



# VIRGINIA

## REGISTER OF REGULATIONS

VOL. 40 ISS. 17

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

April 8, 2024

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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: **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**, Managing Editor; **Erin Comerford**, Regulations Analyst.

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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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## April 2024 through May 2025

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
41:4	September 18, 2024	October 7, 2024
41:5	October 2, 2024	October 21, 2024
41:6	October 16, 2024	November 4, 2024
41:7	October 30, 2024	November 18, 2024
41:8	November 13, 2024	December 2, 2024
41:9	November 26, 2024 ( <b>Tuesday</b> )	December 16, 2024
41:10	December 11, 2024	December 30, 2024
41:11	December 23, 2024 ( <b>Monday</b> )	January 13, 2025
41:12	January 8, 2025	January 27, 2025
41:13	January 22, 2025	February 10, 2025
41:14	February 5, 2025	February 24, 2025
41:15	February 19, 2025	March 10, 2025
41:16	March 5, 2025	March 24, 2025
41:17	March 19, 2025	April 7, 2025
41:18	April 2, 2025	April 21, 2025
41:19	April 16, 2025	May 5, 2025

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Initial Agency Notice

Title of Regulation: **9VAC25-830. Chesapeake Bay Preservation Area Designation and Management Regulations.**

Statutory Authority: §§ 62.1-44.15:69 and 62.1-44.15:72 of the Code of Virginia.

Name of Petitioner: David W. Schnare.

Nature of Petitioner's Request: On March 11, 2024, the Department of Environmental Quality received David W. Schnare's petition to the State Water Control Board. The petitioner requested the board establish by policy or rule a position on:

"1. Whether an Exception Review Committee established under the Chesapeake Bay Preservation Act must only recognize a Resource Protection Area buffer measured from a nontidal wetland in which the geographic extents of the nontidal wetland was determined independent of federal jurisdictional determinations made under the Federal Clean Water Act, or studies intended to support such jurisdictional determinations, and addresses all elements identified in 9VAC25-830-40 and relevant local ordinances; and

2. Whether an applicant for an exception under Fairfax County Ordinance § 118-6-1 can rely on the Atlantic and Gulf Coastal Plain Manual methodologies in order to determine the existence of a nontidal wetland as defined under 33 CFR 328.3 Fairfax County Ordinance § 118-1-6(q), to wit, the presence or absence of a prevalence of vegetation typically adapted for life in saturated soil conditions under normal circumstances; and

3. Requested the board amend 9VAC25-830-40 to read:

"Nontidal wetlands" means those ~~wetlands~~ lands other than tidal wetlands ~~that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 33 CFR 328.3b~~ whose hydrophytic vegetation indicators, hydric soil indicators, and wetland hydrology indicators reveal the subject land is a wetland as described in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (ERDC/EL TR-12-9) or the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (ERDC/EL TR-10-20) or later versions thereof."

Agency Plan for Disposition of Request: A 21-day public comment period is being announced in the Virginia Register of Regulations. Upon completion of the public comment period, the State Water Control Board will consider the petition at a future meeting and decide whether to move forward with initiating a rulemaking.

Public Comment Deadline: April 29, 2024.

Agency Contact: Justin Williams, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA, 23218, telephone (804) 659-1125, or email [justin.williams@deq.virginia.gov](mailto:justin.williams@deq.virginia.gov).

VA.R. Doc. No. PFR26-30; Filed March 19, 2024, 1:24 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF COUNSELING

#### Initial Agency Notice

Title of Regulation: **18VAC115-20. Regulations Governing the Practice of Professional Counseling.**

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Name of Petitioner: Brandy Rucker.

Nature of Petitioner's Request: The petitioner requests that the Board of Counseling amend 18VAC115-20-52 to:

1. Reduce the total required residence hours from 3,400 to 3,000;
2. Reduce residency client contact hours from 2,000 to 1,500; and
3. Change supervision requirements from a minimum of 200 hours to a requirement for weekly supervision with no minimum.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on April 8, 2024. The petition will also be published on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) to receive public comment, which opens April 8, 2024, and closes May 8, 2024. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. That meeting is currently scheduled for August 2, 2024. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: May 8, 2024.

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

VA.R. Doc. No. PFR24-29; Filed March 11, 2024, 1:10 p.m.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### CRIMINAL JUSTICE SERVICES BOARD

#### Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Criminal Justice Services Board will conduct a periodic review and a small business impact review on **6VAC20-60, Rules Relating to Compulsory Minimum Training Standards for Dispatchers**. The Notice of Intended Regulatory Action, which is published in this issue of the Register, serves as the notice of announcement of the reviews.

Contact Information: Kristi Shalton, Regulatory Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-7801, or email [kristi.shalton@dcjs.virginia.gov](mailto:kristi.shalton@dcjs.virginia.gov).

### BOARD OF JUVENILE JUSTICE

#### Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Juvenile Justice will conduct a periodic review and a small business impact review on **6VAC35-170, Regulation Governing Juvenile Data Requests and Research Involving Human Subjects**. The Notice of Intended Regulatory Action, which is published in this issue of the Register, serves as the notice of announcement of the reviews.

Contact Information: Kristen Peterson, Regulatory Affairs Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218, telephone (804) 773-0180, or email [kristen.peterson@djj.virginia.gov](mailto:kristen.peterson@djj.virginia.gov).

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and small business impact review: **8VAC20-11, Regulations Governing Public Participation; 8VAC20-23, Licensure Regulations for School Personnel; 8VAC20-25, Technology Standards for Instructional Personnel; 8VAC20-30, Regulations Governing Adult High School Programs; 8VAC20-180, Regulations Governing School Community Programs; 8VAC20-420, Regulations**

**Governing Personnel in Public School Libraries Operated under Joint Contract under Control of Local School Board or Boards; and 8VAC20-543, Regulations Governing the Review and Approval of Education Programs in Virginia.**

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

Public comment period begins April 8, 2024, and ends April 29, 2024.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Joseph Crook, Regulatory and Board Coordinator, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8719, or email [joseph.crook@doe.virginia.gov](mailto:joseph.crook@doe.virginia.gov).

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board will conduct a periodic review and a small business impact review on **9VAC25-110, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons per Day**. The Notice of Intended Regulatory Action, which is published in this issue of the Register, serves as the notice of announcement of the reviews.

Contact Information: Jeanette Ruiz, Regulatory and Guidance Analyst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 494-9636, or email [jeanette.ruiz@deq.virginia.gov](mailto:jeanette.ruiz@deq.virginia.gov).

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# Periodic Reviews and Small Business Impact Reviews

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## Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board will conduct a periodic review and a small business impact review on **9VAC25-115, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities**. The Notice of Intended Regulatory Action, which is published in this issue of the Register, serves as the notice of announcement of the reviews.

Contact Information: Morgan Emanuel, Regulatory and Guidance Analyst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 494-9635, or email [morgan.emanuel@deq.virginia.gov](mailto:morgan.emanuel@deq.virginia.gov).

complaints from the public during the periodic review. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with any other federal or state law or regulation. The regulation was first promulgated in 2015, underwent periodic review in 2019 and was retained as is, and was updated in January 2022 to conform to Chapter 211 of the 2021 Acts of Assembly, Special Session I. Amending the regulation does not appear to cause an adverse economic impact on small businesses in the Commonwealth.

Contact Information: Karen Mask, Senior Policy Analyst, Office of Epidemiology, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 654-9351, or email [karen.mask@vdh.virginia.gov](mailto:karen.mask@vdh.virginia.gov).

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-115, Virginia Immunization Information System**, and determined that this regulation should be amended. The board is publishing its report of findings dated December 12, 2023, to support this decision.

The regulation protects the public health, safety, and welfare of individuals in the Commonwealth of Virginia by ensuring that public health information associated with immunization records is kept in an efficient, inclusive, and secure system. This system is vital for ensuring immunization data is readily available to providers and impacted stakeholders to ensure providers and impacted stakeholders can provide timely and appropriate patient care.

The regulation sets clear and easily understandable guidance for all providers and health care entities on the appropriate use of the Virginia Immunization Information System by defining protocols related to authorized participants, registration procedures, patient confidentiality, security, data entry and quality assurance, data release, data access, and updated forms.

The State Board of Health will amend the regulation to align it with the Virginia Registrar of Regulations and Virginia Administrative Code form and style requirements and to consider regulatory reduction where possible. Additionally, the agency will update the regulation to reflect current practice and administrative forms.

There is a continued need for the regulation as the regulation is necessary to comply with the mandate in § 32.1-46.01 of the Code of Virginia. The board did not receive any comments or

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-613, Regulations for Alternative Onsite Sewage Systems**, and determined that this regulation should be amended. The board is publishing its report of findings dated June 6, 2023, to support this decision.

The General Assembly has charged the board with the responsibility to adopt, promulgate, and enforce regulations necessary to protect health and safety as it relates to alternative onsite sewage systems. The regulation was reviewed and the regulation was determined to be essential to protecting public health. The regulation is necessary to interpret and apply the requirements imposed by the board and is clearly written and understandable.

The regulation has not undergone a comprehensive review since its initial administrative codification approximately 12 years ago. The regulation would benefit from a comprehensive review to explore (i) advancements in technology; (ii) engagement with the public, including industry, academia, general public, and state and federal partners, to ensure the regulation reflects best and current industry practices; and (iii) cross reference with guidance documents to reduce regulatory burden. The board is recommending to amend the regulation.

Chapters 1 (§ 32.1-1 et seq.) and 6 (§ 32.1-163 et seq.) of Title 32.1 of the Code of Virginia mandate the promulgation of regulations to govern the collection, conveyance, transportation, treatment, and disposal of sewage by alternative discharging sewage systems. In addition, the regulations shall address the maintenance, inspection, and reuse of alternative onsite sewage systems. The continued need for the regulation is established in state law and is not discretionary. No comments were received during the periodic review's public comment period.

The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with any federal or state

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## Periodic Reviews and Small Business Impact Reviews

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law or regulation. The regulation has not undergone revision since 2017.

The board is recommending amending the regulation. Staff will engage with stakeholders and the regulated community regarding any proposed amendments to minimize the economic impact of the regulation on small businesses and consider regulatory reduction where possible, while maintaining appropriate regulatory standards to ensure the safety, health, and welfare of the public.

Contact Information: Lance Gregory, Division Director, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7491, FAX (804) 864-7475, or email [lance.gregory@vdh.virginia.gov](mailto:lance.gregory@vdh.virginia.gov).

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-640, Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated June 6, 2023, to support this decision.

The General Assembly has charged the board with the responsibility to adopt, promulgate, and enforce regulations necessary to protect health and safety as it relates to alternative onsite sewage systems in individual single-family dwellings. The regulation was reviewed and a determination made that the regulation is essential to protecting public health. The regulation is necessary to interpret and apply the requirements imposed by the board and is clearly written and understandable.

The State Board of Health is recommending that the regulation be retained as is, as it reflects the most efficient and cost-effective method to govern the collection, conveyance, transportation, treatment, and disposal of sewage by alternative discharging sewage systems within the Commonwealth.

Chapters 1 (§ 32.1-1 et seq.) and 6 (§ 32.1-163 et seq.) of Title 32.1 of the Code of Virginia mandate the promulgation of regulations to govern the collection, conveyance, transportation, treatment, and disposal of sewage by alternative discharging sewage systems in individual single-family dwellings. In addition, the regulations shall address the maintenance, inspection, and reuse of alternative onsite sewage systems. The continued need for the regulation is established in state law and is not discretionary. No comments were received during the periodic review's public comment period.

The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with any federal, state

law, or regulation. The regulation has not undergone a comprehensive revision since 2015.

Contact Information: Lance Gregory, Division Director, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7491, FAX (804) 864-7475, or email [lance.gregory@vdh.virginia.gov](mailto:lance.gregory@vdh.virginia.gov).

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-650, Schedule of Civil Penalties**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated June 2, 2023, to support this decision.

The General Assembly has charged the board with the responsibility to adopt, promulgate, and enforce regulations necessary to protect health and safety as it relates to onsite sewage systems, which includes the ability to assess penalties. The regulation serves as an important enforcement tool that may be scaled to match the seriousness of violations. The regulation was reviewed, and the determination was made that the regulation is essential to protecting public health. The regulation is necessary to interpret and apply the requirements imposed by the board and is clearly written and understandable.

The State Board of Health is recommending that the regulation be retained as is, as it reflects the most efficient and cost-effective method to support enforcement activities related to the supervision and control of onsite sewage systems within the Commonwealth.

Chapters 1 (§ 32.1-1 et seq.) and 6 (§ 32.-1-163 et seq.) of Title 32.1 of the Code of Virginia mandate the establishment of a uniform schedule of civil penalties for regulations promulgated pursuant § 32.1-164 B of the Code of Virginia and for onsite treatment system pump-out requirements as outlined in the Chesapeake Bay Preservation Act. The continued need for the regulation is established in state law and is not discretionary. No comments were received during the periodic review's public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with any federal or state law or regulation. The regulation has not undergone a comprehensive revision since 2013.

Contact Information: Lance Gregory, Division Director, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7491, FAX (804) 864-7475, or email [lance.gregory@vdh.virginia.gov](mailto:lance.gregory@vdh.virginia.gov).





## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-61, Standards and Regulations for Licensed Adult Day Care Centers**, and determined that this regulation should be amended. The board is publishing its report of findings dated March 6, 2024, to support this decision.

The regulation is necessary to protect the health, safety, welfare, and individual rights of participants of Adult Day Care Centers (ADCCs) and to promote their highest level of functioning. In addition, the regulation sets forth minimum standards for care and services to be provided to participants; administration of medication; staffing; staff qualifications and training; and facility design, construction, and equipment. While the Department of Social Services (DSS) believes the regulation is clearly written and easily understandable, there are opportunities for clarification and to amend or remove specific requirements for clarification or regulatory reduction compliance.

DSS plans to move forward with a Notice of Intended Regulatory Action to amend the regulation based on public comment and the need to reduce regulatory burdens.

The public comment received was in favor of amending the regulation. The regulation does not conflict with federal or state law or regulations; however, a comprehensive review will ensure that duplicative or unnecessary requirements are removed or reduced. The regulation was repealed and replaced four years ago and became effective in December 2019. Amending this regulation is the best alternative to minimize the economic impact on ADCCs as small businesses, while ensuring the protection and well-being of adult participants.

Contact Information: Cynthia Carneal Heflin, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7140, or email [cynthia.carneal@dss.virginia.gov](mailto:cynthia.carneal@dss.virginia.gov).

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### CRIMINAL JUSTICE SERVICES BOARD

#### 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 Criminal Justice Services (DCJS) intends to consider amending **6VAC20-60, Rules Relating to Compulsory Minimum Training Standards for Dispatchers**. The purpose of the proposed action is to modify and update the compulsory minimum training standards and replace the incorporated standard to better align the regulation with the revisions recently made to the compulsory minimum training standards for new law-enforcement officer recruits and Department of Corrections jail, civil process, and courtroom and courthouse security officers. The amendments being considered aim to enhance the requirements for the minimum training standards for law-enforcement dispatchers (public safety telecommunicators) and increase cohesiveness among all criminal justice professions that DCJS regulates.

In addition, pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Comment Deadline: May 8, 2024.

Agency Contact: Kristi Shalton, Regulatory Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-7801, or email [kristi.shalton@dcjs.virginia.gov](mailto:kristi.shalton@dcjs.virginia.gov).

VA.R. Doc. No. R24-7719; Filed March 15, 2024, 11:01 a.m.

### BOARD OF JUVENILE JUSTICE

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Juvenile Justice intends to consider amending **6VAC35-170, Regulation Governing Juvenile Data Requests and Research Involving Human Subjects**. The purpose of the proposed action is to undertake a general review of the regulation in accordance with the

regulatory reduction goal of Executive Directive Number One (2022) and Executive Order 19 (2022). The regulation (i) establishes processes for individuals and entities seeking data maintained by the Department of Juvenile Justice involving individuals who are or have been court-involved, supervised by the department, or committed to the department; (ii) establishes processes and rules for submitting research proposals involving such individuals and the department; and (iii) establishes the processes and rules for human research activities conducted or authorized by the department. This regulatory action is intended to remove provisions that are obsolete and establish processes for addressing requests for data submitted through alternative data systems and trusts.

In addition, pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the board is conducting a periodic review and small business impact review of this regulation to determine whether the 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: §§ 66-10 and 66-10.1 of the Code of Virginia.

Public Comment Deadline: May 8, 2024.

Agency Contact: Kristen Peterson, Regulatory Affairs Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218, telephone (804) 773-0180, or email [kristen.peterson@djj.virginia.gov](mailto:kristen.peterson@djj.virginia.gov).

VA.R. Doc. No. R24-7832; Filed March 18, 2024, 3:41 p.m.

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-110, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day**. The purpose of the proposed action is to amend and reissue the existing general permit, which expires on July 31, 2026. This general permit regulation establishes limitations, monitoring requirements, and other special conditions for point source discharges of treated domestic sewage from treatment works with a design /

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# Notices of Intended Regulatory Action

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Public Comment Deadline: May 8, 2024.

Agency Contact: Jeanette Ruiz, Regulatory and Guidance Analyst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 494-9636, or email [jeanette.ruiz@deq.virginia.gov](mailto:jeanette.ruiz@deq.virginia.gov).

VA.R. Doc. No. R24-7822; Filed March 20, 2024, 11:24 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-115, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities**. The purpose of the proposed action is to amend and reissue the existing general permit, which expires on June 30, 2026. This general permit regulation establishes limitations, monitoring requirements, and other special conditions for point source discharge of seafood processing wastewater from seafood processing facilities to surface waters to maintain surface water quality. The general permit also regulates stormwater quality from seafood processing sites operating under SIC codes 2091(Canned and Cured Fish and Seafoods) and 2092 (Prepared Fresh or Frozen Fish and Seafoods) to maintain surface water quality.

In addition, pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the board 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 intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Public Comment Deadline: May 8, 2024.

Agency Contact: Morgan Emanuel, Regulatory and Guidance Analyst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 494-9635, or email [morgan.emanuel@deq.virginia.gov](mailto:morgan.emanuel@deq.virginia.gov).

VA.R. Doc. No. R24-7823; Filed March 15, 2024, 12:58 p.m.



## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

#### 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 Professional and Occupational Regulation intends to consider amending **18VAC120-30, Regulations Governing Polygraph Examiners**. The purpose of the proposed action is to undertake a general review of the regulation in accordance with the regulatory reduction goal of Executive Directive Number One (2022). The regulation provides for the licensure of polygraph examiners, the registration of polygraph examiner interns, and approval of polygraph schools. The goals of the action include (i) reviewing discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare or are not necessary to effectively administer the licensure program; (ii) ensuring the regulation conforms to current Virginia law and meets applicable federal requirements, is organized, clear, and understandable, and provides minimal burdens on regulants while still protecting the public; and (iii) ensuring the regulation reflects current Department of Professional and Occupational Regulation procedures and policies, along with any other changes determined to be necessary and appropriate.

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

Statutory Authority: § 54.1-1802.1 of the Code of Virginia.

Public Comment Deadline: May 8, 2024.

Agency Contact: Marjorie King, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email [polygraph@dpor.virginia.gov](mailto:polygraph@dpor.virginia.gov).

VA.R. Doc. No. R24-7741; Filed March 8, 2024, 11:43 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

#### Final Regulation

Title of Regulation: **2VAC5-105. Regulations Pertaining to Pet Shops Selling Dogs or Cats (adding 2VAC5-105-10 through 2VAC5-105-60).**

Statutory Authority: §§ 3.2-6501 and 3.2-6501.1 of the Code of Virginia.

Effective Date: May 9, 2024.

Agency Contact: Carolynn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, FAX (804) 371-2380, TDD (800) 828-1120, or email [carolynn.bissett@vdacs.virginia.gov](mailto:carolynn.bissett@vdacs.virginia.gov).

#### Summary:

*Pursuant to Chapter 1284 of the 2020 Acts of Assembly, this regulation establishes specific provisions governing the keeping of dogs and cats by a pet shop, including (i) a requirement that pet shops register with the Department of Agriculture and Consumer Services in order to operate; (ii) the payment of a \$250 annual registration fee by any private, for-profit entity required to register; (iii) standards for the keeping of animals; (iv) a requirement that a state animal welfare inspector annually conduct at least one unannounced drop-in inspection of each pet shop; and (v) remedies for each finding in a given inspection.*

*Changes to the proposed regulation include disallowing employment of individuals convicted of animal cruelty and a requirement that the pet shop must, in consultation with a veterinarian, develop protocols for veterinary care, infection and disease control, and care of medically managed animals or neonates.*

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

#### Chapter 105

Regulations Pertaining to Pet Shops Selling Dogs or Cats

#### 2VAC5-105-10. Definitions.

The following words and terms when used in this chapter

shall have the following meanings unless the context clearly indicates otherwise:

"Animal care inspector" means the animal welfare inspector employed pursuant to § 3.2-5901.1 of the Code of Virginia, or as designated by the State Veterinarian.

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

"Pet shop" means any retail, commercial, private, for-profit establishment that sells dogs or cats to the public and shall not include breeders, dealers, public or private animal shelters, home-based rescues, or residential establishments. Each location will constitute a separate pet shop.

#### 2VAC5-105-20. Registration.

A. Each existing pet shop shall register and pay a \$250 registration fee with the department annually by July 1. A new pet shop that will sell dogs or cats shall register prior to offering dogs or cats for sale, and that registration shall be valid until July 1 of the following calendar year. A pet shop shall apply for a registration using a format developed by the State Veterinarian. A pet shop shall display its registration in a location visible to the public.

B. A pet shop that fails to register with or submit the registration fee to the department shall, upon written warning from the department, have a probationary period of 30 calendar days within which it must register with the department. If the pet shop fails to register with the department by the conclusion of the probationary period, the pet shop shall not sell dogs or cats in the Commonwealth of Virginia.

#### 2VAC5-105-30. Sale limitations.

[ A. ] No pet shop shall offer dogs or cats for sale to any research facility, as defined in § 3.2-6500 of the Code of Virginia.

[ B. No pet shop shall employ a person convicted of animal cruelty pursuant to § 3.2-6570 of the Code of Virginia. ]

#### 2VAC5-105-40. Standards of care.

A. Each pet shop shall be kept in a clean, dry, and sanitary condition. Each pet shop shall provide enclosures that (i) can safely house dogs and cats and (ii) allow for adequate separation of animals of different sexes, ages, and temperaments. Each pet shop shall maintain dogs and cats in a manner that protects the animals against theft, injury, escape, and exposure to harmful substances.

B. Each pet shop shall ensure that all enclosures provide adequate shelter that is properly ventilated and that can be maintained at a comfortable temperature for the dogs and cats confined therein. An enclosure shall not be cleaned when occupied by a dog or cat unless the dog or cat can be further confined in a portion of the enclosure that precludes exposure to any cleaning agent, including water [ , such as in spot cleaning ]. The enclosure shall be thoroughly dry before it is returned to use. An enclosure shall be cleaned with a disinfectant or germicidal agent.

C. Each pet shop shall reasonably endeavor to ensure that drinking water is available to each dog or cat at all times unless otherwise ordered by a licensed veterinarian. Drinking water receptacles or bowls shall be secured to the enclosure in a fixed position or otherwise be of a design that cannot be tipped over by an animal and shall be maintained in sanitary condition.

D. Each pet shop shall ensure that dogs and cats are adequately and appropriately fed according to their age, and feed shall be stored in a manner that prevents spoilage, infestation, and contamination. All feed delivery utensils and receptacles shall be properly cleaned between uses.

E. Each pet shop shall ensure that each dog or cat is provided access to a resting platform or bedding as appropriate to its species, age, and condition.

F. Each pet shop shall provide adequate care to all dogs and cats offered for sale, including adequate exercise, adequate feed, adequate shelter, adequate space, treatment, adequate water, proper lighting, and proper cleaning, as these terms are defined in § 3.2-6500 of the Code of Virginia.

[ G. Each pet shop shall, in consultation with a veterinarian, which may include the State Veterinarian, develop protocols for veterinary care, infection and disease control, and the care of medically managed animals or neonates. ]

**2VAC5-105-50. Inspection.**

A. Each pet shop is subject to at least one unannounced annual inspection of dogs and cats during normal department business hours conducted by the animal care inspector.

B. The animal care inspector shall be granted access to the entire pet shop facility and any requested records.

C. Each pet shop shall be inspected for compliance with this chapter and Chapter 65 (§ 3.2-6500 et seq.) of Title 3.2 of the Code of Virginia.

**2VAC5-105-60. Compliance.**

A. A pet shop shall immediately correct any noncompliance that the animal care inspector identifies during an inspection. If the pet shop is not able to correct a noncompliance during the inspection, then a probationary period shall commence. If the animal care inspector identifies a noncompliance, the animal care inspector will provide the pet shop written notification within a reasonable time after the inspection. The

notification will include a copy of the inspection report and an explanation of the cited noncompliance, including the relevant section of the Code of Virginia or Virginia Administrative Code. The pet shop shall correct the noncompliance to the satisfaction of the animal care inspector.

B. Upon [ ~~gross~~ ] repeated violations or any noncompliance not corrected during a probationary period, the department may revoke a pet shop's registration following reasonable notice to the registration holder and an opportunity for an informal fact finding proceeding pursuant to § 2.2-4019 of the Code of Virginia. If the department revokes a pet shop's registration, the pet shop shall not sell dogs or cats in the Commonwealth of Virginia and must post publicly visible signage provided by the department. The revocation of registration shall remain in effect until the pet shop corrects the noncompliance to the satisfaction of the animal care inspector.

C. The department may immediately temporarily suspend a pet shop's registration whenever the department has reason to believe that an animal health hazard exists or is imminent or when a pet shop willfully refuses to permit authorized inspection. If the department suspends a pet shop's registration, the pet shop shall not sell dogs or cats in the Commonwealth of Virginia and must post publicly visible signage provided by the department. The revocation of registration shall remain in effect until the pet shop corrects the noncompliance to the satisfaction of the animal care inspector.

VA.R. Doc. No. R21-6715; Filed March 6, 2024, 4:34 p.m.



**TITLE 11. GAMING**

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, CHARITABLE GAMING**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Department of Agriculture and Consumer Services, Charitable Gaming, is claiming an exemption from the Administrative Process Act in accordance with the third enactment of Chapters 554 and 609 of the 2022 Acts of Assembly, which exempts the actions of the department relating to the adoption of regulations necessary to implement the provisions of the act; however, the board is required to provide an opportunity for public comment on regulations prior to their adoption.

**Titles of Regulations: 11VAC20-20. Charitable Gaming Regulations (amending 11VAC20-20-10, 11VAC20-20-30, 11VAC20-20-50, 11VAC20-20-80, 11VAC20-20-90, 11VAC20-20-120, 11VAC20-20-600, 11VAC20-20-610).**

**11VAC20-30. Texas Hold'em Poker Tournament Regulations (adding 11VAC20-30-10 through 11VAC20-30-210).**

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# Regulations

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Statutory Authority: § 18.2-340.19 of the Code of Virginia.

Effective Date: May 9, 2024.

Agency Contact: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3983, or email [michael.menefee@vdacs.virginia.gov](mailto:michael.menefee@vdacs.virginia.gov).

Background: Section 18.2-340.19 of the Code of Virginia requires the Department of Agriculture and Consumer Services (VDACS) to adopt regulations that prescribe the conditions under which a qualified organization may manage, operate, contract with operators of, or conduct Texas Hold'em poker tournaments. Chapters 554 and 609 of the 2022 Acts of Assembly require the Commissioner of Agriculture and Consumer Services to prescribe regulations that are consistent with the provisions of Chapter 982 of the 2020 Acts of Assembly. The regulations prescribe the conditions under which Texas Hold'em poker tournaments shall be conducted in the Commonwealth. To effectively regulate Texas Hold'em poker tournaments, VDACS has determined that it will (i) promulgate Texas Hold'em Poker Tournament Regulations (11VAC20-30) and (ii) amend the Charitable Gaming Regulations (11VAC20-20) to include poker-specific provisions where appropriate.

Summary:

*Pursuant to Chapters 554 and 609 of the 2022 Acts of Assembly and in conformance with Chapter 982 of the 2020 Acts of Assembly, the regulatory action establishes the requirements for charitable organizations wishing to conduct Texas Hold'em poker tournaments to generate charitable funds. The new regulation prescribes the conditions under which a qualified organization may manage, operate, conduct, or contract with a separate operator to conduct Texas Hold'em poker tournaments, including (i) providing that a charitable organization wishing to conduct Texas Hold'em poker tournaments must obtain a permit from the department; (ii) establishing required documents that must be provided to the department, prohibited acts, procedures for recordkeeping and bank account maintenance, and contract and lease requirements; (iii) requiring that any person administering a Texas Hold'em poker tournament for a charitable organization must register with the department as an operator; (iv) requiring the registration of a landlord who rents, leases, or otherwise provides a premises to a charitable organization to hold a Texas Hold'em poker tournament; (v) establishing requirements for Texas Hold'em poker tournaments, including a fixed entry fee, use of poker cards and poker chips, posting house rules, and prohibited acts; (vi) outlining training requirements for all persons working or volunteering at a poker tournament, including a prohibition of staff of the charitable organization or the operator from participating as a player in the poker tournament; (vii) allowing*

*concurrent tournaments with several restrictions, including the number of concurrent tournaments that may be played at any given time; (viii) allowing a dealer of an operator to play in a poker tournament only if the dealer does not deal in that tournament or within 48 hours of the dealer's shift; (ix) removing the requirement for a dealer's last name to appear on the dealer's badge; (x) allowing add-ons and defining the term; (xi) allowing an organization to conduct poker tournaments outside of the county, city, or town or adjacent county, city, or town where the organization is located; and (xii) allowing the use of computer software to manage poker tournaments.*

*Amendments to 11VAC20-20 (i) add new definitions consistent with 11VAC20-30 to allow for the conduct of Texas Hold'em poker tournaments by qualified organizations; (ii) establish the criteria for receiving a permit to conduct Texas Hold'em poker tournaments, including documentation that must be provided with the permit application; (iii) establish prohibited acts that if the organization is found to have committed, would result in the denial, revocation, or suspension of the organization's permit; and (iv) add recordkeeping requirements for organizations that conduct poker tournaments.*

## **11VAC20-20-10. Definitions.**

In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

[ "Add-on" means a player's purchase of additional poker chips during a tournament at preannounced times before that player runs out of poker chips. ]

"Administer" means the conduct of activities by an operator that are associated with production of a poker tournament.

[ ~~"Add-on" means a player's purchase of additional poker chips during a tournament at preannounced times before that player runs out of poker chips.~~ ]

"Agent" means any person authorized by a supplier, network bingo provider, or manufacturer to act for or in place of such supplier, network bingo provider, or manufacturer.

"Board of directors" means the board of directors, managing committee, or other supervisory body of a qualified organization.

"Calendar day" means the period of 24 consecutive hours commencing at 12:00:01 a.m. and concluding at midnight.

"Calendar week" means the period of seven consecutive calendar days commencing at 12:00:01 a.m. on Sunday and ending at midnight the following Saturday.

"Cash" means United States currency or coinage.

"Charitable Gaming Law" means Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia.

"Charitable host representative" means a person who (i) is a bona fide member, as defined in § 18.2-340.16 of the Code of Virginia, of the qualified organization; (ii) meets all other requirements for bona fide members set forth in the Charitable Gaming Law; (iii) does not receive remuneration pursuant to § 18.2-340.33 of the Code of Virginia; and (iv) is responsible for the oversight and execution of the written contract between the qualified organization and operator during the poker tournament.

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

"Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face.

"Conduct" means the actions associated with the provision of a gaming operation during and immediately before or after the permitted activity, which may include (i) selling bingo cards or packs, electronic bingo devices, instant bingo or pull-tab cards, electronic pull-tab devices, electronic pull-tabs, network bingo cards, or raffle tickets; (ii) calling bingo games; (iii) distributing prizes; (iv) dealing playing cards; (v) distributing poker chips; and ~~(iv)~~ (vi) any other services provided by game workers, charitable host representatives, or volunteer dealers.

"Control program" means software involved in any critical game function.

"Daubing" means covering a square containing a number called with indelible ink or otherwise marking a number called on a card or an electronic facsimile of a card.

"Deal" means each separate package or series of packages consisting of one game of instant bingo, pull-tabs, or seal cards with the same serial number.

"Decision bingo" means a bingo game where the cost to a player to play is dependent on the number of bingo numbers called, and the prize payout is in direct relationship to the number of participants and the number of bingo numbers called but shall not exceed statutory prize limits for a regular bingo game.

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

"Designator" means an object used in the bingo number selection process, such as a ping-pong ball, upon which bingo letters and numbers are imprinted.

"Device number" means the unique serial number assigned to each electronic gaming device by the department and displayed on the device tag affixed by the department.

"Device tag" means the mark that contains a unique serial number assigned to each electronic gaming device that is affixed by the department to each electronic gaming device

indicating that the department has authorized and approved the use of such device.

"Discount" means any reduction in cost of admission or game packs or any other purchases through use of coupons, free packs, or other similar methods.

"Disinterested player" means a player who is unbiased.

"Disposable bingo paper" or "disposable paper" means a nonreusable, paper bingo card manufactured with preprinted numbers.

"Distributed pull-tab system" means a computer system consisting of a computer and associated equipment for the use of distributing a finite number of electronic pull-tabs, a certain number of which entitle a player to prize awards at various levels.

"Door prize" means any prize awarded by the random drawing or random selection of a name or number based solely on attendance at a charitable gaming activity.

"Electronic bingo device" means an electronic unit that uses proprietary software or hardware, or operates in conjunction with commonly available software and computers to display facsimiles of bingo cards and allows a player to daub such cards or allows for the automatic daubing of such cards.

"Electronic gaming" or "electronic games" means any instant bingo, pull-tabs, or seal card gaming that is conducted primarily by use of an electronic device. "Electronic gaming" does not include (i) the game of chance identified in clause (ii) of the definition of "bingo" in § 18.2-340.16 of the Code of Virginia or (ii) network bingo.

"Electronic gaming device" means an electronic unit used to facilitate the play of an electronic pull-tab. An electronic pull-tab device may take the form of an upright cabinet or a handheld device or may be of any other composition as approved by the department.

"Electronic gaming adjusted gross receipts" means the gross receipts derived from electronic gaming less the total amount in prize money paid out to players.

"Electronic gaming manufacturer" means a manufacturer of electronic devices used to conduct electronic gaming.

"Electronic pull-tabs" means a form of electronic gaming using an electronic version of a single instant bingo card or pull-tab. An electronic pull-tab is a predetermined game outcome in electronic form, distributed on-demand from a finite number of game outcomes by a distributed pull-tab system.

"Equipment and video systems" means equipment that facilitates the conduct of charitable gaming, such as ball blowers, flashboards, electronic verifiers, and replacement parts for such equipment. Equipment and video systems shall

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not include dispensing devices, electronic bingo devices, and electronic pull-tab devices.

"Event game" means a bingo game (i) that is played using instant bingo cards or pull-tabs in which the winners include both instant winners and winners who are determined by the random draw of a bingo ball, the random call of a bingo number, or the use of a seal card, and (ii) that is sold in its entirety and played to completion during a single bingo session.

"Fiscal year" or "annual reporting period" means the 12-month period beginning January 1 and ending December 31 of any given year.

"Flare" means a printed or electronic display that bears information relating to the name of the manufacturer or logo, name of the game, card count, cost per play, serial number, number of prizes to be awarded, and specific prize amounts in a deal of instant bingo, pull-tab, seal cards, or electronic pull-tabs.

"Free space number," "perm number," "center number," "card number," or "face number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

"Game manager" means a person who (i) is a bona fide member, as defined in § 18.2-340.16 of the Code of Virginia, of the qualified organization that is managing, operating, and conducting a poker tournament; (ii) meets all other requirements for bona fide members set forth in the Charitable Gaming Law and this chapter; and (iii) is responsible for the operation of the qualified organization's poker tournament and does not receive remuneration for it pursuant to § 18.2-340.33 of the Code of Virginia.

"Game program" means a written list of all games to be played, including the sales price of all bingo paper, network bingo cards, and electronic bingo devices, pack configuration, prize amounts to be paid during a session for each game, and an indication whether prize amounts are fixed based on attendance.

"Game set" means the entire pool of electronic pull-tabs that contains predefined and randomized game results assigned under a unique serial number. This term is equivalent to "deal" or "deck."

"Game subset" means a division of a game set into equal sizes.

"Immediate family" means one's spouse, parent, child, sibling, grandchild, grandparent, mother or father-in-law, or stepchild.

"Interested persons" means (i) the president, an officer, or a game manager of any qualified organization that is exempt or is a permit applicant or holds a permit to conduct charitable gaming, or (ii) the owner, director, officer, or partner of an

entity engaged in supplying charitable gaming supplies to organizations, engaged in providing network bingo supplies to organizations, or engaged in manufacturing any component of an electronic game that is distributed in the Commonwealth.

"IRS" means the U.S. Internal Revenue Service.

"Management" means the provision of oversight of a gaming operation, which may include the responsibilities of applying for and maintaining a permit or authorization; compiling, submitting, and maintaining required records and financial reports; and ensuring that all aspects of the operation are in compliance with all applicable statutes and regulations.

"Manufacturer" means a person who or entity that assembles from raw materials or subparts a completed piece of bingo equipment or supplies, a distributed pull-tab system, or other charitable gaming or electronic gaming equipment or supplies. "Manufacturer" also means a person who or entity that modifies, converts, adds, or removes parts to or from bingo equipment or supplies, a distributed pull-tab system, or other charitable gaming or electronic gaming equipment or supplies to further their promotion or sale for the conduct of charitable gaming.

"Operation" means the activities associated with production of a charitable gaming or electronic gaming activity, which may include (i) the direct on-site supervision of the conduct of charitable gaming and electronic gaming; (ii) coordination of game workers; and (iii) all responsibilities of charitable gaming and electronic gaming designated by the organization's management.

"Operator" means a person who has registered with the department in accordance with 11VAC20-30-50 to administer poker tournaments.

"Organization number" means a unique identification number issued by the department.

"Owner" means any individual with financial interest of 10% or more in a supplier, network bingo provider, or a manufacturer of a distributed pull-tab system or other electronic gaming device or system distributed in the Commonwealth.

"Pack" means sheets of bingo paper or electronic facsimiles assembled in the order of games to be played. This shall not include any raffle.

"Poker game" means a Texas Hold'em poker game as defined in § 18.2-340.16 of the Code of Virginia.

"Poker tournament" means a Texas Hold'em poker tournament as defined in § 18.2-340.16 of the Code of Virginia.

"Prize" means cash, merchandise, certificate, or other item of value awarded to a winning player.



"Progressive bingo" means a bingo game in which the prize is carried forward to the next game if a predetermined pattern is not completed within a specified number of bingo numbers called.

"Progressive seal card" means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Seal card" means a board or placard used in conjunction with a deal of the same serial number that contains one or more concealed areas that when removed or opened, reveal a predesignated winning number, letter, or symbol located on that board or placard.

"Selection device" means a manually or mechanically operated device used to randomly select bingo numbers.

"Serial number" means a unique number assigned by the manufacturer to each set of bingo cards or network bingo cards; each instant bingo, pull-tab, or seal card in a deal; each electronic bingo device; each door prize ticket; each game set and game subset of electronic pull-tabs; and each electronic gaming device.

"Series number" means the number of unique card faces contained in a set of disposable bingo paper cards, network bingo cards, or bingo hard cards. A 9000 series, for example, has 9,000 unique faces.

"Session" means a period of time during which one or more bingo games are conducted or during which instant bingo, pull-tabs, seal cards, or electronic gaming may be sold and redeemed. A session begins with the sale of instant bingo, pull-tabs, seal cards, electronic gaming, electronic bingo devices, network bingo cards, or bingo cards or packs.

"Social organization" means the same as that term is defined in § 18.2-340.16 of the Code of Virginia.

"Social quarters" means the same as that term is defined in § 18.2-340.16 of the Code of Virginia.

"Treasure chest" means a raffle including a locked treasure chest containing a prize that a participant, selected through some other authorized charitable game, is afforded the chance to select from a series of keys a predetermined key that will open the locked treasure chest to win a prize.

"Use of proceeds" means the use of funds derived by an organization from its charitable gaming activities, which are disbursed for those lawful religious, charitable, community, or educational purposes.

"Voucher" means a printed ticket tendered to the player, upon request, for any unused game plays or winnings that remain on the electronic pull-tab device.

"WINGO" means a variation of a traditional bingo game that uses visual devices rather than a verbal caller and is intended for play by hearing impaired persons.

**11VAC20-20-30. Charitable gaming permit application process for raffles, bingo, paper pull-tabs, network bingo, paper instant bingo, ~~and~~ paper seal cards, and poker tournaments.**

A. Any organization (i) anticipating gross gaming receipts from raffles that exceed the amount set forth in § 18.2-340.23 of the Code of Virginia or (ii) intending to operate and conduct bingo, electronic gaming, instant bingo, seal cards, pull-tabs, a poker tournament, or network bingo shall complete a department-prescribed application to request issuance or renewal of an annual permit to conduct charitable gaming. Organizations shall submit a nonrefundable fee payable to the Treasurer of Virginia in the amount of \$200 with the application, unless the organization is exempt from such fee pursuant to § 18.2-340.23 of the Code of Virginia.

B. The department may initiate action against any organization exempt from permit requirements when it reasonably believes the organization is not in compliance with the provisions of Charitable Gaming Law or regulations adopted pursuant thereto.

C. Permits shall be valid for a period of one year from the date of issuance or for a period specified on the permit. The department may issue permits for periods of less than one year.

D. Permits shall be granted only after a background investigation of an organization, interested persons, or both to ensure public safety and welfare as required by § 18.2-340.25 of the Code of Virginia. Investigations shall consider the nature, the age and severity, and the potential harm to public safety and welfare of any criminal offenses. The investigation may include the following:

1. A search of criminal history records for the chief executive officer and chief financial officer of the organization, game manager, or charitable host representative. Information and authorization to conduct these records checks shall be provided in the permit application. In addition, the department shall require that the organization provides assurances that all other members involved in the management, operation, or conduct of charitable gaming meet the requirements of subdivision 12 of § 18.2-340.33 of the Code of Virginia. Applications may be denied if:

- a. Any person participating in the management of any charitable gaming has ever been:
  - (1) Convicted of a felony; or
  - (2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.
- b. Any person participating in the conduct of charitable gaming has been:

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- (1) Convicted of any felony in the preceding 10 years; or
- (2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years;

2. An inquiry as to whether the organization has been granted tax-exempt status pursuant to § 501(c) by the Internal Revenue Service and is in compliance with IRS annual filing requirements;

3. An inquiry as to whether the organization has entered into any contract with, or has otherwise employed for compensation, any persons for the purpose of organizing or managing, operating, or conducting any charitable gaming activity, excluding a written contract with an operator to administer a qualified organization's poker tournament;

4. Inquiries into the finances and activities of the organization and the sources and uses of funds;

5. Inquiries into the level of community or financial support to the organization and the level of community involvement in the membership and management of the organization; and

6. An inquiry as to whether the organization operates in accordance with the provisions of or is in violation of any provision of the Charitable Gaming Law or regulations promulgated pursuant thereto.

E. The permit application for an organization that has not previously held a permit shall include:

1. A copy of the articles of incorporation, bylaws, charter, constitution, or other appropriate organizing document;

2. A copy of the determination letter issued by the IRS under § 501(c) of the Internal Revenue Code, if appropriate, or a letter from the national office of an organization indicating the applicant organization is in good standing and is currently covered by a group exemption ruling. A letter of good standing is not required if the applicable national or state office has furnished the department with a listing of member organizations in good standing in the Commonwealth as of January 1 of each year and has agreed to promptly provide the department any changes to the listing as they occur;

3. A copy of the written lease or proposed written lease agreement and all other agreements between the organization and the landlord if the organization rents or intends to rent a facility where bingo, a poker tournament, or electronic gaming is or will be conducted. Information on the lease shall include name, address, and telephone number of the landlord; maximum occupancy of the building; ~~and~~ the rental amount per session; and if the landlord that leases a facility where a poker tournament will be conducted is an entity, the name of each of the entity's owners, members, [ ~~manager~~ managers ], officers, and directors;

4. An authorization by an officer or other appropriate official of the organization to permit the department to determine

whether the organization has been investigated or examined by the IRS in connection with charitable gaming activities during the previous three years. ~~F.;~~ and

5. Any contracts or any other agreements with landlords, suppliers, network bingo providers, social organizations, operators, or manufacturers to which the organization is or may be a party.

F. If the organization wishes to conduct a poker tournament, the organization must provide the following information and documentation with its permit application in addition to the documents listed in subsection E of this section:

1. House rules that govern how the poker tournament will be played. All house rules shall be preapproved by the department and shall be consistent with the Charitable Gaming Law, this chapter, 11VAC20-30, and the official rules for poker tournaments established by the Poker Tournament Directors Association;

2. If the organization uses or intends to use an operator to administer its poker tournament, the identity of the organization's charitable host representative and a copy of a current photo identification of the charitable host representative, such as a driver's license or other government-issued identification;

3. If the organization uses or intends to use an operator to administer its poker tournament, a copy of the operator's internal control policies that comply with criteria established in 11VAC20-30-60 O;

4. If the organization intends to manage, operate, and conduct or manages, operates, and conducts its own poker tournament, the designation and identity of the organization's game manager who shall be responsible for the operation and conduct of the poker tournament for the qualified organization and a copy of a current photo identification of the game manager, such as a driver's license or other government-issued identification; and

5. A sample of the badge that meets the criteria established in 11VAC20-30-60 Q.

G. Copies of minutes of meetings of the organization may be requested by the department prior to rendering a permitting decision.

H. Organizations applying to renew a permit previously issued by the department shall submit articles of incorporation, bylaws, charter, constitution, or other organizing document; IRS determination letter; any new contract or agreement with a landlord, supplier, network bingo provider, social organization, operator, or manufacturer to which the organization is or may be a party; and a copy of any lease with any landlord or social organization if there are any amendments or changes to these documents.

I. Organizations may request permits to conduct joint bingo games as provided in § 18.2-340.29 of the Code of Virginia.

1. In the case of a joint bingo game, each organization shall file a permit application.
2. The nonrefundable permit fee for joint bingo games shall be a total of \$200. However, no permit application fee is due if each of the organizations is exempt from the application fee pursuant to § 18.2-340.23 of the Code of Virginia.
3. A single permit may be issued in the names of all the organizations conducting a joint bingo game. All restrictions and prohibitions applying to single organizations shall apply to qualified organizations jointly conducting bingo games pursuant to § 18.2-340.29 of the Code of Virginia.
4. No joint bingo game shall be conducted prior to the issuance of a joint permit.
5. Applications for joint bingo games shall include an explanation of the division of manpower, costs, and proceeds for the joint bingo game.

J. An organization wishing to change dates, times, or locations of its charitable gaming shall request an amendment to its permit. Amendment requests shall be made in writing on a form prescribed by the department in advance of the proposed effective date.

K. An organization may cancel its charitable gaming due to inclement weather, disasters, or other circumstances outside the organization's control without an amendment to its permit.

L. An organization may sell raffle tickets for a drawing to be held outside of the Commonwealth of Virginia in the United States provided:

1. The raffle is conducted by the organization in conjunction with a meeting outside the Commonwealth of Virginia or with another organization that is licensed to conduct raffles outside the Commonwealth of Virginia;
2. The raffle is conducted in accordance with this chapter and the laws and regulations of the state where the drawing is to be held; and
3. The portion of the proceeds derived from the sale of raffle tickets in the Commonwealth is reported to the department.

M. Any permitted organization that ceases to conduct charitable gaming shall immediately notify the department in writing and provide the department a report as to the disposition of all unused charitable gaming supplies or electronic gaming devices on a form prescribed by the department.

**11VAC20-20-50. Suspension, revocation, or denial of permit and authorization.**

A. Pursuant to § 18.2-340.20 of the Code of Virginia, the department may suspend, revoke, or deny (i) the permit to

conduct charitable gaming or to contract with an operator to administer a poker tournament or (ii) the authorization to operate and conduct electronic gaming of any organization for cause, including any of the following reasons:

1. The organization is found to be in violation of or has failed to meet any of the requirements of the Charitable Gaming Law or regulations governing the management, operation, and conduct of charitable gaming or electronic gaming in the Commonwealth.
2. The organization is found to be not in good standing with its state or national organization.
3. The IRS revokes or suspends the organization's federal tax-exempt status.
4. The organization willfully and knowingly provides false information in its application for a permit to conduct charitable gaming.
5. The organization is found to have a member involved in the management, operation, or conduct of its charitable gaming who has been convicted of any felony or any misdemeanor as follows:
  - a. For any person participating in the management or operation of any charitable gaming:
    - (1) Convicted of a felony; or
    - (2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.
  - b. For any person participating in the conduct of charitable gaming:
    - (1) Convicted of any felony within the preceding 10 years; or
    - (2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

6. The organization is found to have managed, operated, or conducted a poker tournament or to have contracted with an operator or any person to administer a poker tournament on its behalf without a permit issued to the organization to do so.

7. If the qualified organization uses or intends to use an operator to administer its poker tournament, the qualified organization fails to submit or provide to the department (i) a written contract that complies with 11VAC20-30-180, (ii) a new or amended written contract with its operator within the 20 days following the date on which that contract is signed by all parties to the contract, or (iii) a new or amended written contract with its operator that complies with 11VAC20-30-180.

8. The qualified organization, member of the qualified organization, person affiliated or associated with the qualified organization, or immediate family member or person residing in the household of a member of the qualified organization or of a person affiliated or associated

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with the qualified organization directly or indirectly has any interest or ownership in an operator with which the qualified organization contracts to administer its poker tournament.

9. A member of the qualified organization; person affiliated or associated with the qualified organization; or immediate family member or person residing in the household of a director, officer, owner, partner, employee, independent contractor, or member of the qualified organization or of a person affiliated or associated with the qualified organization receives compensation from an operator with which the qualified organization contracts to administer its poker tournament.

10. If the qualified organization conducts a poker tournament or contracts with an operator to administer its poker tournament, the qualified organization, member of the qualified organization, person affiliated or associated with the qualified organization, or immediate family member or person residing in the household of a member of the qualified organization or of a person affiliated or associated with the qualified organization directly or indirectly receives any payment from the landlord of the facility where the poker tournament occurs or from the agents, employees, immediate family members, or persons residing in the household of the landlord unless such payment is directly related to a written contract to lease a facility for use to hold a poker tournament as required by 11VAC20-20-120 A and such payment is made by check or electronic fund transfer from the landlord directly to the qualified organization's charitable gaming account.

B. The failure to meet any of the requirements of § 18.2-340.24 of the Code of Virginia shall cause the denial of the permit, and no organization shall conduct any charitable gaming until the requirements are met and a permit is obtained.

C. The failure to meet the definition of a social organization or the requirements in § 18.2-340.26:1 shall cause the denial of the authorization to conduct electronic gaming, and no organization shall conduct electronic gaming until the requirements are met and an authorization is obtained.

D. Except when an organization fails to meet any of the requirements of § 18.2-340.24 of the Code of Virginia or fails to file a financial report as required by § 18.2-340.30 of the Code of Virginia or when a manufacturer fails to file a financial report as required by § 18.2-340.30:2 of the Code of Virginia, in lieu of suspending, revoking, or denying a permit to conduct charitable gaming; an authorization to operate and conduct electronic gaming; or a permit to distribute a distributed pull-tab system or electronic gaming devices, the department may afford an organization or manufacturer, at the department's discretion, an opportunity to enter into a compliance agreement specifying additional conditions or requirements as it may deem necessary to ensure an organization's or a manufacturer's compliance with the Charitable Gaming Law and regulations adopted pursuant thereto and may require that an organization

or manufacturer participates in such training as is offered by the department.

E. If the premises on which a social organization operates and conducts electronic gaming is deemed a common nuisance pursuant to § 18.2-258 of the Code of Virginia, then the department may suspend, revoke, or deny the social organization's authorization to operate and conduct electronic gaming.

F. If a permit or authorization to operate and conduct electronic gaming is suspended, the department shall set the terms of the suspension, which shall include the length of the suspension and a requirement that, prior to reinstatement of the permit or authorization, the organization shall submit a remedial business plan to address the conditions that resulted in the suspension. The remedial business plan must be approved by the department prior to reinstatement of the permit or authorization.

G. An organization whose permit or authorization to operate and conduct electronic gaming is revoked shall be eligible to reapply for an authorization one year from the date of revocation. If the authorization was revoked fewer than 18 months prior to the organization reapplying for an authorization, the organization shall submit a remedial business plan for approval by the department to address the conditions that resulted in the revocation. The remedial business plan must be approved by the department prior to reinstatement of the permit or authorization. The department at its discretion may issue the authorization if it is satisfied that the organization's remedial business plan will result in compliance with the requirements of the Charitable Gaming Law and regulations adopted pursuant thereto.

H. If a permit or authorization to operate and conduct electronic gaming is suspended, the department shall set the terms of the suspension, which shall include the length of the suspension and a requirement that prior to reinstatement of the authorization, the organization shall submit a remedial business plan approved by the department to address the conditions that resulted in the suspension. The remedial business plan must be approved by the department prior to reinstatement of the permit or authorization.

I. If an organization fails to meet the minimum use of proceeds requirement after having been suspended, the organization's authorization to operate and conduct electronic gaming shall be revoked. An organization whose authorization is revoked shall be eligible to reapply for an authorization at the end of one year from the date of revocation. If the authorization is revoked, the organization is required to reapply for an authorization, and if the authorization was revoked less than 18 months prior to reapplying for an authorization, then the organization shall submit a remedial business plan approved by the department to address the conditions that resulted in the revocation. The department at its discretion may issue the authorization if it is satisfied that the organization's

remedial business plan will result in meeting the use of proceeds requirement.

**11VAC20-20-80. Bank accounts.**

A. A qualified organization shall maintain a charitable gaming bank account that is separate from any other bank account, and all gaming receipts, except receipts from electronic gaming, shall be deposited into the charitable gaming bank account.

B. Disbursements for expenses other than prizes and reimbursement of meal expenses shall be made by check directly from a charitable gaming bank account or a bank account authorized pursuant to subsection A of this section. However, expenses related to a network bingo game ~~or~~ distributed pull tab system, or operator may be disbursed through an electronic fund transfer to the network bingo provider ~~or~~ the permitted manufacturer or supplier providing the distributed pull-tab system, or operator, provided that such an arrangement is agreed upon by both (i) the qualified or social organization and (ii) the network bingo provider ~~or~~ permitted manufacturer or supplier, or operator. A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties.

C. All records related to the charitable gaming bank account or the other bank account, authorized pursuant to subsection A of this section, including monthly bank statements, canceled checks or facsimiles thereof, and reconciliations, shall be maintained for a minimum of three years following the close of a fiscal year.

D. All receipts from each session of bingo games, network bingo games, raffles, instant bingo, pull-tabs, or seal cards shall be deposited by the second business day following the session at which they were received. All receipts from electronic gaming shall be deposited at least once every seven calendar days.

E. All receipts from a poker tournament shall be deposited by the second business day following the poker tournament at which they were received. However, receipts received by an operator for administering a poker tournament for a qualified organization may be deposited through an electronic fund transfer into the qualified organization's charitable gaming account provided that such an arrangement is agreed upon by both the qualified organization and the operator. A written agreement specifying the terms of this arrangement is required prior to any electronic fund transfer occurring between the two parties.

F. Raffle proceeds unrelated to a session shall be deposited into the qualified organization's charitable gaming bank account or a bank account authorized pursuant to subsection A of this section no later than the end of the calendar week following the week during which the organization received the proceeds.

~~F. G.~~ A social organization operating and conducting electronic gaming or a qualified organization renting a premises from a social organization for the purpose of electronic gaming shall maintain a separate bank account for all receipts rebates, discounts, or refunds from electronic gaming.

**11VAC20-20-90. Recordkeeping.**

A. In addition to the records required by § 18.2-340.30 D of the Code of Virginia, qualified organizations conducting a session of bingo or electronic gaming; managing, operating, and conducting a poker tournament; or contracting with an operator to administer a poker tournament shall maintain a system of records for a minimum of three years following the close of the fiscal year, unless otherwise specified, for each session on forms prescribed by the department or reasonable facsimiles of those forms approved by the department that include:

1. Charitable gaming supplies, including electronic gaming ~~or~~ supplies, network bingo supplies, or poker tournament supplies purchased and used;
2. A session reconciliation form or an instant bingo, pull-tab, ~~or~~ seal card, or poker tournament reconciliation form completed and signed within 48 hours of the end of the session by the game manager. For electronic gaming, an electronic gaming reconciliation form completed and signed within 48 hours of the deposit of receipts in accordance with 11VAC20-20-80 D;
3. All discounts provided;
4. A reconciliation to account for (i) cash received from floor workers for the sale of extra bingo sheets for any game or network bingo cards or (ii) cash received from dealers or game workers as payment from players for entry into the poker tournament or for add-ons;
5. The summary report that electronic bingo systems are required to maintain pursuant to 11VAC20-20-140 D 11;
6. An admissions control system that provides a cross-check on the number of players in attendance and admission sales. This may include a ticket control system, cash register, or any similar system. The requirements of this subdivision shall not apply to the operation and conduct of electronic gaming;
7. All operating expenses, including rent, advertising, and security. Copies of invoices for all such expenses shall also be maintained;
8. Expected and actual receipts from games played on hard bingo cards and number of games played on hard bingo cards;
9. A record of the name and address of each winner for all seal cards; ~~in addition, the~~ and poker tournaments. The

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winning ticket and seal card shall be maintained for a minimum of 90 days after the session;

10. For poker tournaments, an itemized record of all receipts and expenses associated with a poker tournament, including rent, advertisement, and security as well as an itemized record of all use of proceeds disbursements. Copies of invoices and other documentation for all such expenses shall also be maintained;

11. For poker tournaments, any other operating expenses for which receipts from a poker tournament were disbursed. Copies of invoices and other documentation for all such other expenses shall also be maintained;

12. A record of all door prizes awarded; and

~~H.~~ 13. For any prize or jackpot of a value that meets or exceeds the reporting requirements in the Internal Revenue Service's Publication 3079, the name and address of each individual to whom any such prize or jackpot is awarded and the amount of the award.

B. Qualified organizations conducting raffles unrelated to a session shall have a recordkeeping system to account for cash receipts, cash disbursements, raffle tickets purchased or sold, and prizes awarded. All records shall be maintained for a minimum of three years following the close of the fiscal year. The recordkeeping system shall include:

1. Invoices for the purchase of raffle tickets, which shall reflect the following information:
  - a. Name and address of supplier;
  - b. Name of purchaser;
  - c. Date of purchase;
  - d. Number of tickets printed;
  - e. Ticket number sequence for tickets printed; and
  - f. Sales price of individual ticket;
2. A record of cash receipts from raffle ticket sales by tracking the total number of tickets available for sale, the number issued to sellers, the number returned, the number sold, and reconciliation of all raffle sales to receipts;
3. Serial numbers of tickets for raffle sales initiated and concluded at a bingo game or sequentially numbered tickets, which shall state the name, address, and telephone number of the organization, the prize to be awarded, the date of the prize drawing or selection, the selling price of the raffle ticket, and the charitable gaming permit number;
4. For any raffle prize of a value that meets or exceeds the reporting requirements in the Internal Revenue Service's Publication 3079, receipts on which prize winners must provide printed name, residence address, and the amount and description of the prize received; and
5. Deposit records of the required weekly deposits of raffle receipts.

C. All raffle tickets shall have a detachable section; be consecutively numbered with the detachable section having the same number; provide space for the purchaser's name, complete address, and telephone number; and state (i) the name and address of the organization; (ii) the prize to be awarded; (iii) the date, time, and location of the prize drawing; (iv) the selling price of the ticket; and (v) the charitable gaming permit number. Winning tickets and unsold tickets shall be maintained for a minimum of three years following the close of the fiscal year.

D. All unused charitable gaming supplies, including network bingo supplies, shall either be returned for refund to the original supplier in unopened original packaging in resalable condition as determined by the supplier or destroyed following notification to the department on a form prescribed by the department. The organization shall maintain a receipt for all such supplies returned to the supplier or destroyed.

E. If a qualified organization uses an operator to administer its poker tournament, then the qualified organization and its operator shall each maintain independent records on each poker tournament. The qualified organization shall not have its records managed, maintained, or stored by an operator.

## **11VAC20-20-120. Requirements regarding renting premises, agreements, and landlord participation.**

A. No qualified organization shall lease, rent, or use any premises to operate or conduct charitable gaming unless all terms and conditions for lease, rental, or use are set forth in a written agreement and signed by the parties thereto prior to the issuance of a permit to operate and conduct charitable gaming or authorization to operate and conduct electronic gaming.

B. Organizations shall not make payments to a landlord or a landlord's agent or employee except by check drawn on the organization's charitable gaming account.

C. No landlord, landlord's agent or employee, member of a landlord's immediate family, or person residing in a landlord's household shall make, directly or indirectly, a loan to any of the organization's officers, directors, ~~or~~ game managers, or operators, or to any organization involved in the management, operation, or conduct of charitable gaming or electronic gaming of an organization in Virginia that leases its charitable gaming premises from the landlord.

D. No landlord, landlord's agent or employee, member of a landlord's immediate family, or person residing in a landlord's household shall make any direct or indirect payment to any qualified organization or the organization's officers, directors, or game managers involved in the management, operation, or conduct of charitable gaming or electronic gaming conducted on a premise leased from the landlord in Virginia unless the payment is authorized by the lease agreement and is in accordance with the law.

E. No landlord, landlord's agent or employee, member of a landlord's immediate family, or person residing in a landlord's same household shall do any of the following at charitable games or electronic games operated and conducted on the landlord's premises:

1. Participate in the management, operation, or conduct of any charitable games or electronic games;
2. Sell, lease, or otherwise provide any charitable gaming supplies, including bingo cards, pull-tab cards, distributed pull-tab systems, electronic gaming devices, network bingo cards, playing cards, poker chips, or other game pieces; ~~or~~
3. Require as a condition of the lease that a particular manufacturer, distributor, network bingo provider, ~~or~~ supplier of charitable gaming supplies or electronic gaming device, or operator is used by the organization; or
4. Provide, advise, or direct the qualified organization or its operator to use any particular person to manage, operate, conduct, or administer a poker tournament that is to be held in the landlord's premises.

"Charitable gaming supplies" as used in this chapter shall not include glue, markers, or tape sold from concession stands or from a location physically separated from the location where charitable gaming supplies are normally sold.

F. No member of an organization involved in the management, operation, or conduct of charitable gaming or electronic gaming shall provide any services to a landlord or a landlord's agents or employees or be remunerated in any manner by the landlord of the premises or such landlord's agents or employees where an organization is operating or conducting its charitable gaming or electronic gaming.

G. For the purpose of operating and conducting electronic gaming, a qualified organization shall only lease or rent the premises of a permitted and authorized social organization that is operating and conducting electronic gaming pursuant to §§ 18.2-340.25:1 and 18.2-340.26:3 of the Code of Virginia. All terms and conditions for leasing or renting of the premises shall be set forth in a written agreement and signed by the parties. No qualified organization shall operate and conduct electronic gaming until the written agreement is submitted to the department for review and the department issues a permit authorizing the qualified organization to conduct and operate electronic gaming.

H. The lease agreement between a social organization authorized to operate and conduct electronic gaming and a qualified organization that intends to lease or rent the social organization's public space in order to operate and conduct electronic gaming:

1. Shall not require the qualified organization to acquire, lease, obtain, purchase, rent, or use an electronic gaming device from a specific manufacturer;

2. Shall not provide for the employment or compensation of any member of the social organization for the purpose of organizing, managing, or conducting electronic gaming;

3. Shall establish a fixed rental or lease payment amount that reflects the fair market rental value, as defined in § 18.2-340.16 of the Code of Virginia. The fixed rental or lease payment amount shall not be based on a percentage of the qualified organization's electronic gaming receipts or the number of players at its electronic gaming session;

4. Shall not include a clause or condition that restricts the qualified organization from operating and conducting electronic gaming at the premises of another social organization; and

5. Shall not authorize the qualified organization to operate and conduct electronic gaming in the social organization's social quarters.

I. A social organization that is permitted and authorized to operate and conduct electronic gaming that leases its premises to a qualified organization so that the qualified organization may operate and conduct electronic gaming:

1. Shall not restrict a qualified organization's ability to conduct electronic gaming at the premise of another social organization;

2. Shall not lease or rent its social quarters to a qualified organization for the purpose of operating and conducting electronic gaming;

3. Shall not enter into any agreement that employs or otherwise compensates any person from the qualified organization to participate in the management, operation, or conduct of electronic gaming; and

4. Shall only lease or rent its premises by means of a fixed rental or lease payment amount that is established in the written agreement and reflects the fair market rental value, as defined in § 18.2-340.16 of the Code of Virginia. The fixed rental or lease payment amount shall not be based on a percentage of the qualified organization's receipts from electronic gaming or the number of players at its electronic gaming session.

**11VAC20-20-600. Procedural rules for the conduct of fact-finding conferences and hearings.**

A. As used in this part, "manufacturer" means a person or entity that assembles from raw materials or subparts a distributed pull-tab system.

B. Fact-finding conference; notification, appearance, and conduct.

1. Unless automatic revocation or immediate suspension is required by law, no permit to conduct charitable gaming, sell charitable gaming supplies, or distribute a distributed pull-tab system; no registration to lease a facility for the purpose

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of holding a poker tournament; or no authorization to operate and conduct electronic gaming shall be denied, suspended, or revoked except upon notice stating the basis for such proposed action and the time and place for a fact-finding conference as set forth in § 2.2-4019 of the Administrative Process Act.

2. If a basis exists for a refusal to renew, suspend, or revoke a permit or authorization, the department shall notify by certified mail or by hand delivery the interested persons at the address of record maintained by the department.

3. Notification shall include the basis for the proposed action and afford interested persons the opportunity to present written and oral information to the department that may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Organizations; suppliers; persons who manage, operate, conduct, or administer poker tournaments; landlords leasing a facility for a poker tournament; or manufacturers who wish to waive their right to a conference shall notify the department at least 14 days before the scheduled conference.

4. If after consideration of evidence presented during an informal fact-finding conference, a basis for action still exists, the interested persons shall be notified in writing within 60 days of the fact-finding conference via certified or hand-delivered mail of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.

### C. Hearing; notification, appearance, and conduct.

1. If after a fact-finding conference, a sufficient basis still exists to deny, suspend, or revoke a permit or authorization, interested persons shall be notified by certified or hand-delivered mail of the proposed action and of the opportunity for a hearing on the proposed action. If an organization; supplier; person who manages, operates, conducts, or administers a poker tournament; landlord leasing a facility for a poker tournament; or manufacturer desires to request a hearing, [ ~~the organization, supplier, or manufacturer~~ such party ] shall notify the department within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to or subsequent to an informal fact-finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in the interested party's or representative's absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

D. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the organization; supplier; person who manages, operates, conducts, or administers a poker tournament; landlord leasing a facility for a poker tournament; or manufacturer is located. If the parties agree, hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference, or similar technology, in order to expedite the hearing process.

### E. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law, or discretion presented on the record.

2. The department shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief, or denial thereof as to each issue.

F. Agency representation. The commissioner's designee may represent the department in an informal conference or at a hearing.

### 11VAC20-20-610. Reporting violations.

A. Unless otherwise required by law, the identity of any individual who provides information to the department or its agents regarding alleged violations shall be held in strict confidence.

B. Any officer, director, or game manager of a qualified organization or social organization ~~or any~~ officer or director of a supplier or manufacturer; person who manages, operates, conducts, or administers a poker tournament; or landlord leasing a facility for a poker tournament shall immediately report to the department any information pertaining to the suspected misappropriation or theft of funds or any other violation of the Charitable Gaming Law or regulations promulgated pursuant thereto.

C. Failure to report the information required by subsection B of this section may result in the denial, suspension, or revocation of a permit to conduct charitable gaming, permit to sell charitable gaming supplies, registration as a landlord, or authorization to operate and conduct electronic gaming.

D. Any officer, director, or game manager of a qualified organization or social organization involved in the management, operation, or conduct of charitable gaming or electronic gaming shall immediately notify the department upon being convicted of a felony or a crime involving fraud, theft, or financial crimes.

E. Any officer, director, partner, or owner of a supplier or manufacturer; person who manages, operates, conducts, or



administers a poker tournament; or landlord leasing a facility for a poker tournament shall immediately notify the department upon being convicted or of pleading nolo contendere to a felony or a crime involving gambling or an action against any license or certificate held by the supplier or manufacturer in any state in the United States.

F. Failure to report information required by subsection D or E of this section by any officer, director, or game manager of a qualified organization or social organization or by any supplier or manufacturer may result in the denial, suspension, or revocation of a permit to conduct charitable gaming, permit to sell charitable gaming supplies, or authorization to operate and conduct electronic gaming.

G. Any officer, director, or game manager of a qualified organization involved in charitable gaming or electronic gaming shall immediately report to the department any change the IRS makes in the tax status of the organization, or if the organization is a chapter of a national organization covered by a group tax exempt determination, the tax status of the national organization.

H. All organizations regulated by the department shall display prominently a (i) poster advising the public of a telephone number where complaints relating to charitable gaming may be made and (ii) a poster that bears a toll-free telephone number for "Gamblers Anonymous" or other organization that provides assistance to compulsive gamblers. Such posters shall be in a format prescribed by the department.

**NOTICE:** The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

[ FORMS (11VAC20-20)

## GAME MANAGEMENT FORMS

[Annual Financial Report, Form 101 \(rev. 5/2024\)](#)

[Quarterly Financial Report, Form 102 \(rev. 5/2024\)](#)

[Bingo Session Reconciliation Summary, Form 103 \(rev. 8/2013\)](#)

[Admission Sales Reconciliation - Paper, Form 104-A \(rev. 8/2013\)](#)

[Floor Sales Reconciliation - Paper, Form 104-B \(rev. 12/2014\)](#)

[Decision Bingo Reconciliation, Form 104-C \(rev. 8/2013\)](#)

[Raffle/Treasure Chest Sales Reconciliation - Bingo Session, Form 104-D \(rev. 8/2013\)](#)

[Paper Instant Bingo/Seal Cards/Pull-Tabs Reconciliation, Form 105 \(rev. 8/2013\)](#)

[Storeroom Inventory Issue - Paper, Form 106-A \(rev. 8/2013\)](#)

[Storeroom Inventory Issue - Instant Bingo/Seal Cards/Pull-Tabs, Form 106-B \(rev. 8/2013\)](#)

[List of Bingo Workers, Form 107 \(rev. 8/2013\)](#)

[Prize Receipt, Form 108 \(rev. 8/2013\)](#)

[Storeroom Inventory - Paper, Form 109-A \(rev. 8/2013\)](#)

[Storeroom Inventory - Instant Bingo/Seal Cards/Pull-Tabs, Form 109-B \(rev. 8/2013\)](#)

[Raffle Sales Reconciliation - Stand Alone Raffle, Form 110 \(rev. 8/2013\)](#)

[Instant Bingo/Seal Cars/Pull-tabs Reconciliation \(Non-Bingo\), Form 111 \(rev. 8/2013\)](#)

[Instant Bingo/Seal Cars/Pull-tabs Reconciliation Continuation \(Non-Bingo\), Form 111-A \(rev. 8/2013\)](#)

~~[Destruction of Unused Charitable Gaming Supplies, Form 112 \(rev. 3/2014\)](#)~~

[Destruction of Unused Charitable Gaming Supplies, Form 112 \(rev. 5/2024\)](#)

## ORGANIZATION LICENSING FORMS

~~[Charitable Gaming Permit Application - New Applicants Only, Form 201 - N \(rev. 8/2021\)](#)~~

[Charitable Gaming Permit Application - New Applicants, Form 201-N \(rev. 5/2024\)](#)

[Charitable Gaming Permit Application - Renewal Applicants, Form 201-R \(rev. 5/2024\)](#)

[Permit Amendment, Form 202 \(rev. 5/2024\)](#)

[Gaming Personnel Information Update \(rev. 7/2013\)](#)

~~[Report of Game Termination \(rev. 7/2013\)](#)~~

[Report of Game Termination, Form 0 \(rev. 5/2024\)](#)

## MANUFACTURER OF ELECTRONIC GAMING DEVICES, SUPPLIER, AND NETWORK BINGO PROVIDER LICENSING FORMS

[Charitable Gaming Supplier Permit Application, Form 301 \(rev. 2/2018\)](#)

[Annual Supplier/Manufacturer Sales and Transaction Report, Form 302 \(rev. 8/2013\)](#)

[Certification of Non-Charitable Gaming/Gambling, Form 304 \(rev. 7/2013\)](#)

[Manufacturer of Electronic Pull-tab System Permit Application, Form 305 \(rev. 10/2012\)](#)

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[Manufacturer of Electronic Pull-tab System Permit Application - Personal Information, Form 305A \(rev. 10/2012\)](#)

[Manufacturer of Electronic Pull-tab System Permit Renewal Application, Form 306 \(rev. 10/2013\)](#)

[Manufacturer of Electronic Pull-tab System Permit Renewal Application - Personal Information, Form 306A \(rev. 10/2013\)](#)

[Network Bingo Provider Permit Application, Form 307 \(eff. 5/2014\)](#)

[Network Bingo Provider Permit Application - Personal Information, Form 307A \(eff. 5/2014\)](#)

BINGO MANAGER AND BINGO CALLER REGISTRATION FORMS

[Charitable Gaming Bingo Caller Certificate of Registration Application, Form 401 \(rev. 7/2018\)](#)

[Charitable Gaming Bingo Manager Certificate of Registration Application, Form 402 \(rev. 7/2018\) \]](#)

DOCUMENTS INCORPORATED BY REFERENCE (11VAC20-20)

[IRS Publication 3079, Tax-Exempt Organizations and Gaming \(rev. 6/2010\)](#)

[Security Requirements for Cryptographic Modules, Federal Information Processing Standard, FIPS Pub 140-2 \(rev. 12/2002\)](#)

[Poker Tournament Directors Association Rules, Poker Tournament Directors Association, 2019, September 17, 2019, <https://www.pokertda.com>](#)

## Chapter 30

### Texas Hold'em Poker Tournament Regulations

#### **11VAC20-30-10. Definitions.**

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

"Add-on" means a player's purchase of additional poker chips during a tournament at preannounced times before that player runs out of poker chips.

"Administer" means the conduct of activities by an operator that are associated with production of a poker tournament.

"Agent" means any person authorized by an operator, charitable gaming supplier, or landlord to act for or in place of such operator, supplier, or landlord.

"Charitable Gaming Law" means Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia.

"Charitable host representative" means a person who (i) is a bona fide member, as defined in § 18.2-340.16 of the Code of Virginia, of the qualified organization; (ii) meets all other requirements for bona fide members set forth in the Charitable

Gaming Law and regulations adopted pursuant thereto; (iii) does not receive remuneration pursuant to § 18.2-340.33 of the Code of Virginia; and (iv) is responsible for the oversight of the written contract between the qualified organization and operator during the poker tournament.

"Conduct" means the actions by a qualified organization associated with the provision of a poker tournament during and immediately before or after the permitted activity, which may include (i) dealing playing cards; (ii) distributing poker chips; (iii) distributing prizes; and (iv) any other services provided by a charitable host representative, volunteer game worker, or volunteer dealer.

"Dealer" means a volunteer or volunteer member of a qualified organization or an employee, contractor, volunteer, or agent of an operator whose primary function is to distribute cards to players and manage the action at the poker table during a poker game.

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

"Fiscal year" means the 12-month period beginning January 1 and ending December 31 of any given year.

"Flush" means a hand consisting of five cards of the same suit.

"Four of a kind" means a hand consisting of four cards of the same rank, with four aces being the highest ranking four of a kind and four deuces being the lowest ranking four of a kind.

"Full house" means a hand consisting of three of a kind and a pair, with three aces and two kings being the [ highest ranking highest ranking ] full house and three deuces and two threes being the lowest ranking full house.

"Game manager" means a person who (i) is a bona fide member, as defined in § 18.2-340.16 of the Code of Virginia, of the qualified organization that is managing, operating, and conducting the poker tournament; (ii) meets all other requirements for bona fide members set forth in the Charitable Gaming Law and this chapter; (iii) does not receive remuneration pursuant to § 18.2-340.33 of the Code of Virginia; and (iv) is responsible for the operation of the qualified organization's poker tournament.

"Hi/Lo" means a variation of Texas Hold'em poker in which the highest or lowest poker hands split the pot.

"Immediate family" means a person's spouse, parent, child, sibling, grandchild, grandparent, mother or father-in-law, or stepchild.

"IRS" means the U.S. Internal Revenue Service or its successor.

"Landlord" means any person who owns or leases any premises devoted in whole or in part for use to hold a poker tournament or such person's agent, firm, association, organization, partnership, corporation, employee, or

immediate family member thereof or any person residing in the same household as a landlord.

"Manufacturer" means a person that assembles from raw materials or subparts a completed piece of charitable gaming equipment or supplies. "Manufacturer" also means a person who or an entity that modifies, converts, adds, or removes parts to or from charitable gaming equipment or supplies.

"Operator" means a person who is not affiliated with a qualified organization pursuant to 11VAC20-30-90 and who has registered with the department in accordance with 11VAC20-30-50 to administer poker tournaments.

"Pair" means two cards of the same rank.

"Poker game" means a Texas Hold'em poker game as defined in § 18.2-340.16 of the Code of Virginia.

"Poker tournament" means a Texas Hold'em poker tournament as defined in § 18.2-340.16 of the Code of Virginia.

"Pot" means the total amount bet by players during a poker game.

"Rakes" or "cutting of pots" means the taking of a portion of the pot as a fee or other compensation for providing services during a poker game or tournament, including the services of a dealer.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Re-buy" means a player's purchase of additional poker chips at a predetermined time and for a predetermined fee during a tournament after that player runs out of poker chips.

"Royal flush" means a hand consisting of an ace, king, queen, jack, and 10 of the same suit.

"Shuffler" means a device that randomizes playing cards.

"Straight" means a hand consisting of five cards of consecutive rank, regardless of suit, with an ace, king, queen, jack, and 10 being the highest ranking straight and an ace, two, three, four, and five being the lowest ranking straight [ ; ] provided, however, that an ace may not be combined with any other sequence of cards for purposes of determining a winning hand (e.g., queen, king, ace, deuce, three).

"Straight flush" means a hand consisting of five cards of the same suit in consecutive ranking with king, queen, jack, 10, and nine being the highest ranking straight flush and ace, deuce, three, four, and five being the lowest [ ranking ] straight flush [ ; ] provided, however, that an ace may not be combined with any other sequence of cards for purposes of determining a winning hand (e.g., queen, king, ace, deuce, three).

"Suit" means one of the four categories of cards: club, diamond, heart, or spade, with no suit being higher rank than another.

"Three of a kind" means a hand consisting of three cards of the same rank, with three aces being the highest ranking three of a kind and three deuces being the lowest ranking three of a kind.

"Two pairs" means a hand containing two pairs.

"Tournament chip" or "poker chip" means a token used for wagering in a poker tournament that has no cash value.

"Tournament manager" means a person who is employed or contracted by an operator to administer poker tournaments for a qualified organization.

"Use of proceeds" means the use of funds derived by a qualified organization from its charitable gaming activities for the organization's lawful religious, charitable, community, or educational purpose.

## **11VAC20-30-20. General requirements.**

A qualified organization permitted to conduct poker tournaments shall comply with all applicable provisions of the Charitable Gaming Law, all applicable provisions of 11VAC20-20, and all other regulations adopted pursuant to the Charitable Gaming Law.

## **11VAC20-30-30. Organization eligibility; permit requirements.**

An organization that will conduct a poker tournament is subject to the provisions of 11VAC20-20-20 regarding organization eligibility and permit requirements.

## **11VAC20-30-40. Permit application process for an organization.**

An organization that will conduct a poker tournament is subject to the provisions of 11VAC20-20-30 regarding the permit application process for an organization.

## **11VAC20-30-50. Operator registration.**

A. No qualified organization shall conduct a poker tournament utilizing an operator that is not registered with the department.

B. Any person wishing to administer a poker tournament in Virginia shall obtain a registration from the department. A person seeking to administer a poker tournament on behalf of a qualified organization shall apply to the department for an operator registration on a form prescribed by the department. As part of the registration, a sample of the badge to be worn by the tournament manager, dealer, and other game workers throughout the duration of the qualified organization's poker tournament shall be provided to the department. The sample badge shall meet the criteria set forth in 11VAC20-30-60 Q.

C. Any operator that offers to sell, sells, or otherwise provides charitable gaming supplies, which includes playing cards for Texas Hold'em poker, poker chips, and any other equipment or product manufactured for or intended to be used in the conduct

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of a poker tournament, to any qualified organization must obtain a charitable gaming supplier permit in accordance with § 18.2-340.34 of the Code of Virginia.

D. An operator registration shall be valid for a period of one year from the date of issuance or for the period specified on the registration. The department may issue a registration for a period of less than one year.

E. If any information on the registration application changes or is found to be inaccurate, then the applicant shall notify the department and provide the updated or corrected information within three business days of the change or the discovery of the inaccuracy.

## **11VAC20-30-60. Requirements for administering, conducting, managing, or operating a poker tournament.**

A. A person who has managed, operated, conducted, or administered charitable gaming without a valid license, permit, certificate, registration, or other similar authority related to gambling in any state, territory, or possession of the United States; the District of Columbia; or any political subdivision thereof shall not manage, operate, conduct, or administer a poker tournament.

B. A person who manages, operates, conducts, or administers a poker tournament shall not use or continue to use a poker product that has been recalled by the manufacturer.

C. A person shall not administer a poker tournament for a person who is not permitted to conduct a poker tournament or is not authorized to conduct business in the Commonwealth.

D. A person who administers or conducts a poker tournament must notify the department within 20 days of the occurrence, knowledge, or receipt of the filing of any administrative or legal action against the person relating to gambling or the administration of poker tournaments.

E. A person shall not breach any provision of the contract prescribed in 11VAC20-30-180 between an operator and a qualified organization.

F. A person who has been found to have violated any provision of the Charitable Gaming Law or a regulation adopted pursuant thereto shall not manage, operate, conduct, or administer a poker tournament.

G. A qualified organization shall ensure that all persons, including those employed by the operator, involved in the management, operation, conduct, or administration of a poker tournament are trained in the use of any equipment, on the policies and procedures relevant to the person's function, on the person's responsibilities, on the poker game, and on the Charitable Gaming Law and this chapter. The qualified organization shall ensure the completion of the training required by this subsection, and such completion shall be documented, maintained, and available for inspection by the department, at the department's request.

H. No person other than the charitable organization shall submit a permit application or financial report on behalf of a charitable organization.

I. If the department identifies through inspection, audit, or other means that a person is not in compliance with statutory or regulatory requirements or has ineffective internal controls, the department may impose restrictions consistent with the provisions of this chapter.

J. Any records the department deems necessary to complete an inspection, audit, or investigation may be collected by the department from the premises of any location where a poker tournament is conducted or any location where the records are located or stored. The department shall provide a written receipt of such records at the time of collection.

K. A person who administers a poker tournament shall provide the charitable organization a detailed invoice for each tournament the person administers. The invoice shall reflect the following:

1. Name, address, and the organization number of the qualified organization;
2. Date and location of the poker tournament; and
3. Gross receipts, net receipts, and prize disbursement.

L. A person providing security for an organization's charitable gaming activity shall not participate in the charitable gaming activity and shall not be compensated with charitable gaming supplies, including poker chips.

M. A member of a qualified organization; a person affiliated or associated with the qualified organization; or an immediate family member or person residing in the household of a director, officer, owner, partner, employee, independent contractor, a or member of the qualified organization, or a person affiliated or associated with the qualified organization shall not receive compensation from an operator with whom the qualified organization contracts to administer a poker tournament.

N. A qualified organization shall prohibit an operator and the operator's directors, officers, owners, partners, tournament managers, employees, independent contractors, volunteers, and agents or the immediate family members or persons residing in the household of an operator's directors, officers, owners, partners, tournament managers, employees, independent contractors, volunteers, or agents from playing in a poker tournament that the operator administers for the qualified organization.

O. A qualified organization shall ensure that any poker tournament that the qualified organization conducts or contracts with an operator to administer has internal control policies and procedures that include segregation of duties, cash security, and cash controls based on generally accepted standards.

~~P. A qualified organization shall only pay a fixed fee to an operator for services. No qualified organization shall pay a gross aggregate compensation to the operator based on a percentage of the revenue the qualified organization collects for that tournament. No other fees, charges or assessments shall be paid by the qualified organization. The qualified organization shall not pay any other fees, charges, or assessments to an operator for administering a poker tournament except such a fixed fee.~~

~~Q. All persons managing, operating, conducting, or administering a poker tournament shall wear a badge that meets the requirements set forth in 11VAC20-30-90 Q and shall possess a current photo identification, such as a driver's license or other government issued identification, while managing, operating, conducting, or administering a poker tournament. All persons shall provide the badge and photo identification to the department upon request. During a poker tournament, all game managers, tournament managers, charitable host representatives, dealers, and all other game workers shall wear a badge that is visible to players and to the department throughout the duration of the poker tournament. The badge shall include:~~

- ~~1. A recent photo of the person;~~
- ~~2. The first name of the person;~~
- ~~3. The name of the qualified organization or operator; and~~
- ~~4. The date the badge was issued to the person.~~

~~Each game manager, tournament manager, charitable host representative, dealer, or other game worker shall also possess a current photo identification, such as a driver's license or other government-issued identification. A game manager, tournament manager, charitable host representative, dealer, or other game worker shall provide the game manager's, tournament manager's, charitable host representative's, dealer's, or other game worker's badge, current photo identification, or both upon request by the department.~~

~~R. A qualified organization shall only contract with an operator (4) that (i) purchases or receives its charitable gaming supplies from a permitted charitable gaming supplier pursuant to § 18.2-340.34 of the Code of Virginia or (ii) is permitted as a charitable gaming supplier.~~

~~S. Any house rules that shall govern the poker tournament shall be prominently displayed during each poker tournament. All house rules shall be preapproved by the department and shall be consistent with the Charitable Gaming Law, this chapter, and the official rules for poker tournaments established by the Poker Tournament Directors Association.~~

~~T. A qualified organization shall not rent, lease, or otherwise use any premises for the purposes of holding a poker tournament from a person who is not registered with the department as a landlord in accordance with 11VAC20-30-130.~~

**11VAC20-30-70. Suspension, revocation, or denial of permit for organization.**

A. Pursuant to § 18.2-340.20 of the Code of Virginia, the department may suspend, revoke, or deny the permit of any qualified organization to manage, operate, or conduct poker tournaments or to contract with an operator to administer the qualified organization's poker tournaments for cause, including any of the following reasons:

1. Any person involved in the management, operation, or conduct of the qualified organization's poker tournaments is found to be in violation of or has failed to meet any of the requirements of the Charitable Gaming Law or, this chapter, or 11VAC20-20.
2. The qualified organization is found to be not in good standing with its state or national organization.
3. The IRS revokes or suspends the qualified organization's tax-exempt status.
4. The qualified organization willfully and knowingly provides false information in its application for a permit to conduct charitable gaming.
5. Any person involved in the management, operation, administration, or conduct of the qualified organization's poker tournament has been convicted of any felony or any misdemeanor as follows:
  - a. For any person participating in the management or operation of any charitable gaming:
    - (1) Convicted of a felony; or
    - (2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.
  - b. For any person participating in the administration or conduct of charitable gaming:
    - (1) Convicted of any felony within the preceding 10 years; or
    - (2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.
6. The qualified organization fails to report a violation as required by 11VAC20-20-610.
7. The qualified organization is found to have managed, operated, or conducted a poker tournament or contracted with an operator or any person that administered a poker tournament on its behalf without a permit issued to the qualified organization to do so.
8. The qualified organization fails to comply with the requirements of 11VAC20-20-30.
9. If the qualified organization uses or intends to use an operator to administer its poker tournament, the qualified organization fails to submit or provide to the department a written contract that complies with 11VAC20-30-180, fails to submit or provide to the department a new or amended

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written contract with its operator within the 20 days following the date on which the contract is signed by all parties to the contract, or fails to submit or provide to the department a new or amended written contract with its operator that complies with 11VAC20-30-180.

10. The qualified organization; the members of the qualified organization; any persons affiliated or associated with the qualified organization; or immediate family members or persons residing in the household of a member of the qualified organization or of a person affiliated or associated with the qualified organization shall not directly or indirectly receive received or receives a loan from a landlord; operator; charitable gaming supplier; or the agents, employees, immediate family members, or persons residing in the household of a landlord, operator, or charitable gaming supplier. For the purpose of this subdivision, a "loan" is a loan that the qualified organization; member of the qualified organization; person affiliated or associated with the qualified organization; or immediate family members or persons residing in the household of a member of the qualified organization or of a person affiliated or associated with the qualified organization directly or indirectly receives (i) during the qualified organization's contract with the landlord; operator; charitable gaming supplier; or the agents, employees, immediate family members, or persons residing in the household of a landlord, operator, or charitable gaming supplier; or (ii) within the three years preceding the effective date of that contract. For the purpose of this subdivision, a "loan" is a loan on which the qualified organization; member of the qualified organization; person affiliated or associated with the qualified organization; or immediate family members or persons residing in the household of a member of the qualified organization or of a person affiliated or associated with the qualified organization maintains an outstanding balance during the qualified organization's contract with the landlord; operator; charitable gaming supplier; or the agents, employees, immediate family members, or persons residing in the household of a landlord, operator, or charitable gaming supplier.

B. The failure to meet any of the requirements of § 18.2-340.24 of the Code of Virginia shall be cause for the denial of the permit, and no qualified organization shall manage, operate, and conduct any poker tournaments or contract with an operator to administer the qualified organization's poker tournaments until the requirements are met and a permit is obtained.

C. If the department suspends a qualified organization's permit, the department shall set the terms of the suspension, which shall include the length of the suspension and a requirement that, prior to reinstatement of the permit, the organization shall submit a remedial business plan to address the conditions that resulted in the suspension.

## 11VAC20-30-80. Poker tournaments.

A. A Texas Hold'em poker tournament is a competition at which:

1. Players shall pay a fixed fee for entry into the competition and for a certain amount of poker chips for use in the competition;

2. Players may be allowed to pay an additional fee during set preannounced times of the competition to receive additional poker chips for use in the competition;

3. Players may be seated at one or more tables simultaneously playing Texas Hold'em poker games;

4. Players shall, upon running out of poker chips, be eliminated from the competition;

5. A set preannounced number of players shall be awarded prizes of value according to how long such players remain in the competition;

6. The tournament has a fixed and predetermined end time in accordance with this section; and

7. The poker chips have no monetary or cash value and no actual currency is wagered.

B. Any poker competition game conducted by a qualified organization that does not meet the requirements established in subsection A of this section § 18.2-340.16 and subsection 16 of § 18.2-340.33 of the Code of Virginia, this chapter, and 11VAC20-20 is not a poker tournament and is prohibited pursuant to § 18.2-340.22 of the Code of Virginia. A qualified organization shall ensure its poker tournament meets the requirements established in subsection A of this section the Charitable Gaming Law, this chapter, and 11VAC20-20.

## 11VAC20-30-90. Operation of poker tournaments; administration of poker tournaments.

A. A qualified organization shall only manage, operate, and conduct a poker tournament after a permit has been issued pursuant to 11VAC20-20-20 by the department. A qualified organization that contracts with an operator that is registered pursuant to 11VAC20-30-50 shall obtain a permit prior to the operator administering a poker tournament.

B. A person shall only administer a poker tournament for a qualified organization permitted by the department pursuant to 11VAC20-20-20 and shall only administer a poker tournament after the person is registered pursuant to 11VAC20-30-50.

C. A qualified organization's game managers, volunteer game workers, dealers, charitable host representatives, or the immediate family members or persons residing in the household of a qualified organization's game managers, volunteer game workers, dealers, or charitable host representatives shall not participate as a player or otherwise play in the poker tournament in which they served as a game manager, volunteer game worker, dealer, or charitable host

representative conducted by or administered for the organization.

D. The qualified organization shall ensure an operator's directors,; officers,; owners,; partners,; tournament managers, dealers,; employees,; independent contractors,; volunteers,; agents,; or the immediate family members or persons residing in the household of an operator's directors, officers, owners, partners, tournament managers, dealers, employees, independent contractors, volunteers, or agents do not participate as a player or otherwise play in the poker tournament for which the operator is contracted to administer. The qualified organization, in its sole discretion, may prohibit dealers of the contracted operator from playing in any tournament that the operator conducts for the qualified organization. The qualified organization shall ensure that no dealer plays in a tournament in which [ ~~they were~~ that dealer was ] employed to deal, a tournament conducted concurrently with one in which [ ~~they are~~ that dealer is ] employed to deal, or within 48 hours of any shift. The qualified organization shall ensure that an operator's dealers or the dealer's immediate family member do not participate as a player or otherwise play in the qualified organization's tournament when working as a dealer.

E. A qualified organization is responsible for all actions performed by its game managers, volunteer game workers, dealers, and charitable host representatives. If a qualified organization contracts with an operator to administer its poker tournament, the qualified organization is responsible for ensuring the poker tournament is administered in compliance with the Charitable Gaming Law and, this chapter, and 11VAC20-20.

~~F. A qualified organization may not hold concurrent poker tournaments.~~

~~G. A qualified organization may conduct poker tournaments only at a location within the county, city, or town in which the organization's principal office, as registered with the State Corporation Commission, is located or in an adjoining county, city, or town. A qualified organization may not conduct poker at an establishment that has been granted a license pursuant to Chapter 2 (§ 4.1 200 et seq.) of Title 4.1 of the Code of Virginia unless such license is held by the organization.~~

H. A qualified organization shall ensure that all persons, including the operator's employees, independent contractors, volunteers, or agents, involved in the management, operation, conduct, or administration of a poker tournament are trained in the use of any equipment, on the policies and procedures relevant to the person's function, on the person's responsibilities, on the poker game, and on the Charitable Gaming Law and, this chapter, and 11VAC20-20. All training courses shall be approved in advance by the department.

Any person who will serve as a dealer shall be trained, at a minimum, in the following:

1. Procedures for opening and closing tables for the poker tournament, including the proper security procedures regarding poker chip inventories;

2. Procedures for distributing and removing gaming chips and plaques from the poker tournament table;

3. Procedures for accepting cash at the poker tournament table;

4. Procedures for shift changes at the poker tournament table;

5. Procedures for the proper placement of wagers by players and the proper collection of losing wagers and payment of winning wagers; and

6. Recognizing problem and compulsive gamblers at poker tournaments and procedures for informing supervisory personnel.

Before any person who will serve as a dealer is allowed to deal at a poker tournament, the prospective dealer shall must pass a table test. A table test shall consist of the dealer demonstrating proficiency ~~at~~ prior to the poker tournament to the satisfaction of the game manager or tournament manager. The qualified organization shall ensure the completion of the training required by this subsection and the successful completion of the table test by the prospective dealer. Such completion shall be documented, maintained, and available for inspection by the department, at ~~their~~ its request.

~~F. G. The qualified organization shall be responsible for ensuring all house rules are followed during the poker tournament, including those house rules administered by an operator.~~

~~F. H. If a qualified organization is managing, operating, and conducting its own poker tournament, then a game manager must be physically present during the entire duration of the poker tournament. If an operator is administering a qualified organization's poker tournament, then the charitable host representative must be physically present during the entire duration of the poker tournament and ensure the tournament manager is physically present during the entire duration of the poker tournament.~~

~~K. A qualified organization shall provide a badge that meets the criteria established in 11VAC20 30 90 Q for each of its game managers, the tournament manager, the charitable host representative, dealers, and other game workers. Each game manager, tournament manager, charitable host representative, dealer, or other game worker shall wear a badge so that the badge is visible to players and to the department during the duration of the poker tournament. Each game manager, tournament manager, charitable host representative, dealer, or other game worker shall also possess a current photo identification, such as a driver's license or other government-issued identification. The game manager, tournament manager, charitable host representative, each dealer, and all other game~~

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~~workers shall provide the badge, current photo identification, or both upon request by the department to do so.~~

~~I. If a qualified organization is managing, operating, and conducting its own poker tournament, then a game manager shall complete and sign a poker tournament reconciliation form within the 48 hours following the end of the poker tournament, as required by 11VAC20-30-100. If an operator is administering a qualified organization's poker tournament, then the charitable host representative shall complete a poker tournament reconciliation form, sign it, and ensure the tournament manager signs it within the 48 hours following the end of the poker tournament as required by 11VAC20-30-100.~~

~~M. J. All persons involved in managing, operating, conducting, or administering a poker tournament shall be 18 years of age or older.~~

~~N. K. During a poker tournament held by a qualified organization, no gambling or gaming may take place other than that specifically authorized by this chapter managed, operated, and conducted by a qualified organization or administered by an operator on behalf of the qualified organization, no other gambling or gaming may take place within the rooms used to manage, operate, conduct, or administer the poker tournament.~~

~~L. During a poker tournament held by a qualified organization, no person may use currency, a token that is not an authorized tournament chip, or other thing of value as a wager.~~

~~O. No poker games utilizing any electromechanical device or other mechanism employing electronic chips, tubes, video display screens, or microprocessors may be used during a poker tournament.~~ M. The qualified organization shall be responsible for ensuring that all poker tournaments use human dealers and that the dealers are in the same physical location as all of the players.

~~P. N. Players must be physically present and seated at the poker table to play.~~

~~Q. During a poker tournament, all game managers, tournament managers, charitable host representatives, dealers, and all other game workers shall wear a badge that includes:~~

- ~~1. A recent photo of the person;~~
- ~~2. The first and last name of the person;~~
- ~~3. The name of the qualified organization or operator; and~~
- ~~4. The date the badge was issued to the person.~~

## **11VAC20-30-100. Tournament play.**

A. All persons participating as a player in a poker tournament shall be 18 years of age or older.

B. Prior to a poker tournament, a qualified organization must establish the fixed fee that a player must pay in order to enter the poker tournament. The qualified organization must post or

advertise the fixed entry fee for the poker tournament and the number of tournament chips received for that entry fee.

C. The qualified organization shall ensure a poker game meets the definition of Texas Hold'em poker game as stated in § 18.2-340.16 of the Code of Virginia.

D. The game manager, charitable host representative, dealer, volunteer game workers, or operator's employees, independent contractors, volunteers, or agents shall not:

1. Allow any wagering in any manner not set forth in this chapter;
2. Accept any direct or indirect tip or gratuity; or
3. Consume alcoholic beverages during the tournament.

E. The dealer shall only be responsible for dealing playing cards and handling tournament chips at the poker table during the poker tournament. The dealer shall not be assigned any other duties or responsibilities not directly related to dealing playing cards or handling tournament chips.

F. The following resources shall be used during a poker tournament:

1. A live dealer;
2. Physical playing cards;
3. Physical tournament chips; and
4. Tables large enough to ensure that players may examine their cards without disclosing the card value to other players. No single table shall have more than 11 players.

G. ~~Re-buys~~ Add-ons may be allowed at preannounced times within the first three hours of tournament play or until the first break (consolidation or balancing of tables) of the tournament, whichever occurs first. These ~~re-buys~~ add-ons must occur at established times that are posted in the tournament rules prior to the beginning of the tournament. ~~A re-buy~~ An add-on must contain the predetermined number of poker chips established in the tournament rules. ~~Re-buys~~ Add-ons may only occur before a player has lost all of his poker chips and may only bring the player up to the original amount of poker chips provided at the beginning of the tournament. A player who has lost all of his poker chips may not ~~re-buy~~ add-on and is eliminated from the tournament.

H. Re-buys are prohibited.

I. No individual who is participating in the management, operation, or conduct of a poker tournament shall provide any information or engage in any conduct that alters or is intended to alter the outcome of any poker tournament.

~~I. J. Tournament chips.~~

- ~~1. All tournament chips used in a poker tournament must be purchased from a charitable gaming supplier permitted pursuant to § 18.2-340.34 of the Code of Virginia.~~



~~2.~~ All poker tournaments shall be conducted using tournament chips approved by the department. The tournament chips shall bear the following:

- a. The name, logo, or other identification of the charitable organization or operator issuing the tournament chip;
- b. The word "Tournament;"
- c. The tournament value of the poker chip. No monetary word or symbol, such as dollars (\$) or cents (¢), shall be used on any poker chip; and
- d. The phrase "No Cash Value."

~~3.~~ 2. A qualified organization or its operator shall store tournament chips in a secure area.

~~4.~~ 3. A qualified organization or its operator shall conduct an inventory of all tournament chips and include on a poker tournament reconciliation form prescribed or approved by the department any discrepancy in the inventory and shall include the balance for each tournament value of the poker chip on hand at the beginning of each tournament and the balance on hand at the end of each tournament.

~~5.~~ 4. Tournament chips are to be used in the play of the poker tournament and shall not be redeemed for cash or any other thing of value. A qualified organization or its operator shall not accept tournament chips as payment for any goods or services and shall not use tournament chips in any other transaction.

~~6.~~ 5. No person is permitted to sell or exchange a tournament chip for currency with another player, the operator, the qualified organization, or any other person or entity.

#### ~~J.~~ K. Playing cards.

~~1.~~ All playing cards used in a poker tournament must be purchased from or provided by a charitable gaming supplier permitted pursuant to § 18.2-340.34 of the Code of Virginia.

~~2.~~ The qualified organization or its operator shall conduct an inventory of all boxes containing decks of playing cards at the beginning of each tournament and at the end of each tournament to ensure that the boxes of cards are intact, unbroken, and free from alteration or tampering.

~~3.~~ 2. Decks of cards shall be stored in a secure location that minimizes alteration or tampering.

~~4.~~ 3. The dealer shall verify that all cards are present in the deck and visually inspect the backs of the cards for any defects that might compromise the integrity or fairness of the poker game and shall offer an opportunity for each player at the dealer's table to visually inspect the cards. The game manager or charitable host representative tournament manager shall remove any deck of cards that is missing a card or contains damaged or altered cards or other card flaws that would affect the integrity of the poker game. Any deck found to be defective or missing a card or to contain

damaged or altered cards or other card flaws shall be made unplayable.

~~5.~~ 4. Unless the Poker Tournament Directors Association rules differ, the ranking of hands, from highest to lowest, shall be as follows:

- a. Royal flush;
- b. Straight flush;
- c. Four of a kind;
- d. Full house;
- e. Flush;
- f. Straight;
- g. Three of a kind;
- h. Two pairs;
- i. One pair; and
- j. High card.

~~K.~~ L. The order of finish for a poker tournament shall be determined by one of the following methods only:

~~1.~~ If play continues until all but one player is eliminated before the predetermined end time, the order of finish shall be the order of elimination from last to first. The last remaining player shall be declared the winner; or

~~2.~~ If play stops at the predetermined end time, the order of finish shall be determined by the ranking value of the tournament chips held by each player at the end of play from highest to lowest. The player with the highest value of tournament chips shall be declared the winner.

~~L.~~ M. The following restrictions apply to method of play:

~~1.~~ Wild cards are prohibited;

~~2.~~ Hi/Lo games are prohibited;

~~3.~~ Rakes or cutting of pots is prohibited;

~~4.~~ A player shall only bet on his hand in a poker game;

~~5.~~ A [ ~~players~~ player ] is prohibited from exchanging information concerning [ ~~his~~ the player's ] hand;

~~6.~~ A [ ~~players~~ player ] who folds from the poker game of play shall not reveal [ ~~his~~ the player's ] pocket cards; and

~~7.~~ No player may play more than one hand during a poker game.

~~M.~~ N. A qualified organization shall prominently display its charitable gaming permit during the poker tournament, and if the qualified organization uses an operator to administer its poker tournament, the qualified organization shall also prominently display the operator's registration.

~~N.~~ O. The qualified organization shall prominently display the department's poster advising the public of a telephone number where complaints relating to the poker tournament

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may be made. Such posters shall be in a format prescribed by the department, as required by 11VAC20-20-610.

~~O. P. The qualified organization shall prominently display a poster that bears a toll-free telephone number for "Gamblers Anonymous" or another organization that provides assistance to compulsive gamblers.~~

~~P. The qualified organization shall prominently display any house rules that shall govern the poker tournament beyond the official rules for poker tournaments established by the Poker Tournament Directors Association. Any house rules shall be consistent with the Charitable Gaming Law, this chapter, and the official rules for poker tournaments established by the Poker Tournament Directors Association.~~

Q. The qualified organization shall ensure all mechanical poker equipment is fully functional and maintains the integrity of the poker tournament prior to, during, and after the poker tournament. Any mechanical poker equipment that is not fully functional or that does not maintain the integrity of the poker tournament shall be removed immediately from the poker tournament by the qualified organization.

~~R. A qualified organization shall not manage, operate, or conduct its poker tournament or have its poker tournament administered by an operator on a premises where gambling or gaming activities occur, unless such activities are authorized by the Charitable Gaming Law or regulations adopted pursuant thereto: Chapter 40 (§ 58.1-4000 et seq.) or Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1 of the Code of Virginia; or Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia.~~

S. Only a qualified organization or a permitted charitable gaming supplier shall advertise a poker tournament. Any printed advertisement is permitted, provided the name of the qualified organization shall be in a type size equal to or larger than the name of the premises used for the poker tournament, name of the operator, or any word referring to the poker tournament.

T. S. A game manager or, if a qualified organization uses an operator to administer its poker tournament, the charitable host representative shall ensure any tournament chips, playing cards, or mechanical poker equipment used to conduct the poker tournament are not counterfeit or tampered with or do not otherwise affect the integrity of the poker tournament prior to, during, and after the poker tournament. Any tournament chips, playing cards, or mechanical equipment found to be counterfeit or tampered with shall be removed immediately from the poker tournament. Such incidents shall be reported by the qualified organization or jointly by the qualified organization and operator to the department.

T. A person managing, operating, conducting, or administering a poker tournament at the premises at which another poker tournament is or will be conducted or administered within the same 24-hour period shall ensure that:

1. The start time of the poker tournament is at least two hours before or after the start time of the other poker tournament that is or will be conducted or administered at the premises;

2. The poker tournament has an entry fee that is separate from the entry fee for the other poker tournament that is or will be conducted or administered at the premises;

3. The tournament chips used for the poker tournament are visually distinct from the tournament chips used in the other poker tournament that is or will be conducted or administered at the premises;

4. Each table that is used in the poker tournament bears a sign that distinguishes it from those tables that are used in the other poker tournament that is or will be conducted or administered at the premises;

5. No player plays in more than one poker tournament that is conducted or administered at the premises at a time; and

6. No player plays at more than one table at a time.

U. Notwithstanding the provisions of subsection T of this section, a person shall not at the same premises and in the same 24-hour period in which the start times of two poker tournaments have already occurred manage, operate, conduct, or administer a poker tournament at that premises. No owner of a premises at which a poker tournament is conducted or administered shall allow the management, operation, conduct, or administration of more than two poker tournaments at that premises in a 24-hour period. For the purpose of this subsection and subsection T of this section, a 24-hour period begins at the start time of the first of two poker tournaments conducted or administered at a premises.

## **11VAC20-30-110. Charitable gaming supplies; approval of mechanical card shuffler and dealer shoes and other mechanical equipment.**

A. All charitable gaming supplies, including cards, tournament chips, and mechanical equipment, shall be purchased from or provided by a charitable gaming supplier permitted pursuant to § 18.2-340.34 of the Code of Virginia.

B. Mechanical equipment may be used to conduct poker games or tournaments, provided that such equipment is preapproved by the department in accordance with and subject to this section and technical standards adopted by the department.

C. The department shall set testing criteria for all mechanical card shufflers and dealer shoes and other mechanical equipment used during a poker tournament. A mechanical card shuffler and dealer shoe or other mechanical equipment used during a poker tournament shall not be sold, leased, or otherwise furnished to any person in the Commonwealth for use during a poker tournament until an identical sample mechanical card shuffler and dealer shoe or equipment containing identical software has been certified by a testing

facility that has been formally recognized by the department as a testing facility that upholds the standards of integrity established by the department. The testing facility must certify that the mechanical card shuffler and dealer shoe, other mechanical equipment, associated hardware, and associated software conform, at a minimum, to the requirements of this chapter. Once the testing facility reports the test results to the department, the department will either approve or reject the mechanical card shuffler and dealer shoe or other mechanical equipment and inform the manufacturer of the results. If any such approved system or equipment fails to meet the department's criteria, that system or equipment shall be recalled and shall not be distributed in the Commonwealth. The cost of testing shall be borne by the manufacturer of such equipment.

D. Notwithstanding any other testing criteria established by the department, the mechanical card shuffler and dealer shoe shall be tested to the standards established in GLI 29: Card Shufflers and Dealer Shoes, Version 1.0, produced by Gaming Laboratories International.

#### **11VAC20-30-120. Rules of play.**

All persons conducting, managing, operating, or administering a poker tournament shall adhere to the official rules of the Poker Tournament Directors Association.

#### **11VAC20-30-130. Requirements regarding renting premises, agreements, and landlord participation.**

A. A qualified organization shall not rent or use any leased premises to hold a poker tournament unless all terms for rental or use are set forth in a written contract provided to the department prior to the issuance of a permit to conduct the poker tournament.

B. A person who rents, leases, or otherwise provides a premises to a qualified organization to hold a poker tournament shall obtain a landlord registration from the department. A landlord shall obtain a landlord registration regardless of whether the landlord charges or intends to charge a rental fee for providing a premises to a qualified organization.

C. B. All persons who rent, lease, or otherwise provide a premises to a qualified organization to hold a poker tournament shall apply to the department for a landlord registration on a form prescribed by the department. The application for a landlord registration shall include:

1. The names of all owners, directors, and partners; and
2. All current rental agreements between the landlord and a qualified organization.

D. C. A landlord registration shall be valid for a period of one year from the date of issuance or for the period specified on the registration. The department may issue a registration for a period of less than one year. If any information on the registration application changes or is found to be inaccurate,

the applicant shall notify the department and provide the updated or corrected information within three business days of the change or the discovery of the inaccuracy.

~~E. D. A qualified organization shall ensure that the landlord; the landlord's agents; or the landlord's employees; or an immediate family member or person residing in the household of such landlord, agent, or employee shall not directly or indirectly make a loan to a the qualified organization; a member of a the qualified organization; a person affiliated or associated with a the qualified organization; an operator; a charitable gaming supplier of poker supplies; or an immediate family member or person residing in the household of a member of a the qualified organization, a person affiliated or associated with a the qualified organization, an operator, or a charitable gaming supplier of poker supplies. For the purpose of this subsection, a "loan" is a loan that the landlord; the landlord's agents; the landlord's employees; or an immediate family member or person residing in the household of such landlord, agent, or employee makes (i) during the qualified organization's contract with the landlord or (ii) within the three years preceding the effective date of that contract. For the purpose of this subsection, a "loan" is a loan on which the qualified organization; member of the qualified organization; person affiliated or associated with the qualified organization; or immediate family members or persons residing in the household of a member of the qualified organization or of a person affiliated or associated with the qualified organization maintains an outstanding balance during the qualified organization's contract with the landlord.~~

~~F. E. A qualified organization shall ensure that the landlord; the landlord's agents; the landlord's employees; or the immediate family members or persons residing in the household of such landlord, agent, or employee shall not directly or indirectly make any payment to a the qualified organization; a member of a the qualified organization; a person affiliated or associated with a the qualified organization; an operator; a charitable gaming supplier; or an immediate family member or person residing in the household of a member of a the qualified organization, a person affiliated or associated with a the qualified organization, an operator, or a charitable gaming supplier.~~

~~G. F. A qualified organization shall ensure that the landlord; its agent; or its employees; or the immediate family members or persons residing in the household of such landlord, agent, or employee shall not:~~

1. Participate in the management, operation, conduct, or administration of any the qualified organization's poker tournament that is operated, conducted, or administered on the landlord's premises;
2. Sell, lease, or otherwise provide any charitable gaming supplies, including playing cards, poker chips, or other game pieces, for use during a the qualified organization's poker

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tournament that is operated, conducted, or administered on the landlord's premises;

3. Require as a condition of the lease that a the qualified organization use a particular charitable gaming supplier or operator; or

4. Provide, advise, or direct a the qualified organization or operator to use a particular person to manage, operate, conduct, or administer a the qualified organization's poker tournament that is to be held in the landlord's premises.

~~H.~~ G. A member of a qualified organization who participates in the management, operation, or conduct of a poker tournament shall not provide services to a landlord or be remunerated in any manner by the landlord of the premises that the qualified organization uses to manage, operate, or conduct its poker tournament.

~~I.~~ H. A qualified organization shall only lease a premises by means of a fixed rental payment. The fixed rental payment shall reflect the current fair market rental value of the property and shall not be based upon or determined by a percentage of the proceeds derived from the operation of the poker tournament or to the number of people in attendance at such tournament.

~~J.~~ ~~N.~~ I. The qualified organization shall ensure that no contract for the rental or leasing of a premises for a poker tournament shall be contingent upon the qualified organization's agreement that it will contract with a particular business for a particular premises, equipment, or service. A The qualified organization shall prohibit the landlord, owner, lessor, or lessee of a the premises where a the poker tournament is being played is prohibited from serving in any capacity with any the qualified organization that is leasing from such landlord, owner, lessor, or lessee.

~~K.~~ J. A charitable gaming supplier is ineligible for a landlord registration issued pursuant to the Charitable Gaming Law and this chapter.

~~L.~~ K. A landlord shall provide to the department the records related to the landlord's lease with a qualified organization, including financial records, that the department deems necessary to complete an inspection, audit, or investigation. The department shall provide written receipt of such records at the time the landlord provides requested records to the department. The department may suspend or revoke the registration of a landlord who refuses to provide the requested record.

~~M.~~ L. If the department determines through inspection, audit, or other means that a landlord is not in compliance with a provision of the Charitable Gaming Law or regulations adopted pursuant thereto, the department may deny, suspend, or revoke the landlord's registration.

M. A qualified organization shall not lease the premises of any landlord that has contracted with the qualified organization

to administer the qualified organization's poker tournament as an operator.

## **11VAC20-30-140. Bank accounts.**

An organization that will conduct a poker tournament is subject to the provisions of 11VAC20-20-80 regarding bank accounts.

## **11VAC20-30-150. Recordkeeping.**

An organization that will conduct a poker tournament is subject to the provisions of 11VAC20-20-90 regarding recordkeeping.

## **11VAC20-30-160. Financial reporting, penalties, inspections, and audits.**

An organization that will conduct a poker tournament is subject to the provisions of 11VAC20-20-100 regarding financial reporting, penalties, inspections, and audits.

## **11VAC20-30-170. Use of proceeds.**

An organization that will conduct a poker tournament is subject to the provisions of 11VAC20-20-110 regarding use of proceeds.

## **11VAC20-30-180. Requirements regarding contracts.**

A. If a qualified organization elects to use an operator to administer its poker tournament, then it shall obtain a written contract with the operator.

B. A written contract between a qualified organization and an operator shall identify the conditions and cost for the operator to administer a poker tournament for the qualified organization. This written contract shall:

1. Require the operator to register with the department and comply with the requirements established in 11VAC20-30-50.

2. Require the operator to report to the qualified organization and the department within 20 days if there is any action taken against any valid license, permit, certificate, registration, or other similar documents related to gambling held by the operator in any state, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof.

3. Require the operator to report to the qualified organization and the department within 20 days if the operator fails to file or has been delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the Commonwealth or has failed to establish a registered office or registered agent in the Commonwealth if so required by § 13.1-634 or 13.1-763 of the Code of Virginia.

4. Require the operator to provide the qualified organization and the department with access to the operator's financial record for each poker tournament administered on the qualified organization's behalf for a minimum of the

previous three fiscal years and, if necessary, to provide the qualified organization with copies or the department with the originals of these records or any other records deemed necessary to complete an inspection, audit, or investigation without hindrance from the operator. The department shall provide a written receipt for the originals of the records at the time of collection.

5. Require the operator to provide the qualified organization with a copy of a detailed invoice for each poker tournament that the operator administers on behalf of the qualified organization. The invoice shall include the information required 11VAC20-30-60 K.

6. Require the operator to retain all bank account records, including monthly bank statements, canceled checks or facsimiles thereof, and reconciliations for a minimum of three years following the close of a fiscal year.

7. Require the operator to display prominently its operator's registration during each poker tournament the operator administers on the qualified organization's behalf.

8. Require the operator to comply with any restrictions or additional recordkeeping and financial reporting requirements imposed upon the qualified organization by the department due to deficiencies identified through inspection, audit, or other means.

9. Require the operator to pay all expenses other than prizes that the operator incurs in the administration of the tournament by check or electronic fund transfer directly from its bank account.

10. Specify the duration of the written contract period and the termination rights for the qualified organization and operator.

11. Specify the terms of any arrangement agreed upon by the qualified organization and the operator regarding the deposit of the receipts received by an operator due to the operator's administering of a poker tournament for a qualified organization through an electronic fund transfer into the qualified organization's charitable gaming bank account. A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties.

12. Require the tournament manager to be physically present at all times during a poker tournament the operator is administering.

C. A qualified organization shall only contract with an operator that adheres to the provisions of the Charitable Gaming Law and this chapter.

D. An organization shall provide a copy of all written contracts between the organization and the operator to the department upon application for a permit or upon the entering

into any contract with an operator following the submission of an application or receipt of a permit.

## **11VAC20-30-190. Charitable gaming suppliers.**

A supplier of charitable gaming supplies used during a poker tournament is subject to the provisions of 11VAC20-20-130.

## **11VAC20-30-200. Procedural rules for informal fact-finding conferences and hearings.**

A person who manages, operates, conducts, or administers a poker tournament or a landlord is subject to the provisions of 11VAC20-20-600 regarding procedural rules for informal fact-finding conferences and hearings.

## **11VAC20-30-210. Reporting violations.**

A person who manages, operates, conducts, or administers a poker tournament or a landlord is subject to the provisions of 11VAC20-20-610 regarding reporting violations.

**NOTICE:** The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

### FORMS (11VAC20-30)

[ ~~Annual Financial Report, Form 101 (rev. MM/YYYY)~~

~~Charitable Gaming Permit Application — New Applicants, Form 201-N (rev. MM/YYYY)~~

~~Charitable Gaming Permit Application — Renewal Applicants, Form 201-R (rev. MM/YYYY)~~

~~Destruction of Unused Charitable Gaming Supplies, Form 112 (rev. MM/YYYY)~~

~~Landlord Registration, Form 501 (eff. MM/YYYY)~~

~~Permit Amendment, Form 202 (rev. MM/YYYY)~~

~~Quarterly Financial Report Form, Form 102 (rev. MM/YYYY)~~

~~Report of Game Termination, Form 0 (rev. MM/YYYY)~~

~~Texas Hold'em Poker Tournament Operator Registration Application, Form 307 (eff. MM/YYYY)~~

~~Texas Hold'em Poker Tournament Operator Registration — Personal Information Form, Form 307a (eff. MM/YYYY)~~

~~Texas Hold'em Poker Tournament Reconciliation Summary, Form 114 (eff. MM/YYYY)~~

[Annual Financial Report, Form 101 \(rev. 5/2024\)](#)

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[Charitable Gaming Permit Application - New Applicants, Form 201-N \(rev. 5/2024\)](#)

[Charitable Gaming Permit Application - Renewal Applicants, Form 201-R \(rev. 5/2024\)](#)

[Destruction of Unused Charitable Gaming Supplies, Form 112 \(rev. 5/2024\)](#)

[Landlord Registration, Form 501 \(eff. 5/2024\)](#)

[Permit Amendment, Form 202 \(rev. 5/2024\)](#)

[Quarterly Financial Report, Form 102 \(rev. 5/2024\)](#)

[Report of Game Termination, Form 0 \(rev. 5/2024\)](#)

[Texas Hold'em Poker Tournament Operator Registration Application, Form 307 \(eff. 5/2024\)](#)

[Texas Hold'em Poker Tournament Reconciliation Summary, Form 117 \(eff. 5/2024\)](#)

**DOCUMENTS INCORPORATED BY REFERENCE**  
(11VAC20-30)

[GLI-29: Card Shufflers and Dealer Shoes, Gaming Laboratories International, LLC, Version 1.0, July 2012, \[www.gaminglabs.com\]\(http://www.gaminglabs.com\)](#)

[Poker Tournament Directors Association Rules Poker Tournament Directors Association, 2019, September 17, 2019, <https://www.pokertda.com>](#)

VA.R. Doc. No. R23-7455; Filed March 6, 2024, 5:11 p.m.



## TITLE 17. LIBRARIES AND CULTURAL RESOURCES

### BOARD OF HISTORIC RESOURCES

#### Proposed Regulation

**Title of Regulation:** 17VAC5-40. Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans (adding 17VAC5-40-10 through 17VAC5-40-50).

**Statutory Authority:** § 10.1-2204 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** June 7, 2024.

**Agency Contact:** Sarah Spota, Deputy Director, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6082, or email [sarah.spota@dhr.virginia.gov](mailto:sarah.spota@dhr.virginia.gov).

**Basis:** The Director of the Department of Historic Resources is granted the authority to promulgate regulations pursuant to § 10.1-2202 of the Code of Virginia.

**Purpose:** The regulation is essential to protect the health, safety, or welfare of citizens because it provides localities, their leaders, and their citizens with guidance on interpreting certain war monuments and memorials.

**Substance:** The proposed regulation governs contextualization of monuments or memorials for certain war veterans as provided for in § 15.2-1812 of the Code of Virginia, including (i) providing definitions; (ii) outlining the general provisions regarding where the markers must be placed, marker appearance, and who owns markers and covers all costs for markers; (iii) stating the criteria required on the application for the marker (i.e., basic contact information, location, text, factual information about the monument or memorial, statement of purpose, proposed text and location for the marker, all source documentation, timetable, and proposed marker design); and (iv) requiring that the board evaluate the applications for markers that are presented by the department and that the approval of applications is at the board's sole discretion.

**Issues:** The primary advantage to all is that the information on the marker will be vetted by historians at the department and only credible, documented facts will be a part of the contextualization. The primary advantage to the public is knowing the process by which localities must undergo to contextualize certain monuments or memorials. There are no disadvantages to the public. The primary advantage to the Commonwealth is that contextualization of certain monuments or memorials will be done in a uniform fashion. There are no disadvantages to the Commonwealth.

#### Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. Pursuant to a legislative mandate, the Board of Historic Resources (board) proposes to create a new regulation governing the contextualization of war monuments and memorials. The proposed chapter, 17VAC5-40, Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans, would define relevant terms and describe the requirements for localities to obtain board approval for a contextualizing marker.<sup>2</sup> The new regulation would include a form for localities to use when submitting an application to the Department of Historic Resources (DHR).

Background. Chapter 1100 and 1101 of the 2020 Acts of Assembly permits localities to remove, relocate, contextualize, or cover publicly owned war-related monuments or memorials on the locality's public property, except for those located in publicly owned cemeteries.<sup>3</sup> The legislation specifically directs the board to "promulgate regulations governing the

manner in which any monument or memorial may be contextualized pursuant to the provisions of this act." Accordingly, the new regulation defines "monument" or "memorial" to mean "any object erected on a locality's public property pursuant to § 15.2-1812 of the Code of Virginia, intended to commemorate the veterans of any war or conflict, or any engagement of such war or conflict, to include the following: Algonquin (1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), Civil War (1861-1865), Spanish-American (1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000- ), Operation Enduring Freedom (2001- ), and Operation Iraqi Freedom (2003- ). "Monument" or "memorial" includes both the object and the pedestal on which it is placed. "Monument or Memorial" does not include any monument or memorial located in a publicly owned cemetery."

DHR reports that Virginia has 423 Civil War monuments (both Union and Confederate) and an additional 274 statues or monuments of various types; of the latter, only those that meet this definition would be subject to the legislation as well as the proposed regulation.

The proposed regulation defines "contextualize" as "the use of facts derived from sources that can be cited to explain the circumstances, influences, and conditions that existed at the time a war memorial or monument was erected, and which resulted in its erection." Accordingly, the proposed regulation would require that the text on a marker include (i) a description of the circumstances, influences and conditions that existed at the time the monument or memorial was erected, (ii) an explanation of the documented motivation for the monument's or memorial's creation, (iii) the parties involved in the creation of the monument or memorial and what their motivations were, and (iv) the parties excluded from the process of creating the monument or memorial.<sup>4</sup> In addition, the design of the marker would have to be distinct from state historical markers and would have to identify the governing body (i.e., the locality) or its agent that funded the production and erection of the marker.

Local governments that elect to contextualize a monument or memorial with a marker would be required to submit an application form to DHR.<sup>5</sup> The proposed regulation specifies that DHR shall process up to five applications for contextualization per quarter, on a first-come, first-served basis. DHR may review the application for completeness and accuracy before presenting it to the board. The board shall evaluate the applications and approve them based on the following considerations: (i) whether the proposed marker contains true and correct text, (ii) whether the proposed text provides a complete and accurate historical context, (iii) the quality and validity of the documented sources and the documented research provided, (iv) whether the proposed design is sufficiently distinct from state historical markers, and (v) the appropriateness of the proposed location of the marker.

In addition to new markers, any changes to an existing marker would also have to be approved by the board. However, the local government could choose to remove a previously erected marker. The proposed regulation would not allow local governments to apply for more than one marker at a specific site. The local government would bear all the costs relating to the design, production, and installation of the marker.

**Estimated Benefits and Costs.** Since the proposed regulation does not mandate any action, and allows actions that were not previously permitted, any costs that arise would be solely at the discretion of local governments. Local governments would be responsible for any costs associated with the production and installation of the markers, if they elect to do so. DHR estimates these costs to range from \$500 to \$1,500 per marker. The new regulation would satisfy the legislative mandate and benefit local governments that seek to contextualize monuments via markers by providing them with a process to do so. In localities where the removal or relocation of certain monuments may be politically untenable for the local government, the option of erecting a marker to contextualize the monument may benefit the government officials and the public by offering a viable compromise. Having a marker that accurately describes the historical context would provide a public education benefit, for residents of the locality as well as visitors.

**Businesses and Other Entities Affected.** The proposed amendments do not directly impact businesses in general. If a local government receives approval for a marker and contracts with a local business to fabricate or install the marker, that business would benefit from the promulgation of this regulation.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>6</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 proposed regulation does not create any costs. Thus, an adverse impact is not indicated.

**Small Businesses<sup>7</sup> Affected.**<sup>8</sup> The proposed amendments do not appear to adversely affect small businesses.

**Localities<sup>9</sup> Affected.**<sup>10</sup> The proposed amendments would only impact localities where the local government decided to erect a marker to contextualize a monument. In that case, the local government would need to allocate or raise funds to cover the cost of designing, fabricating, and installing the marker. However, the proposed regulation does not create new costs for local governments in general. Therefore, an adverse impact for local governments is not indicated.

**Projected Impact on Employment.** The proposed regulation would not affect total employment.

**Effects on the Use and Value of Private Property.** The proposed regulation does not directly affect the use or value of private property. Real estate development costs are also unaffected.

<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

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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>A marker could be a plaque, signboard, or other form of signage located near the monument.

<sup>3</sup>See <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=ch1100>. Chapter 1101 is identical. Both chapters overturned an 1890 Act of Assembly that made it unlawful to disturb or interfere with such monuments. Under the new law, local governments may remove, relocate, contextualize, or cover a monument, provided they publish a notice of intent in a local newspaper and conduct a public hearing. The legislation contains specific requirements for the publication of the notice and the hearing, as well as requirements for local governments that vote to remove or relocate a monument or memorial. Thus, adding a marker to contextualize the monument is one option among many, and local governments are not legally mandated to exercise any of these options.

<sup>4</sup>See this marker in DeKalb County, Georgia, that contextualizes the 1908 Confederate monument in Decatur Square, for an example provided by DHR: <https://www.ajc.com/news/local/marker-supplies-historical-context-for-dekalb-confederate-monument/3mGyZ6ITzCEGVgz785O1z/>.

<sup>5</sup>See [https://ris.dls.virginia.gov/uploads/17VAC5/forms/Application\\_to\\_Propose\\_Contextualization\\_DRAFT-20210810114954.docx](https://ris.dls.virginia.gov/uploads/17VAC5/forms/Application_to_Propose_Contextualization_DRAFT-20210810114954.docx).

<sup>6</sup>Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>7</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>8</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 Code § 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>9</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>10</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The Department of Historic Resources on behalf of the Board of Historic Resources concurs with the economic impact analysis prepared by the Department of Planning and Budget.

## Summary:

*Pursuant to Chapters 1100 and 1101 of the 2020 Acts of Assembly, the proposed amendments establish Regulations Governing Contextualization of Monuments of Memorials for Certain War Veterans (17VAC5-40), which provides*

*local governing bodies that choose to contextualize certain war monuments or memorials within their jurisdiction requirements for the markers, including (i) the marker's appearance, location, and ownership; (ii) application requirements; and (iii) the application approval process.*

## Chapter 40

### Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans

#### 17VAC5-40-10. Definitions.

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

"Application" means an application for approval of a marker and contextualization text, in a form prescribed by the director and containing the basic information required by 17VAC5-40-40.

"Board" means the Virginia Board of Historic Resources.

"Contextualization text" means text that contextualizes or purports to contextualize a monument or memorial.

"Contextualize" means the use of facts derived from primary or footed secondary sources, to include oral history, to explain the circumstances, influences, and conditions that existed at the time a war memorial or monument was erected and that resulted in its erection.

"Department" means the Virginia Department of Historic Resources.

"Director" means the Director of the Virginia Department of Historic Resources.

"Locality's public property" means any property owned by a locality, excluding any publicly owned cemetery.

"Marker" means a marker, plaque, or signage of any kind that bears or contains a contextualization text. The term "marker," though singular, includes one or more markers, plaques, or signs of any kind. A marker is not a monument or memorial.

"Monument" or "memorial" means any object erected on a locality's public property pursuant to § 15.2-1812 of the Code of Virginia intended to commemorate the veterans of any war or conflict or any engagement of such war or conflict to include the following: Algonquin (1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), Civil War (1861-1865), Spanish-American (1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000- ), Operation Enduring Freedom (2001- ), and Operation Iraqi Freedom (2003- ). "Monument" or "memorial" includes both the object and the pedestal on which an object is placed. "Monument" or "memorial" does not



include any monument or memorial located in a publicly owned cemetery.

## **17VAC5-40-20. Applicability.**

This chapter shall apply to any locality that proposes to contextualize any monument or memorial pursuant to § 15.2-1812 of the Code of Virginia. The contextualization of monuments by any locality is voluntary.

## **17VAC5-40-30. General provisions.**

A. After fulfilling the requirements set forth in § 15.2-1812 B of the Code of Virginia, any locality proposing to contextualize any monument or memorial shall submit an application to the department and obtain approval of the application from the board. No contextualization text shall be produced anywhere on or near a monument or memorial except on a marker approved by the board.

B. No marker shall be erected or placed on or near a monument or memorial without approval from the board.

C. If a marker is erected without having received approval from the board, then such marker must be removed. If contextualization text is produced on or near a monument or memorial on anything other than a marker approved by the board, such contextualization text must be removed.

D. If the board has approved contextualization text and an application and a locality subsequently desires to change the contextualization text or marker, then the locality must submit a new application for such change.

E. Markers shall differ in style and appearance from state historical markers and shall display on the face of the marker prominent notice of the governing body or the governing body's agent that funded its production and erection. The contextualization text on a marker shall adhere to the formatting guidelines as described in the application.

F. Any marker that is erected shall be the property of the locality.

G. The locality shall be responsible for covering all expenses associated with producing and installing the marker.

H. The locality shall be responsible for covering all expenses associated with removing (i) any unapproved marker installed by the locality and (ii) any contextualization text that is produced on or near a monument or memorial that is not on a marker approved by the board.

I. The name of the locality and the year the marker was created shall appear on the marker.

J. Only one contextualization text per monument or memorial will be approved by the board. Such contextualization text may be produced on one or more markers.

## **17VAC5-40-40. Marker approval application.**

A. Subject to the requirements of this chapter, a locality may, at its own expense, contextualize any monument or memorial located on the locality's public property by erecting a marker that contains contextualization text.

B. Prior to erecting such a marker, the locality shall submit an application to the department and obtain approval from the board of such application.

C. The application shall be in such form as prescribed by the director and shall include the following basic information:

1. Name, address, email address, and telephone number of the local government official who will serve as the primary point of contact;

2. Location and description of the monument or memorial for which the contextualization text and the marker is proposed;

3. The text of any and all inscriptions that appear on the monument or memorial;

4. A statement indicating when the monument or memorial was erected, who erected it, and who paid for it, if known, accompanied by documents verifying this information;

5. A statement of purpose of the contextualization project, the contextualization text, and the marker;

6. The proposed text for the marker, which shall include the following information:

a. A description of who commissioned, paid for, and created the monument or memorial; when it was erected; and what it depicts;

b. A description of the documented reasons for the creation of the monument or memorial;

c. A description of any documented local opposition at any time to the monument or memorial; and

d. A description of the historical era in which the monument or memorial was erected, including information about who held local political power;

7. The proposed location for the marker, which location shall (i) be at or close to the monument or memorial being contextualized and (ii) permit the public to safely view the marker;

8. Documentation relevant to the application, including (i) copies of all references and sources used to draft the proposed contextualization text for the marker and (ii) photographs of the monument or memorial to be contextualized;

9. The expected timetable for erection or placement of the marker; and

10. The design, appearance, size, and height for the proposed marker.

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D. The department shall process up to five applications for contextualization per quarter on a first-come, first-served basis. Any applications received after the first five will be deferred to the next board cycle. The department shall review the applications for completeness and accuracy. The department, as it deems necessary, may request additional documentation and information from an applicant. The department may deny an application if it is incomplete or otherwise does not include all the documentation or information required by the department. After the department determines that an application is complete and accurate, the department will present the application to the board.

## **17VAC5-40-50. Issuance of approval.**

A. The board shall evaluate applications presented by the department to the board and determine whether to approve such applications. Approval of an application is in the board's sole discretion. In evaluating whether to approve an application, the board may consider, without limitation:

1. Whether the proposed marker contains true and correct contextualization text;
2. Whether the proposed contextualization text provides a complete and accurate historical context of the monument or memorial;
3. The quality and validity of the documented sources and documented research provided;
4. Whether the proposed design, appearance, size, and height for the marker differs in style and appearance from state historical markers; and
5. The appropriateness of the proposed location of the marker.

B. The actual contextualization text, location, design, appearance, size, and height of a marker as erected shall not differ from the contextualization text, location, design, appearance, size, and height set forth in the application that has been approved by the board.

C. The board shall not consider any application until the department has determined that such application is complete and accurate and that sufficient documentary evidence has been submitted to establish the authenticity of the proposed contextualization text for the project.

**NOTICE:** The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (17VAC5-40)

[Monument or Memorial Contextualization Approval Application \(eff. 12/2021\)](#)

VA.R. Doc. No. R22-6919; Filed March 15, 2024, 9:46 a.m.

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## **TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

### **BOARD OF MEDICINE**

#### **Forms**

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

**Title of Regulation:** [18VAC85-80. Regulations Governing the Practice of Occupational Therapy.](#)

**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 (18VAC85-80)

[Instructions for Completing an Application to Practice as an Occupational Therapist/Occupational Therapy Assistant in Virginia \(rev. 12/2017\)](#)

[Instructions and Application for Reinstatement of a License to Practice as an Occupational Therapist/Occupational Therapy Assistant \(rev. 4/2018\)](#)

~~[Application to Reactivate an Inactive License for an Occupational Therapist Assistant Pursuant to Virginia Regulations 18VAC85-80-72 \(rev. 5/2019\)](#)~~

[Application to Reactivate an Occupational Therapist Assistant License from Inactive Status \(rev. 3/2024\)](#)

[Application to Reactivate an Inactive License for an Occupational Therapist Pursuant to Virginia Regulations 18VAC85-80-72 \(rev. 1/2018\)](#)

~~[Supervised Occupational Therapy Services \(lapse between two to six years\) \(rev. 5/2017\)](#)~~

[Board-Approved Occupational Therapy Practice to Reinstatement an Inactive License \(rev. 3/2024\)](#)

[Supervised Occupational Therapy Services \(lapse six years or more\) \(rev. 5/2017\)](#)

[Continued Competency Activity and Assessment Form \(rev. 4/2000\)](#)

[Application for Restricted Volunteer License \(rev. 8/2015\)](#)

[Application for Registration for Volunteer Practice \(rev. 8/2015\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 3/2018\)](#)

[License Verification Request \(rev. 2/2024\)](#)

VA.R. Doc. No. R24-7824; Filed March 11, 2024, 1:45 p.m.

## BOARD OF PHARMACY

### Proposed Regulation

**Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-460, 18VAC110-20-490).**

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

**Public Hearing Information:**

March 28, 2024 - 9:07 a.m. - Department of Health Professions, Board Room 4, 9960 Mayland Drive, Suite 201, Henrico, Virginia 23233

**Public Comment Deadline:** June 7, 2024.

**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).

**Basis:** Regulations of the Board of Pharmacy are promulgated under the general authority of § 54.1-2400 of the Code of Virginia. Regulations governing the distribution and dispensing of drugs are promulgated under the authority of § 54.1-3307 of the Code of Virginia.

**Purpose:** The purpose of this regulatory action is to update regulations for utilization of newer technologies in the practice of pharmacy in a hospital system and to facilitate time for pharmacists to be more involved in direct patient care. A pilot for remote verification involving more than a dozen facilities has been approved by the board and has been shown to protect the health and safety of the drug supply and patients in hospitals.

**Substance:** Amendments (i) allow a pharmacist at a warehouse or wholesale distributor to verify Schedule VI drugs to be placed in specific automated dispensing devices prior to delivery of the drugs to a hospital; (ii) remove the requirement of the hospital pharmacist to verify Schedule VI drugs in these circumstances and remove the requirement that the hospital pharmacist initial the delivery record; (iii) require the warehouse or wholesale distributor to maintain a record of

distributed Schedule VI drugs; and (iv) require the hospital to maintain records regarding the barcode scanning rate, the bedside scanning rate, and any errors in drug product received from the warehouse or wholesale distributor. A pharmacist or pharmacy technician may load the Schedule VI drugs specified in the delivery order.

**Issues:** The advantage to the public will be use of newer technologies in the practice of pharmacy in a hospital system and more availability of hospital pharmacists to be involved in direct patient care. A pilot program in more than a dozen facilities has utilized this technology, which has been shown to protect the health and safety of the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

**Department of Planning and Budget's Economic Impact Analysis:**

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

**Summary of the Proposed Amendments to Regulation.** In response to a petition for rulemaking, the Board of Pharmacy (board) proposes to incorporate certain allowances into the regulation that have been piloted and shown to be safe and effective. Specifically, the proposed amendments would allow (i) a pharmacist at a central distribution company to verify the Schedule VI drugs<sup>2</sup> that will be placed into an automated dispensing device (ADD) at a hospital, prior to delivery of the drugs to the receiving hospital, and (ii) pharmacy technicians at the receiving hospital to load the drugs directly into the ADD without further verification by a pharmacist at the hospital.

**Background.** In May 2021, the board received a petition to amend 18VAC110-20-460 and 18VAC110-20-490 so as to allow a pharmacist at a central distribution company to verify the Schedule VI drugs to be placed in an ADD prior to delivery of the drugs to the receiving hospital, and pharmacy technicians at the receiving hospital to load the drugs directly into the ADD without further verification by a pharmacist at the hospital.<sup>3</sup> The petition received 40 comments, representing a number of Virginia hospitals, all in favor of the request. Commenters specifically cited the increased efficiency of using a centralized distribution model and the resulting time savings for pharmacists and pharmacy technicians at the hospitals as their primary rationale in supporting the petition. Subsequently, the board voted unanimously to accept the petition and initiate rulemaking regarding the two sections.<sup>4</sup>

18VAC110-20-460 currently requires all Schedule II-VI drugs delivered to a hospital unit as floor-stock to be checked by a pharmacist before the drugs leave the hospital pharmacy. 18VAC110-20-490, which contains general provisions for the use of ADDs at hospital pharmacies, currently requires pharmacist verification for all drugs removed from the pharmacy to be placed in an ADD. The board proposes to amend 18VAC110-20-490 to add a subsection addressing the Distribution of drugs from a central warehouse or wholesale distributor specifically for use in

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ADDs and to amend 18VAC110-20-460 by adding an exception for drugs covered by this new subsection.

The new subsection (18VAC110-20-490 D) would require the central warehouse or wholesale distributor to have an onsite Virginia-licensed pharmacist (i) verify the accuracy of all Schedule VI drugs to be placed in an ADD prior to delivery of the drugs to the hospital pharmacy and (ii) perform barcode linking of any drug to the related drug files in the hospital information system and automated dispensing device. In addition, the warehouse or distributor would be required to maintain a record of all Schedule VI drugs distributed to a hospital for placement in each specific ADD and to provide an invoice to each hospital pharmacy indicating the drugs delivered to the hospital to be placed in a specific ADD. The recordkeeping requirements would include the date; drug name, dosage form, and strength; quantity; hospital name; hospital unit and a unique identifier for the specific ADD receiving the drug.

The new subsection would also specifically exempt the hospital pharmacist from the current requirements in sections 18VAC110-20-460 and 18VAC110-20-490 regarding verification of and initialing for drugs leaving the pharmacy to be placed in an ADD. Pharmacists or pharmacy technicians loading the ADD would instead be required to scan the drugs as they are loaded into the ADD and initial the delivery record. Hospitals receiving drugs from the warehouse or distributor would be required to maintain a 90% barcode scanning rate for restocking ADDs.<sup>5</sup> If the scanning rate for restocking ADDs is less than 90% for any quarter, the receiving pharmacy would have to immediately reinstitute a 100% pharmacist verification process until a 90% scanning rate is achieved and documented in a subsequent quarter. To implement these security measures, receiving hospital pharmacies would be required to maintain quarterly reports of the restocking barcode scanning rate, bedside barcode scanning rate, and any errors in drug product received from the warehouse or distributor.

Section 54.1-3434.02 A 5 of the Code of Virginia authorizes use of ADDs only when the pharmacist-in-charge (PIC) of a pharmacy located within the hospital, or the PIC of any outside pharmacy providing pharmacy services to the hospital, is held accountable for the drugs dispensed from the ADD.<sup>6</sup> Section 54.1-3434.02 A 6 requires the filling and stocking of all drugs in ADDs to be performed under the direction of the PIC who is an employee of the provider pharmacy and for the PIC to be responsible for proper and accurate stocking and filling of the ADD. Thus, the proposed amendments aim to provide the flexibility requested in the petition by allowing verification to take place at the warehouse while ensuring that PICs meet statutory standards by requiring barcode linking and electronic inventory tracking of each drug.

**Estimated Benefits and Costs.** The proposed amendments would primarily benefit hospitals that use ADDs and the pharmacists and pharmacy technicians employed by those hospitals. As indicated by a number of commenters in favor of the petition, manually verifying every unit of every drug that is placed in an ADD is both time consuming and error-prone in a busy work environment where the hospital pharmacy staff may have competing demands on their time. In addition, Schedule VI drugs are the least restricted category and often the most prescribed, meaning they have to be

restocked in ADDs more frequently compared to Schedules II through V drugs. Allowing a pharmacist at the warehouse to do the manual verification and barcode linking reduces the time hospital pharmacists and pharmacy technicians must spend in stocking ADDs without increasing the risk of drug loss or misuse. These changes would allow hospital pharmacists and pharmacy technicians to spend more of their time working directly with patients.

Hospitals that choose to use ADDs for Schedule VI drugs and the warehouse or wholesale distributors that supply these drugs to them would have to invest some time and effort to implement the requirements of the regulation. Specifically, warehouse or distributors would need to employ or arrange for licensed pharmacists to conduct the onsite verification and barcode linking. They would also need to implement systems for recordkeeping and invoicing as required in the proposed text. Hospitals using ADDs would have to share access to their drug inventory management system and perhaps train the pharmacist at the warehouse or distribution center to do the barcode linking accurately.

It should be noted that the regulation does not require warehouse or wholesale distributors of Schedule VI drugs to take any action unless they supply to a hospital that wants to take advantage of these allowances, in which case any compliance costs would likely be passed on to that hospital. Large hospital chains may run their own warehouse and thus pay for the compliance costs directly. Smaller hospitals that use ADDs may contract with warehouses that are either run by these larger hospital chains or by large pharmacies and would pay for the warehouse's compliance costs indirectly. In either case, the cost of implementing these requirements for the warehouse would either directly or indirectly be incurred by hospitals using ADDs, and those hospitals would choose to make this investment based on the expected time savings for their pharmacy staff.

**Businesses and Other Entities Affected.** The Department of Health Professions (DHP) reports that there are roughly 100 hospitals in Virginia, and that a large hospital may have as many as 75 to 100 ADDs.<sup>7</sup> 26 hospitals have already participated in a pilot program to test these requirements and have reported 99% barcode scanning rates for restocking and at the bedside.<sup>8</sup> There are 121 licensed warehouse and 61 wholesale distributors. However, DHP reports that many warehouse may not possess drugs that lend themselves to this purpose and many only possess medical gases. It is unclear how many of the wholesale distributors would be affected by the proposed changes.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>9</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 proposed amendments do not create any new costs for central warehouse or wholesale distributors that could not be directly recouped from hospitals. Additionally, participation is voluntary. Thus, an adverse impact is not indicated.

**Small Businesses<sup>10</sup> Affected.**<sup>11</sup> The proposed amendments could affect some hospitals, central warehouse, or wholesale distributors that may be small businesses if they use ADDs and

elect to implement a centralized warehouse-based system for verification of Schedule VI drugs to stock ADDs.<sup>12</sup> However, since the proposed amendments do not create new costs for small businesses unless they choose to enter into an arrangement where Schedule VI drugs for ADDs are verified at a warehouse, an adverse economic impact is not indicated for small businesses.

Localities<sup>13</sup> Affected.<sup>14</sup> The proposed amendments do not appear to disproportionately affect any particular localities or introduce costs for local governments. Accordingly, an adverse economic impact is not indicated.

**Projected Impact on Employment.** The proposed amendments do not appear to affect total employment in the short run. Comments in favor of the petition state that these changes would free pharmacists from routine restocking tasks and thereby enable them to spend more time engaging with patients directly and providing clinical services. The magnitude of time savings for hospitals is unlikely to be large enough to result in layoffs for pharmacists or pharmacy technicians.

**Effects on the Use and Value of Private Property.** The proposed amendments could modestly increase the value of hospitals using ADDs by lowering pharmacy operation costs. The proposed amendments could also increase the value of some wholesalers or distributors based on their compensation for providing on-site verification and recordkeeping as value-adding services for supplying Schedule VI drugs to hospitals that use ADDs. The proposed amendments do not affect real estate development costs.

<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>Schedule VI drugs are the least restricted category of scheduled drugs. They represent the lowest potential for abuse while still requiring a prescription. See <https://law.lis.virginia.gov/vacode/title54.1/chapter34/section54.1-3455/>.

<sup>3</sup>See <https://townhall.virginia.gov/L/viewpetition.cfm?petitionid=344>.

<sup>4</sup>Minutes of the Board September 24, 2021 meeting: [https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\30\33096\Minutes\\_DHP\\_33096\\_v2.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\30\33096\Minutes_DHP_33096_v2.pdf).

<sup>5</sup>This threshold and the measures to be followed if the threshold is not maintained were included in the pilot program and would be replicated as is in the regulation. See, for example, [https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\30\22759\Minutes\\_DHP\\_22759\\_v2.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\30\22759\Minutes_DHP_22759_v2.pdf) for details about the pilot.

<sup>6</sup>See <https://law.lis.virginia.gov/vacode/title54.1/chapter34/section54.1-3434.02/>.

<sup>7</sup>Agency Background Document (ABD) p. 58.

<sup>8</sup>Email from DHP dated August 9, 2022. The pilot involved multiple hospitals under shared ownership that had their own central warehouse.

<sup>9</sup>Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities

should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>10</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>11</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>12</sup>Hospitals may operate as a non-profit rather than a traditional business, but would otherwise meet the criteria for small businesses as defined in footnote 8.

<sup>13</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>14</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

#### Summary:

*In response to a petition for rulemaking, the proposed amendments allow (i) a pharmacist at a central distribution company to verify Schedule VI drugs to be placed in an automated dispensing device prior to delivery to the receiving hospital and (ii) pharmacy technicians at the hospital to load the drugs directly into the automated dispensing device without further verification by a pharmacist at the hospital.*

#### **18VAC110-20-460. Floor stock drugs; proof of delivery; distribution records.**

A. ~~A~~ Except as provided in 18VAC110-20-490 D, a pharmacist shall check all ~~Schedule II-VI Schedules II through VI~~ drugs delivered to a hospital unit as floor-stock before the drugs leave the pharmacy and shall initial or sign manually or electronically the record of distribution verifying the accuracy of the distribution.

B. A delivery receipt shall be obtained for ~~Schedule Schedules II through V~~ drugs supplied as floor stock. This record shall include the date, drug name and strength, quantity, hospital unit receiving the drug, and the manual or electronic signatures of the dispensing pharmacist and the receiving nurse.

C. A record of ~~disposition/administration~~ disposition or administration shall be used to document administration of ~~Schedule Schedules II through V~~ drugs when a floor stock system is used for such drugs. The record shall be returned to

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the pharmacy within three months of its issue. The PIC or ~~his~~ the PIC's designee shall:

1. Match returned records with delivery receipts to verify that all records are returned;
2. Periodically audit returned administration records for completeness as to patient's names, dose, date and time of administration, signature or initials of person administering the drug, and date the record is returned;
3. Verify that all additions to inventory are recorded, that all additions to and deductions from inventory are correctly calculated, that sums carried from one record to the next are correctly recorded, and periodically verify that doses documented on administration records are reflected in the medical record; and
4. Initial the returned record.

D. All records required by this section shall be filed chronologically by date of issue, and retained for two years from the date of return at the address of the pharmacy. Schedule VI records may be maintained in offsite storage or as an electronic image that provides an exact image of the document that is clearly legible, provided such offsite or electronic storage is retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent. ~~Schedule II-V~~ Schedules II through V records may only be stored ~~offsite~~ off site or electronically as described in this subsection if authorized by DEA or in federal law or regulation. The filing requirements of 18VAC110-20-240 A 1 for separation of Schedule II records shall be met for administration records if the Schedule II drugs are listed in a separate section on a page that contains other schedules of drugs.

## **18VAC110-20-490. Automated devices for dispensing and administration of drugs.**

A. A hospital may use automated devices for the dispensing and administration of drugs pursuant to § 54.1-3301 of the Code of Virginia and §§ 54.1-3401 and 54.1-3434.02 of the Drug Control Act and in accordance with 18VAC110-20-270, 18VAC110-20-420, or 18VAC110-20-460 as applicable.

B. Policy and procedure manual; access codes.

1. Proper use of the automated dispensing devices and means of compliance with requirements shall be set forth in the pharmacy's policy and procedure manual, which shall include provisions for granting and terminating user access.
2. Personnel allowed access to an automated dispensing device shall have a specific access code that records the identity of the person accessing the device. The device may verify access codes using biometric identification or other coded identification after the initial log-on in order to eliminate sharing or theft of access codes.

C. Distribution of drugs from the pharmacy.

1. Prior to removal of drugs from the pharmacy, a delivery record shall be generated for all drugs to be placed in an

automated dispensing device. The delivery record shall include the date; drug name, dosage form, and strength; quantity; hospital unit and a unique identifier for the specific device receiving the drug; initials of the person loading the automated dispensing device; and initials of the pharmacist checking the drugs to be removed from the pharmacy and the delivery record for accuracy.

2. At the time of loading any Schedules II through V drug, the person loading will verify that the count of that drug in the automated dispensing device is correct. Any discrepancy noted shall be recorded on the delivery record and immediately reported to the pharmacist in charge, who shall be responsible for ensuring reconciliation of the discrepancy or properly reporting of a loss.

D. Distribution of drugs from a central warehouse or wholesale distributor. Notwithstanding subdivision C 1 of this section, a central warehouse or wholesale distributor may distribute Schedule VI drugs to hospitals to be placed in specific automated dispensing devices under the following conditions:

1. A pharmacist licensed in Virginia employed by or otherwise working at the central warehouse or wholesale distributor shall verify the accuracy of all Schedule VI drugs to be placed in specific automated dispensing devices within the hospital prior to delivery of the drugs directly to the hospital pharmacy;

2. A pharmacist at the hospital pharmacy shall not be required to (i) verify the accuracy of these drugs prior to leaving the hospital pharmacy for delivery to the hospital unit as floor stock as required in 18VAC110-20-460 A or (ii) initial the delivery record as required in subdivision C 1 of this section;

3. The central warehouse or wholesale distributor shall maintain a record of all Schedule VI drugs distributed to a hospital for placement in a specific automated dispensing device. The record shall include the date; drug name, dosage form, and strength; quantity; hospital name; hospital unit and a unique identifier for the specific automated dispensing device receiving the drug; and initials of the pharmacist employed by or working at the central warehouse or wholesale distributor who is responsible for verifying the drugs for accuracy;

4. The central warehouse or wholesale distributor shall provide an invoice to each hospital pharmacy that indicates in which specific automated dispensing device the drugs delivered to the hospital are to be placed;

5. A pharmacist or pharmacy technician at each hospital shall load the drugs into the specific automated dispensing device after scanning each unit, and the hospital pharmacy shall maintain a record that consists of the initials of the person loading the automated dispensing device;

6. A pharmacist licensed in Virginia employed by or otherwise working at the warehouse or wholesale distributor shall perform barcode linking of any drug to the related drug files in the hospital information system and automated dispensing device;

7. Each hospital receiving drugs from the central warehouse or wholesale distributor shall maintain at least a 90% barcode scanning rate for restocking automated dispensing devices. If the scanning rate for restocking the automated dispensing device is less than 90% for any quarter, the pharmacy at the hospital shall immediately reinstitute a 100% pharmacist verification process at the receiving pharmacy until a 90% scanning rate for a subsequent quarter is achieved and documented; and

8. The hospital pharmacy receiving such services from a central warehouse or wholesale distributor shall maintain quarterly reports containing the hospital's restocking barcode scanning rate, bedside barcode scanning rate, and any errors in drug product received from the central warehouse or wholesale distributor.

~~D.~~ E. Distribution of drugs from the device.

1. Automated dispensing devices in hospitals shall be capable of producing a hard-copy record of distribution that shall show patient name, drug name and strength, dose withdrawn, date and time of withdrawal from the device, and identity of person withdrawing the drug. The record shall be filed in chronological order from date of issue or maintained electronically.

2. If an automated dispensing device is used to obtain drugs for dispensing from an emergency room, a separate dispensing record is not required, provided the automated record distinguishes dispensing from administration and records the identity of the physician who is dispensing.

~~E.~~ F. Discrepancy reports. A discrepancy report for all Schedules II through V drugs and any drugs of concern, as defined in § 54.1-3456.1 of the Code of Virginia, shall be generated for each discrepancy in the count of a drug on hand in the device. Each such report shall be initiated or resolved by the PIC or ~~his~~ the PIC's designee within 72 hours of the time the discrepancy was discovered or, if determined to be a theft or an unusual loss of drugs, shall be immediately reported to the board in accordance with § 54.1-3404 E of the Drug Control Act.

~~F.~~ G. Reviews and audits.

1. The PIC or ~~his~~ the PIC's designee shall conduct at least a monthly review for compliance with written policy and procedures that are consistent with § 54.1-3434.02 A of the Drug Control Act for security and use of the automated dispensing devices, to include procedures for timely termination of access codes when applicable, accuracy of distribution from the device, and proper recordkeeping.

2. The PIC or ~~his~~ the PIC's designee shall conduct at least a monthly audit to review distribution of Schedules II through V drugs from each automated dispensing device as follows:

a. The audit shall reconcile records of all quantities of Schedules II through V drugs dispensed from the pharmacy with records of all quantities loaded into each device to detect whether any drug recorded as removed from the pharmacy was diverted rather than placed in the proper device.

b. If a pharmacy has an ongoing method for perpetually monitoring drugs in Schedules II through V to ensure drugs dispensed from the pharmacy have been loaded into the device and not diverted, such as with the use of perpetual inventory management software, then the audit required in this subsection may be limited to the discrepancies or exceptions as identified by the method for perpetually monitoring the drugs.

3. The PIC or ~~his~~ the PIC's designee shall conduct at least a monthly audit to review the dispensing and administration records of Schedules II through V drugs from each automated dispensing device as follows:

a. The audit shall include a review of administration records for each device per month for possible diversion by fraudulent charting. The review shall include all Schedules II through V drugs administered for a time period of not less than 24 consecutive hours during the audit period.

b. The hard-copy distribution and administration records printed out and reviewed in the audit shall be initialed and dated by the person conducting the audit. If nonpharmacist personnel conduct the audit, a pharmacist shall review the record and shall initial and date the record.

c. The PIC or ~~his~~ the PIC's designee shall be exempt from requirements of this audit if reconciliation software that provides a statistical analysis is used to generate reports at least monthly. The statistical analysis shall be based on:

(1) Peer-to-peer comparisons of use for that unit or department; and

(2) Monitoring of overrides and unresolved discrepancies.

d. The report shall be used to identify suspicious activity, which includes usage beyond three standard deviations in peer-to-peer comparisons. A focused audit of the suspicious activity and individuals associated with the activity shall be performed whenever suspicious activity is identified from the reports.

4. The PIC or ~~his~~ the PIC's designee shall maintain a record of compliance with the reviews and audits in accordance with subsection ~~H~~ I of this section.

~~G.~~ H. Inspections. Automated dispensing devices shall be inspected monthly by pharmacy personnel to verify proper storage, proper location of drugs within the device, expiration dates, the security of drugs, and validity of access codes. The PIC or ~~his~~ the PIC's designee shall maintain documentation of the inspection in accordance with subsection ~~H~~ I of this section. With the exception of a monthly physical review of look-alike and sound-alike drugs stored within matrix drawers or open access areas within the device, such monthly inspection shall not require physical inspection of the device if the device is capable of and performs the following:

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1. At least daily monitoring of refrigerator or freezer storage with documented temperature ranges, variances, and resolutions;
2. Automatic identification and isolation of the location of each drug within the device using a machine readable product identifier, such as barcode technology, and generation of a report verifying the applicable settings;
3. Electronic tracking of drug expiration dates and generation of proactive reports allowing for the replacement of drugs prior to their expiration date; and
4. Electronic detection of the opening of the device, identification of the person accessing the device, automatic denial of access to the device during malfunctions and mechanical errors, and generation of reports of any malfunction and mechanical error.

## H. I. Records.

1. All records required by this section shall be maintained for a period of not less than two years. Records required to be maintained by the pharmacy shall be maintained at the address of the pharmacy providing services to the hospital ~~except manual~~. Records required to be maintained by the warehouse or wholesale distributor shall be maintained at the address of the applicable facility. Manual Schedule VI distribution records, reports auditing for indications of suspicious activity, and focused audits, ~~all of which and records required to be maintained by the warehouse or wholesale distributor distributing Schedule VI drugs to specific automated dispensing devices~~ may be maintained in offsite storage or electronically as an electronic image that provides an exact image of the document that is clearly legible, provided such offsite or electronic records are retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.
2. Distribution and delivery records and required initials may be generated or maintained electronically, provided:
  - a. The system being used has the capability of recording an electronic signature that is a unique identifier and restricted to the individual required to initial or sign the record.
  - b. The records are maintained in a read-only format that cannot be altered after the information is recorded.
  - c. The system being used is capable of producing a hard-copy printout of the records upon request.
3. Schedules II through V distribution and delivery records may also be stored off site or electronically in compliance with requirements of subdivision 1 of this subsection and if authorized by DEA or in federal law or regulation.
4. Hard-copy distribution and administration records that are printed and reviewed in conducting required audits may be maintained at an off-site location or electronically, provided they can be readily retrieved upon request; ~~provided they~~ are maintained in a read-only format that does not allow alteration of the records; and ~~provided~~ a separate log is

maintained for a period of two years showing dates of audit and review, the identity of the automated dispensing device being audited, the time period covered by the audit and review, and the initials of all reviewers.

VA.R. Doc. No. R21-33; Filed March 20, 2024, 9:26 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 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:** **18VAC110-60. Regulations Governing Pharmaceutical Processors (repealing 18VAC110-60-10 through 18VAC110-60-330).**

**Statutory Authority:** Chapters 740 and 773 of the 2023 Acts of Assembly.

**Effective Date:** May 8, 2024.

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

### Summary:

*The second enactment of Chapters 740 and 773 of the 2023 Acts of Assembly repeals § 54.1-3442.6 of the Code of Virginia, removing the Board of Pharmacy's statutory authority to regulate the pharmaceutical processor program and reassigning authority to the Board of Directors of the Cannabis Control Authority. Therefore, Regulations Governing Pharmaceutical Processors (18VAC110-60) is repealed.*

VA.R. Doc. No. R24-7740; Filed March 15, 2024, 11:31 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, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

### DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: [Centers for Independent Living General Policies and Procedures Manual](#).

Public Comment Deadline: May 8, 2024.

Effective Date: May 9, 2024.

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

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Documents: [Provider Manual Chapter 3 Eligibility. Mental Health Services Manual, Appendix D.](#)

[Mental Health Services Manual, Chapter 4.](#)

[Telehealth Services Supplement.](#)

Public Comment Deadline: May 8, 2024.

Effective Date: May 9, 2024.

Agency Contact: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, or email [meredith.lee@dmas.virginia.gov](mailto:meredith.lee@dmas.virginia.gov).

The following guidance documents have been submitted for deletion and the listed agencies have opened up a 30-day public comment period. The listed agencies had previously identified these documents as certified guidance documents, pursuant to § 2.2-4002.1 of the Code of Virginia. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to view the deleted document and comment. This information is also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact.

### DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Titles of Documents: [Electronic Storage of CIL Consumer Service Records.](#)

[Electronic Signatures Guidance for Independent Living Centers.](#)

Public Comment Deadline: May 8, 2024.

Effective Date: May 9, 2024.

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

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Documents: [Early Intervention Services Manual, Appendix A.](#)

[Early Intervention Services Manual, Appendix G.](#)

[Early Intervention Services Manual, Appendix I.](#)

[Early Intervention Services Manual, Appendix J.](#)

Public Comment Deadline: May 8, 2024.

Effective Date: May 9, 2024.

Agency Contact: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, or email [meredith.lee@dmas.virginia.gov](mailto:meredith.lee@dmas.virginia.gov).



2016 Final Orders of the Virginia Courts in Contested Cases Arising Under the Virginia Occupational Safety and Health Act.

2017 Final Orders of the Virginia Courts in Contested Cases Arising Under the Virginia Occupational Safety and Health Act.

2018 Final Orders of the Virginia Courts in Contested Cases Arising Under the Virginia Occupational Safety and Health Act.

2019 Final Orders of the Virginia Courts in Contested Cases Arising Under the Virginia Occupational Safety and Health Act.

2020 Final Orders of the Virginia Courts in Contested Cases Arising Under the Virginia Occupational Safety and Health Act.

2021 Final Orders of the Virginia Courts in Contested Cases Arising Under the Virginia Occupational Safety and Health Act.

Public Comment Deadline: May 8, 2024.

Effective Date: May 9, 2024.

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

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# GENERAL NOTICES

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Proposed Enforcement Action for Red Hill Utility LLC

The Virginia Department of Environmental Quality (DEQ) proposes to issue a consent special order to Red Hill Utility LLC for alleged violation of the State Water Control Law at 3812 Puddledock Drive, Prince George County, Virginia. A description of the proposed action is available at the DEQ office named in this notice or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). DEQ will accept comments from April 8, 2024, to May 8, 2024.

Contact Information: Jeff Reynolds, Regional Enforcement Manager, Department of Environmental Quality, 4949A Cox Road, Glen Allen, Virginia 23060, telephone (804) 720-4754, or email [jefferson.reynolds@deq.virginia.gov](mailto:jefferson.reynolds@deq.virginia.gov).

## STATE BOARD OF HEALTH

### Annual Adjustment of Capital Expenditure Threshold for Certificate of Public Need Program Available

Section 32.1-102.1:2 C of the Code of Virginia states:

"No general hospital shall make any capital expenditure of \$5 million or more and no medical care facility other than a general hospital shall make any capital expenditure between \$5 million and the amount established by the [State Board of Health] as the minimum capital expenditure by a medical care facility other than a general hospital for which a certificate is required pursuant to subdivision B 8 of § 32.1-102.1:3 without first registering such capital expenditure with the [State Health Commissioner] pursuant to regulations of the Board. The amounts specified in this subsection shall be revised annually to reflect inflation using appropriate measures incorporating construction costs and medical inflation."

Section 32.1-102.1:3 B of the Code of Virginia states, in relevant part:

"The following actions undertaken by or on behalf of a medical care facility described in subsection A shall constitute a project for which a certificate of public need is required pursuant to subsection A of § 32.1-102.1:2:

8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1 through 7 [of this subsection], by or on behalf of a medical care facility described in subsection A other than a general hospital. The amounts specified in this subdivision shall be revised annually to reflect inflation using appropriate measures incorporating construction costs and medical inflation..."

12VAC5-220-110 B states that the capital expenditure threshold is annually adjusted:

"...using the percentage increase listed in the Consumer Price Index for All Urban Consumers (CPI-U) for the most recent year as follows:

$$A \times (1+B)$$

where:

A = the capital expenditure threshold amount for the previous year and

B = the percent increase for the expense category "Medical Care" listed in the most recent year available of the CPI-U of the U.S. Bureau of Labor Statistics."

Additionally, 12VAC5-220-110 D requires the Virginia Department of Health to annually "(i) publish the threshold amount in the General Notices section of the Virginia Register of Regulations and (ii) post the threshold amount on its website."

The previous year's threshold requiring a certificate of public need was \$22,068,371 and the threshold requiring registration was \$7,343,590. Using the calculation of  $A \times (1+B)$  listed in 12VAC5-220-110 B and the 2023 CPI-U percentage of 0.5% for medical care, the current year's thresholds are as follows:

Threshold for capital expenditures requiring a certificate of public need is \$22,178,713.

Threshold for capital expenditures requiring registration is \$7,380,308.

Contact Information: Erik Bodin, Certificate of Public Need Division Director, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Henrico, VA 23233, telephone (804) 367-1889, FAX (804) 527-4502, or email [erik.bodin@vdh.virginia.gov](mailto:erik.bodin@vdh.virginia.gov).

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Announcing Intent to Amend State Plan - Removal of Duplicative Language

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates - Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR § 447.205 and § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from the DMAS staff member listed in this notice.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted in writing within 30 days of this notice publication to the DMAS staff member listed and such comments are available for review at the DMAS office listed in this notice. Comments may also be submitted in writing on the Virginia Regulatory Town Hall at: <https://townhall.virginia.gov/L/generalnotice.cfm>.

Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80)

DMAS is revising the state plan to remove redundant language. DMAS submitted a previous state plan amendment (SPA) related to School Services (SPA 21-017), which was approved by Centers for Medicare and Medicaid Services on September 26, 2023. In that SPA, DMAS inadvertently included some of the old school services text, intended for removal. Consequently, this SPA will repeal the outdated language, which is duplicative and unnecessary.

Contact Information: Jimeequa H. Williams, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 225-3508, or email [jimeequa.williams@dmas.virginia.gov](mailto:jimeequa.williams@dmas.virginia.gov).

## **VIRGINIA CODE COMMISSION**

### **Notice to State Agencies**

Contact Information: Mailing Address: Virginia Code Commission, General Assembly Building, 201 North Ninth Street, Fourth 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/cumulatab.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 WATER CONTROL BOARD

Title of Regulation: **9VAC25-880 General VPDES Permit for Discharges of Stormwater from Construction Activities.**

Publication: 40:16 VA.R. 1333-1358; March 25, 2024

Correction to Final Regulation:

Page 1344, 9VAC25-880-70 Part II A 1, column 2, line 2, after "sale," change "an" to "a"

9VAC25-880-70 Part II A 2, line 4, after "utilize" change "[ a an ]" to "a"

VA.R. Doc. No. R22-7057; Filed March 26, 2024, 11:32 a.m.