



VIRGINIA

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TABLE OF CONTENTS

Register Information Page	1
Publication Schedule and Deadlines	2
Petitions for Rulemaking	3
Periodic Reviews and Small Business Impact Reviews	5
Notices of Intended Regulatory Action	11
Regulations	13
3VAC5-11. Public Participation Guidelines (Action Withdrawn).....	13
8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (Final)	13
8VAC20-132. Virginia Standards of Accreditation (Final)	13
8VAC20-850. Voluntary Registration of Family Day Homes - Requirements for Providers (Forms).....	47
8VAC115-10. Motor Vehicles Parking and Traffic Regulations (Final)	48
8VAC115-11. Parking and Traffic Regulations (Final).....	48
9VAC5-30. Ambient Air Quality Standards (Final)	49
9VAC5-91. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area (Final)	50
9VAC20-121. Regulated Medical Waste Management Regulations (Forms)	50
9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (Final).....	51
9VAC25-115. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities (Final).....	51
9VAC25-151. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (Final)	51
9VAC25-210. Virginia Water Protection Permit Program Regulation (Final)	51
9VAC25-830. Chesapeake Bay Preservation Area Designation and Management Regulations (Final).....	51
9VAC25-890. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s) (Final)	51
9VAC25-900. Certification of Nonpoint Source Nutrient Credits (Final).....	51
9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (Final).....	168
9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (Final)	158
9VAC25-790. Sewage Collection and Treatment Regulations (Final)	158
9VAC25-210. Virginia Water Protection Permit Program Regulation (Final).....	168
9VAC25-610. Groundwater Withdrawal Regulations (Final)	168
9VAC25-720. Water Quality Management Planning Regulation (Final)	172
9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (Action Withdrawn).....	174
9VAC25-875. Virginia Erosion and Stormwater Management Regulation (Final)	174
12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (Fast-Track)	175
12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (Fast-Track).....	177
18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (Proposed)	193
18VAC25-21. Regulations of the Virginia Auctioneers Board (Proposed)	198
18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology (Fast-Track).....	200
18VAC48-60. Common Interest Community Association Registration Regulations (Final)	203

Virginia Code Commission

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

THE VIRGINIA REGISTER INFORMATION PAGE

18VAC50-22. Board for Contractors Regulations (Final)	203
18VAC105-20. Regulations Governing the Practice of Optometry (Proposed)	205
18VAC105-20. Regulations Governing the Practice of Optometry (Fast-Track).....	212
18VAC110-20. Regulations Governing the Practice of Pharmacy (Emergency)	214
18VAC115-20. Regulations Governing the Practice of Professional Counseling (Action Withdrawn).....	221
18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (Action Withdrawn).....	221
18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (Action Withdrawn)	221
18VAC135-20. Virginia Real Estate Board Licensing Regulations (Final)	222
18VAC145-20. Professional Soil Scientists Regulations (Proposed)	224
18VAC145-30. Regulations Governing Certified Professional Wetland Delineators (Proposed).....	224
18VAC145-40. Regulations for the Geology Certification Program (Proposed)	224
18VAC145-30. Regulations Governing Certified Professional Wetland Delineators (Final).....	224
18VAC145-40. Regulations for the Geology Certification Program (Final)	227
18VAC155-20. Waste Management Facility Operators Regulations (Proposed).....	229
24VAC20-40. Rules and Regulations on Accident Prevention Courses for Older Drivers (Fast-Track)	232
24VAC20-40. Rules and Regulations on Accident Prevention Courses for Older Drivers (Fast-Track)	234
Guidance Documents	237
General Notices	238

THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

Members of the Virginia Code Commission: **Marcus B. Simon, Chair; Russet W. Perry, Vice Chair; Katrina E. Callsen; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Michael Mullin; Christopher R. Nolen; Steven Popps; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade.**

Staff of the Virginia Register: **Holly Trice, Registrar of Regulations; Anne Bloomsburg, Assistant Registrar; Nikki Clemons, Managing Editor; Erin Comerford, Regulations Analyst.**

PUBLICATION SCHEDULE AND DEADLINES

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

September 2024 through August 2025

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 (Tuesday)	December 16, 2024
41:10	December 11, 2024	December 30, 2024
41:11	December 23, 2024 (Monday)	January 13, 2025
41:12	January 8, 2025	January 27, 2025
41:13	January 22, 2025	February 10, 2025
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
41:20	April 30, 2025	May 19, 2025
41:21	May 14, 2025	June 2, 2025
41:22	May 28, 2025	June 16, 2025
41:23	June 11, 2025	June 30, 2025
41:24	June 25, 2025	July 14, 2025
41:25	July 9, 2025	July 28, 2025
41:26	July 23, 2025	August 11, 2025
42:1	August 6, 2025	August 25, 2025

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Initial Agency Notice

Title of Regulation: 4VAC20-1260. Pertaining to River Herring.

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

Name of Petitioner: Robert Allen, Coastal Conservation Association Virginia.

Nature of Petitioner's Request: The petitioner's request is as follows: "This petition requests rulemaking by the Virginia Marine Resources Commission (VMRC) for a managed recreational Hickory Shad fishery in Chesapeake Bay waters and coastal rivers and their tributaries within Virginia with a daily creel limit informed by and adjusted based on best available data. The requested regulation would be part of existing VMRC fisheries management for Alosine species and is needed to conserve the Hickory Shad stock by replacing unrestricted recreational harvesting with a controlled fishery. Unrestricted take exposes this species to overharvesting and diminishes the contribution of Virginia coastal river spawners to species abundance.

Petition objectives are to conserve the Hickory Shad species in Virginia's Chesapeake Bay waters and tributaries, sustain its contribution to species abundance of the East Coast stock, maintain a quality recreational fishery, and support shad and herring restoration plans.

The proposed fishery management action is for nonindigenous recreational fishing only. It would not alter commercial fishing regulations or the fishing rights of Native Americans who habitually reside on an Indian reservation or are members of a Virginia-recognized tribe who reside in the Commonwealth."

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on August 26, 2024. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which opens August 26, 2024, and closes September 16, 2024. Following receipt of comments on the petition, the commission will consider whether to grant or deny the petition for rulemaking.

Public Comment Deadline: September 16, 2024.

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

VA.R. Doc. No. PFR25-02; Filed July 29, 2024, 9:54 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Agency Decision

Title of Regulation: 18VAC90-27. Regulations for Nursing Education Programs.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Name of Petitioner: Marcella Williams.

Nature of Petitioner's Request: The petitioner requests that the Board of Nursing amend 18VAC90-27-90 and 18VAC90-27-100 to require training in self-care. The petitioner requests that 18VAC90-27-90 be amended to add: "Personal and professional self-care behaviors that promote well-being, resiliency, and emotional intelligence." The petitioner requests that 18VAC90-27-100 be amended to add: "No more than 10 clinical hours within a nursing program may be used as structured self-care activities. Self-care activities will be planned in cooperation with the agency involved and designed to meet clinical course objectives available to the students, the agency, and the board."

Agency Decision: Request denied.

Statement of Reason for Decision: At its July 23, 2024, meeting, the Board of Nursing voted to take no action on the petition. The board does not currently associate hours of clinical education with specific topics and did not elect to do so at this time. Additionally, the board could not identify a way in which training in self-care could align with current academic courses.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4520, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. PFR25-01; Filed February 12, 2024, 9:58 a.m.

BOARD OF COUNSELING

Agency Decision

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;

Petitions for Rulemaking

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 Decision: Request denied.

Statement of Reason for Decision: At its meeting on August 2, 2024, the Board of Counseling voted to take no action on the petition. The requested changes would impact other regulations not indicated in the petition for rulemaking. The board will, however, review the requests made at a future Regulatory Committee meeting to determine whether changes to the total required residency hours should be made via regulatory action.

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.

VA.R. Doc. No. PFR25-03; Filed March 11, 2024, 1:10 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-11, Regulations Governing Public Participation**, and determined that this regulation should be amended. The board is publishing its report of findings dated April 29, 2024, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it ensures public participation according to the Department of Planning and Budget (DPB) model policies. The regulation is clearly written and easily understandable. While the periodic review found that the regulation is reasonably consistent with the statutory requirements, the Department of Education intends to amend the regulation to align with the DPB Model Public Participation Guide.

There is a continued need for the regulation. There have been no documented complaints or comments received by the agency regarding this regulation. The complexities identified result from the regulation needing to be consistent with applicable law and pursuant to §§ 2.2-4007.02 and 22.1-16 of the Code of Virginia. Section 2.2-4007.02 requires that the agency develop and adopt public participation guidelines and sets minimum requirements for those guidelines. The promulgation of this regulation was completed and became effective on March 19, 2009. This was the last time the regulation was evaluated.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-23, Licensure Regulations for School Personnel**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated February 8, 2024, to support this decision.

As long as the Commonwealth requires teachers and other school personnel to hold a license, there is a continued need for the regulation. The regulation sets requirements for the licensing of teachers and other school personnel, as well as for the grounds and procedures for discipline and suspension of

the license when a teacher or other public school employee, whether full-time or part-time, permanent or temporary, may be suspended for good and just cause. The periodic review found that the regulation was consistent with the statutory requirements. No comments were received during the periodic review.

8VAC20-23 is a complex regulation that sets requirements for numerous teaching disciplines and guarantees minimum competency of licensed school personnel. The promulgation of the regulation was completed and became effective on August 23, 2018. Since that time, multiple fast-track rulemaking actions and exempt actions have made technical edits to certain sections of the regulation. In that time, this regulation has not been evaluated to identify any regulatory overlaps, duplications, or conflicts with federal or state law or regulations. Changes in technology and economic conditions have not diminished the need for the competencies outlined in the regulation.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-25, Technology Standards for Instructional Personnel**, and determined that this regulation should be repealed. The board is publishing its report of findings dated April 30, 2024, to support this decision.

This regulation is no longer necessary for the protection of public health, safety, and welfare. 8VAC20-25 became effective on March 4, 1998. Since that time, this regulation has not been evaluated for the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. 8VAC20-23-40 previously required individuals seeking initial licensure to demonstrate proficiency in the use of educational technology for instruction. The standards for such proficiency was set by 8VAC20-25. The requirement in 8VAC20-23-40 was removed from the regulation on April 15, 2021. Additionally, the role of technology in daily life, as well as education, has changed significantly since the regulation was originally promulgated. The chapter was designed to facilitate technological proficiency in an era before the current expansion of technology into daily life and education. The delivery of education today is far more dependent on technology than when this regulation was promulgated, and school divisions have responded appropriately. While this regulation does not appear to overlap, duplicate, or conflict with federal or state law or regulation, it is no longer required by federal or state law or regulation.

Periodic Reviews and Small Business Impact Reviews

8VAC20-25 should be repealed, and local control should be returned to the local school divisions to evaluate and apply their own technology standards for local instructional personnel.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-30, Regulations Governing Adult High School Programs**, and determined that this regulation should be amended. The board is publishing its report of findings dated February 8, 2024, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare and is clearly written and easily understandable. While the periodic review found that the regulation is reasonably consistent with the statutory requirements, the agency decided to amend the regulation to make the regulation more easily understandable. The agency will also amend the regulation to reduce regulatory requirements in 8VAC20-30-20.

There is a continued need for this regulation. The agency has not received any complaints or comments concerning this regulation. This regulation is neither overly complex nor overlaps, duplicates, or conflicts with federal or state law or regulation. 8VAC20-30 became effective on June 27, 1985. Amendments for consistency with the Code of Virginia were made on August 15, 2005, and updates to comport with legislative changes were made on February 10, 2016.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-180, Regulations Governing School Community Programs**, and determined that this regulation should be repealed. The board is publishing its report of findings dated April 29, 2024, to support this decision.

8VAC20-180 is not necessary for the protection of public health, safety, and welfare, and it does not comport with the current statutory requirements. The regulation was promulgated in 1980, and the statutory environment in which

it was promulgated has changed. Section 22.1-253.13:6 of the Code of Virginia has not required a "six-year school improvement plan" since 2004, and since 2005 the section has required a "six-year divisionwide comprehensive, unified, long-range plan." Section 22.1-253.13:6 B also describes the minimum required elements for such plans. The current regulatory framework for 8VAC20-180 uses the old term "six-year school improvement plan" and does not capture the minimum statutory requirements for the "six-year divisionwide comprehensive, unified, long-range plan." More importantly, in its current form, 8VAC20-180 conflicts with the statutory requirements.

The periodic review found that the regulation no longer accurately reflects the statutory requirements and does no more than repeat old requirements. There is no longer a continued need for this regulation. The agency has not received any complaints or comments concerning the regulation. 8VAC20-180 became effective on September 1, 1980. The regulation has not been evaluated since that time. Repealing the regulation should remove any identifiable economic impact of the regulation on small businesses.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-210, Classifications of Expenditures**, and determined that this regulation should be amended. The board is publishing its report of findings dated May 9, 2024, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare and is clearly written and easily understandable. While the periodic review found that the regulation is reasonably consistent with the statutory requirements, the agency has decided to amend the regulation to align with statute and include all major classifications for expenditures of school funds pursuant to § 22.1-115 of the Code of Virginia.

There is a continued need for the regulation. The agency did not receive any complaints or comments concerning the regulation. The regulation is of minimal complexity. This regulation became effective on February 1, 1989, was amended January 1, 2005, and does not appear to have been affected by changes in technology, economic conditions, or other factors.

Contact Information: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

Periodic Reviews and Small Business Impact Reviews

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-240, Regulations Governing School Activity Funds**, and determined that this regulation should be amended. The board is publishing its report of findings dated July 11, 2024, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it ensures the proper accounting of public funds. It is clearly written and easily understandable. The regulation will be amended to include certain minor revisions.

There is a continued need for the regulation as public funds still require proper accounting. No complaints or comments were received concerning the regulation. The regulation is not overly complex. There is no overlap, duplication, or conflict with federal or state law or regulation. The regulation does not appear to have been affected by changes to technology, economic conditions, or other factors. The regulation has not been amended since it became effective in 1980. There is no impact on small business from this regulation.

Contact Information: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-420, Regulations Governing Personnel in Public School Libraries Operated under Joint Contract under Control of Local School Board or Boards**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated April 30, 2024, to support this decision.

There remains a continued need for the regulation. The periodic review found that the regulation is consistent with statutory requirements and the agency's decision is to retain the regulation. The agency has not received any complaints or comments concerning this regulation. The complexity of the regulation stems from the statutory requirements found in Titles 22.1 and 42.1 of the Code of Virginia. There is no overlap, duplication, or conflict with federal or state law or regulation. 8VAC20-420 became effective on September 1, 1980. Since that time, the regulation has not been evaluated for the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. The agency has found that amending this chapter by consolidating it into other select regulations related to local school boards

should minimize any identifiable economic impact of this regulation on small businesses.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-490, Regulations Governing School Boards Local**, and determined that this regulation should be amended. The board is publishing its report of findings dated May 13, 2024, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it ensures that local school boards are implementing practices approved by the State Board of Education in order to achieve the best outcomes for students. It is clearly written and easily understandable. Some sections appear duplicative of current state law, and the agency will consider eliminating these sections. For example, 8VAC20-490-20 appears to be duplicative of §§ 22.1-299 and 22.1-302 of the Code of Virginia; 8VAC20-490-50 appears to be duplicative of § 22.1253.13.7 C 1, C 7, and C 8 of the Code of Virginia; and 8VAC20-490-60 overlaps with § 22.1-81 of the Code of Virginia. The agency will further consider consolidating the regulation with another regulation governing school divisions (8VAC20-720).

There is a continued need for some of the sections in the regulation. No complaints or comments were received concerning the regulation. The regulation is not overly complex. Other parts of the chapter do not appear to have been affected by changes in technology, economic conditions, or other factors. There is no impact on small business from this regulation.

Contact Information: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-521, Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Teaching Hours**, and determined that this regulation should be repealed. The board is publishing its report of findings dated May 8, 2024, to support this decision.

Periodic Reviews and Small Business Impact Reviews

The regulation is not necessary for the protection of public health, safety, and welfare because it essentially duplicates § 22.1-98 of the Code of Virginia, but it fails to reflect the 2021 changes to the statute. Specifically, the current regulation fails to include the language in § 22.1-98 that provides that when severe weather or other emergency situations result in a school closure, a school division may elect to have an unscheduled remote learning day as an option to make up time. The statute further states that school divisions may schedule no more than 10 unscheduled remote learning days a school year unless the Superintendent of Public Instruction grants an extension, which is provided in 8VAC20-521-40 E. This subsection could be moved to 8VAC20-510-10. The periodic review found that 8VAC20-521 no longer reflects the current statutory framework and simply repeats the requirements found in the prior iteration of the code section.

There is no longer a continued need for the regulation. The agency is currently unaware of any complaints or comments concerning the regulation. The regulation is fairly complicated and may confuse regulated parties. 8VAC20-521-10, 8VAC20-521-20, and 8VAC20-521-30 have not been amended since becoming effective in 2006. 8VAC20-521-40 and 8VAC20-521-50 were last amended in 2019. 8VAC20-521-60 was last amended in 2009. The agency's decision will likely have little to no economic impact on small businesses.

Contact Information: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-543, Regulations Governing the Review and Approval of Education Programs in Virginia**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated April 30, 2024, to support this decision.

This regulation is required by statute and is necessary to ensure the preparation of teachers by colleges and universities according to standards outlined by the board. The regulation sets standards for curriculum to ensure high-quality teachers across the Commonwealth. The periodic review found that the regulation was reasonable and consistent with the statutory requirements, and all prior revisions continue to align with the regulation governing the review and approval of education programs in Virginia.

There is a continued need for the regulation. The agency received one comment concerning the regulation during the periodic review. The Advisory Board for Teacher Education and Licensure may consider the comment during its next

review. While this regulation is complex, there does not appear to be any overlap, duplication, or conflict with federal or state law or regulation. The promulgation of 8VAC20-543 was completed and became effective on August 23, 2018. The regulation does not appear to have been affected by changes in technology, economic conditions, or other factors. The regulation is consistent with applicable law, including §§ 22.1-16 and 22.1-298.2 of the Code of Virginia.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-720, Regulations Governing Local School Boards and School Divisions**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated May 10, 2024, to support this decision.

This regulation is effective and necessary for the protection of public health, safety, and welfare because it ensures that local school boards are implementing practices approved by the board in order to achieve the best outcomes for students. It is clearly written and easily understandable. The agency will retain the regulation as is.

There is a continued need for this regulation. The agency is not currently aware of any complaints or comments concerning the regulation. The regulation is not overly complex. It appears that there is little to no overlap, duplication, or conflict with federal or state law or regulation. 8VAC20-720-170 was amended in 2014 to correct an error. The remainder of the regulation has not been amended since it became effective in 2012. The agency's decision is expected to have little to no economic impact on small businesses.

Contact Information: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.



TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic

Periodic Reviews and Small Business Impact Reviews

review and small business impact review: **16VAC25-35, Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees; 16VAC25-55, Financial Requirements for Boiler and Pressure Vessel Contract Fee Inspectors; 16VAC25-73, Regulation Applicable to Tree Trimming Operations; and 16VAC25-75, General Industry Standard for Telecommunications, General, Approach Distances.** The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether the regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 26, 2024, and ends September 16, 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: Cristin Bernhardt, Regulatory Coordinator and Staff Attorney, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-2392, FAX (804) 786-2641, or email cristin.bernhardt@doli.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

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: **18VAC115-20, Regulations Governing the Practice of Professional Counseling; 18VAC115-30, Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants; 18VAC115-40, Regulations Governing the Certification of Rehabilitation Providers; 18VAC115-50, Regulations Governing the Practice of Marriage and Family Therapy; 18VAC115-60, Regulations Governing the Practice of Licensed Substance**

Abuse Treatment Practitioners; and 18VAC115-70, Regulations Governing the Registration of Peer Recovery Specialists. The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether the regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 26, 2024, and ends September 16, 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: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4406, FAX (804) 5274-4435, or email jaime.hoyle@dhp.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 **22VAC40-80, General Procedures and Information for Licensure**, and determined that this regulation should be amended. The board is publishing its report of findings dated August 1, 2024, to support this decision.

The regulation is necessary for the protection of the health, safety, and welfare of the children and adults served by assisted living facilities (ALF), adult day centers (ADC), and child welfare agencies. The regulation provides information on the licensing process and the responsibilities of the agency and the applicant or licensee. The regulation is clearly written and easily understandable. The agency recommends amending the regulation for technical and clarification purposes and to reduce regulatory burdens.

The agency received no complaints or comments regarding this regulation. The regulation does not overlap, duplicate, or

Periodic Reviews and Small Business Impact Reviews

conflict with federal or state law or regulation. The regulation includes requirements that are also included in the Code of Virginia; however, the regulation provides additional information that is not in statute. The additional detail in the regulation helps applicants and licensees to better understand licensure requirements. This regulation explains requirements affecting all licensed programs.

The last significant revision was completed in 2006 and exempt regulatory actions were completed in 2011, 2013, 2017, 2019, 2021, and 2023 to align the regulation to statutory changes. The regulation now needs to be amended for technical and clarification purposes and to reduce regulatory burdens. The amendments will have a minimal economic impact on small businesses.

Contact Information: Samantha Fogt, Licensing Consultant, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 845-0308, FAX (804) 726-7132, or email samantha.fogt@dss.virginia.gov.

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 **22VAC40-890, Human Subject Research Regulations**, and determined that this regulation should be amended. The board is publishing its report of findings dated August 1, 2024, to support this decision.

This regulation requires that the Department of Social Services (DSS) Institutional Review Board (IRB) reviews and gives its approval, as appropriate, to any research sponsored by DSS and related entities (i.e., local departments of social services, DSS-licensed facilities, and DSS-authorized contractors). The regulation is necessary for the public safety and welfare of human subjects involved in research sponsored by or approved through DSS and related entities. The regulation is clearly written and easily understandable.

While no public comments were received, regulatory language is not aligned with the Code of Virginia. The decision is to amend the regulation, given that the Department of Social Services already has had an action pending from 2021 to 2022 to accomplish that. The amendment was approved by the State Board of Social Services in December 2022.

Contact Information: Gail Jennings, Senior Research Associate, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 726-7490, or email gail.jennings@dss.virginia.gov.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board will conduct periodic reviews and small business impact reviews on **24VAC30-21, General Rules and Regulations of the Commonwealth Transportation Board; 24VAC30-50, Rules and Regulations for the Administration of Waysides and Rest Areas; 24VAC30-61, Rules and Regulations Governing the Transportation of Hazardous Materials Through Bridge-Tunnel Facilities; and 24VAC30-100, Rules and Regulations for the Administration of Parking Lots and Environs**. The Notices of Intended Regulatory Action, which are published in this issue of the Register, serve as the notice of announcement of the reviews.

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

NOTICES OF INTENDED REGULATORY ACTION

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to (i) allow onsite storage and dispensing of necessary medications in crisis stabilization units (CSUs); (ii) permit the use of remote dispensing systems in certain health care facilities using the same requirements that are currently in place for automated drug dispensing systems; and (iii) permit state facilities and services licensed by the Department of Behavioral Health and Developmental Services that serve as site-based CSUs to use automated drug dispensing devices and remote dispensing systems. The amendments are in response to Chapters 63 and 513 of the 2024 Acts of Assembly and based on the innovative pilot programs currently approved by the Board of Pharmacy pursuant to § 54.1-3307.2 of the Code of Virginia.

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

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

Public Comment Deadline: September 25, 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.

VA.R. Doc. No. R25-7883; Filed August 11, 2024, 12:46 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Commonwealth Transportation Board (CTB) intends to consider amending **24VAC30-21, General Rules and Regulations of the Commonwealth Transportation Board**. The purpose of the proposed action is to undertake a general review of the regulation in accordance with the regulatory reduction goal of Executive Order 19 (2022). The regulation establishes requirements for activities that occur on highway rights-of-way under the jurisdiction of the CTB and the Virginia Department of Transportation (VDOT), dictating that uses other than travel are subject to the land use permit framework and that access or entrances are

subject to the access management framework, and providing for regulation of other uses of the highway systems. The intent of this action is to remove redundant or obsolete language and identify opportunities for regulatory reduction and streamlining, along with any other changes determined to be necessary and appropriate.

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

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

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

Public Comment Deadline: September 25, 2024.

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

VA.R. Doc. No. R25-7999; Filed August 6, 2024, 1:19 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Commonwealth Transportation Board (CTB) intends to consider amending **24VAC30-50, Rules and Regulations for the Administration of Waysides and Rest Areas; and 24VAC30-100, Rules and Regulations for the Administration of Parking Lots and Environs**. The purpose of the proposed action is to undertake a general review of the regulation in accordance with the regulatory reduction goal of Executive Order 19 (2022). The regulations (i) establish overall policies, procedures, and conditions under which waysides and rest areas under the control of the CTB may be used, such as operating hours and prohibited and restricted activities, and (ii) establish the rules and conditions governing the use of, and activities that may be conducted in, parking lots and related environs under the control of the CTB, such as restrictions on parking, prohibited activities, and activities that may be performed under a permit from the Commissioner of Highways. The intent of this action is to ensure the regulations comport with statute and applicable federal requirements, organize and clarify text, and reduce regulatory burdens.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the CTB is conducting a periodic review and small business impact review of 24VAC30-50 and 24VAC30-100 to determine whether these regulations should be repealed, amended, or retained in their current forms. Public comment is

Notices of Intended Regulatory Action

sought on the review of any issue relating to these regulations, including whether the regulations (i) are necessary for the protection of public health, safety, and welfare; (ii) minimize the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

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

Statutory Authority:

§§ 33.2-210 and 33.2-246 of the Code of Virginia (24VAC30-50).

§§ 33.2-118 and 33.2-210 of the Code of Virginia (24VAC30-100).

Public Comment Deadline: September 25, 2024.

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

VA.R. Doc. No. R25-8000; Filed August 6, 2024, 1:20 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Commonwealth Transportation Board (CTB) intends to consider amending **24VAC30-61, Rules and Regulations Governing the Transportation of Hazardous Materials Through Bridge-Tunnel Facilities**. The purpose of the proposed action is to undertake a general review of the regulation in accordance with the regulatory reduction goal of Executive Order 19 (2022). This regulation establishes the rules by which transporters of hazardous materials are governed while traveling through state-owned bridge-tunnel facilities. The intent of this action is to ensure the regulation comports with statute and applicable federal requirements, organize and clarify text, and reduce regulatory burdens.

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

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

Statutory Authority: §§ 33.2-210 and 33.2-300 of the Code of Virginia.

Public Comment Deadline: September 25, 2024.

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

VA.R. Doc. No. R25-8001; Filed August 6, 2024, 1:20 p.m.

REGULATIONS

TITLE 3. ALCOHOLIC BEVERAGE AND CANNABIS CONTROL

VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Action Withdrawn

Title of Regulation: **3VAC5-11. Public Participation Guidelines (amending 3VAC5-11-10; repealing 3VAC5-11-30 through 3VAC5-11-60, 3VAC5-11-100, 3VAC5-11-110).**

Statutory Authority: §§ 2.2-4007.02, 4.1-103, and 4.1-111 of the Code of Virginia.

The Virginia Alcoholic Beverage Control (ABC) Authority has WITHDRAWN the regulatory action for **3VAC5-11, Public Participation Guidelines**, which was published as a Notice of Intended Regulatory Action in [39:19 VA.R. 2321 May 8, 2023](#). The purpose of the action was to comprehensively review the regulation to conform it to current ABC processes and procedures and to remove from the regulation provisions that are in statute. The action was withdrawn by the Board of Directors of the ABC Authority on July 29, 2024.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

VA.R. Doc. No. R23-7506; Filed July 29, 2024, 8:52 a.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

Titles of Regulations: **8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (repealing 8VAC20-131-5 through 8VAC20-131-430).**

8VAC20-132. Virginia Standards of Accreditation (adding 8VAC20-132-10 through 8VAC20-132-320).

Statutory Authority: §§ 22.1-16 and 22.1-253.13 of the Code of Virginia.

Effective Date: September 25, 2024.

Agency Contact: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

Summary:

The Virginia Standards for Accreditation (SOA) ensure that an effective educational program is established and maintained in Virginia's public schools by (i) providing an essential foundation of high-quality educational programs in all schools for all students; (ii) encouraging and promoting school quality and acknowledging achievement and continuous improvements by schools and school divisions in multiple areas; (iii) fostering public confidence that graduating students have mastered multiple areas of learning to include academic subjects, workplace skills, career exploration and planning, and civic and community responsibility; (iv) ensuring recognition of Virginia's public schools by other institutions of learning; and (v) establishing the means of determining the effectiveness of schools as prescribed in § 22.1-253.13:3 of the Code of Virginia, including student outcomes, growth measures, and compliance with requirements for multiple inputs affecting school quality.

The State Board of Education is proposing to repeal the existing chapter and establish a new chapter. The existing regulation created an accreditation system that did not transparently communicate information to the public about the quality of schools or student learning outcomes. The existing regulation also used the process for accrediting schools as an accountability system to foster school improvement, rather than ensuring accreditation fosters the establishment of effective school-level educational programs. The new regulation separates accreditation from accountability, creating two separate but interrelated systems. The school accountability system measures student outcomes and identifies schools for supports, and the school accreditation system determines full compliance with each of the inputs described in the SOA. The new regulation also allows for flexibility in the future for the board to continue to refine the accountability system and align to federal requirements, so Virginia would not have multiple systems of supports for divisions and schools. The new regulation includes (i) adding new definitions and amending existing definitions; (ii) clarifying the philosophy, goals, and objectives of public education and the SOA; (iii) clarifying school and community communications; (iv) implementing organizational changes to increase clarity; and (v) updating citations.

No substantive changes were made to the proposed regulation.

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.

Regulations

Chapter 132
Virginia Standards of Accreditation
Part I
Definitions and Purpose

8VAC20-132-10. Definitions.

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

"Accreditation" means a process used by the Virginia Department of Education to evaluate public schools' compliance with the accountability system, based on student outcome and growth measures, the philosophy, goals, and objectives of public education in Virginia, and standards for student achievement, instructional programs, school and instructional leadership, school facilities and safety, and school and community communications in accordance with this chapter.

"Accountability" means the system within the accreditation process used by the Virginia Department of Education to differentiate the performance of public schools and identify schools for improvement, based on student achievement, growth, and other school quality indicators in accordance with this chapter.

"Additional test" means a test, including substitute tests approved by the board, that students may use in lieu of a Standards of Learning test to obtain verified credit.

"Authentic performance assessment" means a test that complies with guidelines adopted by the board that requires students to perform a task or create a product that is typically scored using a rubric. An authentic performance assessment may be used to confer verified credit in accordance with the provisions of 8VAC20-132-110 B 4.

"Board" means the Board of Education or the State Board of Education. The board is responsible for the general supervision of the public school system in Virginia as prescribed in Section 4 of Article VIII of the Constitution of Virginia and § 22.1-8 of the Code of Virginia.

"Class period" means a segment of time during the instructional day that is allocated to lessons, courses, testing and assessments, or other instructional activities and excludes homeroom.

"Credit accommodations" means adjustments to meet the standard and verified credit requirements for earning a Standard Diploma for students with disabilities.

"Department" means the Virginia Department of Education.

"Elementary school" means a public school with any grades kindergarten through grade [~~5~~ five].

"EL" means English learner, as prescribed in the Elementary and Secondary Education Act (Pub. L. No. 89-10, as amended), an individual:

1. Who is aged three through 21 years;
2. Who is enrolled or preparing to enroll in an elementary school or secondary school;
3. a. Who was not born in the United States or whose native language is a language other than English:
 - b. (1) Who is a Native American or Alaska native, or a native resident of the outlying areas; and
 - (2) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
 - c. Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
4. Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the:
 - a. Ability to meet the challenging state academic standards;
 - b. Ability to successfully achieve in classrooms where the language of instruction is English; or
 - c. Opportunity to participate fully in society.

"Enrollment" means the act of complying with state and local requirements relative to the registration or admission of a child for attendance in a school within a local school division. This term also means registration for courses within the student's home school or within related schools or programs.

"First time" means the student has not been enrolled in the school at any time during the current school year (for purposes of 8VAC20-132-60 with reference to students who transfer in during the school year).

"Four core academic areas" means English, mathematics, science, and history and social science for purposes of testing for the Standards of Learning.

"Graduate" means a student who has earned a board recognized diploma, which includes the Advanced Studies Diploma, the Standard Diploma, and the Applied Studies Diploma.

"Growth" or "student growth" means student progress toward achievement of the knowledge and skills required by the summative statewide end-of-year tests as demonstrated through a valid and reliable measure.

"High school" means a secondary school with, at least, grade 12 and that grants a board recognized diploma.

"Homebound instruction" means academic instruction provided to students who are confined at home or in a health

care facility for periods of time that prevent normal school attendance, based upon certification of need by a licensed physician or a licensed clinical psychologist.

"Instructional day" means all the time in a standard school day, from the beginning of the first scheduled class period to the end of the last scheduled class period, including passing time for class changes and excluding breaks for meals.

"Instructional hours" means the hours in a standard school day, from the beginning of the first scheduled class period to the end of the last scheduled class period, including passing time for class changes and excluding breaks for meals.

"Locally awarded verified credit" means a verified unit of credit awarded by a local school board in accordance with 8VAC20-132-110 B 3.

"Middle school" means a public school with any grades six through eight.

"Planning period" means a segment of time in middle and secondary schools during the instructional day that is unencumbered of any teaching or supervisory duties, is not less than 45 minutes or the equivalent of a class period, whichever is greater, and that includes passing time for class changes.

"Planning time" means a segment of time for elementary teachers that provides at least an average of 30 minutes per day for planning during the student's school week as provided in § 22.1-291.1 of the Code of Virginia.

"Recess" means a segment of unstructured recreational time exclusive of time provided for meals during the standard school day.

"Reporting group" means a group of students who are identified as having common characteristics including students identified as belonging to major racial and ethnic groups, economically disadvantaged students, students with disabilities, and English learners.

"School" means a publicly funded institution where students are enrolled for all or a majority of the instructional day and those students are reported in fall membership at the institution.

"Secondary school" means a public school with any grades nine through 12.

"Standard school day" means a calendar day, including passing time for class changes and excluding breaks for meals, that averages a minimum of five and one-half instructional hours for students in grades one through 12 and a minimum of three instructional hours for students in kindergarten. Recess may be included in the calculation of required instructional hours for elementary school, provided that recess does not exceed 15% of the required instructional hours.

"Standard school year" means a school year of at least 180 teaching days or a total of at least 990 instructional hours per year, as specified in § 22.1-98 of the Code of Virginia.

"Standard unit of credit" or "standard credit" means credit awarded for a course in which the student successfully completes 140 clock hours of instruction and the requirements of the course. Local school boards may develop alternatives to the requirement for 140 clock hours of instruction as provided for in 8VAC20-132-110 and in accordance with board guidelines.

"Standards of Learning tests" or "SOL tests" means those criteria referenced, statewide, summative assessments approved by the board for use in the Virginia Assessment Program that measure mastery of knowledge and skills required by the Standards of Learning.

"Standards of Quality" means the Standards of Quality prescribed in Chapter 13.2 (§ 22.1-253.13:1 et seq.) of Title 22.1 of the Code of Virginia.

"Student" means a person of school age as defined by § 22.1-1 of the Code of Virginia, a child with disabilities as defined in § 22.1-213 of the Code of Virginia, and a person for whom English is a second language in accordance with § 22.1-5 of the Code of Virginia.

"Verified credit" or "verified unit of credit" means credit awarded for a course in which a student earns a standard unit of credit and (i) achieves a passing score on a corresponding end-of-course SOL test; (ii) achieves a passing score on an additional test as defined in this section as part of the Virginia Assessment Program; (iii) meets the criteria for the receipt of a locally awarded verified credit conferred in accordance with board criteria and guidelines as provided in 8VAC20-132-110 B 3 when the student has not passed a corresponding SOL test in English, mathematics, laboratory science, or history and social science; or (iv) meets the criteria for the receipt of a verified credit for English (writing) by demonstrating mastery of the content of the associated course on an authentic performance assessment, as provided in 8VAC20-132-110 B 4.

"Virginia Assessment Program" means a system used to evaluate student achievement that includes SOL tests and additional tests that may be approved from time to time by the board.

8VAC20-132-20. Purpose.

The foremost purpose of public education in Virginia is to provide children with a high-quality education, giving them opportunities to meet their fullest potential in life. The standards for the accreditation of public schools in Virginia are designed to ensure that an effective educational program is established and maintained in Virginia's public schools. The mission of the public education system is to educate students in the essential knowledge and skills in order that they may be

Regulations

equipped for citizenship, work, and an informed and successful life.

The Standards of Accreditation provide the foundation for the provision of a high-quality public education, including a system of accountability and continuous improvement. They are intended to:

1. Provide an essential foundation of high-quality educational programs in all schools for all students.
2. Encourage and promote school quality and acknowledge achievement and continuous improvements by schools and school divisions in multiple areas.
3. Foster public confidence that graduating students have mastered multiple areas of learning to include academic subjects, workplace skills, career exploration and planning, and civic and community responsibility.
4. [~~Assure~~ Ensure] recognition of Virginia's public schools by other institutions of learning.
5. Establish the means of determining the effectiveness of schools as prescribed in the Standards of Quality at § 22.1-253.13:3 of the Code of Virginia, including student learning and progress and student outcomes for multiple areas affecting school quality.

Section 22.1-253.13:3 A of the Code of Virginia requires the board to promulgate regulations establishing standards for accreditation, which shall include student outcome and growth measures, requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional staffing levels and positions, including staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, course and credit requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia.

The statutory authority for this chapter is delineated in § 22.1-19 of the Code of Virginia, which includes the requirement that the board shall provide for the accreditation of public elementary, middle, and secondary schools in accordance with regulations prescribed by it.

This chapter governs public schools operated by local school boards providing instruction to students as defined in 8VAC20-132-10. Other schools licensed under other state statutes are exempt from these requirements.

Part II

Philosophy, Goals, and Objectives

8VAC20-132-30. Philosophy, goals, and objectives.

A. Achieving school quality and continuous improvement are accomplishments dependent upon multiple factors, including instruction, leadership, learning environment, professional

staff development, student supports, parent and community engagement, and continual evaluation of outcomes. Goals and objectives to be achieved through these and other areas include student opportunities for learning, closure of achievement gaps, reduction of the dropout rate, increased graduation rates, and student mastery beyond minimum requirements.

Preparation of all students should result in graduates who have explored and understand what opportunities exist for them after high school and have the knowledge and abilities necessary for the next phase of their lives as adults. Students should attain essential knowledge and skills in order that they may be equipped to be responsible citizens, understand and meet expectations for work, gain and apply knowledge, and plan and achieve personal life goals. In addition to academic and technical knowledge, their education should encompass mastery of creative and critical thinking, analysis and problem solving, and the development of personal attributes such as communication and collaboration skills, dependability, and persistence.

The philosophy, goals, and objectives of individual schools should reflect and encompass the means by which the Standards of Learning and Standards of Accreditation are to be achieved.

The board's objective is to provide an educational foundation that ensures students are ready to be successful in a global economy, which includes changing and growing technology. Families, students, employers, representatives from institutions of higher education, and educators have all expressed concerns about adequate preparation of Virginia's students for the future. In addition to appropriate content knowledge, stakeholders have asked that graduates be prepared with skills and attributes such as critical thinking, creative thinking, communication, collaboration, and citizenship in order to be prepared to be successful in life and competitive in the work world. In response, the board is redesigning the public school experience for Virginia's students so that they are adequately prepared for the future challenges they face.

In Virginia, as a student progresses through elementary, middle, and secondary school, the college-ready, career-ready, and citizenship-ready student is expected to achieve and apply appropriate academic and technical knowledge; attain and demonstrate age-appropriate productive workplace skills, qualities, and behavior; align knowledge, skills, and personal interests with career and civic opportunities; and attain and demonstrate knowledge and skills necessary for productive citizenship and participation in communities and governments.

B. Each school shall have current philosophy, goals, and objectives that shall serve as the basis for all policies and practices and shall be developed using the following criteria:

1. The philosophy, goals, and objectives shall be developed with the advice of professional and lay people who represent the various populations served by the school and in

consideration of the needs of the community and shall serve as a basis for the creation and review of the biennial school plan.

2. The school's philosophy, goals, and objectives shall be consistent with the Standards of Quality.

3. The goals and objectives shall (i) be written in plain language so as to be understandable to noneducators, including parents; (ii) to the extent possible, be stated in measurable terms; and (iii) consist primarily of measurable objectives to raise student and school achievement in the core academic areas of the Standards of Learning, to improve student and staff attendance, to reduce student dropout rates, to increase graduation rates, and to increase the quality of instruction through professional staff development and licensure.

4. The school staff and community representatives shall review annually the extent to which the school has met its prior goals and objectives, analyze the school's student performance data, including data by grade level or academic department as necessary, and report these outcomes to the division superintendent and the community in accordance with local school board policy. This report shall be in addition to the school performance report required by 8VAC20-132-250 A.

Part III

Student Achievement

8VAC20-132-40. Student achievement expectations.

A. Each student should learn the relevant grade level or course subject matter before promotion to the next grade. The division superintendent shall certify to the Department of Education that the division's promotion and retention policy does not exclude students from membership in a grade or participation in a course in which SOL tests are to be administered. Each school shall have a process, as appropriate, to identify and recommend strategies to address the learning, behavior, communication, or development of individual children who are having difficulty in the educational setting.

B. In kindergarten through grade eight, where the administration of Virginia Assessment Program tests is required by the board, each student shall be expected to take the tests following instruction. Students who are accelerated shall take the test aligned with the highest grade level, following instruction in the content. No student shall take more than one test in any content area in each year, except in the case of expedited retakes as provided for in this section. Schools shall use the Virginia Assessment Program test results in kindergarten through grade eight as part of a set of multiple criteria for determining the promotion or retention of students. Students promoted to secondary school from grade eight should have attained basic mastery of the Standards of Learning in English, history and social science, mathematics, and science and should be prepared for secondary school work.

Students shall not be required to retake the Virginia Assessment Program tests unless they are retained in grade and have not previously passed the related tests.

The board shall provide the same criteria for eligibility for an expedited retake of any SOL test, with the exception of the writing SOL tests, to each student regardless of grade level or course.

C. In kindergarten through grade 12, students may participate in a remediation recovery program as established by the board in English (reading) or mathematics or both.

D. The board recommends that no student in kindergarten through grade eight be required to attend summer school or weekend remediation classes solely based on failing an SOL test in science or history and social science. However, any student who fails to achieve a passing score on all Standard of Learning assessments for the relevant grade level in grades three through eight shall be required to attend a remediation program or to participate in another form of remediation. Further, any student who fails an end-of-course test required for the award of a verified unit of credit shall be required to attend a remediation program or to participate in another form of remediation.

E. Each student in middle and secondary schools shall take all applicable end-of-course SOL tests following course instruction. The division superintendent shall certify to the Department of Education that the division's policy for dropping courses ensures that student course schedules are not changed to avoid end-of-course SOL tests. Students who achieve a passing score on an end-of-course SOL test shall be awarded a verified unit of credit in that course in accordance with the provisions of 8VAC20-132-110. Students may earn verified units of credit in any courses for which end-of-course SOL tests are available. Students shall not be required to take an end-of-course SOL test in an academic subject after they have earned the number of verified credits required for that academic content area for graduation, unless such test is necessary in order for the school to meet federal accountability requirements. Middle and secondary schools may consider the student's end-of-course SOL test score in determining the student's final course grade. However, no student who has failed an end-of-course SOL test but passed the related course shall be prevented from taking any other course in a content area and from taking the applicable end-of-course SOL test. The board may approve additional tests to verify student achievement in accordance with guidelines adopted for verified units of credit described in 8VAC20-132-110.

F. Participation in the Virginia Assessment Program by students with disabilities shall be prescribed by provisions of their Individualized Education Program (IEP) or 504 Plan. All students with disabilities shall be assessed with appropriate accommodations and alternate assessments where necessary.

Regulations

G. Any student identified as an English Learner (EL) shall participate in the Virginia Assessment Program. A school-based committee shall convene and make determinations regarding the participation level of EL students in the Virginia Assessment Program. In kindergarten through grade eight, EL students may be granted a one-time exemption from SOL testing in the areas of writing and history and social science.

H. Students identified as foreign exchange students taking courses for credit shall be required to take the relevant Virginia Assessment Program tests, as specified in subsection E of this section. Foreign exchange students who are auditing courses are not eligible for academic credit for those courses and shall not be required to take the SOL tests for those courses.

8VAC20-132-50. Requirements for graduation (effective for students entering ninth grade prior to the 2018-2019 school year).

A. The requirements for a student to earn a diploma and graduate from a Virginia high school shall be those in effect when that student enters the ninth grade for the first time. Students shall be awarded a diploma upon graduation from a Virginia high school.

The Advanced Studies Diploma shall be the recommended diploma for students pursuing baccalaureate study. Both the Standard Diploma and the Advanced Studies Diploma shall prepare students for postsecondary education and the career readiness required by the Commonwealth's economy.

When students below the ninth grade successfully complete courses offered for credit in grades nine through 12, credit shall be counted toward meeting the standard units required for graduation, provided the courses are equivalent in content and academic rigor as those courses offered at the secondary level. To earn a verified unit of credit for these courses, students must meet the requirements of 8VAC20-132-110.

The following requirements shall be the only requirements for a diploma, unless a local school board has prescribed additional requirements that have been approved by the board. All additional requirements prescribed by local school boards that have been approved by the board remain in effect until such time as the local school board submits a request to the board to amend or discontinue them.

B. Requirements for a Standard Diploma.

1. Beginning with the ninth-grade class of 2013–2014 and through the ninth-grade class of 2017–2018, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with a Standard Diploma.

<u>Discipline Area</u>	<u>Standard Units of Credit Required</u>	<u>Verified Credits Required</u>
<u>English</u>	<u>4</u>	<u>2</u>
<u>Mathematics¹</u>	<u>3</u>	<u>1</u>
<u>Laboratory Science^{2,6}</u>	<u>3</u>	<u>1</u>
<u>History and Social Sciences^{3,6}</u>	<u>3</u>	<u>1</u>
<u>Health and Physical Education</u>	<u>2</u>	
<u>World Language, Fine Arts, or Career and Technical Education⁷</u>	<u>2</u>	
<u>Economics and Personal Finance</u>	<u>1</u>	
<u>Electives⁴</u>	<u>4</u>	
<u>Student Selected Test⁵</u>		<u>1</u>
<u>Career and Technical Education Credential⁸</u>		
<u>Total⁹</u>	<u>22</u>	<u>6</u>

¹Courses completed to satisfy this requirement shall include at least two different course selections from among: Algebra I, Geometry, Algebra, Functions, and Data Analysis, Algebra II, or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a mathematics course credit.

²Courses completed to satisfy this requirement shall include course selections from at least two different science disciplines: earth sciences, biology, chemistry, or physics, or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve courses to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a science course credit.

³Courses completed to satisfy this requirement shall include Virginia and U.S. History, Virginia and U.S. Government, and one course in either world history or geography or both. The board shall approve courses to satisfy this requirement.

⁴Courses to satisfy this requirement shall include at least two sequential electives as required by the Standards of Quality.

⁵A student may utilize additional tests for earning verified credit in computer science, technology, career and technical education, economics, or other areas as prescribed by the board in 8VAC20-132-110.

⁶Students who complete a career and technical education program sequence and pass an examination or occupational competency assessment in a career and technical education field that confers certification or an occupational competency credential from a recognized industry or trade or professional association or acquire a professional license in a career and technical education field from the Commonwealth of Virginia may substitute the certification, competency credential, or license for (i) the student-selected verified credit and (ii) either a science or history and social science verified credit when the

certification, license, or credential confers more than one verified credit. The examination or occupational competency assessment must be approved by the board as an additional test to verify student achievement.

⁷Pursuant to § 22.1-253.13:4 of the Code of Virginia, credits earned for this requirement shall include one credit in fine or performing arts or career and technical education. Per the Standards of Quality, a computer science course credit earned by students may be considered a career and technical education course credit.

⁸Students shall earn a career and technical education credential approved by the State Board of Education, except when a career and technical education credential in a particular subject area is not readily available or appropriate or does not adequately measure student competency, in which case the student shall receive satisfactory competency-based instruction in the subject area to satisfy the standard diploma requirements. The career and technical education credential, when required, could include the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness assessment.

⁹Students shall successfully complete one virtual course, which may be a noncredit-bearing course or a required or elective credit-bearing course that is offered online.

Beginning with first-time ninth-grade students in the 2016–2017 school year, students shall be trained in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators, including hands-on practice of the skills necessary to perform cardiopulmonary resuscitation. Students with an Individualized Education Program (IEP) or 504 Plan that documents that they cannot successfully complete this training shall be granted a waiver from this graduation requirement, as provided in 8VAC20-132-310 B.

3. The board shall establish, through guidelines, credit accommodations to the standard and verified credit requirements for a Standard Diploma. Such credit accommodations for students with disabilities may include:

- a. Approval of alternative courses to meet the standard credit requirements;
- b. Modifications to the requirements for local school divisions to award locally awarded verified credits;
- c. Approval of additional tests to earn a verified credit;
- d. Adjusted cut scores required to earn verified credit; and
- e. Allowance of work-based learning experiences.

The student's IEP or 504 Plan shall specify any credit accommodations that are applicable.

Students completing the requirements for the Standard Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection H of this section.

C. Requirements for an Advanced Studies Diploma.

1. Beginning with the ninth-grade class of 2013–2014 and through the ninth-grade class of 2017–2018, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with an Advanced Studies Diploma.

<u>Discipline Area</u>	<u>Standard Units of Credit Required</u>	<u>Verified Credits Required</u>
<u>English</u>	<u>4</u>	<u>2</u>
<u>Mathematics¹</u>	<u>4</u>	<u>2</u>
<u>Laboratory Science²</u>	<u>4</u>	<u>2</u>
<u>History and Social Sciences³</u>	<u>4</u>	<u>2</u>
<u>World Language⁴</u>	<u>3</u>	
<u>Health and Physical Education</u>	<u>2</u>	
<u>Fine Arts or Career and Technical Education⁵</u>	<u>1</u>	
<u>Economics and Personal Finance</u>	<u>1</u>	
<u>Electives</u>	<u>3</u>	
<u>Student Selected Test⁶</u>		<u>1</u>
<u>Total⁷</u>	<u>26</u>	<u>9</u>

¹Courses completed to satisfy this requirement shall include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a mathematics course credit.

²Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve additional courses to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a science course credit.

³Courses completed to satisfy this requirement shall include Virginia and U.S. History, Virginia and U.S. Government, and two courses in either world history or geography or both. The board shall approve additional courses to satisfy this requirement.

⁴Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.

⁵Per the Standards of Quality, a computer science course credit earned by students may be considered a career and technical education course credit.

⁶A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics, or other areas as prescribed by the board in 8VAC20-132-110.

⁷Students shall successfully complete one virtual course, which may be a noncredit-bearing course, or may be a course required to earn this diploma that is offered online.

Students completing the requirements for the Advanced Studies Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection H of this section.

Regulations

Beginning with first-time ninth-grade students in the 2016–2017 school year, students shall be trained in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators, including hands-on practice of the skills necessary to perform cardiopulmonary resuscitation. Students with an IEP or 504 Plan that documents that they cannot successfully complete this training shall be granted a waiver from this graduation requirement, as provided in 8VAC20-132-310 B.

D. In accordance with the requirements of the Standards of Quality, students with disabilities who complete the requirements of their IEP and do not meet the requirements for other diplomas shall be awarded Applied Studies Diplomas.

E. In accordance with the requirements of the Standards of Quality, students who complete prescribed programs of studies defined by the local school board but do not qualify for a Standard Diploma, an Advanced Studies Diploma, or an Applied Studies Diploma shall be awarded Certificates of Program Completion. The requirements for Certificates of Program Completion are developed by local school boards in accordance with the Standards of Quality.

F. In accordance with the provisions of the compulsory attendance law and 8VAC20-30, Regulations Governing Adult High School Programs, students who do not qualify for diplomas may earn a high school equivalency credential.

G. At a student's request, the local school board shall communicate or otherwise make known to institutions of higher education, potential employers, or other applicable third parties, in a manner that the local school board deems appropriate, that a student has attained the state's academic expectations by earning a Virginia diploma and that the value of such a diploma is not affected in any way by the accreditation status of the student's school.

H. Awards for exemplary student performance. Students who demonstrate academic excellence or outstanding achievement may be eligible for one or more of the following awards:

1. The Governor's Seal shall be awarded to students who complete the requirements for an Advanced Studies Diploma with an average grade of "B" or better and successfully complete college-level coursework that will earn the student at least nine transferable college credits in Advanced Placement (AP), International Baccalaureate (IB), Cambridge, or dual enrollment courses.

2. The Board of Education Seal shall be awarded to students who complete the requirements for a Standard Diploma or an Advanced Studies Diploma with an average grade of "A".

3. The Board of Education's Career and Technical Education Seal shall be awarded to students who earn a Standard Diploma or an Advanced Studies Diploma and complete a prescribed sequence of courses in a career and technical education concentration or specialization that they choose

and maintain a "B" or better average in those courses or (i) pass an examination or an occupational competency assessment in a career and technical education concentration or specialization that confers certification or occupational competency credential from a recognized industry, trade, or professional association or (ii) acquire a professional license in that career and technical education field from the Commonwealth of Virginia. The board shall approve all professional licenses and examinations used to satisfy these requirements.

4. The Board of Education's Seal of Advanced Mathematics and Technology shall be awarded to students who earn either a Standard Diploma or an Advanced Studies Diploma and (i) satisfy all of the mathematics requirements for the Advanced Studies Diploma (four units of credit, including Algebra II, and two verified units of credit) with a "B" average or better and (ii) either (a) pass an examination in a career and technical education field that confers certification from a recognized industry, trade, or professional association; (b) acquire a professional license in a career and technical education field from the Commonwealth of Virginia; or (c) pass an examination approved by the board that confers college-level credit in a technology or computer science area. The board shall approve all professional licenses and examinations used to satisfy these requirements.

5. The Board of Education's Seal for Excellence in Civics Education shall be awarded to students who earn either a Standard Diploma or an Advanced Studies Diploma and (i) complete Virginia and United States history and Virginia and United States government courses with a grade of "B" or higher; (ii) have good attendance and no disciplinary infractions as determined by local school board policies; and (iii) complete 50 hours of voluntary participation in community service or extracurricular activities. Activities that satisfy the requirements of clause (iii) of this subdivision include (a) volunteering for a charitable or religious organization that provides services to the poor, sick, or less fortunate; (b) participating in Boy Scouts, Girl Scouts, or similar youth organizations; (c) participating in Junior Reserve Officers' Training Corps; (d) participating in political campaigns or government internships or Boys State, Girls State, or Model General Assembly; or (e) participating in school-sponsored extracurricular activities that have a civics focus. Any student who enlists in the United States military prior to graduation shall be deemed to have met this community service requirement.

6. The Board of Education's Seal of Biliteracy shall be awarded to students who demonstrate proficiency in English and at least one other language and meet additional criteria established by the board. Such seal shall be awarded to eligible students graduating from public high schools in the Commonwealth beginning in 2016.

7. Students may receive other seals or awards for exceptional academic, career and technical, citizenship, or other exemplary performance in accordance with criteria defined by the local school board.

I. Students completing graduation requirements in a summer school program shall be eligible for a diploma. The last school attended by the student during the regular session shall award the diploma unless otherwise agreed upon by the principals of the two schools.

J. Students who complete Advanced Placement courses, college-level courses, or courses required for an International Baccalaureate Diploma shall be deemed to have completed the requirements for graduation under these standards, provided they have earned the standard units of credit and earned verified units of credit in accordance with the requirements for the Standard Diploma and the Advanced Studies Diploma, as specified in subsections B and C of this section.

K. Students shall be counseled annually regarding the opportunities for using additional tests for earning verified credits, as provided in accordance with the provisions of 8VAC20-132-110, and the consequences of failing to fulfill the obligations to complete the requirements for verified units of credit.

8VAC20-132-51. Requirements for graduation (effective for students who enter the ninth grade in the 2018–2019 school year).

A. The requirements for a student to earn a diploma and graduate from a Virginia high school shall be those in effect when that student enters the ninth grade for the first time. Students shall be awarded a diploma upon graduation from a Virginia high school.

Both the Standard Diploma and the Advanced Studies Diploma shall provide multiple paths toward college, career, and citizenship readiness for students to follow in the later years of high school. Each such pathway shall provide meaningful and rigorous opportunities tied to instruction to achieve workplace and citizenship skills through experiences such as internships,

externships, credentialing, and blended learning, which may be offered for credit toward high school graduation.

In accordance with the Profile of a Virginia Graduate approved by the board, the instructional program leading to a Standard Diploma or Advanced Studies Diploma shall ensure that students (i) attain the knowledge, skills, competencies, and experiences necessary to be successful in the evolving global economy whether immediately entering the world of work or pursuing a postsecondary education and (ii) acquire and be able to demonstrate foundational skills in critical thinking, creative thinking, collaboration, communication, and citizenship.

When students below grade nine successfully complete courses offered for credit in grades nine through 12, credit shall be counted toward meeting the standard units required for graduation, provided the courses are equivalent in content and academic rigor as those courses offered at the secondary level. To earn a verified unit of credit for these courses, students must meet the requirements of 8VAC20-132-110.

The requirements in this section shall be the only requirements for a diploma, unless a local school board has prescribed additional requirements that have been approved by the board. All additional requirements prescribed by local school boards that have been approved by the board remain in effect until such time as the local school board submits a request to the board to amend or discontinue them.

B. Requirements for a Standard Diploma.

1. Beginning with the ninth-grade class of 2018–2019 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with a Standard Diploma.

No more than one locally awarded verified credit may be used to satisfy these requirements, except as provided in subdivision 3 of this subsection for credit accommodations for students with disabilities.

<u>Discipline Area</u>	<u>Standard Units of Credit Required</u>	<u>Verified Credits Required</u>
<u>English (reading and writing)</u>	<u>4</u>	<u>2</u>
<u>Mathematics</u>	<u>3</u>	<u>1</u>
<u>Laboratory Science</u>	<u>3</u>	<u>1</u>
<u>History and Social Science</u>	<u>3</u>	<u>1</u>
<u>Health and Physical Education</u>	<u>2</u>	
<u>World Language, Fine Arts, or Career and Technical Education</u>	<u>2</u>	

Regulations

<u>Economics and Personal Finance</u>	<u>1</u>	
<u>Electives</u>	<u>4</u>	
<u>Total</u>	<u>22</u>	<u>5</u>
<u>Discipline Area</u>	<u>Specifications</u>	
<u>Mathematics</u>	<p>Courses completed to satisfy this requirement shall include at least two different course selections from among: algebra I, geometry, algebra functions, and data analysis, algebra II, or other mathematics courses approved by the board to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a mathematics course credit.</p>	
<u>Laboratory Science</u>	<p>Courses completed to satisfy this requirement shall include course selection from at least two different science disciplines: earth sciences, biology, chemistry, or physics, or completion of the sequence of science courses required for the International Baccalaureate Diploma and shall include interdisciplinary courses that incorporate Standards of Learning content from multiple academic areas. The board shall approve courses to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a science course credit. A laboratory science verified credit may be awarded to students who complete a career and technical education program sequence and (i) pass two examinations or occupational competency assessments in a career and technical education field that confers certification or an occupational competency credential from a recognized industry, trade, or professional association; (ii) acquire two professional licenses in a career and technical education field from the Commonwealth of Virginia; or (iii) pass one examination or competency assessment from clause (i) and acquire one license from clause (ii). The examination or occupational competency assessment must be approved by the board as an additional test to verify student achievement.</p>	
<u>History and Social Science</u>	<p>Courses completed to satisfy this requirement shall include Virginia and U.S. history, Virginia and U.S. government, and one course in either world history or geography or both. The board shall approve courses to satisfy this requirement.</p>	
<u>World Language, Fine Arts, or Career and Technical Education</u>	<p>Per the Standards of Quality, credits earned for this requirement shall include one credit in fine or performing arts or career and technical education. Per the Standards of Quality, a computer science course credit earned by students may be considered a career and technical course credit.</p>	
<u>Electives</u>	<p>Courses to satisfy this requirement shall include at least two sequential electives as required by the Standards of Quality.</p>	
<u>Additional Requirements for Graduation</u>		
(i) complete an Advanced Placement, honors, or International Baccalaureate course, or (ii) earn a career and technical		
<u>Advanced Placement, Honors, or International Baccalaureate Course or Career and Technical Education Credential</u>	<p>In accordance with the Standards of Quality, students shall (i) complete an Advanced Placement, honors, International Baccalaureate, or dual enrollment course; (ii) complete a high-quality work-based learning experience, as established by board guidance on work-based learning; or (iii) earn a career and technical education credential approved by the board, except when a career and technical education credential in a particular subject area is not readily available or appropriate or does not adequately measure student competency, in which case the student shall receive satisfactory competency-based instruction in the subject area to satisfy the standard diploma requirements. The career</p>	

	and technical education credential, when required, could include the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness assessment.
<u>Virtual Course</u>	Students shall successfully complete one virtual course, which may be a non-credit-bearing course or a required or elective credit-bearing course that is offered online.
<u>Training in emergency first aid, cardiopulmonary resuscitation (CPR), and the use of automated external defibrillators (AED)</u>	Students shall be trained in emergency first aid, CPR, and the use of AED, including hands-on practice of the skills necessary to perform cardiopulmonary resuscitation. Students with an individualized education plan (IEP) or 504 Plan that documents that they cannot successfully complete this training shall be granted a waiver from this graduation requirement, as provided in 8VAC20-131-420 B.
<u>Demonstration of the five Cs</u>	Students shall acquire and demonstrate foundational skills in critical thinking, creative thinking, collaboration, communication, and citizenship in accordance with the Profile of a Virginia Graduate approved by the board.

3. The board shall establish, through guidelines, credit accommodations to the standard and verified credit requirements for a Standard Diploma. Such credit accommodations for students with disabilities may include:

- a. Approval of alternative courses to meet the standard credit requirements;
- b. Modifications to the requirements for local school divisions to award locally awarded verified credits;
- c. Approval of additional tests to earn verified credit;
- d. Adjusted cut scores required to earn verified credit; and
- e. Allowance of work-based learning experiences.

The student's IEP or 504 Plan shall specify any credit accommodations applicable for the student.

Students completing the requirements for the Standard Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection H of this section.

C. Requirements for an Advanced Studies Diploma.

1. Beginning with the ninth-grade class of 2018–2019 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with an Advanced Studies Diploma.

No more than one locally awarded verified credit may be used to satisfy these requirements.

<u>Discipline Area</u>	<u>Standard Units of Credit Required</u>	<u>Verified Credits Required</u>
<u>English (reading and writing)</u>	<u>4</u>	<u>2</u>
<u>Mathematics</u>	<u>4</u>	<u>1</u>
<u>Laboratory Science</u>	<u>4</u>	<u>1</u>
<u>History and Social Science</u>	<u>4</u>	<u>1</u>
<u>World Language</u>	<u>3</u>	
<u>Health and Physical Education</u>	<u>2</u>	
<u>Fine Arts or Career and Technical Education</u>	<u>1</u>	
<u>Economics and Personal Finance</u>	<u>1</u>	
<u>Electives</u>	<u>3</u>	
<u>Total</u>	<u>26</u>	<u>5</u>
<u>Discipline Area</u>	<u>Specifications</u>	
<u>Mathematics</u>	<u>Courses completed to satisfy this requirement shall include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics</u>	

Regulations

	<u>courses above the level of Algebra II. The board shall approve courses to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a mathematics course credit.</u>
<u>Laboratory Science</u>	<u>Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma and shall include interdisciplinary courses that incorporate Standards of Learning content from multiple academic areas. The board shall approve additional courses to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a science course credit.</u>
<u>History and Social Science</u>	<u>Courses completed to satisfy this requirement shall include Virginia and U.S. history, Virginia and U.S. government, and two courses in either world history or geography or both. The board shall approve additional courses to satisfy this requirement.</u>
<u>World Language</u>	<u>Courses completed to satisfy this requirement shall include three years of one language or two years of two languages. A student who is pursuing an advanced diploma and whose individualized education program specifies a credit accommodation for world language may substitute two standard units of credit in computer science for two standard units of credit in a world language. For any student who elects to substitute a credit in computer science for a credit in world language, the student's school counselor must provide notice to the student and parent or guardian of possible impacts related to college entrance requirements.</u>
<u>Fine Arts or Career and Technical Education</u>	<u>Per the Standards of Quality, a computer science course credit earned by students may be considered a career and technical credit.</u>
<u>Electives</u>	<u>Courses to satisfy this requirement shall include at least two sequential electives as required by the Standards of Quality.</u>
<u>Additional Requirements for Graduation</u>	
<u>Advanced Placement, Honors, International Baccalaureate Course, or Career and Technical Education Credential</u>	<u>In accordance with the Standards of Quality, students shall (i) complete an Advanced Placement, honors, International Baccalaureate, or dual enrollment course; (ii) complete a high-quality work-based learning experience as established by board guidance on work-based learning; or (iii) earn a career and technical education credential approved by the board, except when a career and technical education credential in a particular subject area is not readily available or appropriate or does not adequately measure student competency, in which case the student shall receive satisfactory competency-based instruction in the subject area to satisfy the advanced studies diploma requirements. The career and technical education credential, when required, could include the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness assessment.</u>
<u>Virtual Course</u>	<u>Students shall successfully complete one virtual course, which may be a non-credit-bearing course or a required or elective credit-bearing course that is offered online.</u>
<u>Training in emergency first aid, cardiopulmonary resuscitation (CPR), and the use of automated external defibrillators (AED).</u>	<u>Students shall be trained in emergency first aid, CPR, and the use of AED, including hands-on practice of the skills necessary to perform cardiopulmonary resuscitation. Students with an IEP or 504 Plan that documents that they cannot successfully complete this training shall be granted a waiver from this graduation requirement, as provided in 8VAC20-132-310 B.</u>
<u>Demonstration of the five Cs</u>	<u>Students shall acquire and demonstrate foundational skills in critical thinking, creative thinking, collaboration, communication, and citizenship in accordance with the Profile of a Virginia Graduate approved by the board.</u>

REGULATIONS

D. Requirements for an Applied Studies Diploma. In accordance with the requirements of the Standards of Quality, a student with disabilities who completes the requirements of the student's IEP and does not meet the requirements for other diplomas shall be awarded Applied Studies Diplomas in accordance with state and federal laws and regulations regarding special education.

Students who pursue an Applied Studies Diploma shall be allowed to pursue a Standard Diploma or an Advanced Studies Diploma at any time during high school. Such students shall not be excluded from courses or tests required to earn these diplomas.

E. Requirements for Certificates of Program Completion. In accordance with the requirements of the Standards of Quality, students who complete prescribed programs of studies defined by the local school board but do not qualify for a Standard Diploma, an Advanced Studies Diploma, or an Applied Studies Diploma shall be awarded Certificates of Program Completion. The requirements for Certificates of Program Completion are developed by local school boards in accordance with the Standards of Quality.

F. In accordance with the provisions of the compulsory attendance law and 8VAC20-30, Regulations Governing Adult High School Programs, students who do not qualify for diplomas may earn a high school equivalency credential. The requirements for the General Achievement Adult High School Diploma are provided in 8VAC20-30-20.

G. At a student's request, the local school board shall communicate or otherwise make known to institutions of higher education, potential employers, or other applicable third parties, in a manner that the local school board deems appropriate, that a student has attained the state's academic expectations by earning a Virginia diploma and that the value of such a diploma is not affected in any way by the accreditation status of the student's school.

H. Awards for exemplary student performance. Students who demonstrate academic excellence and outstanding achievement may be eligible for one or more of the following awards:

1. The Governor's Seal shall be awarded to students who complete the requirements for an Advanced Studies Diploma with an average grade of "B" or better and successfully complete college-level coursework that shall earn the student at least nine transferable college credits in Advanced Placement (AP), International Baccalaureate (IB), Cambridge, or dual enrollment courses.

2. The Board of Education Seal shall be awarded to students who complete the requirements for a Standard Diploma or an Advanced Studies Diploma with an average grade of "A."

3. The Board of Education's Career and Technical Education Seal shall be awarded to students who earn a Standard

Diploma or an Advanced Studies Diploma and complete a prescribed sequence of courses in a career and technical education concentration or specialization that they choose and maintain a "B" or better average in those courses or (i) pass an examination or an occupational competency assessment in a career and technical education concentration or specialization that confers certification or occupational competency credential from a recognized industry, trade, or professional association or (ii) acquire a professional license in that career and technical education field from the Commonwealth of Virginia. The board shall approve all professional licenses and examinations used to satisfy these requirements.

4. The Board of Education's Science, Technology, Engineering, and Mathematics (STEM) Seal shall be awarded to students who meet criteria established by the board.

5. The Board of Education's Seal for Excellence in Civics Education shall be awarded to students who earn either a Standard Diploma or an Advanced Studies Diploma and (i) complete Virginia and United States history and Virginia and United States government courses with a grade of "B" or higher; (ii) have good attendance and no disciplinary infractions as determined by local school board policies; and (iii) complete 50 hours of voluntary participation in community service or extracurricular activities. Activities that satisfy the requirements of clause (iii) of this subdivision include (a) volunteering for a charitable or religious organization that provides services to the poor, sick, or less fortunate; (b) participating in Boy Scouts, Girl Scouts, or similar youth organizations; (c) participating in Junior Reserve Officers' Training Corps; (d) participating in political campaigns or government internships or Boys State, Girls State, or Model General Assembly; or (e) participating in school-sponsored extracurricular activities that have a civics focus. Any student who enlists in the United States military prior to graduation shall be deemed to have met this community service requirement.

6. The Board of Education's Seal of Biliteracy shall be awarded to students who demonstrate proficiency in English and at least one other language and meet additional criteria established by the board.

7. The Board of Education's Seal for Excellence in Science and the Environment shall be awarded to students who earn either a Standard Diploma or Advanced Studies Diploma and (i) complete at least three different first-level board-approved laboratory science courses and at least one rigorous advanced-level or postsecondary-level laboratory science course, each with a grade of "B" or higher; (ii) complete laboratory or field-science research and present that research in a formal, juried setting; and (iii) complete at least 50 hours of voluntary participation in community service or extracurricular activities that involve the

Regulations

application of science, such as environmental monitoring, protection, management, or restoration.

8. Students may receive other seals or awards for exceptional academic, career and technical, citizenship, or other exemplary performance in accordance with criteria defined by the local school board.

I. Students completing graduation requirements in a summer school program shall be eligible for a diploma. The last school attended by the student during the regular session shall award the diploma unless otherwise agreed upon by the principals of the two schools.

J. Students who complete Advanced Placement courses, college-level courses, or courses required for an International Baccalaureate Diploma shall be deemed to have completed the course requirements for graduation under these standards, provided they have earned the total number of standard units of credit and verified units of credit in each discipline area in accordance with the requirements for the Standard Diploma and the Advanced Studies Diploma, as specified in subsections B and C of this section.

K. Students shall be counseled annually regarding the opportunities for using additional tests for earning verified credits, as provided in accordance with the provisions of 8VAC20-132-110, and the consequences of failing to fulfill the obligations to complete the requirements for verified units of credit.

8VAC20-132-60. Transfer students.

A. The provisions of this section pertain generally to students who transfer into Virginia high schools. Students transferring in kindergarten through grade eight from Virginia public schools or nonpublic schools accredited by one of the approved accrediting constituent members of the Virginia Council for Private Education (VCPE) shall be given recognition for all grade-level work completed. The academic record of students transferring from all other schools shall be evaluated to determine appropriate grade placement in accordance with policies adopted by the local school board. The State Testing Identifier (STI) for students who transfer into a Virginia public school from another Virginia public school shall be retained by the receiving school.

B. For the purposes of this section, the term "beginning" means within the first 20 hours of instruction per course. The term "during" means after the first 20 hours of instruction per course.

C. Standard or verified units of credit earned by a student in a Virginia public school shall be transferable without limitation regardless of the accreditation status of the Virginia public school in which the credits were earned. Virginia public schools shall accept standard and verified units of credit from other Virginia public schools, Virginia's virtual learning program, Virtual Virginia, and state-operated programs.

Standard units of credit shall also be accepted for courses satisfactorily completed in accredited colleges and universities when prior written approval of the principal has been granted or the student has been given credit by the previous school attended.

D. A high school shall accept credits toward graduation received from Virginia nonpublic schools accredited by one of the approved accrediting constituent members of the VCPE. The board shall maintain contact with the VCPE and may periodically review its accrediting procedures and policies as part of its policies under this section.

Nothing in these standards shall prohibit a public school from accepting standard units of credit toward graduation awarded to students who transfer from all other schools when the courses for which the student receives credit generally match the description of or can be substituted for courses for which the receiving school gives standard credit and the school from which the child transfers certifies that the courses for which credit is given meet the requirements of 8VAC20-132-110 A.

E. The academic record of a student transferring from other Virginia public schools shall be sent directly to the school receiving the student upon request of the receiving school in accordance with the provisions of 8VAC20-150, Management of the Student's Scholastic Record in the Public Schools of Virginia. The State Testing Identifier (STI) for students who transfer into a Virginia public school from another Virginia public school shall be retained by the receiving school.

F. The academic record of a student transferring into Virginia public schools from other than a Virginia public school shall be evaluated to determine the number of standard units of credit that have been earned, including credit from schools outside the United States, and the number of verified units of credit needed to graduate in accordance with subsection G of this section. Standard units of credit also shall be accepted for courses satisfactorily completed in accredited colleges and universities when the student has been given credit by the previous school attended.

Students transferring above grade 10 from schools or other education programs that do not require or give credit for health and physical education shall not be required to take these courses to meet graduation requirements.

Students transferring into a Virginia public school from other than a Virginia public school shall earn no fewer than the number of verified units listed in subdivision G 1 or G 2 of this section. The school division shall accept the following tests from the sending state, country, private school, or Department of Defense Educational Activity school for the purpose of awarding verified units of credit in courses previously completed at another school or program of study, for the purpose of awarding a Virginia high school diploma:

1. End-of-course tests required for graduation by the sending state;

2. Exit tests required for graduation by the sending state; and
3. National norm-referenced achievement tests. When students transfer to a Virginia public school from a state that requires a national norm-referenced achievement test, and that state education agency has set a "cut score" or passing score for the purpose of graduation, the school division shall accept the test for the purpose of awarding a verified credit if the test includes some content in a subject for which a verified credit may be awarded. If that state education agency has not set a cut score for the norm-referenced test, the test may not be used for the purpose of awarding a verified credit or earning a high school diploma.

Any substitute test approved by the board for verified credit shall be accepted in lieu of the applicable SOL tests if the applicable standard credit has been earned by the student.

The sending state's test must include content in the subjects for which verified credit is awarded. The test does not have to be comparable to a Virginia SOL test, so long as the test includes some content in the subject area. If the test includes some content from more than one subject, verified credits shall be awarded for every subject area covered by the test.

G. Students entering a Virginia public high school for the first time after grade 10 shall earn as many credits as possible toward the prescribed graduation requirements. However, schools may substitute courses required in other states in the same content area if the student is unable to meet the specific content requirements of 8VAC20-132-50 or 8VAC20-132-51, respectively, without taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when the student otherwise would have graduated.

The graduation requirements for students transferring into a Virginia high school for the first time shall be as follows:

1. For a Standard Diploma:
 - a. Students entering a Virginia high school for the first time at the beginning of or during grade nine prior to the 2018–2019 school year shall meet the graduation requirements prescribed in 8VAC20-132-50. Students entering a Virginia high school for the first time at the beginning of or during grade nine in the 2018–2019 school year or thereafter shall meet the graduation requirements prescribed in 8VAC20-132-51.
 - b. Students entering a Virginia high school for the first time at the beginning of or during grade 10 prior to the 2019–2020 school year or at the beginning of grade 11 prior to the 2020–2021 school year shall meet the graduation requirements prescribed in 8VAC20-132-50, except that such students shall only be required to earn a minimum of four verified units of credit: one each in English, mathematics, history, and science. Students entering a Virginia high school for the first time at the beginning of or during grade 10 in the 2019–2020 school

year or thereafter or at the beginning of grade 11 in the 2020–2021 school year or thereafter shall meet the graduation requirements prescribed in 8VAC20-132-51.

- c. Students entering a Virginia high school for the first time during grade 11 prior to the 2020–2021 school year or at the beginning of grade 12 prior to the 2021–2022 school year shall meet the graduation requirements prescribed in 8VAC20-132-50, except that such students shall only be required to earn a minimum of two verified units of credit: one in English and one in mathematics if participation in mathematics testing is required by federal law; otherwise, such verified credit may be of the student's own choosing. Students entering a Virginia high school for the first time during grade 11 in the 2020–2021 school year or thereafter, or at the beginning grade 12 in the 2021–2022 school year or thereafter shall meet the graduation requirements prescribed in 8VAC20-132-51, except that such students shall only be required to earn a minimum of two verified units of credit: one in English and one in mathematics if participation in mathematics testing is required by federal law; otherwise, such verified credit may be of the student's own choosing.

d. Students transferring after 20 instructional hours per course of their senior or grade 12 year shall be given every opportunity to earn a diploma following the graduation requirements prescribed in 8VAC20-132-50 for students entering prior to the 2021–2022 school year or following the graduation requirements prescribed in 8VAC20-132-51 for students entering in the 2021–2022 school year or thereafter. If it is not possible for the student to meet the requirements for a diploma, arrangements should be made for the student's previous school to award the diploma. If these arrangements cannot be made, a waiver of the verified unit of credit requirements may be available to the student. The Department of Education may grant such waivers upon request by the local school board in accordance with guidelines prescribed by the board.

2. For an Advanced Studies Diploma:
 - a. Students entering a Virginia high school for the first time at the beginning of or during grade nine prior to the 2018–2019 school year shall earn credit as prescribed in 8VAC20-132-50. Students entering a Virginia high school for the first time at the beginning of or during grade nine in the 2018-2019 school year or thereafter shall earn credit as prescribed in 8VAC20-132-51.
 - b. Students entering a Virginia high school for the first time at the beginning of or during grade 10 prior to the 2019–2020 school year or at the beginning of grade 11 prior to the 2020–2021 school year shall meet the graduation requirements prescribed in 8VAC20-132-50, except that such students shall only be required to earn a minimum of six verified units of credit: two in English and one each in mathematics, history, and science and one of the student's own choosing. Students entering a Virginia

Regulations

high school for the first time at the beginning of or during grade 10 in the 2019–2020 school year or thereafter or at the beginning of grade 11 in the 2020–2021 school year or thereafter shall earn credit as prescribed in 8VAC20-132-51.

c. Students entering a Virginia high school for the first time during grade 11 prior to the 2020–2021 school year or at the beginning of grade 12 prior to the 2021–2022 school year shall meet the graduation requirements prescribed in 8VAC20-132-50, except that such students shall only be required to earn a minimum of four verified units of credit: one in English, one in mathematics if required participation in mathematics testing is required by federal law, otherwise such verified credit may be of the student's own choosing, and two additional verified credits of the student's own choosing. Students entering a Virginia high school for the first time during grade 11 in the 2020–2021 school year or thereafter or at the beginning of grade 12 in the 2021–2022 school year or thereafter shall meet the graduation requirements prescribed in 8VAC20-132-51, except that such students shall only be required to earn a minimum of two verified units of credit: one in English, and one in mathematics if required participation in mathematics testing is required by federal law; otherwise such verified credit may be of the student's own choosing.

d. Students transferring after 20 instructional hours per course of their senior or grade 12 year shall be given every opportunity to earn a diploma following the graduation requirements prescribed in 8VAC20-132-50 for students entering prior to the 2021–2022 school year or following the graduation requirements prescribed in 8VAC20-132-51 for students entering in the 2021–2022 school year or thereafter. If it is not possible for the student to meet the requirements for a diploma, arrangements should be made for the student's previous school to award the diploma. If these arrangements cannot be made, a waiver of the verified unit of credit requirements may be available to the student. The Department of Education may grant such waivers upon request by the local school board in accordance with guidelines prescribed by the board.

3. For an Applied Studies Diploma: In accordance with the requirements of the Standards of Quality, students with disabilities who complete the requirements of their Individualized Education Plan and do not meet the requirements for other diplomas shall be awarded Applied Studies Diplomas in accordance with state and federal laws and regulations regarding special education.

Students who pursue an Applied Studies Diploma shall be allowed to pursue a Standard Diploma or an Advanced Studies Diploma at any time during high school. Such students shall not be excluded from courses or tests required to earn these diplomas.

4. For a Certificate of Program Completion: In accordance with the requirements of the Standards of Quality, students who complete prescribed programs of studies defined by the local school board but do not qualify for a Standard Diploma, an Advanced Studies Diploma, or an Applied Studies Diploma shall be awarded Certificates of Program Completion. The requirements for Certificates of Program Completion are developed by local school boards in accordance with the Standards of Quality.

H. No local school division receiving approval to increase its course credit requirements for a diploma may deny either the Standard Diploma or the Advanced Studies Diploma to any transfer student who has otherwise met the requirements contained in these standards if the transfer student can only meet the division's additional requirements by taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when the student otherwise would have graduated.

I. The transcript of a student who graduates or transfers from a Virginia secondary school shall conform to the requirements of 8VAC20-160, Regulations Governing Secondary School Transcripts.

J. The accreditation status of a high school shall not be included on the student transcript provided to colleges, universities, or employers. The board expressly states that any student who has met the graduation requirements and has received a Virginia diploma holds a diploma that should be recognized as equal to any other Virginia diploma of the same type, regardless of the accreditation status of the student's high school. It is the express policy of the board that no student shall be affected by the accreditation status of the student's school. The board shall take appropriate action, from time to time, to ensure that no student is affected by the accreditation status of the student's school.

Part IV

School Instructional Program

8VAC20-132-70. Program of instruction and learning objectives.

A. As required by the Standards of Quality, each local school board shall develop and implement a program of instruction for kindergarten through grade 12 that is aligned to the Standards of Learning and meets or exceeds the requirements of the board. The program of instruction shall emphasize reading, writing, speaking, mathematical concepts and computations, proficiency in the use of computers and related technology, computer science and computational thinking, including computer coding, and scientific concepts and processes; essential skills and concepts of citizenship, including knowledge of Virginia history and world and United States history, economics, government, world languages, international cultures, health and physical education, environmental issues, and geography necessary for responsible

participation in American society and in the international community; fine arts, which may include music and art, and practical arts; knowledge and skills needed to qualify for further education, gainful employment, or training in a career or technical field; and development of the ability to apply such skills and knowledge in preparation for eventual employment and lifelong learning and to achieve economic self-sufficiency.

B. As described in 8VAC20-132-51 and in accordance with the Profile of a Virginia Graduate approved by the board, the instructional program and learning objectives shall ensure that students (i) attain the knowledge, skills, competencies, and experiences necessary to be successful in the evolving global economy whether immediately entering the world of work or pursuing a postsecondary education and (ii) acquire and be able to demonstrate foundational skills in critical thinking, creative thinking, collaboration, communication, and citizenship. Consistent with the Profile of a Virginia Graduate, the instructional program and learning objectives shall ensure that, as age appropriate, during the kindergarten through grade 12 experience, students achieve and apply appropriate career development and technical knowledge. During the elementary and middle school years, students shall explore personal interests, be exposed to different types of careers, and plan for career development. In the later school years, students are to attain and demonstrate productive workplace skills, qualities, and behaviors; align knowledge, skills, and personal interests with career opportunities; and understand and demonstrate civic responsibility and community engagement.

C. Each school shall provide a program of instruction that promotes individual student academic achievement in the essential academic disciplines and shall provide additional instructional opportunities that meet the abilities, interests, and educational needs of students. Each school shall establish learning objectives to be achieved by students at successive grade levels that meet or exceed the knowledge and skills contained in the Standards of Learning for English, mathematics, science, and history and social science adopted by the board and shall continually assess the progress of each student in relation to the objectives.

D. Instruction shall be designed to accommodate all students, including those identified with disabilities in accordance with the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) or § 504 of the Rehabilitation Act, as amended, those identified as gifted or talented, and those who are ELs. Students with disabilities shall have the opportunity to receive a full continuum of education services in accordance with 8VAC20-81, Regulations Governing Special Education Programs for Children with Disabilities in Virginia, and other pertinent federal and state laws and regulations.

8VAC20-132-80. Instructional program in elementary schools.

A. The elementary school shall provide each student a program of instruction that corresponds to the Standards of

Learning for English, mathematics, science, and history and social science. Each school shall provide instruction in art, music, and physical education and health and shall require students to participate in a program of physical fitness during the regular school year in accordance with guidelines established by the board. In addition, each school shall provide instruction in career exploration in accordance with the provisions of 8VAC20-132-140.

B. In kindergarten through grade three, reading, writing, spelling, and mathematics shall be the focus of the instructional program. Schools shall maintain an early skills and knowledge achievement record in reading and mathematics for each student in kindergarten through grade three to monitor student progress and to promote successful achievement on the third-grade SOL tests. This record shall be included with the student's records if the student transfers to a new school.

In accordance with the Standards of Quality, local school boards shall implement early identification, diagnosis, and assistance for students with reading and mathematics problems and provide instructional strategies and reading and mathematics practices that benefit the development of reading and mathematics skills for all students.

C. To provide students with sufficient opportunity to learn, local school divisions shall provide a minimum of 680 hours of the required 990 hours of instructional time to students in elementary school in the four academic disciplines of English, mathematics, science, and history and social science.

Students who are not successfully progressing in early reading proficiency or who are unable to read with comprehension the materials used for instruction shall receive additional instructional time in reading, which may include summer school.

In accordance with the Standards of Quality, local school divisions shall provide reading intervention services to students in kindergarten through grade three who demonstrate deficiencies based on their individual performance on the SOL reading test or any reading diagnostic test that meets criteria established by the Department of Education. The local school division, in its discretion, shall provide such reading intervention services prior to promoting a student from grade three to grade four.

D. Elementary schools are encouraged to provide instruction in world languages.

8VAC20-132-90. Instructional program in middle schools.

A. The middle school shall provide each student a program of instruction that corresponds to the Standards of Learning for English, mathematics, science, and history and social science. In addition, each school shall provide instruction in art, music, world language, physical education and health, and career and technical exploration and shall require students to participate in a program of physical fitness during the regular school year

Regulations

in accordance with guidelines established by the board. Each middle school shall provide a course in career investigation in accordance with the provisions of 8VAC20-132-140. School divisions may seek alternate means of delivering the career investigation course content, provided it is equivalent in content and rigor and provides the foundation for students to develop their academic and career plans as described in 8VAC20-132-140 C 2. Possible alternative means to deliver the career investigation course content could include online methods, middle school exploratory course options, and delivering the course content through other courses.

B. The middle school shall provide a minimum of eight courses to students in grade eight. English, mathematics, science, and history and social science shall be required. Four elective courses shall be available: level one of a world language, one in health and physical education, one in fine arts, and one in career and technical exploration.

C. Level one of a world language and an Algebra I course shall be available to all eighth-grade students. For any secondary school credit-bearing course taken in middle school, parents may request that grades be omitted from the student's transcript and the student earn no high school credit for the course in accordance with policies adopted by the local school board. Notice of this provision must be provided to parents with a deadline and format for making such a request. Nothing in this chapter shall be construed to prevent a middle school from offering any other credit-bearing courses for graduation.

D. To provide students a sufficient opportunity to learn, each student shall be provided a total of 560 instructional hours per year in the four academic disciplines of English, mathematics, science, and history and social science.

E. Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading, which may include summer school.

F. In accordance with the Standards of Quality, each school shall ensure that students in grades six through eight who need targeted mathematics remediation or intervention, including remediation or intervention for computational deficiencies as demonstrated by their individual performance on any diagnostic test or grade-level SOL mathematics test, shall receive additional instruction in mathematics, which may include summer school. Students in grades six through eight who are at risk of failing the Algebra I end-of-course test shall be provided Algebra readiness intervention services.

8VAC20-132-100. Instructional program in secondary schools.

A. The secondary school, in accordance with the Profile of a Virginia Graduate approved by the board, shall provide a program of instruction to ensure that students (i) attain the knowledge, skills, competencies, and experiences necessary to be successful in the evolving global economy whether

immediately entering the world of work or pursuing a postsecondary education and (ii) acquire and be able to demonstrate foundational skills in critical thinking and creative thinking, collaboration, communication, and citizenship in accordance with 8VAC20-132-70 and the Profile of a Virginia Graduate.

The secondary school shall provide each student a program of instruction in the four core academic areas of English, mathematics, science, and history and social science that identifies the knowledge and skills that students should attain, giving due consideration to critical thinking, creative thinking, collaboration, communication, and citizenship in the early years of high school, and enables each student to meet the prescribed graduation requirements. The secondary school shall offer opportunities for each student, including:

1. Career and technical education choices that incorporate knowledge of regional workforce needs and opportunities; prepare the student as a career and technical education program completer in one of three or more occupational areas; and prepare the student for technical or preprofessional postsecondary programs;
2. Coursework and experiences that prepare the student for college-level studies, including access to at least three Advanced Placement (AP) courses, college-level courses for degree credit, International Baccalaureate (IB) courses, Cambridge courses, or any combination thereof;
3. Preparation for college admissions tests;
4. Study and exploration of the fine arts and world languages; and
5. Participation in work experiences, such as internships, externships, and other work-based learning experiences, and attaining workforce and career readiness and industry credentials.

B. Minimum course offerings for each secondary school shall provide opportunities for students to meet the graduation requirements stated in this chapter and must include:

<u>English</u>	<u>4</u>
<u>Mathematics</u>	<u>4</u>
<u>Science (Laboratory)</u>	<u>4</u>
<u>History and Social Science</u>	<u>4</u>
<u>World Language</u>	<u>3</u>
<u>Electives</u>	<u>4</u>
<u>Career and Technical Education</u>	<u>11</u>
<u>Fine Arts</u>	<u>2</u>
<u>Health and Physical Education</u>	<u>2</u>
<u>Economics and Personal Finance</u>	<u>1</u>
<u>Total Units</u>	<u>39</u>

C. Classroom driver education may count for 36 class periods, or the equivalent in minutes, of health education. Students shall not be removed from classes other than health and physical education for the in-car phase of driver education.

D. Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading, which may include summer school.

E. In accordance with the Standards of Quality, each school shall ensure that students who need targeted mathematics remediation and intervention, including remediation or intervention for computational deficiencies as demonstrated by their individual performance on any diagnostic test or grade-level SOL mathematics test, shall receive additional instruction in mathematics, which may include summer school. Students in grade nine who are at risk of failing the Algebra I end-of-course test, as demonstrated by their individual performance on any diagnostic test that has been approved by the department, shall be provided Algebra readiness intervention services.

8VAC20-132-110. Standard and verified units of credit.

A. A "standard unit of credit" or "standard credit" is a credit awarded for a course in which the student successfully completes 140 clock hours of instruction and the requirements of the course. A school division may waive the requirement that a student receive 140 clock hours of instruction to earn a standard credit, effective with students enrolled in the 2015-2016 school year, as prescribed in the Standards of Quality and board guidelines. When credit is awarded in less than whole units, the increment awarded must be no greater than the fractional part of the 140 hours of instruction provided. If a school division elects to award credit on a basis other than the 140 clock hours of instruction required for a standard unit of credit defined in this subsection, the local school division shall provide the board with satisfactory proof, based on board guidelines, that the students for whom the 140-clock-hour requirement is waived have learned the content and skills included in the relevant Standards of Learning. In addition, the local school division shall develop a written policy approved by the superintendent and school board that ensures:

1. That the content of the course for which credit is awarded is comparable to 140 clock hours of instruction; and
2. That upon completion, the aims and objectives of the course have been met.

B. A "verified unit of credit" or "verified credit" is a credit awarded for a course in which a student earns a standard unit of credit and completes one of the following:

1. Achieves a passing score on a corresponding end-of-course SOL test. In accordance with the provisions of the Standards of Quality, students may earn a standard and verified unit of credit for any elective course in which the

core academic Standards of Learning course content has been integrated and the student passes the related end-of-course SOL test. Such course and test combinations must be approved by the board.

Upon waiver of the 140-clock-hour requirement according to board guidelines, qualified students who have received a standard unit of credit shall be permitted to sit for the relevant SOL test to earn a verified credit without having to meet the 140-clock-hour requirement.

2. Achieves a passing score on an additional test, as defined in 8VAC20-132-10, as a part of the Virginia Assessment Program.

3. Meets the criteria for the receipt of a locally awarded verified credit when the student has not passed a corresponding SOL test.

a. Students who enter grade nine for the first time prior to the 2018-2019 school year and do not pass SOL tests in English, mathematics, science, or history and social science may receive locally awarded verified credits from the local school board in accordance with criteria established in guidelines adopted by the board. Credit accommodations for students with disabilities may be used to confer locally awarded verified credits as provided in 8VAC20-132-50 B 3.

b. Students who enter grade nine for the first time in the 2018-2019 school year or thereafter and do not pass SOL tests in English, mathematics, laboratory science, or history and social science may receive locally awarded verified credits from the local school board in accordance with criteria established in guidelines adopted by the board. No more than one locally awarded verified credit may be used to satisfy graduation requirements, except as provided in 8VAC20-132-51 B 3 for students with disabilities seeking a standard diploma.

4. Meets the criteria for the receipt of a verified credit in English (writing) by demonstrating mastery of the content of the associated course on an authentic performance assessment that complies with guidelines adopted by the board. Such students shall not also be required to take the corresponding SOL test in English (writing).

C. The board may from time to time approve additional tests for the purpose of awarding verified credit. Such additional tests, which enable students to earn verified units of credit, must, at a minimum, meet the following criteria:

1. The test must be standardized and graded independently of the school or school division in which the test is given;
2. The test must be knowledge based;
3. The test must be administered on a statewide, multistate, or international basis, or administered as part of another state's accountability assessment program; and

Regulations

4. To be counted in a specific academic area, the test must measure content that incorporates or exceeds the Standards of Learning content in the course for which verified credit is given.

The board shall set the score that must be achieved to earn a verified unit of credit on the additional test options.

D. With such funds as are appropriated by the General Assembly, the board shall provide opportunities for students who meet criteria adopted by the board to have an expedited retake of a SOL test to earn verified credit.

E. The provisions of this section are effective on and after the beginning of the 2018–2019 academic year.

8VAC20-132-120. Summer school.

A. The courses offered and the quality of instruction in the summer school program shall be comparable to that offered during the regular school term. At the middle and secondary school levels, credit for courses taken for credit toward graduation other than a repeat course shall be awarded in accordance with the requirements of 8VAC20-132-110. Students must also meet the requirements for SOL testing if appropriate.

B. Summer school instruction at any level, which is provided as part of a state-funded remedial program, shall be designed to improve specific identified student deficiencies. Such programs shall be conducted in accordance with regulations adopted by the board.

8VAC20-132-130. Elective courses.

Locally developed elective courses offered for credit toward high school graduation shall be approved by the division superintendent and local school board.

8VAC20-132-140. College and career readiness; career exposure, exploration, and planning; and opportunities for postsecondary credit.

A. Each middle and secondary school shall provide for the early identification and enrollment of students in a program with a range of educational and academic experiences related to college and career readiness in and outside the classroom, including an emphasis on experiences that will motivate disadvantaged and minority students to prepare for a career or postsecondary education.

B. Beginning with the 2013–2014 academic year and through the 2017–2018 academic year:

1. All schools shall begin development of a personal Academic and Career Plan (ACP) for each seventh-grade student with completion by the fall of the student's eighth-grade year. Students who transfer from other than a Virginia public school into grade eight shall have the plan developed as soon as practicable following enrollment. Beginning with the 2014–2015 academic year, students who transfer into a

Virginia public school after their eighth-grade year shall have an ACP developed upon enrollment. The components of the ACP shall include the student's program of study for high school graduation and a postsecondary career pathway based on the student's academic and career interests. The ACP shall be developed in accordance with guidelines established by the board and signed by the student, student's parent or guardian, and school official designated by the principal. The ACP shall be included in the student's record and shall be reviewed and updated, if necessary, before the student enters grades nine and 11. The school shall have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the ACP. Any personal ACPs prescribed by local school boards for students in grades seven through 12 and in effect as of June 30, 2009, are approved to continue without further action by the board.

2. Beginning in the middle school years, students shall be counseled on opportunities for beginning postsecondary education and opportunities for obtaining industry certifications, occupational competency credentials, or professional licenses in a career and technical education field prior to high school graduation. Such opportunities shall include access to at least three Advanced Placement (AP), International Baccalaureate (IB), or Cambridge courses or three college-level courses for degree credit pursuant to 8VAC20-132-100. No student taking advantage of such opportunities shall be denied participation in school activities for which the student is otherwise eligible. Wherever possible, students shall be encouraged and afforded opportunities to take college courses simultaneously for high school graduation and college degree credit (dual enrollment), under the following conditions:

- a. Written approval of the secondary school principal prior to participation in dual enrollment must be obtained;
- b. The college must accept the student for admission to the course; and
- c. The course must be given by the college for degree credits (no remedial courses will be accepted).

No school that complies with this standard shall be penalized in receiving state appropriations.

C. Beginning with the 2018–2019 academic year:

1. Each elementary, middle, and secondary school shall provide for the identification by all students of personal interests and abilities to support planning for postsecondary opportunities and career preparation. Such support shall include provision of information concerning exploration of career cluster areas in elementary schools and course information and planning for college preparation programs, opportunities for educational and academic experiences in and outside the classroom, including internships and work-

based learning, and the multiple pathways to college and career readiness in middle and secondary school.

2. Beginning in the elementary school years, students are to explore the different occupations associated with career clusters and select areas of interest. Students shall begin the development of an Academic and Career Plan Portfolio (ACPP) in elementary grades to include information about interests, values such as dependability and responsibility, and skills supporting decisions about their future interests and goals. The ACPP is a repository for planning notes, class projects, interest inventory results, awards and recognitions, and other information related to academic and career plans and preparation. The ACPP is student led and updated and revised as the student continues to plan for the student's future throughout school years. The information contained in the ACPP shall serve as the foundation for creating the ACP in grade seven.

In middle school, students are to complete a locally selected career interest inventory and select a career pathway. To support development of the ACP, students shall complete a career investigations course selected from the career and technical education state-approved list or a school division-provided alternative means of delivering the career investigations course content, provided that the alternative is equivalent in content and academic rigor. The course, or its alternative, shall address, at a minimum, planning for academic courses, work-based learning opportunities, completion of industry certifications, possible independent projects, and postsecondary education. The course, or its alternative, shall include demonstration of personal, professional, and technical workplace readiness skills.

All schools shall continue development of a personal ACP with each seventh-grade student with completion by the end of the fall semester of the student's eighth-grade year. Students who transfer from other than a Virginia public school into grade eight shall have the ACP developed as soon as practicable following enrollment. Students who transfer into a Virginia public school after their eighth-grade year shall have an ACP developed upon enrollment. The components of the ACP shall include the student's program of study for high school graduation and a postsecondary career pathway based on the student's academic and career interests. In secondary school, a career-related learning experience shall be chosen by the student and documented in the ACP.

3. The ACP shall be developed in accordance with guidelines established by the board and signed by the student, student's parent or guardian, and school official or officials designated by the principal. The ACP shall be included in the student's record and shall be reviewed and updated annually.

4. Beginning in the middle school years, students shall be counseled on opportunities for beginning postsecondary

education and opportunities for obtaining industry certifications, occupational competency credentials, or professional licenses in a career and technical education field prior to high school graduation. Such opportunities shall include access to at least three Advanced Placement, International Baccalaureate, or Cambridge courses or three college-level courses for degree credit pursuant to 8VAC20-132-100. No students taking advantage of such opportunities shall be denied participation in school activities for which the student is otherwise eligible.

5. Wherever possible, students shall be encouraged and afforded opportunities to take college courses simultaneously for high school graduation and college degree credit (dual enrollment), under the following conditions:

- a. Written approval of the secondary school principal prior to participation in dual enrollment must be obtained;
- b. The college must accept the student for admission to the course;
- c. The course must be given by the college for degree credits (no remedial courses will be accepted); and
- d. Students participating in courses offered by an institution of higher education shall be permitted to exceed a full course load in order to participate in courses that lead to a degree, certificate, or credential at such institution.

8VAC20-132-150. Standard school year and school day.

A. The standard school year shall be 180 instructional days or 990 instructional hours. The standard school day, including passing time for class changes and excluding breaks for meals, shall average a minimum of 5-1/2 instructional hours for students in kindergarten through grade 12. Recess may be included in the calculation of required instructional hours for elementary school, provided that recess does not exceed 15% of the required instructional hours.

B. All students in kindergarten through grade 12 shall maintain a full day schedule of classes (5-1/2 hours), unless a waiver is granted in accordance with policies defined by the local school board.

8VAC20-132-160. Family life education.

Each school may implement the Standards of Learning for the Family Life Education program promulgated by the board or a Family Life Education program consistent with the guidelines developed by the board, which program shall have the goals of reducing the incidence of pregnancy, sexually transmitted diseases, and substance abuse among teenagers.

8VAC20-132-170. Off-site instruction.

A. Homebound instruction shall be made available to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical

Regulations

psychologist. For students eligible for special education or related services, the Individualized Education Program (IEP) committee must revise the IEP, as appropriate. Credit for the work shall be awarded when it is done under the supervision of a licensed teacher qualified in the relevant subject areas and employed by the local school board, and there is evidence that the instructional time requirements or alternative means of awarding credit adopted by the local school board in accordance with the provisions of 8VAC20-132-110 have been met.

B. Schools are encouraged to pursue alternative means to deliver instruction to accommodate student needs through virtual courses, emerging technologies, and other similar means. Students may enroll in and receive a standard and verified unit of credit for supervised virtual courses with prior approval of the principal. The local school board shall develop policies governing this method of delivery of instruction that shall include the provisions of 8VAC20-132-110 and the administration of required SOL tests prescribed by 8VAC20-132-40. For courses offered for possible high school credit, standard units of credit shall be awarded for successful completion of such courses when the course is equivalent to that offered in the regular school program and the work is done under the supervision of a licensed teacher qualified in the relevant subject areas. A verified unit of credit may be earned when the student has successfully completed the requirements specified in 8VAC20-132-110.

8VAC20-132-180. Library media, materials, and equipment.

A. Each school shall maintain an organized library media center as the resource center of the school and provide a unified program of media services and activities for students and teachers before, during, and after school. The library media center shall contain hard copy, electronic technological resources, materials, and equipment that are sufficient to meet research, inquiry, and reading requirements of the instructional program and general student interest.

B. Each school shall provide a variety of materials, resources, and equipment to support the instructional program.

8VAC20-132-190. Extracurricular and other school activities; recess.

A. School sponsored extracurricular activities shall be under the direct supervision of the staff and shall contribute to the educational objectives of the school. Extracurricular activities must be organized to avoid interrupting the instructional program. Extracurricular activities shall not be permitted to interfere with the student's required instructional activities. Extracurricular activities and eligibility requirements shall be established and approved by the superintendent and the school board.

B. Competitive sports of a varsity nature (scheduled league games) shall be prohibited as a part of the elementary school program.

C. Each elementary school shall provide students with a daily recess during the regular school year as determined appropriate by the school.

D. Local school boards shall provide a program of physical activity for all students in kindergarten through [grade] five consisting of at least 20 minutes per day or an average of 100 minutes per week during the regular school year and available to all students in grades six through 12 with a goal of at least 150 minutes per week on average during the regular school year.

Part V

School and Instructional Leadership

8VAC20-132-200. Role of the principal.

A. The principal is recognized as the instructional leader and manager of the school and is responsible for:

1. Fostering the success of all students by facilitating the development, communication, implementation, and evaluation of a shared vision of teaching and learning that leads to student academic progress and school improvement;
2. Fostering the success of all students by developing, advocating, and sustaining an academically rigorous, positive, and safe school climate for all stakeholders;
3. Fostering effective human resources management by appropriately assigning, selecting, inducting, supporting, evaluating, and retaining quality instructional and support personnel;
4. Fostering the success of all students by communicating and collaborating effectively with stakeholders;
5. Fostering the success of all students by demonstrating professional standards and ethics, engaging in continuous professional development, and contributing to the profession; and
6. Providing leadership that results in acceptable, measurable student academic progress based on established standards.

As a matter of policy, the board, through these standards, recognizes the critically important role of principals to the success of public schools and the students who attend those schools and recommends that local school boards provide principals with the maximum authority available under law in all matters affecting the school, including instructional leadership, school climate, human resources management, organizational management, communication and community relations, and student academic progress, in a manner that allows the principal to be held accountable in a fair and

consistent manner for matters under the principal's direct control.

B. As the instructional leader, the principal is responsible for ensuring that students are provided an opportunity to learn and shall:

1. Lead the collaborative development and maintenance of a student-centered shared vision for educational improvement and work collaboratively with staff, students, parents, and other stakeholders to develop a mission and programs for effective teaching and learning, consistent with the division's strategic plan and the school's goals;

2. Collaboratively plan, implement, support, monitor, and evaluate instructional programs that enhance teaching and student academic progress and lead to school improvement;

3. Analyze current academic achievement data and instructional strategies and monitor and evaluate the use of diagnostic, formative, and summative assessment by grade and by discipline to:

a. Make appropriate educational decisions to improve classroom instruction, increase student achievement, and improve overall school effectiveness; provide timely and accurate feedback to students and parents and to inform instructional practices; and direct and require appropriate prevention, intervention, or remediation to those students performing below grade level or not meeting expectations, including passing the SOL tests;

b. Involve the staff of the school in identifying and evaluating professional development needed to improve student achievement and provide professional development opportunities and ensure that the staff participate in those activities;

c. Evaluate and improve classroom practices and instruction; and

d. Seek to ensure students' successful attainment of knowledge and skills set forth in the Standards of Learning;

4. Ensure that student records are maintained and that criteria used in making placement and promotion decisions, as well as any instructional interventions used to improve a student's performance, are included in the record;

5. Protect the academic instructional time from unnecessary interruptions and disruptions and provide collaborative leadership for the design and implementation of effective and efficient schedules that protect and maximize instructional time;

6. Involve students, staff, parents, and the community to create and sustain a positive, safe, and healthy learning environment that enforces state, division, and local rules, policies, and procedures and consistently models and collaboratively promotes high expectations, mutual respect,

care, and concern for students, staff, parents, and the community;

7. Create a culture of shared accountability and continuous school improvement;

8. Involve students, families, staff, and other stakeholders to promote community engagement;

9. Maintain records of students who drop out of school, including their reasons for dropping out and actions taken to prevent these students from dropping out;

10. Notify the parents of rising eleventh-grade and twelfth-grade students of:

a. The number of standard and verified units of credit required for graduation; and

b. The remaining number of such units of credit the individual student requires for graduation; and

11. Notify the parent or guardian of students removed from class for disciplinary reasons for two or more consecutive days in whole or in part. The school shall have met its obligation if it makes a good faith effort to notify the parent or guardian.

C. As the school manager, the principal shall:

1. Support, manage, and oversee the school's organization, operation, and use of resources;

2. Demonstrate and communicate a knowledge and understanding of Virginia public education rules, regulations, laws, and school division policies and procedures;

3. Work with staff to create an atmosphere of mutual respect and courtesy and to facilitate constructive communication by establishing and maintaining a current handbook of personnel policies and procedures;

4. Ensure the use of data systems and technology to support goals;

5. Disseminate information to staff, parents, and other stakeholders in a timely manner through multiple channels and sources;

6. Work with the community to involve parents and citizens in the educational program;

7. Facilitate communication with parents by maintaining and disseminating a current student handbook of policies and procedures that includes the school division's standards of student conduct and procedures for enforcement, along with other matters of interest to parents and students;

8. Manage the supervision and research-based evaluation of staff in accordance with local and state requirements;

Regulations

9. Maintain a current record of staff's licenses and endorsements to ensure compliance and professional development completed by staff;

10. Follow local and state laws and policies with regard to finances, school accountability, and reporting;

11. Maintain records of receipts and disbursements of all funds handled, which shall be audited annually by a professional accountant approved by the local school board; and

12. Ensure the security of all tests administered to students, including those required by the board and the local school division. This includes:

a. The requirement that all schools adhere to a policy that prohibits students' access to cell phones and other electronic devices with texting or camera capabilities during the administration of the SOL tests;

b. The requirement that, to the extent possible, no teacher should administer the SOL test associated with the grade level content or class such teacher taught;

c. Notification to teachers of the penalties for breaching security on SOL tests, including actions against the teacher's license and civil penalties; and

d. Establishment of penalties for students who breach security on SOL tests.

8VAC20-132-210. Role of professional teaching staff.

The professional teaching staff shall be responsible for providing instruction that is educationally sound in an atmosphere of mutual respect and courtesy that is conducive to learning and in which all students are expected to achieve the objectives of the Standards of Learning for the appropriate grade level or course. The staff shall:

1. Serve as role models for effective oral and written communication with special attention to the use of standard English;

2. Strive to strengthen the basic skills of students in all subjects and to close any achievement gaps among groups of students in the school;

3. Establish teaching objectives to achieve the following:

a. Identify what students are expected to learn; and

b. Inform students of the achievement expected and keep them engaged in learning tasks;

4. Provide for individual differences of students through the use of differentiated instruction, varied materials, and activities suitable to student interests and abilities; and

5. Assess the progress of students and report promptly and constructively to students and their parents.

8VAC20-132-220. Role of support staff.

The school's support staff shall work with the principal and professional teaching staff to promote student achievement and successful attainment of the school's goals.

8VAC20-132-230. Administrative and support staff; staffing requirements.

A. Each school shall have, at a minimum, the staff as specified in the Standards of Quality with proper licenses and endorsements for the positions they hold.

B. The principal of each middle and secondary school shall be employed on a 12-month basis.

C. Each elementary, middle, and secondary school shall employ school counseling staff as prescribed by the Standards of Quality. School counseling shall be provided for students to ensure that a program of studies contributing to the student's academic achievement and meeting the graduation requirements specified in this chapter is being followed.

D. Each member of the school counseling staff in the counseling program for elementary, middle, and secondary schools shall spend at least 80% of the member's staff time during normal school hours in direct counseling of individual students or groups of students.

E. A middle school classroom teacher's standard load shall be based on teaching no more than the instructional day minus one planning period per day or the equivalent with no more than 150 students or 25 class periods per week. If a middle school classroom teacher teaches more than 150 students or 25 class periods per week, an appropriate contractual arrangement and compensation shall be provided.

F. The secondary classroom teacher's standard load shall be based on teaching no more than the instructional day minus one planning period per day or the equivalent with no more than 150 students or 25 class periods per week. If a secondary school classroom teacher teaches more than 150 students or 25 class periods per week, an appropriate contractual arrangement and compensation shall be provided.

G. Middle or secondary school teachers shall teach no more than 150 students per week; however, physical education and music teachers may teach 200 students per week. If a middle or secondary school physical education or music teacher teaches more than 200 students per week, an appropriate contractual arrangement and compensation shall be provided.

H. Each elementary classroom teacher shall be provided at least an average of 30 minutes per day during a student's school week as planning time. Each full-time middle and secondary classroom teacher shall be provided one planning period per day or the equivalent, as defined in 8VAC20-132-10, unencumbered of any teaching or supervisory duties.

I. Staff-student ratios in special education and career and technical education classrooms shall comply with regulations of the board.

J. Student support positions as defined in the Standards of Quality shall be available as necessary to promote academic achievement and to provide support services to the students in the school.

Part VI

School Facilities and Safety

8VAC20-132-240. School facilities and safety.

A. Each school shall be maintained in a manner ensuring compliance with the Virginia Uniform Statewide Building Code (13VAC5-63). In addition, the school administration shall:

1. Maintain a physical plant that is accessible, barrier free, safe, and clean;
2. Provide for the proper outdoor display of flags of the United States and of the Commonwealth of Virginia;
3. Provide suitable space for classrooms, administrative staff, pupil personnel services, library and media services, and for the needs and safety of physical education;
4. Provide adequate, safe, and properly equipped laboratories to meet the needs of instruction in the sciences, technology, fine arts, and career and technical programs;
5. Provide facilities for the adequate and safe administration and storage of student medications; and
6. Carry out the duties of the threat assessment team established by the division superintendent and implement policies established by the local school board related to threat assessment pursuant to § 22.1-79.4 of the Code of Virginia.

B. Each school shall maintain records of regular safety, health, and fire inspections that have been conducted and certified by local health and fire departments. The frequency of such inspections shall be determined by the local school board in consultation with the local health and fire departments. In addition, the school administration shall:

1. Equip all exit doors with panic hardware as required by the Virginia Uniform Statewide Building Code (13VAC5-63);
2. Conduct a fire drill at least twice during the first 20 days of school and conduct at least two additional fire drills during the remainder of the school term. Evacuation routes for students shall be posted in each room; and
3. Conduct a lock-down drill at least twice during the first 20 days of school and conduct at least two additional lock-down drills during the remainder of the school term.

C. Each school shall have contingency plans for emergencies that include staff certified in cardiopulmonary resuscitation (CPR), the Heimlich maneuver, and emergency first aid.

Each school building with instructional or administrative staff of 10 or more shall have at least three employees with current certification or training in emergency first aid, CPR, and the use of an automated external defibrillator. If one or more students diagnosed with diabetes attend such school, at least two employees shall have been trained in the administration of insulin and glucagon.

Each school building with instructional or administrative staff of fewer than 10 shall have at least two employees with current certification or training in emergency first aid, CPR, and the use of an automated external defibrillator. If one or more students diagnosed with diabetes attend such school, at least one employee shall have been trained in the administration of insulin and glucagon.

D. In addition, the school administration shall ensure that the school has:

1. Written procedures to follow in emergencies such as fire, injury, illness, allergic reactions, and violent or threatening behavior. This shall include school board policies for the possession and administration of epinephrine in every school, to be administered by any school nurse, employee of the school board, employee of a local governing body, or employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine to any student believed to be having an anaphylactic reaction. The plan shall be outlined in the student handbook and discussed with staff and students during the first week of each school year;
2. Space for the proper care of students who become ill;
3. A written procedure, in accordance with guidelines established by the local school board, for responding to violent, disruptive, or illegal activities by students on school property or during a school-sponsored activity; and
4. Written procedures to follow for the safe evacuation of persons with special physical, medical, or language needs who may need assistance to exit a facility.

Part VII

School and Community Communications

8VAC20-132-250. School and community communications.

A. Each school shall promote communication and foster mutual understanding with parents and the community. Each school shall:

1. Involve parents, citizens, community agencies, and representatives from business and industry in developing, disseminating, and explaining the biennial school plan; on advisory committees; in curriculum studies; and in evaluating the educational program.

Regulations

2. Provide annually to the parents and the community a school performance report in a manner prescribed by the board and consistent with the requirements of the Elementary and Secondary Education Act (Pub. L. No. 89-10, as amended). The school performance report shall include designated information for the most recent three-year period. Such information shall be designated by the board to include indicators of the following: accountability, assessments, enrollment and demographics, college and career readiness, finance, learning environment, and teacher quality. Specific indicators shall include:

a. Virginia Assessment Program results by percentage of participation and proficiency and disaggregated by student reporting groups.

b. School performance, disaggregated by student reporting groups, on each school quality indicator described in 8VAC20-132-270 B, the school's overall performance category described in 8VAC20-132-270 E, and whether the school is identified for improvement under 8VAC20-132-280.

c. Accreditation status.

d. Attendance and absenteeism for students.

e. Information related to school safety, to include incidents of crime and violence.

f. Information related to qualifications and educational attainment of the teaching staff.

g. In addition, each secondary school's school performance report shall include the following:

(1) Advanced Placement (AP) information, to include the percentage of students who take AP courses and percentage of students who take AP tests;

(2) International Baccalaureate (IB) and Cambridge course information, to include the percentage of students who are enrolled in IB or Cambridge programs and the percentage of students who receive an IB or Cambridge Diploma;

(3) College-level course information, to include the percentage of students who take college-level courses, including dual enrollment courses;

(4) Number and percentage of (i) graduates by diploma type as prescribed by the board; (ii) certificates awarded to the senior class, including high school equivalency preparation program credentials approved by the board; and (iii) students who do not complete high school;

(5) As a separate category on the school performance report, the number of students obtaining board-approved industry certifications and passing state licensure examinations, national occupational competency assessments, and Virginia workplace readiness skills assessments while still in high school, and the number of career and technical education completers who graduated; and

(6) Number and percentage of dropouts.

3. Cooperate with business and industry in formulating career and technical educational programs and conducting joint enterprises involving personnel, facilities, training programs, and other resources.

4. Encourage and support the establishment or continuation of a parent-teacher association or other organization and work cooperatively with it.

B. At the beginning of each school year, each school shall provide to the parents or guardians of its students information on the availability of and source for receiving:

1. The learning objectives developed in accordance with the provisions of 8VAC20-132-70 to be achieved at the child's grade level or, in high school, a copy of the syllabus for each of the child's courses, and a copy of the school division promotion, retention, and remediation policies;

2. The Standards of Learning applicable to the child's grade or course requirements and the approximate date and potential impact of the child's next SOL testing; and

3. An annual notice to students in all grade levels of all requirements for Standard Diploma and Advanced Studies Diploma and the board's policies on promotion and retention as outlined in 8VAC20-132-30.

The division superintendent shall report to the department compliance with this subsection as required by 8VAC20-132-300.

Part VIII

School Accountability

8VAC20-132-260. Expectations for school accountability.

A. The system of school accountability provides a means of determining the quality and effectiveness of schools for the following purposes:

1. Building on strengths in schools and addressing specific areas needing improvement;

2. Driving continuous improvement in school achievement for all schools;

3. Identifying areas for technical assistance and the use of school improvement resources;

4. Providing a comprehensive picture of school quality information to the public; and

5. Informing board accreditation of schools based on the conditions specified in 8VAC20-132-300.

B. The accountability system, which presents expectations and standards for schools and school divisions, shall:

1. Be used to publish the annual school performance report, as referenced in 8VAC20-132-250, which provides information to parents, citizens, the community, businesses

and other agencies, and the general public about school characteristics and about a comprehensive range of school indicators;

2. Fulfill the state accountability provisions for schools and divisions as presented in this part and the federal accountability provisions required under the Elementary and Secondary Education Act (Pub. L. No. 89-10, as amended) and the Individuals with Disabilities Education Act (20 USC § 1400 et seq.); and

3. Identify schools, based on student outcome and growth measures, that require multi-year school support plans to improve performance on school quality indicators, which shall be taken into consideration in accrediting schools consistent with 8VAC20-132-300 alongside compliance with the standards for student achievement, instructional programs, school and instructional leadership, school facilities and safety, and school and community communications in this chapter.

8VAC20-132-270. Measurement of school quality for accountability.

A. Requirements for indicator selection. School quality for the purposes of accountability shall be measured for each school using multiple indicators as provided for in this part. School quality indicators include student academic outcomes and other factors that are associated with student learning.

Designation of school quality indicators by the board is based on the following criteria:

1. Research demonstrates that the indicator is related to student academic outcomes, such as academic achievement and success beyond high school;

2. Standardized procedures exist across schools and school divisions for collection of data used for the indicator so that the indicator is measured consistently and comparably statewide;

3. The data used in the indicator is reliable and valid;

4. Performance in the indicator can be positively impacted through division-level and school-level policies and procedures;

5. The indicator meaningfully differentiates among schools based on progress of all students and student reporting groups; and

6. The indicator does not unfairly impact one type or group of schools or students.

B. School quality indicators. Specific indicators designated by the board for accountability purposes include the following:

1. For all schools, academic achievement on board-approved Standards of Learning tests in reading, mathematics, and science, as measured through a weighted

mastery index that gives full credit, or a weight of one, in the numerator for students who attain grade-level proficiency; partial credit, or a weight of less than one, in the numerator for students who do not attain grade-level proficiency; and bonus credit, or a weight greater than one, in the numerator for students who exceed grade-level proficiency;

2. For elementary and middle schools, growth in reading and mathematics, as measured by an individual student's year-over-year progress on summative statewide end-of-year tests;

3. For high schools, graduation rate, which shall primarily be based on the four-year adjusted cohort graduation rate as prescribed in the Elementary and Secondary Education Act (Pub. L. No. 89-10, as amended) and may include other graduation rate measures determined by the board consistent with federal requirements;

4. Readiness for all students as measured by:

a. For all schools, chronic absenteeism, defined as students who miss 10% or more of the school year regardless of reason, excluding students receiving homebound instruction, as defined in 8VAC20-132-10; and

b. For high schools, college, career, and civic readiness, as measured by the extent to which a school's students demonstrate preparedness for postsecondary experiences such as successful completion of advanced high school coursework, acquisition of approved industry-recognized credentials, and meeting qualifications for military service;

5. For all schools, the progress of EL students toward achieving proficiency in English, as measured by board-approved English language proficiency assessments consistent with the Elementary and Secondary Education Act (Pub. L. No. 89-10, as amended); and

6. At the board's discretion, additional indicators of school quality consistent with subsection G of this section.

C. EL and transfer students. When calculating the academic achievement and growth indicators described in subsection B of this section for the purpose of school accountability, the following tolerances for EL and transfer students shall apply:

1. The scores of EL students enrolled in Virginia public schools fewer than three semesters may be removed from the calculation used to measure the academic achievement and growth indicators consistent with the Elementary and Secondary Education Act (Pub. L. No. 89-10, as amended). Completion of a semester shall be based on school membership days. Membership days are defined as the days the student is officially enrolled in a Virginia public school, regardless of days absent or present. For a semester to count as a completed semester, a student must have been

Regulations

in membership for a majority of the membership days of the semester. These semesters need not be consecutive. The scores of students who were formerly classified as English learners may be included in the calculation to measure the academic achievement and growth indicators for four years after the student ceases to be identified as an English learner consistent with the Elementary and Secondary Education Act (Pub. L. No. 89-10, as amended).

2. In accordance with the provisions of 8VAC20-132-40, all students who transfer into Virginia public schools are expected to take and pass all applicable SOL tests in the content areas in which they receive instruction.

3. All students who transfer within a school division shall have their scores counted in the calculation of the school's academic achievement and growth indicators. Students who transfer into a Virginia school from home instruction or from another Virginia school division, another state, or another country in kindergarten through grade eight shall be expected to take all applicable SOL tests or additional tests approved by the board as outlined in 8VAC20-132-110. If the transfer takes place after the 20th instructional day following the opening of school, the scores on these tests may be used in calculating the academic achievement and growth indicators applied to school accountability.

4. Students who transfer into a Virginia middle or secondary school from home instruction or from another Virginia school division, another state, or another country and enroll in a course for which there is an end-of-course SOL test shall be expected to take the test or additional tests for that course approved by the board as outlined in 8VAC20-132-40 and 8VAC20-132-110. If the transfer takes place after 20 instructional hours per course have elapsed following the opening of school or beginning of the semester, if applicable, the scores on those tests may be used in calculating the academic achievement and growth indicators applied to school accountability.

5. Students who enroll on the first day of school and subsequently transfer to a school outside of the division for a total amount of instructional time equal to or exceeding 50% of a current school year or semester, whether the transfer was a singular or multiple occurrence, and return during the same school year shall be expected to take any applicable SOL test. The scores of those tests may be used in measuring the school academic achievement and growth indicators in the year in which the transfers occur.

D. School performance calculation and weighting. The board shall meaningfully differentiate schools annually, beginning with the 2025-2026 school year, using data collected from the 2024-2025 school year, based on the school quality indicators described in subsection B of this section.

Consistent with the requirements for the weighting of indicators for annual meaningful differentiation in the Elementary and Secondary Education Act (Pub. L. No. 89-10, as amended), an overall score for each school shall be calculated by:

1. For elementary and middle schools, a weighted measure, consisting of the school quality indicators described in subsection B of this section, such that the academic achievement mastery index comprises between 50% and 70% of a school's score and growth comprises up to 40% of a school's score.

2. For high schools, a weighted measure, consisting of the school quality indicators described in subsection B of this section, such that the academic achievement mastery index comprises between 40% and 60% of a school's score and the four-year adjusted cohort graduation rate as prescribed in the Elementary and Secondary Education Act (Pub. L. No. 89-10, as amended) comprises at least 15% of a school's score.

E. Public reporting. To provide parents and the public with transparent and clear information about the overall performance of schools, the board shall use the calculation in subsection D of this section to assign schools into at least four performance categories on an annual basis. The scores associated with each performance category shall be determined by the board and posted on the portion of the department's website relating to the school performance report, beginning with the 2025-2026 school year, using data collected from the 2024-2025 school year. A school's performance category shall be reported separately from its accreditation status and shall not affect a school's accreditation status. Further, the board shall review the scores associated with each performance category at least once every three years.

F. Student groups. Any school identified for targeted support or additional targeted support under 8VAC20-132-280 based on the performance of a reporting group, including students belonging to each major racial and ethnic group, economically disadvantaged students, students with disabilities, and English learners, shall have their overall performance category described in subsection E of this section lowered by one level.

G. Board responsibilities.

1. The board may adopt special provisions related to the measurement and use of a school quality indicator as prescribed by the board. The board may also alter the inclusions and exclusions from indicator calculations or school ratings by providing adequate notice to local school boards.

2. The board may add new assessments or discontinue the use of existing assessments in the Virginia Assessment Program by providing adequate notice to local school

boards. As specified in the Standards of Quality, the board may adopt special provisions related to the administration and use of any SOL tests as applied to school quality indicators for any period during which the Standards of Learning content or assessments in that area are being revised and phased in. Notice shall be provided to local school boards regarding the special provisions prior to statewide administration of such tests.

3. The board may adopt valid and reliable measures of student growth to be used in calculating the growth indicators for reading and mathematics and in determining the progress of English learners toward English proficiency.

4. The board may incorporate additional school quality indicators into the calculation described in subsection D of this section, according to its criteria as specified in subsection A of this section.

H. Schools with non-tested grades. To use the school quality indicators to meaningfully differentiate among schools with grade configurations that do not house a grade or offer courses for which SOL tests or additional tests approved by the board as outlined in 8VAC20-132-110 are administered, such schools shall be paired with another school in the division housing one or more of the grades in which SOL tests are administered. The pairing of such schools shall be made upon the recommendation of the division superintendent. The schools should have a "feeder" relationship and the grades should be contiguous.

8VAC20-132-280. Identification of schools for improvement and required actions.

A. Using the indicators and weights described in 8VAC20-132-270 and consistent with the Elementary and Secondary Education Act (Pub. L. No. 89-10, as amended), the department shall identify schools as follows:

1. Comprehensive support. For school identification in the 2025-2026 school year, this category shall include at least the lowest-scoring 5.0% of schools based on the calculation described in 8VAC20-132-270 D. In subsequent identification years, the board shall set a minimum score on such calculation for identification for comprehensive support informed by the baseline established in the 2025-2026 school year. In addition, any high school where the four-year adjusted cohort graduation rate, as prescribed in the Elementary and Secondary Education Act (Pub. L. No. 89-10, as amended), is below 67% shall be identified for comprehensive support, starting with identification in the 2025-2026 year. Comprehensive support schools shall be identified once every three years, and no school in comprehensive support shall be placed in the highest performance category described in 8VAC20-132-270 E.

2. Targeted support. For school identification in the 2025-2026 school year and all subsequent identification years,

this category shall include any school that is not identified for comprehensive support where the performance of any reporting group within a school using the calculation described in 8VAC20-132-270 D is below the score by which schools are identified for comprehensive support. Targeted support schools shall be identified annually and the performance of the reporting group shall be reflected in the school's performance category consistent with 8VAC20-132-270 F.

3. Additional targeted support. For school identification beginning in the 2028-2029 school year, this category shall include any targeted support school where the performance of any reporting group within a school using the calculation described in 8VAC20-132-270 D meets the criteria in subdivision 2 of this subsection after being identified for targeted support in the previous three years. Additional targeted support schools shall be identified once every three years, and the performance of the reporting group shall be reflected in the school's performance category consistent with 8VAC20-132-270 F.

Responses and actions to be taken by schools, under the leadership of division superintendents and school principals, school divisions, and the Department as a result of school identification are as prescribed in subsections B, C, and D of this section.

B. Targeted and additional targeted support. If a school is identified for targeted or additional targeted support, the school and its school division shall work cooperatively and in consultation with stakeholders, including principals, teachers, and parents, to develop and implement a multi-year school support plan to improve student outcomes, which shall be incorporated as a component of the school's comprehensive, unified long-range plan in 8VAC20-132-300 B 9.

In developing and revising such plan, the school and its school division shall conduct a needs assessment to determine the issues and conditions that are likely contributing to the school's performance on the school quality indicators for all students and reporting groups; identify the resources the school may require to implement its plan and how any resource needs will be addressed; and develop a plan for implementation with goals, measurable objectives, evidence-based strategies, and actions designed to improve performance on the school quality indicators to exit targeted support or additional targeted support status.

School division and school staff shall:

1. Identify factors related to the school's performance on the school quality indicators described in 8VAC20-132-270 B for all students and reporting groups as part of the school's comprehensive needs assessment;

2. Use the results of the comprehensive needs assessment to develop and revise the multi-year school support plan to include goals, measurable objectives, at least two evidence-

Regulations

based strategies, and actions that address the factors identified in the needs assessment that are related to the school's performance on the school quality indicators. The department may implement an audit process to ensure compliance with this provision;

3. Review available resources for the school, which may include reviewing division-level and school-level budgeting; identify the resources the school may require to implement its multi-year support plan; and include how any resource needs will be addressed in such plan. The school's multi-year support plan shall be approved by the school division and local school board and published on the website for the school and school division. The department may implement an audit process to ensure compliance with this provision;

4. Implement the evidence-based strategies and actions with fidelity;

5. Regularly evaluate the impact of plan implementation and evidence of the school's progress, monitor changes on the school quality indicators for all students and reporting groups, and make adjustments as warranted; and

6. Evaluate progress on the school quality indicators for all students and each reporting group at the end of each year and assess the results of the school support plan actions at the end of two years. If no progress is made within the two-year period on the school quality indicators, the plan shall be revised.

The board shall establish criteria for sufficient improvement on the school quality indicators for schools to exit additional targeted support. If the school is reidentified for additional targeted support after three years, the school must undergo a review conducted by the department, or under its guidance, to identify further or alternative evidence-based strategies and actions to improve student achievement on the school quality indicators. Review of other data by the department, or under its guidance, may occur based on the school's multi-year school support plan. Revised school support plans developed as a result of the review shall be reviewed through a department-established process, which may include peer review by staff from other school divisions. Further, if such a school receives funding under Title I, Part A of the Elementary and Secondary Education Act (Pub. L. No. 89-10, as amended), the school shall be identified for comprehensive support and required to implement actions specified in subsection C of this section.

School divisions with schools identified for targeted or additional targeted support may request technical assistance from the department.

C. Comprehensive support.

1. Multi-year support plans. If a school is identified for comprehensive support, the school and school division

shall work cooperatively and in consultation with the department and with stakeholders, including principals, teachers, and parents, to develop and implement a multi-year support plan to improve student outcomes, which shall be incorporated as a component of the school's comprehensive, unified, long-range plan in 8VAC20-132-300 B 9.

The department shall develop a standardized template to develop multi-year support plans for schools in comprehensive support that divisions and schools must use. In developing such plan, the school and school division, in consultation with the department, shall conduct a needs assessment to determine the issues and conditions that are likely contributing to the school's performance on the school quality indicators; identify the resources the school may require to implement its plan and how any resource needs will be addressed; and develop a plan for implementation with goals, measurable objectives, evidence-based strategies, and actions to achieve improvement on the school quality indicators and exit comprehensive support status.

In consultation and with support from department staff, school division and school staff shall:

a. Identify factors related to the school's performance on the school quality indicators described in 8VAC20-132-270 B for all students and reporting groups as part of the school's comprehensive needs assessment;

b. Use the results of the comprehensive needs assessment to develop a multi-year school support plan that includes goals, measurable objectives, at least four evidence-based strategies, and actions that address the factors in the needs assessment that are related to the school's performance on the school quality indicators;

c. Review available resources for the school, which may include reviewing division-level and school-level budgeting; identify the resources the school may require to implement its multi-year support plan; and include how any resource needs will be addressed in such plan;

d. Submit the completed multi-year support plan to the department through the division superintendent for department approval. The school's proposed plan shall also be provided to the local school board for review prior to submission;

e. Amend the plan if the department disapproves any portion thereof, as needed to secure the department's approval and publish the approved plan on the website for the school and school division;

f. Implement the approved multi-year support plan's evidence-based strategies and actions with fidelity; and

g. Meet regularly with department staff to evaluate the impact of plan implementation and monitor evidence of the school's progress, to track improvement on the school quality indicators and whether the school is on track to

exit comprehensive support status, and to identify next steps, including whether adjustments to the plan are warranted.

2. Schools failing to meet exit criteria. The board shall establish criteria for sufficient improvement on the school quality indicators for schools to exit comprehensive support. If a school is reidentified for comprehensive support after implementing its plan for three years, the multi-year support plan described in subdivision 1 of this subsection shall be revised with greater direction and intervention from the department, including that the department will identify more rigorous actions, consistent with the Elementary and Secondary Education Act (Pub. L. No. 89-10, as amended), to improve student outcomes on the school quality indicators.

The level of direction and intervention from the department may include calling for the local school division superintendent and the Superintendent of Public Instruction to enter into an agreement that shall delineate the responsibilities for the school staff, school division staff, and department staff and shall include required goals, measurable objectives, evidence-based strategies, and actions to improve student achievement and to improve performance on the school quality indicators.

D. Division responsibilities. In addition to facilitating the development of multi-year school support plans, school divisions with schools identified for additional targeted and comprehensive support under subsection A of this section shall create a division support plan to improve student outcomes in such schools, which shall be incorporated into the long-range comprehensive plan for the division in 8VAC20-132-300 B 9. Division support plans shall be published on the website for the division. In developing and revising such plan, the school division shall:

1. Conduct a needs assessment to determine division-level issues and conditions that are likely contributing to the school's performance on the school quality indicators;
2. Review the resources available to identified schools compared to other schools in the division and identify resources identified schools may require to implement their school support plans. Such plans shall be informed by a division needs assessment and each identified school's multi-year improvement plan;
3. Include how the division will support effective implementation of the required actions and evidence-based interventions within the school support plan for each identified school in the division; and
4. Regularly evaluate the impact of plan implementation and evidence of the division's progress in implementing the plan, monitor changes on the school quality indicators for all students and reporting groups in identified schools

compared to those that are not identified in the division, and make adjustments as warranted.

E. Once every three years, the board shall review the performance scores used to identify schools for comprehensive, targeted, and additional targeted support status in the school accountability system.

8VAC20-132-290. Recognitions and rewards for school and division accountability.

Schools and divisions shall be recognized by the board in accordance with guidelines the board shall establish for the Exemplar School Recognition Program to recognize (i) schools or school divisions that exceed board-established requirements or show continuous improvement on the school quality indicators and (ii) schools, school divisions, and school boards that implement effective, innovative practices. Such recognition may include:

1. Public announcements recognizing individual schools and divisions;
2. Tangible rewards;
3. Waivers of certain board regulations;
4. Exemptions from certain reporting requirements; or
5. Other commendations deemed appropriate to recognize high achievement.

In addition to board recognition, local school boards shall adopt policies to recognize individual schools through public announcements, media releases, and participation in community activities when setting policy relating to schools and budget development, as well as other appropriate recognition.

Part IX School Accreditation

8VAC20-132-300. Accreditation.

A. The board shall adopt a process to accredit schools based on the school accountability requirements and student outcome and growth measures, as well as compliance with the standards for student achievement, school instructional programs, school and instructional leadership, school facilities and safety, and school and community communications described in this chapter.

The department shall develop guidance, templates, evidentiary exemplars, or rubrics to demonstrate how it will objectively measure school and division compliance with each of the Standards of Accreditation described in subsection B of this section. All such guidance shall be submitted to the board for approval and final guidance shall be published on the department's website and directly provided to local school divisions.

Regulations

B. The principal of each new or existing school and the division superintendent shall annually document and report to the Department of Education, in a manner prescribed by the board, satisfactory evidence of the following:

1. The division's promotion and retention policies have been developed in accordance with the requirements of 8VAC20-132-40;

2. Compliance with the requirements to offer courses that shall allow students to complete the graduation requirements in 8VAC20-132-50 and 8VAC20-132-51, as applicable;

3. The school and school division's ability to offer the instructional program prescribed in 8VAC20-132-70 through 8VAC20-132-100;

4. The school and school division's offering of history and social science and English, to include writing, as prescribed in 8VAC20-132-70 C;

5. Compliance with the leadership and staffing requirements of 8VAC20-132-200 through 8VAC20-132-230;

6. Compliance with the facilities and safety provisions of 8VAC20-132-240;

7. Compliance with the parental notification provisions of 8VAC20-132-250 B;

8. The Standards of Learning have been fully incorporated into the school division's curriculum in all accreditation-eligible schools, and the Standards of Learning material is being taught to all students eligible to take the SOL tests;

9. A long-range comprehensive plan for the division and a comprehensive, unified, long-range school plan has been prepared and implemented as required by the Standards of Quality in accordance with § 22.1-253.13:6 C of the Code of Virginia for each division and school. The comprehensive plans shall be reviewed and updated as needed on an annual basis. Such plans shall be published on the website of each division and school and be available to students, parents, staff, and the public. Each comprehensive division and school plan shall be evaluated as part of the development of the next plan.

To develop such plans, each school shall conduct a comprehensive needs assessment in collaboration with its school division staff to identify needed actions to ensure continuous improvement for its students. For schools receiving comprehensive, targeted, or additional targeted support, results of the needs assessment shall be used to develop the multi-year school support plan, consistent with the requirements specified in 8VAC20-132-280, which shall be included in the school's comprehensive, unified, long-range plan;

10. Actions prescribed by 8VAC20-132-280 have been completed, and in the case of a school identified for comprehensive support, a corrective action plan for

continuous improvement aligned to its multi-year school support plan demonstrates the support plan is being implemented with fidelity and the school is on track to improve student achievement, growth, and performance on other school quality indicators in 8VAC20-132-270 consistent with subsection C of this section; and

11. Actions taken to correct any noncompliance issues that the school reported in the previous year.

C. Accreditation designations. Effective no later than the academic year 2025-2026, schools shall be assigned one of the following accreditation designations.

1. Fully accredited.

a. For a school that is not identified for comprehensive support under 8VAC20-132-280 based on its performance on the school quality indicators in 8VAC20-132-270 B, once all required evidence in subsection B of this section is submitted to the department, deemed satisfactory, and approved for compliance, the school shall be designated "Fully Accredited."

b. If a school is identified for comprehensive support, the required evidence in subsection B of this section must be submitted to the department, deemed satisfactory, and approved for compliance along with a corrective action plan for continuous improvement. Such plan must demonstrate the school is faithfully implementing its department-approved multi-year school support plan under 8VAC20-132-280 and include data showing the school's progress in improving student achievement, growth, and performance on other school quality indicators.

If the school is not among the lowest performing 5.0% on the school quality indicators in the current year (or has improved the four-year adjusted cohort graduation rate above 67% for schools identified due to low graduation rates), the school shall be designated "Fully Accredited." Further, the board may grant an exception and designate schools identified for comprehensive support as "Fully Accredited" that have not met the progress threshold using current year data but are improving at a rate using data from previous years that would lead to the school meeting the exit criteria established by the board in 8VAC20-132-280 within the required timeline.

2. Conditionally accredited.

a. If any piece of required evidence in subsection B of this section is submitted to the department and determined to be unsatisfactory or noncompliant, a school shall be designated "Conditionally Accredited" until such school successfully submits additional evidence and is deemed to meet the conditions set forth in subsection B of this section by the department.

b. If the corrective action plan for continuous improvement submitted by a school identified for

comprehensive support does not demonstrate such school has improved from the lowest performing 5.0% on the school quality indicators in the current year (or improved the four-year adjusted cohort graduation rate above 67% for schools identified due to low graduation rates) or is improving at a rate using data from previous years that would lead to the school meeting the exit criteria established by the board in 8VAC20-132-280 within the required timeline, the school shall be designated "Conditionally Accredited." If a school identified for comprehensive support is "Conditionally Accredited," the department shall require and approve revisions to the school's multi-year support plan under 8VAC20-132-280 C 1 to include more rigorous actions to improve student achievement, growth, and performance on the school quality indicators.

3. Accreditation denied.

a. If a school is designated "Conditionally Accredited" and the school or school division fails to submit additional documentation consistent with subsection A of this section, it may be designated by the board as "Accreditation Denied."

b. If a school identified for comprehensive support is designated "Conditionally Accredited" and fails to submit, amend, adopt, and implement a revised multi-year support plan with more rigorous actions, the Superintendent of Public Instruction shall review the school for potential designation by the board as "Accreditation Denied" and shall present the results of such review to the board with recommendations. If the board determines that any such school is at not on track to improve student achievement, growth, and performance on other school quality indicators and meet the exit criteria in 8VAC20-132-280 due to its failure to adopt and implement a multi-year school support plan and corrective action plan with fidelity as required by this section, the board shall designate such school as "Accreditation Denied."

The local school board shall be given an opportunity to correct such failure, and if successful in a timely manner, the school's "Accreditation Denied" designation may be rescinded at the board's discretion.

c. If the board determines that the local school board failed to demonstrate progress in developing or implementing the corrective action plan on behalf of any school designated "Accreditation Denied," the local school board shall enter into a memorandum of understanding with the board, which shall delineate responsibilities for the local school board, the board, school division staff, school staff, and department staff and shall also include required goals, measurable objectives, and actions based on a division-level needs assessment to improve student achievement and to improve performance on school quality indicators. Department staff shall meet regularly with school division staff to monitor the memorandum of understanding and

corrective action plan, to track progress on the school quality indicators, and to identify next steps. School divisions that do not demonstrate evidence of progress under the memorandum of understanding and the associated corrective action plan shall be subject to additional actions, which may include more frequent meetings with department staff, required technical assistance, or appearance before the board.

D. Any school in violation of this chapter shall be subject to appropriate action by the board, including withholding the school's accreditation rating.

E. A school's accreditation rating may be withheld by action of the board for any school found to be in violation of test security procedures pursuant to § 22.1-19.1 of the Code of Virginia.

F. Review cycles. If a school has been designated "Fully Accredited" for three consecutive years and is not receiving comprehensive support as specified in 8VAC20-132-280, the board shall review the accreditation status of the school every three years. If a school is identified for comprehensive support during its triennial accreditation period, the school shall be required to receive approval from the department of its school support plan, consistent with 8VAC20-132-280, and submit a corrective action plan to the department consistent with subsection C of this section each subsequent year within that triennial period.

If the board finds that a school with multi-year accreditation status that is not identified for comprehensive support would have been accredited every year of the triennial review period, the board shall accredit the school for another three years. A multi-year accreditation status shall neither relieve any school or division of annual reporting requirements, nor relieve any school or division of annual review of school quality indicators used for school accountability and subsequent actions as appropriate and provided for in 8VAC20-132-270 and 8VAC20-132-280.

G. Division-level reviews and corrective actions. Because a high proportion of schools identified for support under 8VAC20-132-280 within a single division may be indicative of a division-level failure to implement the Standards of Quality or other division-level action or inaction, school divisions with at least 40% of their schools identified for comprehensive or additional targeted support or 10 or more schools identified for comprehensive support will be required to undergo a division-level academic and resource allocation review conducted by the department consistent with the Elementary and Secondary Education Act (Pub. L. No. 89-10, as amended).

After the completion of such review, the Superintendent of Public Instruction shall present the results of such review to the board with recommendations. Each local school board shall, within a time period specified by the board, enter into a

Regulations

memorandum of understanding with the board and shall subsequently submit to the board for approval a corrective action plan, consistent with criteria established by the board, delineating responsibilities for the local school board, the board, school division staff, school staff, and department staff and setting forth specific actions and a schedule designed to ensure that schools within its school division meet the standards established by the board and improve performance on the school quality indicators. If the board determines that the proposed corrective action plan is not sufficient to enable all schools within the division to meet the standards established by the board, the board may return the plan to the local school board with directions to submit an amended plan pursuant to board guidance. Such corrective action plans shall be part of the relevant school division's comprehensive plan pursuant to § 22.1-253.13:6 of the Code of Virginia.

Department staff shall meet regularly with school division staff to monitor the memorandum of understanding and corrective action plan, to track progress on the school quality indicators, and to identify next steps.

School divisions that do not demonstrate evidence of progress under the memorandum of understanding and the associated corrective action plan shall be subject to additional actions, which may include more frequent meetings with department staff, required technical assistance, or appearance before the board.

H. At-risk add-on funds. As provided in the appropriation act, if the board has required a local school board to submit a corrective action plan pursuant to § 22.1-253.13:3 A of the Code of Virginia, either for the school division pursuant to a division-level review or for any schools within its division that have been designated as not meeting the standards as approved by the board, the Superintendent of Public Instruction shall determine and report to the board whether each such local school board has met its obligation to develop and submit such corrective action plan and is making adequate and timely progress in implementing the plan. Additionally, if an academic review process undertaken pursuant to § 22.1-253.13:3 A of the Code of Virginia has identified actions for a local school board to implement, the Superintendent of Public Instruction shall determine and report to the board whether the local school board has implemented required actions. If the Superintendent of Public Instruction certifies that a local school board has failed or refused to meet any of those obligations, the board shall withhold payment of some or all at-risk add-on funds otherwise allocated to the affected division pursuant to this allocation for the pending fiscal year. In determining the amount of at-risk add-on funds to be withheld, the board shall take into consideration the extent to which such funds have already been expended or contractually obligated. The local school board shall be given an opportunity to correct its failure and if successful in a timely manner, may have some or all of its at-risk add-on funds restored at the board's discretion.

I. Additional remedies. The board may exercise its authority to seek school division compliance with school laws pursuant to the relevant provisions of the Code of Virginia when any

school within a division receives an accreditation designation other than "Fully Accredited."

In accordance with the Standards of Quality at § 22.1-253.13:8 of the Code of Virginia, if the board determines that a school division has failed or refused and continues to fail or refuse to comply with any of the Standards of Quality, including the requirement for local school boards to maintain schools designated as "Accredited" as provided in § 22.1-253.13:3 A of the Code of Virginia, the board may petition the circuit court having jurisdiction in the school division to mandate or otherwise enforce compliance with such standard, including the development or implementation of any required corrective action plan that a local school board has failed or refused to develop or implement in a timely manner.

J. The board shall provide a process for a local school board to appeal an accreditation designation under subsection C of this section for any school in the division. The board shall grant such appeals only in limited circumstances that warrant special consideration. In order to appeal such designation, the local school board shall submit a request to the board, signed by the chairman of the school board and the division superintendent, explaining why the school board is appealing the designation and shall include documentation supporting the request.

8VAC20-132-310. Waivers and alternative accreditation plans.

A. Except as specified in this section, the board may grant, for a period of up to five years, a waiver of requirements of this chapter that are not mandated by state or federal law or designed to promote health or safety. The board may grant all or a portion of the request for a waiver and designate conditions as appropriate. Waivers of requirements in 8VAC20-132-40, 8VAC20-132-50, 8VAC20-132-51, 8VAC20-132-70, and 8VAC20-132-260 through 8VAC20-132-320 shall not be granted, and no waiver may be approved for a program that violates the Standards of Quality.

B. Waivers of some of the requirements of this chapter may be granted by the board based on submission of a request from the division superintendent and chairman of the local school board. The request shall include documentation of the justification and need for the waiver. In no event shall waivers be granted to the requirements of Part III (8VAC20-132-40 et seq.) of this chapter, except that the board may provide for the waiver of certain graduation requirements and the subsequent award of a high school diploma in 8VAC20-132-50 and 8VAC20-132-51 upon (i) the board's initiative; (ii) the request of a local school board; or (iii) the request of the parent of any high school senior who died in good standing prior to graduation during the student's senior year. Such waivers shall be granted only for good cause and shall be considered on a case-by-case basis. The board shall develop guidelines for implementing this chapter.

Any student with a disability whose Individualized Education Program (IEP) or 504 Plan documents that the student cannot successfully complete training in emergency first aid, cardiopulmonary resuscitation, or the use of automated external defibrillators, including hands-on practice of the skills necessary to perform cardiopulmonary resuscitation, as required for graduation in 8VAC20-132-50 B 2 and C 2 and 8VAC20-132-51 B 2 and C 2 shall be granted a waiver from this graduation requirement.

C. Waivers for innovative or school experimental programs. With the approval of the local school board, schools seeking to implement experimental or innovative programs, or both, that are not consistent with this chapter shall submit a waiver request to the board for evaluation and approval prior to implementation. The request must include the following:

1. Purpose and objectives of the experimental or innovative programs;
2. Description and duration of the programs;
3. Anticipated outcomes;
4. Number of students affected;
5. Evaluation procedures; and
6. Mechanisms for measuring goals, objectives, and student academic achievement.

D. Alternative accreditation plans. Subject to the provisions of subsection B of this section, the governing school board of special purpose schools such as those provided for in § 22.1-26 of the Code of Virginia, Governor's schools, special education schools, alternative schools, or career and technical schools that serve as the student's school of principal enrollment may seek approval of an alternative accreditation plan from the board. Schools offering alternative education programs and schools with a graduation cohort of 50 or fewer students as defined by the graduation rate formula adopted by the board may request that the board approve an alternative accreditation plan using different graduation rate measures than those specified in 8VAC20-132-270 B. Special purpose schools with alternative accreditation plans shall be evaluated on standards appropriate to the programs offered in the school and approved by the board prior to August 1 of the school year for which approval is requested. Any student graduating from a special purpose school with a Standard Diploma or an Advanced Studies Diploma must meet the requirements prescribed in 8VAC20-132-50 or 8VAC20-132-51.

As set forth in the Standards of Quality and according to department procedures, any school board may request the board for release from state regulations or, on behalf of one or more of its schools, for approval of an Individual School Accreditation Plan for the evaluation of the performance of one or more of its schools as authorized for schools enumerated in this subsection, based on special circumstances.

8VAC20-132-320. Effective dates.

A. Graduation requirements.

1. The graduation requirements for students entering grade nine for the first time in the 2013-2014 school year and prior to the 2018-2019 school year shall be those provided in 8VAC20-132-50.

2. The graduation requirements for students entering grade nine for the first time in the 2018-2019 school year and beyond shall be those provided in 8VAC20-132-51.

3. The graduation requirements applicable to students transferring into a Virginia high school for the first time shall be as determined by 8VAC20-132-60 G.

B. Locally awarded verified credits.

1. Locally awarded verified credits conferred for English, mathematics, laboratory science, and history and social science for students entering grade nine for the first time prior to the 2018-2019 school year shall be as provided in 8VAC20-132-110 B 3 a.

2. Locally awarded verified credits conferred for English, mathematics, laboratory science, and history and social science for students entering grade nine for the first time in 2018-2019 or thereafter shall be as provided in 8VAC20-132-110 B 3 b.

C. Academic and career planning.

1. The requirements for academic and career planning prescribed in 8VAC20-132-140 B shall be effective beginning with the 2013-2014 academic year and through the 2017-2018 academic year.

2. The requirements for Academic and Career Plans prescribed in 8VAC20-132-140 C shall be effective beginning with the 2018-2019 academic year.

D. Unless otherwise specified, the remainder of this chapter shall become effective beginning with the 2025-2026 academic year.

VA.R. Doc. No. R24-7679; Filed August 6, 2024, 1:56 p.m.

Forms

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

Title of Regulation: 8VAC20-850. Voluntary Registration of Family Day Homes - Requirements for Providers.

Effective Date: August 26, 2024.

Agency Contact: Jessica Silva, Office of Child Care Licensing, Virginia Department of Education, P.O. Box 2120, Richmond,

Regulations

VA 23218, telephone (804) 298-5715, or email jessica.silva@doe.virginia.gov.

FORMS (8VAC20-850)

~~Voluntary Registration Health and Safety Checklist (eff. 7/1/21)~~

[Voluntary Registration Health and Safety Checklist \(rev. 7/2024\)](#)

[Voluntary Registration Provider Application Form \(eff. 7/2021\)](#)

VA.R. Doc. No. R24-8008; Filed July 23, 2024, 9:19 a.m.

COLLEGE OF WILLIAM AND MARY; RICHARD BLAND COLLEGE

Final Regulation

REGISTRAR'S NOTICE: College of William and Mary, Richard Bland College is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC115-10. Motor Vehicles Parking and Traffic Regulations (repealing 8VAC115-10-10 through 8VAC115-10-430).**

Statutory Authority: §§ 23.1-1301 and 23.1-2806 of the Code of Virginia.

Effective Date: August 9, 2024.

Agency Contact: Carla Costello, Executive Assistant, College of William and Mary; Richard Bland College, 250 James Blair Drive, Williamsburg, VA 23185, telephone (757) 221-1254, or email cacostello@wm.edu.

Summary:

This regulatory action repeals Motor Vehicles Parking and Traffic Regulations (8VAC115-10) in its entirety. Another regulatory action (published simultaneously) replaces the chapter with rules enforcing applicable current university policies, Parking and Traffic Regulations (8VAC115-11).

VA.R. Doc. No. R25-7959; Filed August 5, 2024, 2:18 p.m.

Final Regulation

REGISTRAR'S NOTICE: College of William And Mary; Richard Bland College is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC115-11. Parking and Traffic Regulations (adding 8VAC115-11-10 through 8VAC115-11-70).**

Statutory Authority: §§ 23.1-1301 and 23.1-2806 of the Code of Virginia.

Effective Date: August 9, 2024.

Agency Contact: Carla Costello, Executive Assistant, College of William And Mary; Richard Bland College, 250 Jamestown Road, Williamsburg, VA 23185, telephone (757) 221-1254, or email cacostello@wm.edu.

Summary:

This action replaces Motor Vehicles Parking and Traffic Regulations (8VAC115-10) with Parking and Traffic Regulations (8VAC115-11) and includes provisions (i) requiring a parking permit and exceptions to that requirement, (ii) establishing where parking is allowed, (iii) providing for enforcement of the chapter requirements, (iv) designating who will be responsible for such enforcement, and (v) establishing a process for appeals.

Chapter 11

Parking and Traffic Regulations

8VAC115-11-10. Scope.

This chapter applies to all William & Mary faculty, staff, students, contractors, alumni, visitors, and all other persons who operate a motor vehicle on university property or use university-owned or university-leased parking facilities.

8VAC115-11-20. Definitions.

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

"William & Mary" means the College of William & Mary in Virginia, including the Virginia Institute of Marine Science.

"University policies" includes the William & Mary Parking Services Rules & Regulations as published on the website for William & Mary's Office of Parking and Transportation Services and amended from time to time.

"University property" means any property owned, leased, or controlled by William & Mary.

"Visitor" means any unaffiliated person on university property who is not a faculty member, staff member, student, vendor, contractor, or alumni of the university.

8VAC115-11-30. Decal or permit required; exceptions.

A. All motor vehicles parked on university property are required to properly display a valid William & Mary parking permit in accordance with university policies.

B. The following exceptions apply:

1. Visitors are required to park in (i) designated areas with the appropriate permit or pass obtained from Parking Services or (ii) pay areas. If parked in a pay area, visitors are required to pay the prevailing rate.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC5-30. Ambient Air Quality Standards (adding 9VAC5-30-68).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; Clean Air Act §§ 108, 109, 302; 40 CFR 50.20, 40 CFR Part 53, 40 CFR Part 58.

Effective Date: September 25, 2024.

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

Summary:

Pursuant to a federal Environmental Protection Agency revision to the National Ambient Air Quality Standard for PM_{2.5} (particles in the ambient air with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) that set the annual arithmetic mean concentration at 9.0 micrograms per cubic meter (µg/m³), the amendments add a section to 9VAC5-30, which contains the specific criteria pollutant standards set out in 40 CFR Part 50, conforming Virginia's regulation to the federal standard.

9VAC5-30-68. Particulate matter (PM_{2.5}).

A. The national primary ambient air quality standards for PM_{2.5} are 9.0 micrograms per cubic meter (µg/m³) annual arithmetic mean concentration and 35 µg/m³ 24-hour average concentration measured in the ambient air as PM_{2.5} (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by either:

1. A reference method based on Appendix L to 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or
2. An equivalent method designated in accordance with 40 CFR Part 53.

B. The primary annual PM_{2.5} standard is met when the annual arithmetic mean concentration, as determined in accordance with Appendix N to 40 CFR Part 50, is less than or equal to 9.0 µg/m³.

2. Parking Services may designate specific parking areas, issue special permits, or issue notices related to special events. Parking related to these special events shall be in accord with the specific parking areas, special permits, or notices. Individuals visiting William & Mary for special events may only park in areas designated for the event by Parking Services or may park in any other pay visitor area.

3. Other exceptions may apply in accordance with university policies.

8VAC115-11-40. Parking.

Parking is permitted in authorized, clearly identified spaces only. Parking is not allowed in or on lawns, loading zones, pedestrian crosswalks, handicap spaces, handicap access ramps, yellow lines or curbs, service areas, service vehicle spaces, sidewalks, or unmarked areas without specific authorization.

8VAC115-11-50. Enforcement.

A. All regulations enacted by the Commonwealth of Virginia and William & Mary are duly enforced. Motor vehicles in violation of this chapter may be subject to penalties in accord with university policies, including citation, fine, immobilization, towing, or impoundment, at the owner's risk and expense.

B. If a vehicle is displaying a valid William & Mary parking permit and incurs a citation for violation of this chapter, the registered owner of the permit will be held responsible for all citations and fines.

C. If a vehicle is not displaying a valid William & Mary parking permit and incurs a citation for violation of this chapter, the registered owner of the vehicle will be held responsible for all citations and fines. However, the registered owner of a vehicle is ultimately responsible for all violations issued to that vehicle, regardless of who is operating the vehicle.

D. Any person shall abide by instructions of William & Mary police officers or parking services enforcement personnel. When in conflict with this chapter, the instructions of the enforcement personnel shall supersede.

8VAC115-11-60. Persons lawfully in charge.

In addition to individuals authorized by university policies, William & Mary police officers are lawfully in charge for the purposes of enforcing violations of this chapter.

8VAC115-11-70. Appeals.

All individuals who receive a violation under this chapter have a right to appeal the violation as dictated by university policies. All individuals who operate a vehicle on university property give implied consent to first address citation appeals through the university's administrative appeal process.

VA.R. Doc. No. R25-7960; Filed August 5, 2024, 2:14 p.m.

Regulations

C. The primary 24-hour PM_{2.5} standard is met when the 98th percentile 24-hour concentration, as determined in accordance with Appendix N to 40 CFR Part 50, is less than or equal to 35 µg/m³.

V.A.R. Doc. No. R25-7877; Filed August 7, 2024, 8:55 a.m.

Final Regulation

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

Title of Regulation: **9VAC5-91. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area (amending 9VAC5-91-665).**

Statutory Authority: § 46.2-1180 of the Code of Virginia; § 182 of the Clean Air Act; 40 CFR Part 51, Subpart S.

Effective Date: September 25, 2024.

Agency Contact: Karen Collins, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1941, or email karen.collins@deq.virginia.gov.

Summary:

Pursuant to Chapters 634 and 676 of the 2024 Acts of Assembly, the amendment raises the fee to be charged by the inspection and maintenance program coordinator for each certified analyzer system to \$5,000 per year.

9VAC5-91-665. Warranty; service contract with program coordinator.

A. On or after July 1, 2013, and upon designation of a program coordinator, a service contract approved by the department shall be established between each inspection station owner and the program coordinator providing, at a minimum, the following services:

1. The delivery, installation, calibration, and verification of the proper operating condition of an analyzer system that has been certified in writing by the department.
2. The instruction of all inspectors currently employed by the emissions inspection station at the time of installation to include ~~but not be limited to:~~
 - a. The proper use, maintenance, and operation of the exhaust analyzer system;
 - b. The step-by-step procedure for performing an emissions inspection, including OBD system test as appropriate;
 - c. The proper safety precautions for dynamometer use; and
 - d. The proper safety precautions for exhaust and calibration gas ventilation procedures.

B. The agreement shall provide for equipment maintenance and service or replacement of components of the certified analyzer system including dynamometer control devices, optional analyzer equipment, and dynamometer preventative maintenance. Repair or replacement of analyzer system components, other than minimal maintenance items established in the service contract, must be performed by the program coordinator or his authorized agent.

C. The fee to be charged by the program coordinator for each certified analyzer system shall be determined by the department and shall not exceed ~~\$3,500~~ \$5,000 per year, not including optional devices and services and minimal maintenance items established in the service contract.

D. The program coordinator may contract with the inspection station to provide services or equipment beyond the minimum requirements of the contract specified in subsection A of this section.

V.A.R. Doc. No. R25-7879; Filed August 7, 2024, 8:54 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

Forms

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

Title of Regulation: **9VAC20-121. Regulated Medical Waste Management Regulations.**

Agency Contact: Jenny Poland, Solid Waste Permit Coordinator, Department of Environmental Quality, 901 Russell Drive, Salem, VA 24153, telephone (540) 759-9840, or email jenny.poland@deq.virginia.gov.

FORMS (9VAC20-121)

[Solid Waste Management Facility Permit Applicant's Disclosure Statement \(Cover Sheet\), DEQ Form DISC 01 \(rev. 9/2020\)](#)

[Solid Waste Management Facility Permit Applicant's Disclosure Statement - Key Personnel Statement, DEQ Form DISC 02 \(rev. 9/2020\)](#)

[Local Government Certification Request, DEQ Form CERT 01 \(rev. 8/2018\)](#)

~~[Regulated Medical Waste Management Facility Permit by Rule Form, DEQ Form RMW-PBR \(eff. 1/2022\)](#)~~

~~[Application for Evaluation and Approval of Regulated Medical Waste Treatment Technology, DEQ Form RMWTP 01 \(rev. 9/2018\)](#)~~

[Regulated Medical Waste Management Facility Permit by Rule Form, DEQ Form RMW PBR \(rev. 3/2023\)](#)

[Application for Evaluation and Approval of Regulated Medical Waste Treatment Technology, DEQ Form RMWTP 01 \(rev. 3/2023\)](#)

VA.R. Doc. No. R25-7989; Filed August 1, 2024, 1:03 p.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with (i) § 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 where no agency discretion is involved and (ii) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-950, 9VAC25-31-960, 9VAC25-31-970, 9VAC25-31-980, 9VAC25-31-1010, 9VAC25-31-1020, 9VAC25-31-1030).**

9VAC25-115. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities (amending 9VAC25-115-50).

9VAC25-151. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (amending 9VAC25-151-60, 9VAC25-151-70, 9VAC25-151-400).

9VAC25-210. Virginia Water Protection Permit Program Regulation (amending 9VAC25-210-60).

9VAC25-830. Chesapeake Bay Preservation Area Designation and Management Regulations (amending 9VAC25-830-40, 9VAC25-830-130, 9VAC25-830-140, 9VAC25-830-150).

9VAC25-890. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s) (amending 9VAC25-890-1, 9VAC25-890-20, 9VAC25-890-30, 9VAC25-890-40).

9VAC25-900. Certification of Nonpoint Source Nutrient Credits (amending 9VAC25-900-10, 9VAC25-900-40, 9VAC25-900-60, 9VAC25-900-90, 9VAC25-900-100, 9VAC25-900-110, 9VAC25-900-120, 9VAC25-900-230).

Statutory Authority:

§ 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, 124, 403, and 503 (9VAC25-31).

§ 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124 (9VAC25-115, 9VAC25-151).

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (9VAC25-210).

§§ 62.1-44.15:69 and 62.1-44.15:72 of the Code of Virginia (9VAC25-830).

§ 62.1-44.15:28 of the Code of Virginia (9VAC25-890).

§ 62.1-44.19:20 of the Code of Virginia (9VAC25-900).

Effective Date: September 25, 2024.

Agency Contact: Rebecca W. Rochet, P.E, Deputy Director, Division of Water Permitting, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2950, or email rebeccah.rochet@deq.virginia.gov.

Summary:

The amendments update references to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) that became effective July 1, 2024. Pursuant to Chapters 68 and 758 of the 2016 Acts of Assembly, the amendments also reflect changes to the Code of Virginia that became effective July 1, 2024.

9VAC25-31-950. Purpose and scope.

A. This part, in conjunction with the reporting requirements specified in this chapter and ~~9VAC25-870~~ 9VAC25-875, specifies the requirements for:

1. Electronic reporting of information by VPDES permittees;
2. Facilities or entities seeking coverage under VPDES general permits;
3. Facilities or entities submitting stormwater certifications or waivers from VPDES permit requirements;
4. Industrial users located in municipalities without approved local pretreatment programs; and
5. Approved pretreatment programs.

B. Proper collection, management, and sharing of the data and information listed in Appendix A of 40 CFR Part 127, as adopted by reference in 9VAC25-31-1030, ensures that there is timely, complete, accurate, and nationally consistent set of data about the NPDES program.

9VAC25-31-960. Definitions.

In addition to the definitions given in Part I (9VAC25-31-10 et seq.) of this chapter, the following definitions apply to this part.

Regulations

"NPDES data group" means the group of related data elements identified in Table 1 in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030. These NPDES data groups have similar regulatory reporting requirements and have similar data sources.

"Minimum set of NPDES data" means the data and information listed in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

"Program reports" means the information reported by VPDES-regulated entities and listed in Table 1 of Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, except NPDES Data Groups 1, 2, and 3.

"VPDES-regulated entity" means any entity regulated by the VPDES Program in accordance with this chapter or ~~9VAC25-870~~ 9VAC25-875.

9VAC25-31-970. Types of data to be reported electronically by VPDES permittees, facilities, and entities subject to this part.

A. VPDES-regulated entities must electronically submit the minimum set of NPDES data for these reports if such reporting requirements are applicable. The following reports are the source of the minimum set of data from regulated entities:

1. Discharge Monitoring Report (9VAC25-31-190 and ~~9VAC25-870-430~~ 9VAC25-875-1000);
2. Concentrated Animal Feeding Operation (CAFO) Annual Program Report (9VAC25-31-200);
3. Pretreatment Program Annual Report (9VAC25-31-840);
4. Sewer Overflow and Bypass Incident Event Report (9VAC25-31-190 and ~~9VAC25-870-430~~ 9VAC25-875-1000);
5. CWA § 316(b) Annual Reports (9VAC25-31-165); and
6. Municipal Separate Storm Sewer System (MS4) Program Reports (~~9VAC25-870-400~~ 9VAC25-875-970 and ~~9VAC25-870-440~~ 9VAC25-875-1010).

B. Facilities or entities seeking coverage under or termination from general permits and facilities or entities submitting stormwater certifications or waivers from VPDES permit requirements must electronically submit the minimum set of NPDES data for the following notices, certifications, and waivers if such reporting requirements are applicable:

1. Notice of intent (NOI) to discharge by facilities seeking coverage under a general VPDES permit rather than an individual VPDES permit, as described in 9VAC25-31-170 B 2 and ~~9VAC25-870-410~~ 9VAC25-875-980;
2. Notice of termination (NOT), as described in 9VAC25-31-410 and ~~9VAC25-870-650~~ 9VAC25-875-1250;
3. No exposure certification (NOE), as described in 9VAC25-31-120 E 1 c; and

4. Certification in support of waiver for stormwater discharge associated with small construction activity, as described in ~~9VAC25-870-10~~ 9VAC25-875-20.

C. Industrial users located in municipalities without approved local pretreatment programs must electronically submit the minimum set of NPDES data for the following self-monitoring reports if such reporting requirements are applicable:

1. Periodic reports on continued compliance, as described in 9VAC25-31-840 E; and
2. Reporting requirements for industrial users not subject to categorical pretreatment standards, as described in 9VAC25-31-840 H.

D. The minimum set of NPDES data for VPDES-regulated facilities is identified in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

9VAC25-31-980. Signature and certification standards for electronic reporting.

The signatory and certification requirements identified in 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110 or ~~9VAC25-870-370~~ 9VAC25-875-940 as appropriate, and 9VAC25-31-840 L shall also apply to electronic submissions of information by VPDES permittees, facilities, and entities subject to this part.

9VAC25-31-1010. Waivers from electronic reporting.

A. VPDES permittees, facilities, and entities subject to this part must electronically submit the minimum set of NPDES data in compliance with this part, 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110 or ~~9VAC25-870-370~~ 9VAC25-875-940 as appropriate, and 9VAC25-31-840 L unless a waiver is granted in compliance with this section.

B. Temporary waivers from electronic reporting may be granted by the department for programs for which the department has received authorization to implement the NPDES program, in compliance with this section, to VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A).

1. Each temporary waiver must not extend beyond five years. However, VPDES-regulated entities may reapply for a temporary waiver. It is the duty of the owner, operator, or duly authorized representative of the VPDES permittee, facility, and entity subject to this part to reapply for a new temporary waiver. The department cannot grant a temporary waiver to a VPDES-regulated entity without first receiving a temporary waiver request from the VPDES-regulated entity.

2. To apply for a temporary waiver, the owner, operator, or duly authorized representative of the VPDES permittee, facility, and entity subject to this part must submit the following information to their authorized VPDES program:

- a. Facility name;
- b. VPDES permit number (if applicable);
- c. Facility address;
- d. Name, address, and contact information for the owner, operator, or duly authorized facility representative;
- e. Brief written statement regarding the basis for claiming such a temporary waiver; and
- f. Any other information required by the department.

3. The department will determine whether to grant a temporary waiver. The department shall provide notice to the owner, operator, or duly authorized facility representative submitting a temporary waiver request in compliance with the requirements of subsection E of this section.

4. VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A) that have received a temporary waiver must continue to provide the minimum set of NPDES data (as well as other required information in compliance with statutes, regulations, the VPDES permit, another control mechanism, or an enforcement order) in hard-copy format to the department. The department shall electronically transfer these data to EPA in accordance with 40 CFR Part 127 Subpart C.

5. An approved temporary waiver is not transferrable.

C. Permanent waivers from electronic reporting may be granted by the department for programs for which the department has received authorization to implement the NPDES program, in compliance with this section, to VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A).

1. Permanent waivers are only available to facilities and entities owned or operated by members of religious communities that choose not to use certain modern technologies (e.g., computers, electricity). The department cannot grant a permanent waiver to a VPDES-regulated entity without first receiving a permanent waiver request from the VPDES-regulated entity.

2. To apply for a permanent waiver, the owner, operator, or duly authorized representative of the VPDES permittee, facility, and entity subject to this part must submit the information listed in subdivision B 2 of this section to the department.

3. An approved permanent waiver is not transferrable.

4. VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A) that have received a permanent waiver shall continue to provide the minimum set of NPDES data (as well as other required information in compliance with statutes, regulations, the VPDES permit, another control mechanism, or an enforcement order) in hard-copy format to the department. The department shall

electronically transfer these data to EPA in accordance with 40 CFR Part 127 Subpart C.

D. Episodic waivers from electronic reporting may be granted by the department for programs for which the department has received authorization to implement the NPDES program, in compliance with this section, to VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A). The following conditions apply to episodic waivers.

1. No waiver request from the VPDES permittee, facility, or entity is required to obtain an episodic waiver from electronic reporting.

2. Episodic waivers are not transferrable.

3. Episodic waivers cannot last more than 60 days.

4. The department will decide if the episodic waiver provision allows facilities and entities to delay their electronic submissions or to send hard-copy (paper) submissions. Episodic waivers are only available to facilities and entities in the following circumstances:

a. Large scale emergencies involving catastrophic circumstances beyond the control of the facilities, such as forces of nature (e.g., hurricanes, floods, fires, earthquakes) or other national disasters. The department will make the determination if an episodic waiver is warranted in this case and must receive the hard-copy (paper) submissions.

b. Prolonged electronic reporting system outages (i.e., outages longer than 96 hours). The department, will make the determination if an episodic waiver is warranted in this case and must receive the hard-copy (paper) submissions.

E. Responsibilities regarding review of waiver requests from VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A).

1. Under this section, a VPDES permittee, facility, or entity subject to this part (see 9VAC25-31-950 A) may seek a waiver from electronic reporting. The department shall review the temporary or permanent waiver requests that it receives and either approve or reject these requests within 120 days.

2. The department shall provide the permittee, facility, or entity with notice of the approval or rejection of their temporary or permanent waiver request from electronic reporting.

3. The department shall electronically transfer to EPA the minimum set of NPDES data as specified in Appendix A of 40 CFR Part 127, as adopted by reference in 9VAC25-31-1030, that they receive from permittees, facilities, or entities with a waiver from electronic reporting in accordance with 40 CFR 127.23.

4. Under subsection D of this section, episodic waivers from electronic reporting may be granted by the department to

Regulations

VPDES permittees, facilities, and entities. The department granting an episodic waiver must provide notice, individually or through means of mass communication, regarding when such an episodic waiver is available, the facilities and entities that may use the episodic waiver, the likely duration of the episodic waiver, and any other directions regarding how facilities and entities should provide the minimum set of NPDES data, as well as other required information in compliance with statutes, regulations, the VPDES permit, another control mechanism, or an enforcement order, to the department. No waiver request from the VPDES permittee, facility, or entity is required to obtain an episodic waiver from electronic reporting. The department granting the episodic waiver will determine whether to allow facilities and entities to delay

their electronic submissions for a short time (i.e., no more than 40 days) or to send hard-copy (paper) submissions.

9VAC25-31-1020. Implementation of electronic reporting requirements for VPDES permittees, facilities, and entities subject to this part.

A. VPDES permittees, facilities, and entities subject to this part, with the exception of those covered by waivers under 9VAC25-31-1010, must electronically submit the following VPDES information (reports, notices, waivers, and certifications) after the start dates listed in Table 1 of this subsection. This part is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of this part, the permittee may be required to report electronically if specified by a particular permit or if required to do so by state law.

Table 1—Start Dates for Electronic Submissions of VPDES Information

VPDES information	Start dates for electronic submissions
General Permit Reports	
Notices of Intent to discharge (NOIs) (9VAC25-31-170 B 2 and 9VAC25-870-410 9VAC25-875-980)	Start date will be provided in a schedule approved by the department.
Notices of Termination (NOTs) (9VAC25-31-410 and 9VAC25-870-650 9VAC25-875-1250)	Start date will be provided in a schedule approved by the department.
No Exposure Certifications (NOEs) (9VAC25-31-120 E 1 c)	Start date will be provided in a schedule approved by the department.
Certifications in support of waiver for stormwater discharge associated with small construction activity (9VAC25-870-10 9VAC25-875-20)	Start date will be provided in a schedule approved by the department.
Discharge Monitoring Reports (9VAC25-31-190 L 4 and 9VAC25-870-430 L 4 9VAC25-875-1000 L 4, as applicable)	
Individual VPDES Permit - Major Facility (9VAC25-31)	January 26, 2018
Individual VPDES Permit - Minor Facility (9VAC25-31)	January 26, 2018
Watershed General VPDES Permit - Nutrient Discharges (9VAC25-820)	March 26, 2018
General VPDES Permit - Industrial Stormwater Discharges (9VAC25-151)	July 26, 2018
All Other General VPDES Permits	Start dates will be provided in a schedule approved by the department.
Concentrated Animal Feeding Operation (CAFO) Annual Program Reports (9VAC25-31-200 E 4)	Start date will be provided in a schedule approved by the department.
Municipal Separate Storm Sewer System (MS4) Program Reports (9VAC25-870-400 D 7-e 9VAC25-875-970 D 7 and 9VAC25-870-440 9VAC25-875-1010)	Start date will be provided in a schedule approved by the department.
POTW Pretreatment Program Annual Reports (9VAC25-31-840 I)	Start date will be provided in a schedule approved by the department.

Significant Industrial User Compliance Reports in Municipalities Without Approved Pretreatment Programs (9VAC25-31-840 E and H)	Start date will be provided in a schedule approved by the department.
Sewer Overflow or Bypass Event Reports (9VAC25-31-190 L and M and 9VAC25-870-430 L and M 9VAC25-875-1000 M and N)	Start date will be provided in a schedule approved by the department.
CWA 316(b) Annual Reports (9VAC25-31-165 B 6 b)	Start date will be provided in a schedule approved by the department.

B. VPDES permittees, facilities, and entities subject to this part shall electronically submit the information listed in Table 1 of this section in compliance with this part and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110 or ~~9VAC25-870-370~~ 9VAC25-875-940 as appropriate, and 9VAC25-31-840 L.

C. The department shall be the initial recipient as defined in 40 CFR 127.2(b) and as identified by EPA in 81 FR 62395 (September 9, 2016). VPDES permittees, facilities, and entities subject to this part shall electronically submit the information listed in Table 1 in this section to the department.

D. VPDES permittees, facilities, and entities subject to this part that have received a waiver from electronic reporting shall continue to provide the minimum set of NPDES data (as well as other required information in compliance with statutes, regulations, the VPDES permit, another control mechanism, or an enforcement order) to the department in accordance with 9VAC25-31-1010.

9VAC25-31-1030. Adoption by reference of Appendix A to 40 CFR Part 127—Minimum Set of NPDES Data.

A. Except as otherwise provided, the regulations of the U.S. Environmental Protection Agency set forth in Appendix A to 40 CFR Part 127 are hereby incorporated as part of this chapter and ~~9VAC25-870~~ 9VAC25-875.

B. In all locations in this chapter and ~~9VAC25-870~~ 9VAC25-875 where Appendix A to 40 CFR Part 127 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. The department shall be the initial recipient as defined in 40 CFR 127.2(b) and as identified by EPA in 81 FR 62395 (September 9, 2016). The department will be the initial recipient for all NPDES data groups except for the sewage sludge/biosolids annual program reports (40 CFR Part 503)

as Virginia is not authorized for the federal biosolids NPDES program.

2. NPDES-regulated entity shall be the same as VPDES-regulated entity.

3. The authorized NPDES program shall be the department for those NPDES program components for which EPA has granted the state authorization.

9VAC25-115-50. General permit.

Any owner whose registration statement is accepted by the board shall comply with the requirements of the general permit and be subject to all requirements of 9VAC25-31-170 of the VPDES Permit Regulation.

General Permit No.: VAG52
 Effective Date: July 24, 2021
 Expiration Date: June 30, 2026

GENERAL PERMIT FOR SEAFOOD PROCESSING FACILITIES

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

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

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

REGULATIONS

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. SEAFOOD PROCESSING NOT LIMITED ELSEWHERE IN PART I. A.— SIC 2091, 2092, 5142 AND 5146 SOURCES EXCEPT MECHANIZED CLAM FACILITIES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from seafood processing not otherwise classified from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/YEAR	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/YEAR	Grab
TSS	NL	NL	NA	NA	NA	1/YEAR	Composite
Oil and Grease	NL	NL	NA	NA	NA	1/YEAR	Grab
Production	NA	NL	NA	NA	NA	1/YEAR	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by the end of the calendar year and reported by the 10th of January of the following calendar year on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 3,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	0.74	2.2	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.20	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

REGULATIONS

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

3. CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	0.15	0.30	NA	1/3 Months	Composite
TSS	NL	NL	0.45	0.90	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.065	0.13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

4. MECHANIZED BLUE CRAB PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		

Regulations

Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12	36	NA	1/3 Months	Composite
Oil and Grease	NL	NL	4.2	13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

5. MECHANIZED BLUE CRAB PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	2.5	5.0	NA	1/3 Months	Composite
TSS	NL	NL	6.3	13	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.3	2.6	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

6. NON-BREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 2,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	38	110	NA	1/3 Months	Composite
Oil and Grease	NL	NL	12	36	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

7. NON-BREADED SHRIMP PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	25	63	NA	1/3 Months	Composite
TSS	NL	NL	10	25	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.6	4.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Regulations

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

8. BREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 2,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	93	280	NA	1/3 Months	Composite
Oil and Grease	NL	NL	12	36	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

9. BREADED SHRIMP PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab

BOD ₅	NL	NL	40	100	NA	1/3 Months	Composite
TSS	NL	NL	22	55	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.5	3.8	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

10. TUNA PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	3.3	8.3	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.84	2.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

11. TUNA PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) _____.

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

Regulations

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	8.1	20	NA	1/3 Months	Composite
TSS	NL	NL	3.0	7.5	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.76	1.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

12. CONVENTIONAL BOTTOM FISH PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 4,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s)

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	2.0	3.6	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.55	1.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

13. CONVENTIONAL BOTTOM FISH PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	0.71	1.2	NA	1/3 Months	Composite
TSS	NL	NL	0.73	1.5	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.042	0.077	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

14. MECHANIZED BOTTOM FISH PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12	22	NA	1/3 Months	Composite
Oil and Grease	NL	NL	3.9	9.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

Regulations

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

15. MECHANIZED BOTTOM FISH PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	7.5	13	NA	1/3 Months	Composite
TSS	NL	NL	2.9	5.3	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.47	1.2	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

16. HAND-SHUCKED CLAM PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 4,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s) _____.

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

Regulations

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	18	59	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

17. HAND-SHUCKED CLAM PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	17	55	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.21	0.56	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

18. HAND-SHUCKED OYSTER PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 1,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16	23	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Raw material = The weight of oyster meat after shucking.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

19. HAND-SHUCKED OYSTER PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16	23	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

Regulations

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

20. STEAMED AND CANNED OYSTER PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	190	270	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.7	2.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

21. STEAMED AND CANNED OYSTER PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s) _____.

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

Regulations

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	17	67	NA	1/3 Months	Composite
TSS	NL	NL	39	56	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.42	0.84	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

22. SCALLOP PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

23. SCALLOP PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

24. FARM-RAISED CATFISH PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 3,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	9.2	28	NA	1/3 Months	Composite
Oil and Grease	NL	NL	3.4	10	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

Regulations

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

25. FARM-RAISED CATFISH PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	2.3	4.6	NA	1/3 Months	Composite
TSS	NL	NL	5.7	11	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.45	0.90	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

26. HERRING PROCESSING—ALL

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) _____.

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

Regulations

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	24	32	NA	1/3 Months	Composite
Oil and Grease	NL	NL	10	27	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

27. HERRING PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) _____.

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

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	15	16	NA	1/3 Months	Composite
TSS	NL	NL	5.2	7.0	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.1	2.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

B. SPECIAL CONDITIONS APPLYING TO PART I A 1 THROUGH PART I A 27.

1. No sewage shall be discharged from a point source to surface waters at this facility except under the provisions of another VPDES permit specifically issued for that purpose.

2. There shall be no chemicals added to the water or waste to be discharged, other than those listed on the owner's accepted registration statement.

3. Wastewater should be reused or recycled to the maximum extent practicable.

4. The permittee shall comply with the following solids management plan:

a. There shall be no discharge of floating solids or visible foam in other than trace amounts.

b. All floors, machinery, conveyor belts, dock areas, etc. shall be dry swept or dry brushed prior to washdown.

c. All settling basins shall be cleaned frequently in order to achieve effective settling.

d. All solids resulting from the seafood processes covered under this general permit, other than oyster, clam, or scallop shells, shall be handled, stored, and disposed of so as to prevent a discharge to state waters of such solids or industrial wastes or other wastes from those solids.

e. The permittee shall install and properly maintain wastewater treatment necessary in order to remove organic solids present in the wastewater that may settle and accumulate on the substrate of the receiving waters in other than trace amounts.

f. All employees shall receive training relative to preventive measures to be taken to control the release of solids from the facility into surface waters.

5. Production to be reported and used in calculating effluent discharge levels in terms of kg/kkg shall be the weight in kilograms of raw material processed, in the form in which it is received at the processing plant, on the day of effluent sampling, except for the hand-shucked oyster, steamed and canned oyster, and scallop processing subcategories, for which production shall mean the weight of oyster or scallop meat after processing. The effluent levels in terms of kg/kkg shall be calculated by dividing the measured pollutant load in kg/day by the production level in kkg (thousands of kilograms).

6. The permittee shall notify the department as soon as they know or have reason to believe:

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

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

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

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

(4) The level established by the board.

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

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

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

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

(4) The level established by the board.

7. Compliance reporting and recordkeeping under Part I A.

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

Effluent Parameter	Quantification Level
BOD	2 mg/l
TSS	1.0 mg/l
Oil and Grease	5.0 mg/l

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

b. Recording results. Any concentration below the QL used in the analysis shall be recorded as "<QL" if it is less than the QL used in the analysis (the QL must be less than or equal to the QL in subdivision 7 a of this subsection. Otherwise the numerical value shall be recorded.

c. Monitoring results shall be recorded using the same number of significant digits as listed in the permit. Regardless of the rounding conventions used by the permittee (e.g., five always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

8. The discharges authorized by this permit shall be controlled as necessary to meet water quality standards in 9VAC25-260.

9. If a new process is added after coverage under the general permit is obtained, an amended registration statement must

be submitted at least 60 days prior to commencing operation of the new process or a later submittal approved by the board.

10. Notice of termination.

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

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

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

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

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

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

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

(2) Facility name and location;

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

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

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

(b) A statement indicating that operations have ceased at the facility, and there are no longer discharges from the facility;

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

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

(5) The following certification: "I certify under penalty of law that all wastewater and stormwater discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge seafood processing wastewater or, for facilities classified as SIC Code 2091 or 2092, stormwater associated with industrial activity in

accordance with the general permit, and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

c. The notice of termination shall be submitted to the department and signed in accordance with Part III K.

Part II Stormwater Management

The following stormwater management requirements apply only to seafood processors classified as Standard Industrial Classifications (SIC) Codes 2091 and 2092.

A. Monitoring and inspections.

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

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

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

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

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

Regulations

documented in the SWPPP. Acceptable documentation includes dates and times the outfalls were viewed or sampling was attempted, national Climatic Data Center weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

e. Representative outfalls – substantially identical stormwater discharges. If the facility has two or more outfalls that discharge substantially identical stormwater effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, frequency of discharges, and stormwater management practices occurring within the drainage areas of the outfalls, the permittee may conduct quarterly visual monitoring on the stormwater discharges of just one representative outfall.

f. Visual monitoring reports shall be maintained on-site with the SWPPP. The report shall include:

- (1) Outfall location;
- (2) Monitoring date and time;
- (3) Duration of storm event;
- (4) Rainfall measurement or estimate (in inches) of the storm event that generated the discharge;
- (5) Duration between the storm event sampled and the end of the previous measurable storm event;
- (6) Monitoring personnel;
- (7) Nature of the discharge (i.e., runoff or snow melt);
- (8) Visual quality of the stormwater discharge, including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution;
- (9) Probable sources of any observed stormwater contamination;
- (10) Why it was not possible to take the sample within the first 30 minutes (if applicable); and
- (11) Documentation to support substantially identical outfalls (if applicable) required by Part II A 1 e.

g. Corrective action. Whenever the visual monitoring shows evidence of stormwater pollution, the SWPPP and stormwater control measures shall be updated per Part II B.

2. Routine facility inspections. Personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of control measures shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater.

a. Inspections include loading and unloading areas, storage areas, including associated containment areas, waste management units, vents and stacks emanating from industrial activities, spoiled product and broken product container hold areas, animal holding pens, staging areas, air pollution control equipment, areas where spills or leaks

have occurred in the past three years, discharge points, and control measures.

b. At least one member of the pollution prevention team shall participate in the routine facility inspections.

c. The inspection frequency shall be specified in the SWPPP based upon a consideration of the level of industrial activity at the facility but shall be at a minimum of once per calendar quarter unless written approval is received from the department for less frequent intervals. Inspections shall be performed during operating hours. At least once each calendar year, the routine facility inspection shall be conducted during a period when a stormwater discharge is occurring.

d. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 60 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP and shall include at a minimum:

- (1) The inspection date;
- (2) The names of the inspectors;
- (3) Weather information and a description of any discharges occurring at the time of the inspection;
- (4) Any previously unidentified discharges of pollutants from the site;
- (5) Any control measures needing maintenance or repairs;
- (6) Any failed control measures that need replacement;
- (7) Any incidents of noncompliance observed; and
- (8) Any additional control measures needed to comply with the permit requirements.

e. Corrective action. Whenever the routine inspection shows evidence of stormwater pollution, the SWPPP and stormwater control measures shall be updated per Part II B.

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

3. Nonstormwater discharges.

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

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

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

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

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

B. Corrective actions. The permittee shall take corrective action whenever:

1. Routine facility inspections, visual monitoring, inspections by local, state, or federal officials, or any other process, observation, or event result in a determination that modifications to the stormwater control measures are necessary to meet the permit requirements;
2. The department determines, or the permittee becomes aware, that the stormwater control measures are not stringent enough for the discharge to meet applicable water quality standards.
3. The permittee shall review the SWPPP and modify it as necessary to address any deficiencies. Revisions to the

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

4. Any corrective actions taken shall be documented and retained with the SWPPP. Reports of corrective actions shall be signed in accordance with Part III K.

C. Stormwater pollution prevention plans (SWPPPs). An SWPPP shall be developed and implemented for the facility covered by this permit, which has stormwater discharges associated with industrial activity and is classified under SIC Code 2091 or 2092. The SWPPP is intended to document the selection, design, and installation of control measures, including BMPs, to minimize the pollutants in all stormwater discharges from the facility and to meet applicable effluent limitations and water quality standards.

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as an erosion and sediment control (ESC) plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the plan requirements of Part II C 2 (Contents of the SWPPP). If an ESC plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulations, 9VAC25-840 Stormwater Management Regulation (9VAC25-875). All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Part III C 2, the permittee shall develop the missing SWPPP elements and include them in the required plan.

1. Deadlines for SWPPP preparation and compliance.
 - a. Owners of facilities that were covered under the 2016 Seafood Processing Facilities General Permit who are continuing coverage under this general permit shall update

Regulations

and implement any revisions to the SWPPP within 60 days of the board granting coverage under this permit.

b. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit that elect to be covered under this general permit shall prepare and implement the SWPPP within 60 days of the board granting coverage under this permit.

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

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

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

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

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

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

(2) Site map. A site map identifying the following:

(a) The boundaries of the property and the size of the property in acres;

(b) The location and extent of significant structures and impervious surfaces;

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

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

(e) Locations of all water bodies receiving discharges from the site, including wetlands;

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

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

(h) Locations of stormwater outfalls, monitoring locations, an approximate outline of the area draining to each outfall, the drainage area of each outfall in acres, the longitude and latitude of each outfall, the location of any municipal separate storm sewer system (MS4)

conveyance receiving discharge from the facility, and each outfall identified with a unique numerical identification codes. For example: Outfall Number 001, Outfall Number 002, etc.;

(i) Location and description of all nonstormwater discharges;

(j) Location of any storage piles containing salt;

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

(l) Locations of vents and stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage area if exposed to precipitation or runoff.

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

(1) Activities in area. A list of the industrial activities exposed to stormwater;

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

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

d. Control measure considerations. Control measures shall be implemented for all the areas identified in Part II C 2 c (Summary of potential pollutant sources) to prevent or control pollutants in stormwater discharges from the

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

- (1) That preventing stormwater from coming into contact with polluting materials is generally more effective, and less costly, than trying to remove pollutants from stormwater;
- (2) Control measures generally must be used in combination with each other for most effective water quality protection;
- (3) Assessing the type and quantity of pollutants, including their potential to impact receiving water quality, is critical to designing effective control measures;
- (4) That minimizing impervious areas at the facility can reduce runoff and improve groundwater recharge and stream base flows in local streams (however, care must be taken to avoid groundwater contamination);
- (5) Flow attenuation by use of open vegetated swales and natural depressions can reduce instream impacts of erosive flows;
- (6) Conservation or restoration of riparian buffers will help protect streams from stormwater runoff and improve water quality; and
- (7) Treatment interceptors (e.g., swirl separators and sand filters) may be appropriate in some instances to minimize the discharge of pollutants.

e. Control measures. The permittee shall implement the following types of control measures to prevent and control pollutants in the stormwater discharges from the facility, unless it can be demonstrated and documented that such controls are not relevant to the discharges.

- (1) Good housekeeping. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants to stormwater discharges. The permittee shall perform the following good housekeeping measures to minimize pollutant discharges:
 - (a) The SWPPP shall include a schedule for regular pickup and disposal of waste materials along with routine inspections for leaks and conditions of drums, tanks, and containers;
 - (b) Sweep or vacuum as feasible;
 - (c) Store materials in containers constructed of appropriate materials;
 - (d) Manage all waste containers to prevent a discharge of pollutants;
 - (e) Minimize the potential for waste, garbage, and floatable debris to be discharged by keeping areas exposed

to stormwater free of such materials or by intercepting such materials prior to discharge; and

- (f) Implement BMPs to eliminate stormwater discharges of plastics.
 - (2) Eliminating and minimizing exposure. To the extent practicable, manufacturing, processing, and material storage areas, including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations, shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff. Unless infeasible, facilities shall implement the following:
 - (a) Use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from potential sources of pollutants;
 - (b) Locate materials, equipment, and activities so that potential leaks and spills are contained, or able to be contained, or diverted before discharge;
 - (c) Clean up spills and leaks immediately, upon discovery of the spills or leaks, using dry methods (e.g., absorbents) to prevent the discharge of pollutants;
 - (d) Store leaking vehicles and equipment indoors, or if stored outdoors, use drip pans and adsorbents;
 - (e) Utilize appropriate spill or overflow protections equipment;
 - (f) Perform all vehicle maintenance or equipment cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also capture any overspray; and
 - (g) Drain fluids from equipment and vehicles that will be decommissioned, and for any equipment and vehicles that remain unused for extended periods of time, inspect at least monthly for leaks.

(3) Preventive maintenance. The SWPPP shall include preventive maintenance that includes a description of procedures and a regular schedule for inspection of the following:

- (a) All control measures that includes a description of the back-up practices that are in place should a runoff event occur while a control measure is off line; and
 - (b) Testing, maintenance, and repairing of all industrial equipment and systems to avoid situations that could result in leaks, spills, and other releases of pollutants in stormwater discharged from the facility.
- (4) Spill prevention and response procedures. The SWPPP shall describe the procedures that will be followed for preventing and responding to spills and leaks, including:
- (a) Preventive measures, such as barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling;

Regulations

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

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

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

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

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

(7) Management of runoff. The plan shall describe the stormwater runoff management practices (i.e., permanent structural control measures) for the facility. These types of control measures shall be used to divert, infiltrate, reuse, or otherwise reduce pollutants in stormwater discharges from the site.

Structural control measures may require a separate permit under § 404 of the federal Clean Water Act and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

3. Signature and SWPPP review.

a. Signature and location. The SWPPP, including revisions to the SWPPP to document any corrective actions taken as required by Part II B, shall be signed in accordance with Part III K, dated, and retained on-site at the facility covered by this permit. All other changes to the SWPPP, and other permit compliance documentation, must be signed and dated by the person preparing the change or documentation.

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

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

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

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

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

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

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

e. There is an unauthorized discharge from the facility.

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

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

Part III

Conditions Applicable to All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.
4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

1. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individuals who performed the sampling or measurements;
 - c. The dates and times analyses were performed;
 - d. The individuals who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the

registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.
2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department. Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.
3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.
4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

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

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of

Regulations

this permit shall be submitted no later than 14 days following each schedule date.

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

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

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F (Unauthorized discharges); or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify (see Part III I 3) the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset, should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to

writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include any discharge resulting from:

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

I. Reports of noncompliance.

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

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

(1) Any unanticipated bypass; and

(2) Any upset that causes a discharge to surface waters.

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

(1) A description of the noncompliance and its cause;

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

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

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

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

3. The immediate (within 24 hours) reports required in Part III G, H, and I may be made to the department's regional office. Reports may be made by telephone, or online at <https://www.deq.virginia.gov/our-programs/pollution-response>.

For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

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

J. Notice of planned changes.

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

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

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

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

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified under Part I B 6; or

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

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

K. Signatory requirements.

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

a. For a corporation: by a responsible corporate officer. For the purposes of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of

making capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

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

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

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

c. The written authorization is submitted to the department.

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

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

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information,

Regulations

the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

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

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

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

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

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

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance,

adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

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

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

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

U. Bypass.

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

2. Notice.

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

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

3. Prohibition of bypass.

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

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

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

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

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

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

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

- a. An upset occurred and that the permittee can identify the causes of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required in Part III I; and
- d. The permittee complied with any remedial measures required under Part III S.

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

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

- 1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
- 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- 4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the federal Clean Water Act and the State Water Control Law, any substances or parameters at any location.

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

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the

permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permit coverage.

1. Permit coverage is not transferable to any person except after notice to the department.

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

- a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property unless permission for a later date has been granted by the board;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2.

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

9VAC25-151-60. Registration statement and stormwater pollution prevention plan (SWPPP).

A. An owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the VPDES general permit regulation for discharges of stormwater associated with industrial activity.

Any owner that was authorized to discharge under the industrial stormwater general permit that became effective on July 1, 2019, and that intends to continue coverage under this general permit shall review and update the stormwater pollution prevention plan (SWPPP) to meet all provisions of the general permit (9VAC25-151-70 et seq.) within 90 days of the department granting coverage under this permit. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit that wish to obtain coverage under this general permit shall prepare and implement a written SWPPP for the facility in accordance with the general permit (9VAC25-151-70 et seq.) before submitting the registration statement.

B. Deadlines for submitting registration statements.

- 1. Existing facilities.

Regulations

- a. Any owner that was authorized to discharge under the industrial stormwater general permit that became effective on July 1, 2019, and that intends to continue coverage under this general permit shall submit a complete registration statement to the department on or before May 1, 2024.
 - b. Any owner covered by a VPDES individual permit for stormwater discharges associated with industrial activity that is proposing to be covered under this general permit shall submit a complete registration statement at least 240 days before the expiration date of the VPDES individual permit.
 - c. Any owner of an existing facility with stormwater discharges associated with industrial activity, not currently covered by a VPDES permit, that is proposing to be covered under this general permit shall submit a complete registration statement to the department.
2. New facilities. Any owner proposing a new discharge of stormwater associated with industrial activity shall submit a complete registration statement at least 60 days before the date planned for the beginning of the industrial activity at the facility.
3. New owners of existing facilities. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall submit a complete registration statement within 30 days of the ownership change.
4. Late registration statements. Registration statements for existing facilities covered under subdivision 1 a of this subsection will be accepted after June 30, 2024, but authorization to discharge will not be retroactive.
- C. The required registration statement shall contain the following information:
1. Facility name and mailing address, owner name and mailing address, telephone number, and email address;
 2. Facility street address (if different from mailing address) or location (if the facility location does not have a mailing address);
 3. Facility operator (local contact) name, address, telephone number, and email address (if available) if different than owner;
 4. The nature of the business conducted at the facility to be covered under this general permit, including a description of the primary industrial activity and all other industrial activities that take place;
 5. The receiving waters of the industrial activity discharges;
 6. A determination of whether the facility will discharge to an MS4. If the facility discharges to an MS4, the facility owner must notify the owner of the MS4 of the existence of the discharge information and include that notification with the registration statement. The notice shall include the following information: the name of the facility, a contact person and telephone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number (if assigned by DEQ);
 7. The permit number for any existing VPDES permit assigned to the facility;
 8. An indication that an SWPPP has been prepared before submitting this registration statement by the owner of a new facility, a facility previously covered by an expiring individual permit, or an existing facility not currently covered by a VPDES permit;
 9. For each outfall, identification of up to four four-digit Standard Industrial Classification (SIC) Codes or two-letter Industrial Activity Codes that best represent the principal products or services rendered by the facility and major colocated industrial activities (two-letter Industrial Activity Codes are: HZ – hazardous waste treatment, storage, or disposal facilities; LF – landfills and disposal facilities that receive or have received any industrial wastes; SE – steam electric power generating facilities; or TW – treatment works treating domestic sewage);
 10. Identification of all applicable industrial sectors in this permit (as designated in Table 50-2) that cover the industrial activities at the facility, and major colocated industrial activities to be covered under this permit, and the stormwater outfalls associated with each industrial sector.
 - a. If the facility is a landfill (sector L), state the type of landfill (i.e., MSWLF (municipal solid waste landfill), CDD (construction debris and demolition), or other), and which outfalls (if any) receive contaminated stormwater runoff;
 - b. If the facility is a timber products operation (sector A), state which outfalls (if any) receive discharges from wet decking areas, and which outfalls (if any) collect runoff from areas where mulch dyeing operations (including loading, transporting, and storage) occur;
 - c. For all facilities, state any outfalls receiving discharges from coal storage piles;
 - d. If the facility manufactures asphalt paving and roofing materials (sector D), state which outfalls (if any) receive discharges from areas where production of asphalt paving emulsions or roofing emulsions occurs;
 - e. If the facility manufactures cement (sector E), state which outfalls (if any) receive discharges from material storage piles;
 - f. If a scrap recycling and waste recycling facility (sector N - SIC 5093) only receives source-separated recyclable materials, state which outfalls (if any) receive discharges from this activity. List the metals (if any) that are received; or

g. For primary airports subject to 40 CFR 449 (1,000 or more annual departures of nonpropeller aircraft), list the average deicing season and state which outfalls (if any) receive discharges from deicing or anti-icing operations;

11. List the following facility area information:

- a. The total area of the facility in acres;
- b. The total area of industrial activity of the facility in acres;
- c. The total impervious surface area of the industrial activity of the facility in acres;
- d. The impervious and total areas in acres draining to each industrial activity outfall at the facility. Outfalls shall be numbered using a unique numerical identification code for each outfall. For example: Outfall Number 001 or Outfall Number 002; and
- e. The latitude and longitude of each outfall location;

12. A site map depicting the following shall be included with the registration statement:

- a. The property boundaries;
- b. All industrial activity outfalls labeled with unique numerical identification for each outfall. Outfall numbering shall be the same as that used for the facility area information in subdivision 11 of this subsection; and
- c. All water bodies or MS4 conveyances, labeled with names if applicable, receiving stormwater discharges from the site;

13. Virginia's Phase I Chesapeake Bay TMDL Watershed Implementation Plan (November 29, 2010) states that wasteloads for future growth for new facilities in the Chesapeake Bay watershed with industrial stormwater discharges cannot exceed the nutrient and sediment loadings that were discharged before the land was developed for the industrial activity. For purposes of this permit regulation, facilities that begin construction after June 30, 2024, must be consistent with this requirement to be eligible for coverage under this general permit.

If this is a new facility that began construction after June 30, 2024, in the Chesapeake Bay watershed and is applying for first time general permit coverage, attach documentation to the registration statement to demonstrate:

- a. That the total phosphorus load does not exceed the greater of (i) the total phosphorus load that was discharged from the industrial area of the property before the land was developed for the new industrial activity or (ii) 0.41 pounds per acre per year (~~VSMR~~ VSMP water quality design criteria, 9VAC25-875-580). The documentation must include the measures and controls that were employed to meet this requirement, along with the supporting calculations. The owner may include additional nonindustrial land on the site as part of any plan to comply with the no net increase requirement. Consistent with the

definition of "site," this includes adjacent land used in connection with the facility. Compliance with the water quality design criteria may be determined utilizing the Virginia Runoff Reduction Method or another equivalent methodology approved by the department. Design specifications and pollutant removal efficiencies for specific BMPs can be found on the Virginia Stormwater BMP Clearinghouse website; or

- b. The owner may consider utilization of any pollutant trading or offset program in accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia, governing trading and offsetting, to meet the no net increase requirement;

14. State Corporation Commission entity identification number if the facility is required to obtain an entity identification number by law; and

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

D. The registration statement shall be signed in accordance with 9VAC25-31-110 A.

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

9VAC25-151-70. General permit.

Any owner whose registration statement is accepted by the director will receive the following general permit and shall comply with the requirements therein and be subject to the VPDES Permit Regulation, 9VAC25-31. Facilities with colocated industrial activities shall comply with all applicable monitoring and SWPPP requirements of each industrial activity sector of this chapter in which a colocated industrial activity is described. All pages of 9VAC25-151-70 and

Regulations

9VAC25-151-80 apply to all stormwater discharges associated with industrial activity covered under this general permit. Not all pages of 9VAC25-151-90 et seq. will apply to every permittee. The determination of which pages apply will be based on an evaluation of the regulated activities located at the facility.

General Permit No.: VAR05

Effective Date: July 1, 2024

Expiration Date: June 30, 2029

VPDES GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

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

The authorized discharge shall be in accordance with this cover page, the registration statement, Part I-Effluent Limitations, Monitoring Requirements and Special Conditions, Part II-Conditions Applicable to All VPDES Permits, Part III-Stormwater Pollution Prevention Plan, Part IV-Sector-Specific Permit Requirements, and Part V-Chesapeake Bay Total Maximum Daily Load Compliance as set forth in this general permit.

Part I

Effluent Limitations, Monitoring Requirements and Special Conditions

A. Effluent limitations and monitoring requirements.

There are four individual and separate categories of monitoring requirements that a facility may be subject to under this permit: (i) quarterly visual monitoring; (ii) benchmark monitoring of discharges associated with specific industrial activities; (iii) compliance monitoring for discharges subject to numerical effluent limitations; and (iv) monitoring of discharges to impaired waters, both those with an approved TMDL and those without an approved TMDL. The monitoring requirements and numeric effluent limitations applicable to a facility depend on the types of industrial activities generating stormwater runoff from the facility, and for TMDL monitoring, the location of the facility's discharge. Part IV of the permit identifies monitoring requirements applicable to specific sectors of industrial activity. The permittee shall review Part I A 1 and Part IV of the permit to determine which monitoring requirements and numeric limitations apply to the permittee's

facility. Unless otherwise specified, limitations and monitoring requirements under Part I A 1 and Part IV are additive.

Sector-specific monitoring requirements and limitations are applied discharge by discharge at facilities with colocated activities. Where stormwater from the colocated activities is commingled, the monitoring requirements and limitations are additive. Where more than one numeric limitation for a specific parameter applies to a discharge, compliance with the more restrictive limitation is required. Where benchmark, numerical effluent limitations, or TMDL monitoring requirements for a monitoring period overlap, the permittee may use a single sample to satisfy monitoring requirements.

1. Types of monitoring requirements and limitations.

a. Quarterly visual monitoring. The requirements and procedures for quarterly visual monitoring are applicable to all facilities covered under this permit, regardless of the facility's sector of industrial activity.

(1) The permittee shall perform and document a quarterly visual examination of a stormwater discharge associated with industrial activity from each outfall, except discharges exempted in Part I A 3 or A 4. The visual examinations shall be made at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December. The visual examination shall be made during normal working hours, where practicable, and when considerations for safety and feasibility allow. If no storm event resulted in runoff from the facility during a monitoring quarter, the permittee is excused from visual monitoring for that quarter provided that documentation is included with the monitoring records indicating that no runoff occurred.

(2) Samples shall be collected in accordance with Part I A 2. Sample examination shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution. The visual examination of the sample shall be conducted in a well-lit area. No analytical tests are required to be performed on the samples.

(3) The visual examination documentation shall be maintained on-site with the SWPPP. The documentation shall include the outfall location, the examination date and time, examination staff, the nature of the discharge (i.e., runoff or snow melt), visual quality of the stormwater discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution), and probable sources of any observed stormwater contamination.

b. Benchmark monitoring of discharges associated with specific industrial activities.

Table 70-1 identifies the specific industrial sectors subject to the benchmark monitoring requirements of this permit and the industry-specific pollutants of concern. The permittee shall refer to the tables found in the individual sectors in Part IV for benchmark monitoring concentration values. Colocated industrial activities at the facility that are described in more than one sector in Part IV shall comply with all applicable benchmark monitoring requirements from each sector.

The results of benchmark monitoring are primarily for the permittee to use to determine the overall effectiveness of the SWPPP in controlling the discharge of pollutants to receiving waters. Benchmark concentration values, included in Part IV of this permit, are not effluent limitations. Exceedance of a benchmark concentration does not constitute a violation of this permit and does not show that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP are necessary, unless justification is provided in a routine facility inspection. In addition, exceedance of benchmark concentrations may identify facilities that would be more appropriately covered under an individual, or alternative general permit where more specific pollution prevention controls could be required.

TABLE 70-1 INDUSTRIAL SECTORS SUBJECT TO BENCHMARK MONITORING		
Industry Sector ¹	SIC Code or Activity Code	Benchmark Monitoring Parameters
A	2421	TSS.
	2491	Arsenic, Chromium, Copper.
	2411	TSS.
	2426	TSS.
	2499 (24991303)	COD, TSS.
	2499 (Mulch Dyeing)	BOD, TSS, COD, Aluminum, Arsenic, Cadmium, Chromium, Copper, Selenium, Silver, Zinc, Total N, Total P.
B	2631	BOD.

C	2812-2819	Aluminum, Iron, Total N.
	2821-2824	Zinc.
	2841-2844	Total N, Zinc.
	2873-2879	Total N, Zinc, Total P.
	2875 (Composting Facilities)	TSS, BOD, COD, Ammonia, Total N, Total P.
D	2951, 2952	TSS.
E	3251-3259, 3261-3269	Aluminum.
	3274, 3275	TSS, pH.
F	3312-3317	Aluminum, Zinc.
	3321-3325	Aluminum, TSS, Copper, Zinc.
	3351-3357	Copper, Zinc.
	3363-3369	Copper, Zinc.
G ²	1021	TSS.
H	1221-1241	TSS, Aluminum.
K	HZ (Hazardous Waste Treatment, Storage, or Disposal)	TKN, TSS, TOC, Arsenic, Cadmium, Cyanide, Lead, Mercury, Selenium, Silver.
L	LF (Landfills, Land Application Sites, and Open Dumps)	TSS.
M	5015	TSS, Aluminum, Lead.
N	5093	Copper, Aluminum, Lead, Zinc, TSS, Cadmium, Chromium.
	4499	Aluminum, Cadmium, Chromium, Copper, Lead, Zinc, TSS.

Regulations

O	SE (Steam Electric Generating Facilities)	Facilities in Sector O are not subject to benchmark requirements.
Q	4412-4499 (except 4499 facilities as specified in Sector N)	TSS, Copper, Zinc.
	3731, 3732	TSS, Copper, Zinc.
U	2021-2026	BOD, TSS.
	2041-2048	TSS, TKN.
	2074-2079	BOD, Total N, TSS.
Y	3011-3069	Zinc.
AA	3411-3471, 3482-3499, 3911-3915	Aluminum, Copper, Zinc.
	3479	Zinc.
AB	3511-3599 (except 3571-3579)	TSS, TPH, Copper, Zinc.
AD	Nonclassified Facilities/Stormwater Discharges Designated by the department as Requiring Permits	As determined by the director.
AE	2611, 2621, 2652-2657, 2671-2679, 2833-2836, 2851, 2861-2869, 2891-2899, 3952, 3211, 3221, 3229, 3231, 3241, 3281, 3291-3299, 3331-3339, 3398, 3399, 3341, 1311, 1321, 1381-1389, 2911, 4512-4581, (TW) Treatment Works, 2011-2015, 2032-2038, 2051-2053, 2061-2068, 2082-2087, 2091-2099, 2111-2141, 2211-2299, 2311-2399, 3131-3199, 2434, 2511-2599, 2711-2796, 3081-3089, 3931, 3942-3949, 3951-3955 (except 3952), 3961, 3965, 3991-3999, 3111, 3711-3799 (except 3731, 3732 see Sector Q), 3571-3579, 3612-3699, 3812-3873	Facilities in Sector AE are not subject to benchmark monitoring requirements.
AF	4011, 4013, 4111-4173, 4212-4231, 4311, 5171	TSS.

¹Table does not include parameters for compliance monitoring under effluent limitations guidelines.
²See Sector G (Part IV G) for additional monitoring discharges from waste rock and overburden piles from active ore mining or dressing facilities, inactive ore mining or dressing facilities, and sites undergoing reclamation.

(1) Benchmark monitoring shall be performed for all benchmark parameters specified for the industrial sector applicable to a facility's discharge. Monitoring shall be performed at least once during each of the first four, and potentially all, monitoring periods after coverage under the permit begins. Monitoring begins with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2.

(2) Benchmark monitoring waivers for facilities testing below benchmark concentration values. Waivers from benchmark monitoring are available to facilities whose discharges are below benchmark concentration values on an outfall by outfall basis. Sector-specific benchmark monitoring is not required to be conducted in subsequent monitoring periods during the term of this permit provided:

(a) Samples were collected in four consecutive monitoring periods, and the average of the four samples for all parameters at the outfall is below the applicable benchmark concentration value in Part IV. Facilities that were covered under the 2019 industrial stormwater general permit may use sampling data from the last two monitoring periods of that permit and the first two monitoring periods of this permit to satisfy the four consecutive monitoring periods requirement;

(b) The facility is not subject to a numeric effluent limitation established in Part I A 1 c (1) (stormwater effluent limitations), Part I A 1 c (2) (coal pile runoff), or Part IV (Sector Specific Permit Requirements) for any of the parameters at that outfall; and

(c) A waiver request is submitted to and approved by the department. The waiver request shall be sent to the appropriate DEQ regional office, along with the supporting monitoring data for four consecutive monitoring periods, and a certification that, based on current potential pollutant sources and control measures used, discharges from the facility are reasonably expected to be substantially similar or cleaner compared to when the benchmark monitoring for the four consecutive monitoring periods was done.

Waiver requests will be evaluated by the department based on (i) benchmark monitoring results below the benchmark concentration values; (ii) a favorable compliance history (including inspection results); and (iii) no outstanding enforcement actions.

The monitoring waiver may be revoked by the department for cause. The permittee will be notified in writing that the monitoring waiver is revoked, and that the benchmark monitoring requirements are again in force and will remain in effect until the permit's expiration date.

(3) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C and retained in accordance with Part II B.

c. Compliance monitoring for discharges subject to numerical effluent limitations or discharges to impaired waters.

(1) Facilities subject to stormwater effluent limitation guidelines.

(a) Facilities subject to stormwater effluent limitation guidelines (see Table 70-2) are required to monitor the discharges to evaluate compliance with numerical effluent limitations. Industry-specific numerical limitations and compliance monitoring requirements are described in Part IV of the permit. Permittees with colocated industrial activities at the facility that are described in more than one sector in Part IV shall comply on a discharge-by-discharge basis with all applicable effluent limitations from each sector.

(b) Permittees shall monitor the discharges for the presence of the pollutant subject to the effluent limitation at least once during each of the monitoring periods after coverage under the permit begins. Monitoring begins with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2. The substantially identical outfall monitoring provisions (Part I A 2 f) are not available for numeric effluent limits monitoring.

(c) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas (40 CFR Part 429, Subpart I (established January 26, 1981))	A
Runoff from asphalt emulsion facilities (40 CFR Part 443 Subpart A (established July 24, 1975))	D
Runoff from landfills (40 CFR Part 445, Subpart A and B (established January 19, 2000))	K and L
Discharges from airport deicing operations (40 CFR Part 449 (established May 16, 2012))	Facilities subject to the effluent limitation guidelines in 40 CFR Part 449 may be covered under Sector AD.

(2) Facilities subject to coal pile runoff monitoring.

(a) Facilities with discharges of stormwater from coal storage piles shall comply with the limitations and monitoring requirements of Table 70-3 for all discharges containing the coal pile runoff, regardless of the facility's sector of industrial activity.

(b) Permittees shall monitor the stormwater discharges at least once during each of the monitoring periods after coverage under the permit begins. Monitoring begins with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2. The substantially identical outfall monitoring provisions (Part I A 2 f) are not available for coal pile numeric effluent limits monitoring.

(c) The coal pile runoff shall not be diluted with other stormwater or other flows to meet this limitation.

(d) If a facility is designed, constructed, and operated to treat the volume of coal pile runoff that is associated with a 10-year, 24-hour rainfall event, any untreated overflow of coal pile runoff from the treatment unit is not subject to the 50 mg/L limitation for total suspended solids.

(e) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

Effluent Limitation Guideline	Sectors with Affected Facilities
Runoff from material storage piles at cement manufacturing facilities (40 CFR Part 411 Subpart C (established February 20, 1974))	E
Contaminated runoff from phosphate fertilizer manufacturing facilities (40 CFR Part 418 Subpart A (established April 8, 1974))	C
Coal pile runoff at steam electric generating facilities (40 CFR Part 423 (established November 19, 1982))	O

Parameter	Limit	Monitoring Frequency	Sample Type

Regulations

Total Suspended Solids (TSS)	50 mg/l, max.	1/6 months	Grab
pH	6.0 min. - 9.0 max.	1/6 months	Grab

(3) Facilities discharging to an impaired water with an approved TMDL wasteload allocation. Owners of facilities that are a source of the specified pollutant of concern to waters for which a TMDL wasteload allocation has been approved by the U.S. Environmental Protection Agency (EPA) before the term of this permit will be notified by the department when they are approved for coverage under the general permit.

(a) Upon written notification from the department, permittees shall monitor the discharges for the pollutant subject to TMDL wasteload allocation once every six months after coverage under the permit begins, unless another sampling frequency is determined by the department for polychlorinated biphenyls (PCBs). Monitoring begins with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2.

(b) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

(c) If the pollutant subject to the TMDL wasteload allocation is below the quantitation level in all of the samples from the first four monitoring periods, the permittee may request to the department in writing that further sampling be discontinued, unless the TMDL has specific instructions to the contrary (in which case those instructions shall be followed). The laboratory certificate of analysis shall be submitted with the request. If approved, documentation of this shall be kept with the SWPPP.

If the pollutant subject to the TMDL wasteload allocation is above the quantitation level in any of the samples from the first four monitoring periods, the permittee shall continue the scheduled TMDL monitoring throughout the term of the permit. Applicable sampling data collected during the 2019 industrial stormwater general permit term may be used to satisfy all or part of the four monitoring periods requirement.

(d) Upon written notification from the department, facilities exceeding the TMDL wasteload allocation shall prepare and submit a pollutant minimization plan (PMP) designed to investigate the location and potential reduction of sources in the facility's stormwater discharges. The PMP shall be developed and submitted to the department for approval within 180 days of the receipt of notification from the department. The PMP shall include the following items, as appropriate:

(i) Facility contact for the contents of the PMP and any activities associated with the PMP;

(ii) A proposed implementation schedule for minimization activities and prospective milestones;

(iii) Proposed actions for known or probable sources;

(iv) Proposed action to find and control unknown sources;

(v) A summary of any previous minimization activities; and

(vi) Information on continuing assessment of progress, which may include establishment of criteria to evaluate whether the location and potential reduction of sources have been addressed.

(4) Facilities discharging to an impaired water without an approved TMDL wasteload allocation. Owners of facilities that discharge to waters listed as impaired in the 2022 Final 305(b)/303(d) Water Quality Assessment Integrated Report, and for which a TMDL wasteload allocation has not been approved before the term of this permit, will be notified by the department when they are approved for coverage under the general permit.

(a) Upon written notification from the department, permittees shall monitor the discharges for all pollutants for which the waterbody is impaired, and for which a standard analytical method exists, at least once every six months after coverage under the permit begins, unless otherwise determined by the department for polychlorinated biphenyls (PCBs). Monitoring begins with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2.

(b) If the pollutant for which the waterbody is impaired is suspended solids, turbidity, or sediment, or sedimentation, monitor for total suspended solids (TSS). If the pollutant for which the waterbody is impaired is expressed in the form of an indicator or surrogate pollutant, monitor for that indicator or surrogate pollutant. No monitoring is required when a waterbody's biological communities are impaired but no pollutant, including indicator or surrogate pollutants, is specified as causing the impairment, or when a waterbody's impairment is related to hydrologic modifications, impaired hydrology, or temperature. Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

(c) If the pollutant for which the water is impaired is below the quantitation level in the discharges from the facility, or it is above the quantitation level but its presence is caused solely by natural background sources, the permittee may request to the department in writing that further impaired water monitoring be discontinued. The laboratory certificate of analysis shall be submitted with the request.

If approved, documentation of this shall be kept with the SWPPP.

To support a determination that the pollutant's presence is caused solely by natural background sources, the following documentation shall be submitted with the request and kept with the SWPPP: (i) an explanation of why it is believed that the presence of the impairment pollutant in the facility's discharge is not related to the activities at the facility; and (ii) data or studies that tie the presence of the impairment pollutant in the facility's discharge to natural background sources in the watershed. Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity at the facility's site or pollutants in run-on from neighboring sources that are not naturally occurring.

2. Monitoring instructions.

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

b. When and how to sample. A minimum of one grab sample shall be taken from the discharge associated with industrial activity resulting from a storm event that results in a discharge from the site, providing the interval from the preceding storm event discharge is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document that less than a 72-hour interval is representative for local storm events during the sampling period. In the case of snowmelt, the monitoring shall be performed at a time when a measurable discharge occurs at the site. For discharges from a stormwater management structure, the monitoring shall be performed at a time when a measurable discharge occurs from the structure.

The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first three hours of the discharge, provided that the permittee explains why a grab sample during the first 30 minutes was impracticable. This information shall be submitted in the department's electronic discharge monitoring report (e-DMR) system, and maintained with the SWPPP. If the sampled discharge commingles with process or nonprocess water, the permittee shall attempt to sample the stormwater discharge before it mixes with the nonstormwater.

c. Storm event data. For each monitoring event (except snowmelt monitoring), along with the monitoring results, the permittee shall identify the date of the storm event sampled; rainfall total (in inches) of the storm event that generated the sampled runoff; and the interval between the storm event sampled and the end of the previous storm

event discharge. For snowmelt monitoring, the permittee shall identify the date of the sampling event.

d. Monitoring periods.

(1) Quarterly visual monitoring. The quarterly visual examinations shall be made at least once in each of the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December.

(2) Benchmark monitoring, effluent limitation monitoring, and impaired waters monitoring (for waters both with and without an approved TMDL). Monitoring shall be conducted at least once in each of the following semiannual periods each year of permit coverage: January through June, and July through December.

e. Documentation explaining a facility's inability to obtain a sample (including dates and times the outfalls were viewed or sampling was attempted), of no rain event, or of deviation from the 72-hour storm interval shall be submitted with the e-DMR and maintained with the SWPPP. Acceptable documentation includes National Climatic Data Center (NCDC) weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

f. Representative outfalls - substantially identical discharges. If the facility has two or more outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, and stormwater management practices occurring within the drainage areas of the outfalls, frequency of discharges, and stormwater management practices occurring within the drainage areas of the outfalls, the permittee may conduct monitoring on the effluent of just one of the outfalls and report that the observations also apply to the substantially identical outfall. The substantially identical outfall monitoring provisions apply to quarterly visual monitoring, benchmark monitoring, and impaired waters monitoring (both those with and without an approved TMDL). The substantially identical outfall monitoring provisions are not available for numeric effluent limits monitoring. The permittee shall include the following information in the SWPPP:

(1) The locations of the outfalls;

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

(3) An estimate of the size of each outfall's drainage area in acres.

3. Adverse climatic conditions waiver. When adverse weather conditions prevent the collection of samples, a substitute sample may be taken during a qualifying storm event in the next monitoring period. Adverse weather

Regulations

conditions are those that are dangerous or create inaccessibility for staff and may include local flooding, high winds, electrical storms, or situations that otherwise make sampling impracticable (e.g., drought or extended frozen conditions). Unless specifically stated otherwise, this waiver may be applied to any monitoring required under this permit. Narrative documentation of conditions necessitating the use of the waiver shall be kept with the SWPPP.

4. Inactive and unstaffed sites (including temporarily inactive sites).

a. A waiver of the quarterly visual monitoring, routine facility inspections, and monitoring requirements (including benchmark, effluent limitation, and impaired waters monitoring) may be granted by the department at a facility that is both inactive and unstaffed, as long as the facility remains inactive and unstaffed and there are no industrial materials or activities exposed to stormwater. The owner of the facility is only required to conduct an annual routine site inspection in accordance with the requirements in Part III B 5.

b. An inactive and unstaffed sites waiver request shall be submitted to the department for approval and shall include the name of the facility; the facility's VPDES general permit registration number; a contact person, telephone number, and email address; the reason for the request; and the date the facility became or will become inactive and unstaffed. The waiver request shall be signed and certified in accordance with Part II K. If this waiver is granted, a copy of the request and the department's written approval of the waiver shall be maintained with the SWPPP.

c. If circumstances change and industrial materials or activities become exposed to stormwater or the facility becomes either active or staffed, the permittee shall notify the department within 30 days, and all quarterly visual monitoring, routine facility inspections, and monitoring requirements shall be resumed immediately.

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

e. Inactive and unstaffed facilities covered under Sector G (Metal Mining) and Sector H (Coal Mines and Coal Mining-Related Facilities) are not required to meet the "no industrial materials or activities exposed to stormwater" standard to be eligible for this waiver, consistent with the conditional exemption requirements established in Part IV Sector G and Part IV Sector H.

5. Reporting monitoring results.

a. Reporting to the department. The permittee shall follow the reporting requirements and deadlines in Table 70-4 for the types of monitoring that apply to the facility:

Semiannual Monitoring	Submit the results by January 10 and by July 10.
Quarterly Visual Monitoring	Retain results with SWPPP - do not submit unless requested to do so by the department.

Permittees shall submit results for each outfall associated with industrial activity according to the requirements of Part II C.

b. Significant digits. The permittee shall report at least the same number of significant digits as a numeric effluent limitation or TMDL wasteload allocation for a given parameter; otherwise, at least two significant digits shall be reported for a given parameter. Regardless of the rounding convention used by the permittee (i.e., five always rounding up or to the nearest even number), the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

6. Corrective actions.

a. The permittee shall take corrective action whenever:

(1) Routine facility inspections, inspections by local, state or federal officials, or any other process, observation or event result in a determination that modifications to the stormwater control measures are necessary to meet the permit requirements;

(2) There is any exceedance of an effluent limitation (including coal pile runoff), TMDL wasteload allocation, or a reduction required by a local ordinance established by a municipality to meet Chesapeake Bay TMDL requirements;

(3) The department determines, or the permittee becomes aware, that the stormwater control measures are not stringent enough for the discharge to meet applicable water quality standards; or

(4) Benchmark monitoring results exceed the benchmark concentration value for a parameter.

The permittee shall review the SWPPP and modify it as necessary to address any deficiencies. Revisions to the SWPPP shall be completed within 60 days following the discovery of the deficiency. When control measures need to be modified or added (distinct from regular preventive maintenance of existing control measures described in Part III C), implementation shall be completed before the next anticipated storm event if possible, but no later than 60 days after the deficiency is discovered, or as otherwise provided or approved by the department. In cases where construction is necessary to implement control measures, the permittee shall include a schedule in the SWPPP that provides for the completion of the control measures as

expeditiously as practicable, but no later than three years after the deficiency is discovered. Where a construction compliance schedule is included in the SWPPP, the SWPPP shall include appropriate nonstructural and temporary controls to be implemented in the affected portion of the facility before completion of the permanent control measure. Any corrective actions taken shall be documented and retained with the SWPPP. Any control measure modifications shall be dated and document the amount of time taken to modify the applicable control measures or implement additional control measures.

b. Natural background pollutant levels. If the concentration of a pollutant exceeds a benchmark concentration value and the permittee determines that exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background, corrective action is not required provided that:

(1) The concentration of the benchmark monitoring result is less than or equal to the concentration of that pollutant in the natural background;

(2) The permittee documents and maintains with the SWPPP the supporting rationale for concluding that benchmark exceedances are in fact attributable solely to natural background pollutant levels. The supporting rationale shall include any data previously collected by the facility or others (including literature studies) that describe the levels of natural background pollutants in the facility's stormwater discharges; and

(3) The permittee notifies the department on the benchmark monitoring DMR that the benchmark exceedances are attributable solely to natural background pollutant levels. Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity on the facility's site, or pollutants in run-on from neighboring sources that are not naturally occurring.

c. Follow-up reporting. If at any time monitoring results show that discharges from the facility exceed an effluent limitation or a TMDL wasteload allocation, or the department determines that discharges from the facility are causing or contributing to an exceedance of a water quality standard, immediate steps shall be taken to eliminate the exceedances in accordance with Part I A 6. Within 30 calendar days of implementing the relevant corrective action, an exceedance report shall be submitted to the department and shall be signed in accordance with Part II K. The following information shall be included in the report:

- (1) General permit registration number;
- (2) Facility name and address;
- (3) Receiving water for each outfall exceeding an effluent limitation of TMDL wasteload allocation;

- (4) Monitoring data from the event being reported;
- (5) A narrative description of the situation;
- (6) A description of actions taken since the event was discovered and steps taken to minimize to the extent feasible pollutants in the discharge; and
- (7) A local facility contact name, email address, and phone number.

B. Special conditions.

1. Authorized nonstormwater discharges. Except as provided in this section or in Part IV, all discharges covered by this permit shall be composed entirely of stormwater. The following nonstormwater discharges are authorized by this permit:

- a. Discharges from emergency firefighting activities or firefighting training activities managed in a manner to avoid an instream impact in accordance with § 9.1-207.1 of the Code of Virginia;
- b. Fire hydrant flushings, managed in a manner to avoid an instream impact;
- c. Potable water, including water line flushings, managed in a manner to avoid an instream impact;
- d. Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;
- e. Irrigation drainage;
- f. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling;
- g. Routine external building washdown, provided no soaps, solvents, or detergents are used, external building surfaces do not contain hazardous substances, and the washwater is filtered, settled, or similarly treated prior to discharge;
- h. Pavement washwaters, provided no soaps, solvents, detergents, or hazardous cleaning products are used, and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled or leaked material is removed prior to washing), and the washwater is filtered, settled, or similarly treated prior to discharge;
- i. Uncontaminated groundwater or spring water;
- j. Foundation or footing drains where flows are not contaminated with process materials; and
- k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

All other nonstormwater discharges are not authorized and shall either be eliminated or covered under a separate VPDES permit.

Regulations

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

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

- a. The permittee is required to notify the department in accordance with the requirements of Part II G as soon as he has knowledge of the discharge;
- b. Where a release enters an MS4, the permittee shall also notify the owner of the MS4; and
- c. The SWPPP required under Part III shall be reviewed to identify measures to prevent the reoccurrence of the releases and to respond to the releases, and the SWPPP shall be modified where appropriate.

3. Colocated industrial activity. If the facility has industrial activities occurring on-site that are described by any of the activities in Part IV of the permit, those industrial activities are considered to be colocated industrial activities. Stormwater discharges from colocated industrial activities are authorized by this permit, provided that the permittee complies with any and all additional SWPPP and monitoring requirements from Part IV applicable to that particular colocated industrial activity. The permittee shall be responsible for additional SWPPP and monitoring requirements applicable to the colocated industrial activity by examining the narrative descriptions of all discharges covered under this section.

4. The stormwater discharges authorized by this permit may be combined with other sources of stormwater that are not required to be covered under a VPDES permit, so long as the combined discharge is in compliance with this permit.

5. There shall be no discharge of waste, garbage, or floating debris in other than trace amounts.

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

7. Discharges to waters subject to TMDL wasteload allocations. Owners of facilities that are a source of the specified pollutant of concern to waters for which a TMDL wasteload allocation has been approved by EPA before the term of this permit shall incorporate measures and controls into the SWPPP required by Part III that are consistent with the assumptions and requirements of the TMDL. The

department will provide written notification to the owner that a facility is subject to the TMDL requirements. The facility's SWPPP shall specifically address any conditions or requirements included in the TMDL that are applicable to discharges from the facility. If the TMDL establishes a specific numeric wasteload allocation that applies to discharges from the facility, the owner shall perform any required monitoring in accordance with Part I A 1 c (3), and implement control measures designed to meet that allocation.

8. Discharges through a regulated MS4 to waters subject to the Chesapeake Bay TMDL. In addition to the requirements of this permit, any facility with industrial activity stormwater discharges through a regulated MS4 that is notified by the MS4 operator that the locality has adopted ordinances to meet the Chesapeake Bay TMDL shall incorporate measures and controls into its SWPPP to comply with applicable local TMDL ordinance requirements.

9. Expansion of facilities that discharge to waters subject to the Chesapeake Bay TMDL. Virginia's Phase I Chesapeake Bay TMDL Watershed Implementation Plan (November 29, 2010), states that the wasteloads from any expansion of an existing permitted facility discharging stormwater in the Chesapeake Bay watershed cannot exceed the nutrient and sediment loadings that were discharged from the expanded portion of the land prior to the land being developed for the expanded industrial activity.

a. For any industrial activity area expansions (i.e., construction activities, including clearing, grading, and excavation activities) that begin on or after July 1, 2024, the permittee shall document in the SWPPP the information and calculations used to determine the nutrient and sediment loadings discharged from the expanded land area before the land was developed, and the measures and controls that were employed to meet the no net increase of stormwater nutrient and sediment load as a result of the expansion of the industrial activity. Any land disturbance that is exempt from permitting under the VPDES construction stormwater general permit regulation (9VAC25-880) is exempt from this requirement.

b. The permittee may use the ~~VSMP~~ water quality design criteria, 9VAC25-875-580, to meet the requirements of Part I B 10 a. Under this criteria, the total phosphorus load shall not exceed the greater of (i) the total phosphorus load that was discharged from the expanded portion of the land before the land being developed for the industrial activity or (ii) 0.41 pounds per acre per year. Compliance with the water quality design criteria may be determined utilizing the Virginia Runoff Reduction Method or another equivalent methodology approved by the department. Design specifications and pollutant removal efficiencies for specific BMPs can be found on the Virginia Stormwater BMP Clearinghouse website.

c. The permittee may consider utilization of any pollutant trading or offset program in accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia, governing trading and offsetting, to meet the no net increase requirement.

10. Water quality protection. The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards. The department expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards.

11. Adding or deleting stormwater outfalls. The permittee may add new or delete existing stormwater outfalls at the facility as necessary and appropriate. The permittee shall update the SWPPP and notify the department of all outfall changes within 30 days of the change. The permittee shall submit a copy of the updated SWPPP site map with this notification.

12. Antidegradation requirements for new or increased discharges to high quality waters. Facilities that add new outfalls, or increase their discharges from existing outfalls that discharge directly to high quality waters designated under Virginia's water quality standards antidegradation policy under 9VAC25-260-30 A 2 may be notified by the department that additional control measures, or other permit conditions are necessary to comply with the applicable antidegradation requirements, or may be notified that an individual permit is required in accordance with 9VAC25-31-170 B 3.

13. Termination of permit coverage.

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

- (1) Operations have ceased at the facility and there are no longer discharges of stormwater associated with industrial activity from the facility;
- (2) A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement Form has been submitted;
- (3) All stormwater discharges associated with industrial activity have been covered by an individual VPDES permit; or
- (4) Termination of coverage is being requested for another reason, provided the department agrees that coverage under this general permit is no longer needed.

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

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

- (2) Facility name and location;
- (3) VPDES industrial stormwater general permit registration number;
- (4) The basis for submitting the notice of termination, including:
 - (a) A statement indicating that a new owner has assumed responsibility for the facility;
 - (b) A statement indicating that operations have ceased at the facility, and there are no longer discharges of stormwater associated with industrial activity from the facility;
 - (c) A statement indicating that all stormwater discharges associated with industrial activity have been covered by an individual VPDES permit; or
 - (d) A statement indicating that termination of coverage is being requested for another reason and a description of the reason; and
- (5) The following certification: "I certify under penalty of law that all stormwater discharges associated with industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual permit, or that I am no longer the owner of the industrial activity, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge stormwater associated with industrial activity in accordance with the general permit, and that discharging pollutants in stormwater associated with industrial activity to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."
- c. The notice of termination shall be signed in accordance with Part II K.
- d. The notice of termination shall be submitted to the DEQ regional office serving the area where the industrial facility is located.

Part II

Conditions Applicable to All VPDES Permits

A. Monitoring.

- 1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
- 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
- 3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical

Regulations

instrumentation at intervals that will ensure accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

B. Records.

1. Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individuals who performed the sampling or measurements;
- c. The dates and times analyses were performed;
- d. The individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of the analyses.

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

C. Reporting monitoring results.

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

2. Monitoring results shall be reported in the department's electronic discharge monitoring report (e-DMR) system. All reports and forms submitted in compliance with this permit shall be submitted electronically by the permittee in accordance with 9VAC25-31-1020.

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

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

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

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

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

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

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

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;

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

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

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

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

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

I. Reports of noncompliance.

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

a. A report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under Part II I:

- (1) Any unanticipated bypass; and
 - (2) Any upset that causes a discharge to surface waters.
- b. A written report shall be submitted within five days and shall contain:
- (1) A description of the noncompliance and its cause;
 - (2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
 - (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

3. The immediate (within 24 hours) reports required in Part II G, H and I shall be made to the department's regional office. Reports may be made by telephone or online at <https://www.deq.virginia.gov/our-programs/pollution-response>. For reports outside normal working hours, the online portal shall be used. For emergencies, call the Virginia Department of Emergency Management's Emergency Operations Center (24-hours) at 1-800-468-8892.

J. Notice of planned changes.

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

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

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

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

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

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

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

K. Signatory requirements.

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

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-

Regulations

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

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

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

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

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

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity (e.g., the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company). A duly authorized representative may be a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

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

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

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

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

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

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the department. The department shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit neither conveys any property rights in either real or personal property or any exclusive privileges nor authorizes any injury to private property or invasion of personal rights, or any infringement of federal, state, or local law or regulations.

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

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be

subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

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

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

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

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

U. Bypass.

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

2. Notice.

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

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

3. Prohibition of bypass.

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

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

(2) There were no feasible alternatives to the bypass (e.g., the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime). This condition is not satisfied if

adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

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

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

V. Upset.

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

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

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

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

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

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

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

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

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

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

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

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

Regulations

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

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

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department.
2. Coverage under this permit may be automatically transferred to a new permittee if:
 - a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the department;
 - b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
 - c. The department does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

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

9VAC25-151-400. Chesapeake Bay total maximum daily load compliance.

A. Chesapeake Bay TMDL Compliance. EPA's Chesapeake Bay TMDL (December 29, 2010) includes wasteload allocations for VPDES permitted industrial stormwater facilities as part of the regulated stormwater aggregate load. EPA used data submitted by Virginia with the Phase I Chesapeake Bay TMDL Watershed Implementation Plan, including the number of industrial stormwater permits per county and the number of urban acres regulated by industrial stormwater permits, as part of their development of the aggregate load. Aggregate loads for industrial stormwater facilities were appropriate because actual facility loading data were not available to develop individual facility wasteload allocations.

Virginia estimated the loadings from industrial stormwater facilities using actual and estimated facility acreage information and total phosphorus (TP) and total nitrogen (TN) loading rates from the Northern Virginia Planning District

Commission (NVPDC) Guidebook for Screening Urban Nonpoint Pollution Management Strategies (Annandale, VA November 1979), prepared for the Metropolitan Washington Council of Governments. The loading rates used were as follows:

TP - High (80%) imperviousness industrial; 1.5 lb/ac/yr

TN - High (80%) imperviousness industrial; 12.3 lb/ac/yr

Actual facility area information and TP and TN data collected for facilities subject to Part V of this permit will be used by the department to quantify the nutrient and sediment loads from those VPDES permitted industrial stormwater facilities.

1. Facilities that obtained coverage under the 2019 industrial stormwater general permit that demonstrated compliance with the Chesapeake Bay TMDL loading rates.

Owners shall maintain documentation of their demonstration of compliance with the Chesapeake Bay TMDL loading rates with the SWPPP and shall continue implementing any BMPs that may have been developed as part of that demonstration.

Documentation may include:

- a. Calculations submitted to the department indicating that reductions were not necessary;
- b. A completed TMDL Action Plan, including a description of the means and methods, such as management practices and retrofit programs that were utilized to meet the required reductions;
- c. Other means accepted by the department indicating compliance with the Chesapeake Bay TMDL loading rates.

2. Facilities that obtained coverage under the 2019 industrial stormwater general permit that did not demonstrate compliance with the Chesapeake Bay TMDL loading rates shall submit a demonstration to the department.

- a. Owners of facilities that submitted a Chesapeake Bay TMDL action plan during the 2019 industrial stormwater general permit term that did not achieve reductions by the end of the 2019 permit term shall update and resubmit their action plan to the department for approval no later than 60 days following coverage under this general permit. Permittees shall achieve 10% of the remaining reductions by December 31, 2024, and all remaining reductions by December 31, 2025. An annual report shall be submitted to the department by June 30 of each year describing the progress in meeting the interim and final reductions. A final report to demonstrate compliance shall be submitted to the department no later than January 10, 2026. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.
- b. Owners of facilities that completed four samples for each outfall for TN and TP during the 2019 industrial stormwater general permit term that did not submit

calculations by the end of the 2019 permit term shall utilize the procedures in Part V D to calculate their facility stormwater loads. The permittee shall submit a copy of the calculations, and a Chesapeake Bay TMDL action plan if required under Part V E, no later than 60 days following coverage under this general permit to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department. Reductions, if applicable, shall be achieved by December 31, 2025, and an annual report shall be submitted to the department by June 30 of each year describing the progress in meeting the required reductions until such time that the demonstration is completed. The demonstration shall be submitted to the department no later than January 10, 2026. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

c. Owners of facilities registered prior to July 1, 2022, that did not complete four samples for each outfall for TN and TP by the end of the 2019 industrial stormwater general permit term shall monitor their discharges for TN and TP to characterize the contributions from their facility's specific industrial sector for these parameters. Total nitrogen is the sum of total Kjeldahl nitrogen (TKN) and nitrite + nitrate and shall be derived from the results of those tests. After the facility is granted coverage under the permit, samples shall be collected during each of the first four quarters of permit coverage. Samples shall be collected and analyzed in accordance with Part V B. Monitoring results shall be reported in accordance with Part V C and Part II C, and retained in accordance with Part II B. Calculations utilizing the procedures in Part V D, and a Chesapeake Bay TMDL action plan if required under Part V E, shall be submitted no later than 60 days following the completion of the fourth quarterly monitoring period to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department. Reductions, if applicable, shall be achieved by December 31, 2025, and an annual report shall be submitted to the department by June 30 of each year describing the progress in meeting the required reductions until such time that the demonstration is completed. The demonstration shall be submitted to the department no later than January 10, 2026. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

Facilities may use the applicable sampling data collected during the 2019 industrial stormwater general permit term to satisfy all or part of the four monitoring periods requirement in accordance with Part V A 2 c.

d. Owners of facilities registered after June 30, 2022, that did not complete four samples for each outfall for TN and TP by the end of the 2019 industrial stormwater general permit term shall monitor their discharges in accordance with Part V A 3.

Facilities may use the applicable sampling data collected during the 2019 industrial stormwater general permit term to satisfy all or part of the four monitoring periods requirements in accordance with Part V A 3.

3. Facilities that obtain initial coverage under the 2024 industrial stormwater general permit, but are not newly constructed facilities as identified in 9VAC25-151-60 C 13.

Owners of facilities in the Chesapeake Bay watershed that obtain initial coverage under the 2024 industrial stormwater general permit shall monitor their discharges for TN and TP to characterize the contributions from their facility's specific industrial sector for these parameters. Total nitrogen is the sum of total Kjeldahl nitrogen (TKN) and nitrite + nitrate and shall be derived from the results of those tests. After the facility is granted coverage under the permit, samples shall be collected during each of the first four quarters of permit coverage. Samples shall be collected and analyzed in accordance with Part V B. Monitoring results shall be reported in accordance with Part V C and Part II C, and retained in accordance with Part II B. Calculations utilizing the procedures in Part V D and a Chesapeake Bay TMDL action plan if required under Part V E shall be submitted no later than 60 days following the completion of the fourth quarterly monitoring period to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department. Reductions, if applicable, shall be achieved by two years following the end of the fourth quarterly monitoring period, and an annual report shall be submitted to the department by June 30 of each year describing the progress in meeting the required reductions until such time that the demonstration is completed. The demonstration shall be submitted to the department no later than the 10th of the month directly following the two year period. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

B. Monitoring instructions.

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

2. When and how to sample. A minimum of one grab sample shall be taken from the discharge associated with industrial activity resulting from a storm event that results in a discharge from the site providing the interval from the preceding storm event discharge is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document that less than a 72-hour interval is representative for local storm events during the sampling period. In the case of snowmelt, the monitoring shall be performed at a time when a measurable discharge occurs at the site. For discharges from a stormwater management structure, the

Regulations

monitoring shall be performed at a time when a measurable discharge occurs from the structure.

The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first three hours of the discharge, provided that the permittee explains why a grab sample during the first 30 minutes was impracticable. This information shall be submitted in the department's electronic discharge monitoring report (e-DMR) system and maintained with the SWPPP. If the sampled discharge commingles with process or nonprocess water, the permittee shall attempt to sample the stormwater discharge before it mixes with the nonstormwater.

3. Storm event data. For each monitoring event, except snowmelt monitoring, along with the monitoring results, the permittee shall identify the date of the storm event sampled; rainfall total (in inches) of the storm event that generated the sampled runoff; and the interval between the storm event sampled and the end of the previous storm event discharge. For snowmelt monitoring, the permittee shall identify the date of the sampling event.

4. Monitoring periods. Quarterly monitoring shall be conducted in each of the following three-month periods: January through March, April through June, July through September, and October through December.

5. Documentation explaining a facility's inability to obtain a sample (including dates and times the outfalls were viewed or sampling was attempted), of no rain event, or of deviation from the 72-hour storm interval shall be submitted with the e-DMR and maintained with the SWPPP. Acceptable documentation includes National Climatic Data Center (NCDC) weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

6. Representative outfalls may be used in accordance with Part I A 2 f.

C. Reporting monitoring results.

1. Reporting to the department. The permittee shall follow the reporting requirements and deadlines in Table 400-1 if required by Part V A 2 or A 3:

Table 400-1 Monitoring Reporting Requirements	
Quarterly Chesapeake Bay TMDL Monitoring	Submit the results by January 10, April 10, July 10, and October 10

2. Permittees shall submit results for each outfall associated with industrial activity according to the requirements of Part II C.

3. Significant digits. The permittee shall report at least the same number of significant digits as a numeric effluent limitation or TMDL wasteload allocation for a given parameter; otherwise, at least two significant digits shall be reported for a given parameter. Regardless of the rounding convention used by the permittee (i.e., five always rounding up or to the nearest even number), the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

D. Calculation of facility loads.

Permittees required to collect nutrient and sediment data in accordance with Part V A 2 or A 3 shall analyze the data collected to determine if pollution reductions are required. The permittee shall average the data collected at the facility for each of the pollutants of concern (POC) (e.g., TP and TN) and compare the results to the loading rates for TP and TN presented in Part V A.

The following formula may be used to determine the loading rate:

$$L = 0.226 \times P \times P_j \times (0.05 + (0.9 \times I_a)) \times C$$

where:

L = the POC loading rate (lb/acre/year)

P = the annual rainfall (inches/year) - The permittee may use either actual annual average rainfall data for the facility location (in inches/year), the Virginia annual average rainfall of 44.3 inches/year, or another method approved by the department.

P_j = the fraction of annual events that produce runoff - The permittee shall use 0.9 unless the department approves another rate.

I_a = the impervious fraction of the facility impervious area of industrial activity to the facility industrial activity area.

C = the POC average concentration of all facility samples (mg/L) - Facilities with multiple outfalls shall calculate a weighted average concentration for each outfall using the drainage area of each outfall.

For total phosphorus, all daily concentration data below the quantitation level (QL) for the analytical method used shall be treated as half the QL. All daily concentration data equal to or above the QL for the analytical method used shall be treated as it is reported.

For total nitrogen, if none of the daily concentration data for the respective species (i.e., TKN, nitrate, or nitrite) are equal to or above the QL for the respective analytical methods used, the daily TN concentration value reported shall equal one half of the largest QL used for the respective species. If one of the data is equal to or above the QL, the daily TN concentration value shall be treated as that data point is

reported. If more than one of the data is above the QL, the daily TN concentration value shall equal the sum of the data points as reported.

Calculations shall be submitted to the department within 60 days from the end of the last monitoring period that satisfies the monitoring requirements in Part V A 2 or A 3. Calculations shall be submitted to the DEQ regional office serving the area where the industrial facility is located, on a form provided by the department, and maintained with the facility's SWPPP.

Alternative calculations may be accepted on a case by case basis by the department to accommodate facilities with outfalls that rarely discharge.

E. Chesapeake Bay TMDL action plan requirements. For permittees required to submit calculations in accordance with Part V D, if the calculated facility loading rate for TP or TN is above the loading rates for TP or TN presented in Part V A, then the permittee shall develop and submit a Chesapeake Bay TMDL action plan to the department.

The Chesapeake Bay TMDL action plan shall be submitted on a form provided by the department to the regional office serving the area where the industrial facility is located within 60 days following the completion of the fourth quarterly monitoring period. A copy of the current Chesapeake Bay TMDL action plan and all facility loading rate calculations shall be maintained with the facility's SWPPP. The Chesapeake Bay TMDL action plan shall include:

1. A determination of the total pollutant load reductions for TP and TN (as appropriate) necessary to reduce the annual loads from industrial activities. This shall be determined by multiplying the industrial average times the difference between the TMDL loading rates listed in Part V A and the actual facility loading rates calculated in accordance with Part V D. The reduction applies to the total difference calculated for each pollutant of concern; and
2. The means and methods, such as management practices and retrofit programs that will be utilized to meet the required reductions determined in Part V E 1 and a schedule to achieve those reductions by the applicable deadline set in Part V A 2 or A 3. Pollutant reductions may be achieved using a combination of the following alternatives:
 - a. Reductions provided by one or more of the BMPs from the Virginia Stormwater BMP Clearinghouse listed in ~~9VAC25-870-65~~ 9VAC25-875-590, approved BMPs found on the Virginia Stormwater Clearinghouse website, or BMPs approved by the Chesapeake Bay Program. Any BMPs implemented to provide the required pollutant reductions shall be incorporated in the SWPPP and be permanently maintained by the permittee;
 - b. Implementation of site-specific BMPs followed by a minimum of four stormwater samples collected in accordance with sampling requirements in Part V B that

demonstrate pollutant loadings have been reduced below those calculated under Part V D. Any BMPs implemented to provide the required pollutant reductions shall be incorporated in the SWPPP and be permanently maintained by the permittee; or

c. Acquisition of nonpoint source credits certified by the board as perpetual in accordance with § 62.1-44.19:20 of the Code of Virginia.

9VAC25-210-60. Exclusions.

The activities in this section do not require a VWP permit but may require other permits under state and federal law. Upon request by the department, any person claiming one of these exclusions shall demonstrate to the satisfaction of the department that he qualifies for the exclusion. Exclusions pertaining to surface water withdrawals are established in 9VAC25-210-310.

1. Discharges of dredged or fill material into state waters, except wetlands, which are addressed under a USACE Regional, General, or Nationwide Permit, and for which no § 401 Water Quality Certificate is required.
2. Any discharge of stormwater from municipal separate storm sewer systems or ~~land-disturbing~~ land-disturbing activities authorized by ~~9VAC25-870~~ 9VAC25-875, or the discharge of sewage, industrial wastes, or other wastes or any noxious or deleterious substances into surface waters that is authorized by a Virginia Pollutant Discharge Elimination System (VPDES) permit in accordance with 9VAC25-31 or a Virginia Pollution Abatement (VPA) permit in accordance with 9VAC25-32.
3. Any activity governed under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, unless state certification is required by § 401 of the Clean Water Act. State certification is waived if the activity meets the provisions of subdivision 10 a of this section. The activity does not require a VWP permit pursuant to § 62.1-44.15:21 G of the Code of Virginia.
4. Normal residential gardening and lawn and landscape maintenance in a wetland, or other similar activity, that is incidental to an occupant's ongoing residential use of property and is of minimal ecological impact. The criteria governing this exclusion are set forth in the definition of "normal residential gardening and lawn and landscape maintenance" in 9VAC25-210-10.
5. Maintenance of currently serviceable structures, such as purpose-built stormwater and utility structures, transportation structures, dikes, groins, levees, dams, riprap breakwaters, causeways, or bridge abutments or approaches. Maintenance includes the emergency reconstruction of recently damaged parts but does not include modifications that change the character, scope, or size of the original design. If the original design is not available, the permittee shall submit the best available information on the design for

Regulations

consideration and approval by the department. In order to quality for this exclusion, emergency reconstruction shall occur as soon as practicable after damage occurs.

6. Impacts to open waters that do not have a detrimental effect on public health, animal life, or aquatic life or to the uses of such waters for domestic or industrial consumption, recreation, or other uses.

7. Flooding or back-flooding impacts to surface waters resulting from the construction of temporary sedimentation basins on a construction site when such structures are necessary for erosion and sediment control or stormwater management purposes.

8. Normal agriculture and silviculture activities in a wetland such as plowing; seeding; cultivating; minor drainage and harvesting for the production of food, fiber, and forest products; or upland soil and water conservation practices.

a. To fall under this exclusion, the activities specified in this subdivision 8 must be part of an established (i.e., ongoing) agriculture or silviculture operation, and must be in accordance with applicable best management practices set forth in either Forestry Best Management Practices for Water Quality in Virginia Technical Guide (Fourth Edition, July 2002) or Virginia Agricultural BMP Manual (2000), which facilitate compliance with the § 404(b)(1) Guidelines (40 CFR Part 230). Activities on areas lying fallow as part of a conventional, rotational cycle are part of an established operation.

b. Activities which bring a new area into agricultural or silvicultural use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If the activity takes place outside surface waters, it does not need a VWP permit, whether or not it is part of an established agriculture or silviculture operation.

c. For the purposes of this subdivision 8, cultivating, harvesting, minor drainage, plowing, and seeding are defined as follows:

(1) "Cultivating" means physical methods of soil treatment employed within established agriculture and silviculture lands on farm or forest crops to aid and improve their growth, quality, or yield.

(2) "Harvesting" means physical measures employed directly upon farm, forest, or crops within established agricultural and silviculture lands to bring about their removal from farm or forest land, but does not include the construction of farm or forest roads.

(3) "Minor drainage" means:

(a) The discharge of dredged or fill material incidental to connecting upland drainage facilities to surface waters, adequate to effect the removal of excess soil moisture

from upland croplands. Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops;

(b) The discharge of dredged or fill material for the purpose of installing ditching or other water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, or other wetland crop species, where these activities and the discharge occur in surface waters which are in established use for such agricultural and silviculture wetland crop production;

(c) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments that have been constructed in accordance with applicable requirements of the Clean Water Act, and that are in established use for the production of rice, or other wetland crop species;

(d) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting, or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year after such blockages are discovered in order to be eligible for exclusion; and

(e) Minor drainage in surface waters is limited to drainage within areas that are part of an established agriculture or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland (for example, wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to agriculture). In addition, minor drainage does not include the construction of any canal, ditch, dike, or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog, or any other wetland or aquatic area constituting surface water. Any discharge of dredged or fill material into surface water incidental to the construction of any such structure or waterway requires a VWP permit, unless otherwise excluded or exempted by this chapter.

(4) "Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm or forest land for the breaking up, cutting, turning

over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of surface water to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities does not constitute plowing. Plowing as described above will never involve a discharge of dredged or fill material.

(5) "Seeding" means the sowing of seed and placement of seedlings to produce farm or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

9. Discharges of dredged or fill material into wetlands when addressed under a U.S. Army Corps of Engineers Regional, General, or Nationwide Permit and that meet the provisions of subdivision 10 a of this section.

10. Construction or maintenance of farm ponds or impoundments, stock ponds or impoundments, or irrigation ditches, or the maintenance (but not construction) of drainage ditches.

a. The exclusion for the construction and maintenance of farm or stock ponds and farm or stock impoundments applies to those structures that are operated for normal agricultural or silvicultural purposes, and are less than 25 feet in height or create a maximum impoundment capacity smaller than 100 acre-feet.

b. The exclusion for the construction and maintenance of farm or stock ponds and farm or stock impoundments does not include the impacts associated with the withdrawal of surface water from, within, or behind such structures. A VWP permit may be required for the surface water withdrawal.

c. Discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exclusion.

d. The maintenance dredging of existing ditches is included in this exclusion provided that the final dimensions of the maintained ditch do not exceed the average dimensions of the original ditch. This exclusion does not apply to the construction of new ditches or to the channelization of streams.

11. Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with applicable best management practices (BMPs) set forth in either Forestry Best Management Practices for Water Quality in Virginia, Technical Guide, Fourth Edition, July 2002, or Virginia Agricultural BMP Manual, 2000, to ensure

that flow and circulation patterns and chemical and biological characteristics of surface waters are not impaired, that the reach of such waters is not reduced, and that any adverse effect on the aquatic environment will otherwise be minimized. The BMPs which must be applied to satisfy this provision include the following baseline provisions:

a. Permanent roads (for agriculture or forestry activities), temporary access roads (for mining, forestry, or farm purposes), and skid trails (for logging) in surface waters shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific agriculture, silviculture or mining operations, and local topographic and climatic conditions;

b. All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into surface waters;

c. The road fill shall be bridged, piped, culverted, or otherwise designed to prevent the restriction of expected flood flows;

d. The fill shall be properly stabilized and maintained to prevent erosion during and following construction;

e. Discharges of dredged or fill material into surface waters to construct road fill shall be made in a manner which minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within state waters (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

f. In designing, constructing, and maintaining roads, vegetative disturbance in surface waters shall be kept to a minimum;

g. The design, construction, and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

h. Borrow material shall be taken from upland sources whenever feasible;

i. The discharge shall not take, or jeopardize the continued existence of a state-listed or federally-listed threatened or endangered species as defined under the Endangered Species Act (16 USC § 1531 et seq.), in § 29.1-566 of the Code of Virginia and in 4VAC15-20-130 B and C, except as provided in § 29.1-568 of the Code of Virginia, or adversely modify or destroy the critical habitat of such species;

j. Discharges into the nesting and breeding areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical on-site or off-site alternatives exist;

k. The discharge shall not be located in proximity of a public water supply or intake;

l. The discharge shall not occur in areas of concentrated shellfish production;

Regulations

m. The discharge shall not occur in a component to the National Wild and Scenic River System;

n. The discharge material shall consist of suitable material free from toxic pollutants in toxic amounts; and

o. All temporary fills shall be removed in their entirety and the area restored to its original elevation.

12. Wetland and open water impacts to a stormwater management facility that was created on dry land for the purpose of conveying, treating, or storing stormwater.

9VAC25-830-40. Definitions.

The following words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 62.1-44.15:68 of the Act.

"Act" means the Chesapeake Bay Preservation Act, Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Adaptation measure" means a project, practice, or approach to mitigate or address an impact of climate change including sea-level rise, storm surge, and flooding including increased or recurrent flooding.

"Best management practice" means a practice, or combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

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

"Buffer area" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

"Canopy tree" means a tree that typically reaches 35 feet in height or taller when mature.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of this chapter and § 62.1-44.15:74 of the Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

"Daylighted stream" means a stream that had been previously diverted into an underground drainage system and has been redirected into an aboveground channel using natural channel design concepts as defined in § 62.1-44.15:51 of the Code of Virginia, and where the adjacent lands would meet the criteria

for being designated as a Resource Protection Area (RPA) as defined by the department under this chapter.

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

"Development" means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

"Director" means the Director of the Department of Environmental Quality.

"Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Floodplain" means all lands that would be inundated by flood water as a result of a storm event of a 100-year return interval.

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include roofs, buildings, streets, parking areas, and any concrete, asphalt or compacted gravel surface.

"Infill" means utilization of vacant land in previously developed areas.

"Intensely Developed Areas" means those areas designated by the local government pursuant to 9VAC25-830-100.

"Local governments" means counties, cities, and towns. This chapter applies to local governments in Tidewater Virginia, as defined in § 62.1-44.15:68 of the Act, but the provisions of this chapter may be used by other local governments.

"Local program" means the measures by which a local government complies with the Act and this chapter.

"Local program adoption date" means the date a local government meets the requirements of subdivisions 1 and 2 of 9VAC25-830-60.

"Mature tree" means a canopy tree with a diameter at breast height (DBH) of 12 inches or greater or an understory tree with a DBH of four inches or greater.

"Nature-based solution" means an approach that reduces the impacts of sea-level rise, flooding and storm events through the use of environmental processes and natural systems.

"Nontidal wetlands" means those wetlands 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.

"Plan of development" means any process for site plan review in local zoning and land development regulations designed to ensure compliance with § 62.1-44.15:74 of the Act and this chapter, prior to issuance of a building permit.

"Public road" means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program and (ii) the Virginia Erosion and Stormwater Management Act. This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

"Redevelopment" means the process of developing land that is or has been previously developed.

"Resource Management Area" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area.

"Resource Protection Area" means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts that may result in significant degradation to the quality of state waters.

"Silvicultural activities" means forest management activities, including the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of forest for reforestation that are conducted in accordance

with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

"Substantial alteration" means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource Management Area only.

"Tidal shore" or "shore" means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

"Tidal wetlands" means vegetated and nonvegetated wetlands as defined in § 28.2-1300 of the Code of Virginia.

"Tidewater Virginia" means those jurisdictions named in § 62.1-44.15:68 of the Act.

"Understory tree" means a tree that typically reaches 12 feet to 35 feet in height when mature.

"Use" means an activity on the land other than development including agriculture, horticulture and silviculture.

"Virginia Erosion and Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities.

9VAC25-830-130. General performance criteria.

Through their applicable land use ordinances, regulations, and enforcement mechanisms, local governments shall require that any use, development, or redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance criteria:

1. No more land shall be disturbed than is necessary to provide for the proposed use or development.
2. Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development proposed. Mature trees shall be protected during development and only removed where necessary, including to provide for the proposed use or development.

A locality which has an ordinance providing for the conservation, planting, and replacement of trees during the land development process pursuant to § 15.2-961 or 15.2-961.1 of the Code of Virginia may rely on such ordinance

Regulations

for demonstrating compliance with this requirement related to mature trees in Resource Management Areas.

3. All development exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development review process consistent with § 15.2-2286 A 8 of the Code of Virginia and subdivision 1 e of 9VAC25-830-240.

4. Land development shall minimize impervious cover consistent with the proposed use or development.

5. Any ~~land-disturbing~~ land-disturbing activity that exceeds an area of 2,500 square feet (including construction of all single family houses, septic tanks, and drainfields, but otherwise as defined in § ~~62.1-44.15:24~~ or 62.1-44.15:51 of the Code of Virginia) shall comply with the requirements of the local erosion and sediment control program ordinance or erosion and stormwater management program ordinance. Enforcement for noncompliance with the erosion and sediment control requirements referenced in this criterion shall be conducted under the provisions of the Erosion and Sediment State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and attendant regulations.

6. ~~Any Land-disturbing activities in a Chesapeake Bay Preservation Act land-disturbing activity as defined in § 62.1-44.15:24 of the Code of Virginia Area that are equal to or greater than 2,500 square feet but less than one acre shall comply with the requirements of 9VAC25-870-51 9VAC25-875-740 and 9VAC25-870-103 9VAC25-875-750.~~

7. Onsite sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:

a. Have pump-out accomplished for all such systems at least once every five years.

(1) If deemed appropriate by the local health department and subject to conditions the local health department may set, local governments may offer to the owners of such systems, as an alternative to the mandatory pump-out, the option of having a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter should satisfy standards established in the Sewage Handling and Disposal Regulations (12VAC5-610) administered by the Virginia Department of Health.

(2) Furthermore, in lieu of requiring proof of septic tank pump-out every five years, local governments may allow owners of onsite sewage treatment systems to submit documentation every five years, certified by an operator or onsite soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design onsite sewage systems, that the septic system has been

inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.

(3) Effective July 1, 2023, requirements of this section directly related to compliance with onsite sewage system pump-outs shall be managed and enforced by the Virginia Department of Health in Accomack, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland Counties, and the incorporated towns within those counties.

b. For new construction, provide a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building shall be prohibited on the area of all sewage disposal sites until the structure is served by public sewer or an onsite sewage treatment system that operates under a permit issued by the department. All sewage disposal site records shall be administered to provide adequate notice and enforcement. As an alternative to the 100% reserve sewage disposal site, local governments may offer the owners of such systems the option of installing an alternating drainfield system meeting the following conditions:

(1) Each of the two alternating drainfields in the system shall have, at a minimum, an area not less than 50% of the area that would otherwise be required if a single primary drainfield were constructed.

(2) An area equaling 50% of the area that would otherwise be required for the primary drainfield site must be reserved for subsurface absorption systems that utilize a flow diversion device, in order to provide for future replacement or repair to meet the requirements for a sewage disposal system. Expansion of the primary system will require an expansion of this reserve area.

(3) The two alternating drainfields shall be connected by a diversion valve, approved by the local health department, located in the pipe between the septic (aerobic) tank and the distribution boxes. The diversion valve shall be used to alternate the direction of effluent flow to one drainfield or the other at a time. However, diversion valves shall not be used for the following types of treatment systems:

(a) Sand mounds;

(b) Low-pressure distribution systems;

(c) Repair situations when installation of a valve is not feasible; and

(d) Any other approved system for which the use of a valve would adversely affect the design of the system, as determined by the local health department.

(4) The diversion valve shall be a three-port, two-way valve of approved materials (i.e., resistant to sewage and leakproof and designed so that the effluent from the tank can be directed to flow into either one of the two distribution boxes).

(5) There shall be a conduit from the top of the valve to the ground surface with an appropriate cover to be level with or above the ground surface.

(6) The valve shall not be located in driveways, recreational courts, parking lots, or beneath sheds or other structures.

(7) In lieu of the aforementioned diversion valve, any device that can be designed and constructed to conveniently direct the flow of effluent from the tank into either one of the two distribution boxes may be approved if plans are submitted to the local health department and found to be satisfactory.

(8) The local government shall require that the owner alternate the drainfields every 12 months to permit the yearly resting of half of the absorption system.

(9) The local government shall ensure that the owner are notified annually of the requirement to switch the valve to the opposite drainfield.

8. Land upon which agricultural activities are being conducted, including crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and, where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Act and this chapter.

a. Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

(1) For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T,"

as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.

(2) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC50-85).

(3) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.

b. A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

c. The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the local Soil and Water Conservation District Board, which will be the plan-approving authority.

9. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the Fifth Edition (March 2011) of "Virginia's Forestry Best Management Practices for Water Quality Technical Manual." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

10. Local governments shall require evidence of all wetlands permits required by law prior to authorizing grading or other onsite activities to begin.

9VAC25-830-140. Development criteria for Resource Protection Areas.

In addition to the general performance criteria set forth in 9VAC25-830-130, the criteria in this section are applicable in Resource Protection Areas.

Regulations

1. Land development may be allowed in the Resource Protection Area, subject to approval by the local government, only if it (i) is water dependent; (ii) constitutes redevelopment; (iii) constitutes development or redevelopment within a designated Intensely Developed Area; (iv) is a new use established pursuant to subdivision 4 a of this section; (v) is a road or driveway crossing satisfying the conditions set forth in subdivision 1 d of this section; or (vi) is a flood control or stormwater management facility satisfying the conditions set forth in subdivision 1 e of this section.

a. A water quality impact assessment in accordance with subdivision 6 of this section shall be required for any proposed land disturbance.

b. A new or expanded water-dependent facility may be allowed provided that the following criteria are met:

(1) It does not conflict with the comprehensive plan;

(2) It complies with the performance criteria set forth in 9VAC25-830-130;

(3) Any nonwater-dependent component is located outside of Resource Protection Areas; and

(4) Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

c. Redevelopment outside locally designated Intensely Developed Areas shall be permitted in the Resource Protection Area only if there is no increase in the amount of impervious cover and no further encroachment within the Resource Protection Area, and it shall conform to applicable erosion and sediment control and stormwater management criteria set forth in the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program and the Virginia Erosion and Stormwater Management Act and their attendant regulations, as well as all applicable stormwater management requirements of other state and federal agencies.

d. Roads and driveways not exempt under subdivision B 1 of 9VAC25-830-150 and which, therefore, must comply with the provisions of this chapter, may be constructed in or across Resource Protection Areas if each of the following conditions is met:

(1) The local government makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;

(2) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality;

(3) The design and construction of the road or driveway satisfy all applicable criteria of this chapter, including submission of a water quality impact assessment; and

(4) The local government reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with local government site plan, subdivision and plan of development approvals.

e. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas provided such facilities are allowed and constructed in accordance with the Virginia Erosion and Stormwater Management Act and its attendant regulations, and provided that (i) the local government has conclusively established that location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with ~~9VAC25-870-92~~ 9VAC25-875-660 ~~of the Virginia Stormwater Management Program (VSMP) regulations;~~ (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

2. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subdivisions a and b of this subdivision 2: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities:

a. Local governments shall establish administrative procedures to review such exemptions.

b. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control criteria in subdivision 5 of 9VAC25-830-130.

3. Buffer area requirements. The 100-foot wide buffer area shall be the landward component of the Resource Protection Area as set forth in subdivision B 5 of 9VAC25-830-80. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width. To minimize the adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and

filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. Where such buffer must be established, the planting of trees shall be incorporated as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.

a. The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.

b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this chapter. Where such buffer must be reestablished, the planting of trees shall be incorporated as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.

4. Permitted encroachments into the buffer area.

a. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.

(2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel. Such vegetated area where established shall include the planting of trees as appropriate to site conditions. Inclusion of native species in tree planting is preferred.

(3) The encroachment may not extend into the seaward 50 feet of the buffer area.

b. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989, and March 1, 2002, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) The lot or parcel was created as a result of a legal process conducted in conformity with the local government's subdivision regulations;

(2) Conditions or mitigation measures imposed through a previously approved exception shall be met;

(3) If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to

determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and

(4) The criteria in subdivision 4 a of this section shall be met.

5. Permitted modifications of the buffer area.

a. In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by the local government, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:

(1) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. Mature trees shall be preserved and trimmed or pruned in lieu of removal as site conditions permit and any removal should be limited to the fewest number of trees feasible. When trees are removed to provide for sight lines and vista, they shall be replaced with trees as appropriate to site conditions and in such a manner as to maximize the buffer function and to protect the quality of state waters. Inclusion of native species in tree replanting is preferred.

(2) Any path shall be constructed and surfaced so as to effectively control erosion.

(3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practice incorporated into locally-adopted standards.

(4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements. Mature trees shall be removed only as necessary for the installation and maintenance of the projects consistent with the best available technical advice project plans, and applicable permit conditions or requirements. Trees shall be utilized in the project when vegetation is being established as appropriate to the site conditions and the project specifications. Inclusion of native species in tree planting is preferred.

b. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

Regulations

(1) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—erosion control or nutrient management—is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Nutrient Management Training and Certification Regulations (4VAC50-85) administered by the Virginia Soil and Water Conservation Board.

(2) Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the Nutrient Management Training and Certification Regulations (4VAC50-85) administered by the Virginia Soil and Water Conservation Board. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

(3) The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—either erosion control or nutrient management—is being implemented on the adjacent land.

(4) If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the local government, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

(5) In cases where the landowner or the landowner's agent or operator has refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the local government. The local government shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

6. Water quality impact assessment. A water quality impact assessment shall be required for any proposed development within the Resource Protection Area consistent with this part and for any other development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.

a. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in the Resource Protection Areas consistent with the goals and objectives of the Act, this chapter, and local programs, and to determine specific measures for mitigation of those impacts. The specific content and procedures for the water quality impact assessment shall be established by each local government. Local governments should notify the department of all development requiring such an assessment.

b. The water quality impact assessment shall be of sufficient specificity to demonstrate compliance with the criteria of the local program.

7. Buffer area requirements for Intensely Developed Areas. In Intensely Developed Areas the local government may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation. In considering such measures, local governments shall consider the planting of trees as a component of any such measure. Inclusion of native species in tree planting is preferred.

9VAC25-830-150. Nonconformities, exemptions, and exceptions.

A. Nonconforming uses and noncomplying structures.

1. Local governments may permit the continued use, but not necessarily the expansion, of any structure in existence on the date of local program adoption. Local governments may establish an administrative review procedure to waive or modify the criteria of this part for structures on legal nonconforming lots or parcels provided that:

- a. There will be no net increase in nonpoint source pollutant load; and
- b. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

2. This chapter shall not be construed to prevent the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise restricted by local government ordinances.

B. Public utilities, railroads, public roads, and facilities exemptions.

1. Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the ~~Erosion and Sediment Control Law~~ and the Virginia Erosion and Stormwater Management Act, (ii) an erosion and sediment control plan and a stormwater management plan approved by the department, or (iii) local water quality protection criteria at least as stringent as the above state requirements will be deemed to constitute compliance with this chapter. The exemption of public roads is further conditioned on the following:

- a. Optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality; and
- b. Local governments may choose to exempt (i) all public roads as defined in 9VAC25-830-40, or (ii) only those public roads constructed by the Virginia Department of Transportation.

2. Construction, installation and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines owned, permitted, or both, by a local government or regional service authority shall be exempt from the criteria in this part provided that:

- a. To the degree possible, the location of such utilities and facilities should be outside Resource Protection Areas;
- b. No more land shall be disturbed than is necessary to provide for the proposed utility installation;
- c. All such construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality; and

d. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

C. Exceptions.

1. Exceptions to the requirements of 9VAC25-830-130 and 9VAC25-830-140 may be granted, provided that a finding is made that:

- a. The requested exception to the criteria is the minimum necessary to afford relief;
- b. Granting the exception will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated;
- c. The exception is in harmony with the purpose and intent of this part and is not of substantial detriment to water quality;
- d. The exception request is not based upon conditions or circumstances that are self-created or self-imposed;
- e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and
- f. Other findings, as appropriate and required by the local government, are met.

2. Each local government shall design and implement an appropriate process or processes for the administration of exceptions. The process to be used for exceptions to 9VAC25-830-140 shall include, but not be limited to, the following provisions:

- a. An exception may be considered and acted upon only by the local legislative body; the local planning commission; or a special committee, board or commission established or designated by the local government to implement the provisions of the Act and this chapter.
- b. Local governments implementing this chapter through the local zoning code may provide for specific provisions that allow for consideration of exceptions that comply with subdivision 2 of this subsection.
- c. The provision of subdivision 2 b of this subsection notwithstanding, no exception shall be authorized except after notice and a hearing, as required by § 15.2-2204 of the Code of Virginia, except that only one hearing shall be required. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the notice may be given by first-class mail rather than by registered or certified mail.

3. Exceptions to other provisions of this part may be granted, provided that:

- a. Exceptions to the criteria shall be the minimum necessary to afford relief; and

Regulations

b. Reasonable and appropriate conditions upon any exception granted shall be imposed, as necessary, so that the purpose and intent of the Act is preserved.

4. Notwithstanding the provisions of subdivisions 2 a through 2 c of this subsection, additions and modifications to existing legal principal structures may be processed through an administrative review process, as allowed by subsection A of this section, subject to the findings required by subdivision 1 of this subsection but without a requirement for a public hearing. This provision shall not apply to accessory structures.

9VAC25-890-1. Definitions.

The words and terms used in this chapter shall have the meanings defined in the Virginia Erosion and Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia) and the Virginia Erosion and Stormwater Management Program (VSMP) Regulation (9VAC25-870 9VAC25-875) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Annual practice" means a nonstructural best management practice such as street or storm drain cleaning that reduces pollution for one compliance year upon implementation.

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

"Date brought online" means the date when the permittee determines that a new stormwater management facility is properly functioning.

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

"Ecosystem restoration projects" means practices implemented to reestablish and maintain natural systems that prevent, reduce, or remediate pollutant loadings. Examples of ecosystem restoration projects include stream restoration, shoreline restoration, land-use conversion, and reforestation.

"High-priority facilities" means facilities owned or operated by the permittee with drainage to any permitted MS4 that actively engage in one or more of the following activities: (i) composting; (ii) equipment storage, cleaning, and maintenance; (iii) long-term bulk materials storage; (iv) pesticide, herbicide, and fertilizer storage; (v) recycling; (vi) anti-icing and deicing agent storage, handling, and transfer; (vii) solid waste handling and transfer, and (viii) permittee owned or operated vehicle washing, maintenance, and salvage.

"MS4 regulated service area" or "service area" means for Phase II permittees, the drainage area served by the permittee's MS4 that is located within the 2020 census urban areas with a population of at least 50,000 or the 2000 and 2010 decennial

censuses urbanized area as determined by the Bureau of the Census. MS4 regulated service area may also be referred to as "served by the MS4" as it pertains to the tables in Part II A of this permit.

"Nontraditional MS4 permittee" or "nontraditional permittee" means a government entity that operates a regulated MS4 that is not under the authority of a county board of supervisors, a city council, or a town council.

"Physically interconnected" means that one MS4 is connected to a second MS4 in such a manner that it allows for direct discharges to the second system.

"Pollutants of concern" or "POC" means pollutants specifically identified in a U.S. Environmental Protection Agency approved total maximum daily load (TMDL) report as causing a water quality impairment.

"Traditional MS4 permittee" or "traditional permittee" means a local government that operates a regulated MS4 under the authority of a county board of supervisors, a city council, or a town council.

9VAC25-890-20. Authorization to discharge.

A. Any operator covered by this general permit is authorized to discharge stormwater from the MS4 to surface waters of the Commonwealth of Virginia provided that:

1. The operator submits a complete and accurate registration statement in accordance with 9VAC25-890-30 and that registration statement is accepted by the department;
2. The operator submits any permit fees required by Part ~~XIII~~ VIII (9VAC25-870-700 9VAC25-875-1290 et seq.) of the Virginia Erosion and Stormwater Management Regulation;
3. The operator complies with the requirements of 9VAC25-890-40; and
4. The department has not notified the operator that the discharge is ineligible for coverage in accordance with subsection C of this section.

B. The operator is not authorized by this general permit to discharge to surface waters specifically named in other board regulations that prohibit such discharges.

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

1. The operator is required to obtain an individual permit in accordance with ~~9VAC25-870-410-B~~ 9VAC25-875-980 B;
2. The operator is proposing discharges to surface waters specifically named in other board regulations that prohibit such discharges; or
3. The operator fails to implement BMPs to reduce pollutants to the maximum extent practicable (MEP) standard to demonstrate progress toward meeting the water

quality requirements as listed in 9VAC25-31-220 D 1 a in accordance with 9VAC25-31-220 K 2.

D. Nonstormwater discharges or flows into the MS4 are authorized by this state permit and do not need to be addressed in the MS4 program required under 9VAC25-890-40 Part I E 3 if:

1. The nonstormwater discharges or flows are covered by a separate individual or general VPDES or state permit for nonstormwater discharges;
2. The individual nonstormwater discharges or flows have been identified by the department as de minimis discharges that are not significant sources of pollutants to surface waters and do not require a separate VPDES permit;
3. The nonstormwater discharges or flows are identified in this subdivision and have not been identified by the operator or by the department as significant contributors of pollutants to the MS4:
 - a. Water line flushing, managed in a manner to avoid an instream impact;
 - b. Landscape irrigation;
 - c. Diverted stream flows;
 - d. Rising groundwaters;
 - e. Uncontaminated groundwater infiltration, as defined at 40 CFR 35.2005(20);
 - f. Uncontaminated pumped groundwater;
 - g. Discharges from potable water sources managed in a manner to avoid instream impact;
 - h. Foundation drains;
 - i. Air conditioning condensation;
 - j. Irrigation water;
 - k. Springs;
 - l. Water from crawl space pumps;
 - m. Footing drains;
 - n. Lawn watering;
 - o. Individual residential car washing;
 - p. Flows from riparian habitats and wetlands;
 - q. Dechlorinated freshwater swimming pool discharges managed in a manner to avoid instream impact;
 - r. Street and pavement wash waters that do not contain cleaning additives or are otherwise managed in a manner to avoid instream impact;
 - s. Routine external building washdown provided no soaps, solvents, or detergents are used, external building surfaces do not contain hazardous substances, and the wash water is filtered, settled, or similarly treated prior to discharge;
 - t. Discharges or flows from emergency firefighting activities;

u. Discharges or flows of water for fire prevention or firefighting training activities managed in a manner to avoid instream impact in accordance with § 9.1-207.1 of the Code of Virginia;

v. Discharges from noncommercial fundraising car washes if the washing uses only biodegradable, phosphate-free, water-based cleaners in accordance with § 15.2-2114.1 of the Code of Virginia; or

w. Other activities generating discharges identified by the department as not requiring VPDES authorization; or

4. The immediate discharge of materials is necessary to protect life or property as determined by fire department personnel or emergency management officials or any discharge in accordance with 9VAC25-31-40. The operator shall take or ensure that the responsible party takes all reasonable steps to minimize or prevent any adverse effect on human health or the environment. This state permit does not transfer liability for a spill itself from the party responsible for the spill to the operator nor relieve the party responsible for a spill from the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302.

E. In the event the operator is unable to meet certain conditions of this permit due to circumstances beyond the operator's control, the operator shall submit a written explanation of the circumstances that prevented state permit compliance to the department in the annual report. Circumstances beyond the control of the operator include abnormal climatic conditions; weather conditions that make certain requirements unsafe or impracticable; or unavoidable equipment failures caused by weather conditions or other conditions beyond the reasonable control of the operator (operator error is not a condition beyond the control of the operator). The failure to provide adequate program funding, staffing, or equipment maintenance shall not be an acceptable explanation for failure to meet state permit conditions. The department will determine, at its sole discretion, whether the reported information will result in an enforcement action.

F. Discharges that are excluded from permitting requirements pursuant to ~~9VAC25-870-300~~ 9VAC25-875-860 are exempted from the regulatory requirements of this state permit.

G. For those portions of the MS4 engaging in activities that are covered under a separate VPDES permit for discharges associated with industrial activities, the permittee shall follow the conditions established by the separate VPDES permit.

H. Upon termination of permit coverage for those activities addressed in subsection G of this section, the discharges from the outfalls previously authorized under the VPDES permit for stormwater discharges associated with industrial activities shall meet the conditions of this state permit provided it has been determined by the department that an individual MS4 permit is not required.

Regulations

I. Stormwater discharges from specific MS4 permittee activities that have been granted conditional exclusion for "no exposure" of industrial activities and materials to stormwater under the separate VPDES permitting program shall comply with this state permit unless a separate VPDES permit is obtained. The department is responsible for determining compliance with the conditional exclusion under the State Water Control Law (Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia) and attendant regulations.

J. Receipt of this general permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

K. Continuation of permit coverage.

1. Any permittee that was authorized to discharge under the state permit effective November 1, 2018, and that submits a complete registration statement on or before October 1, 2023, is authorized to continue to discharge under the terms of the November 1, 2018, state permit until such time as the department either:

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

2. When the permittee is not in compliance with the conditions of the expiring or expired general permit, the department may choose to do any or all of the following:

- a. Initiate enforcement action based upon the 2018 general permit;
- b. Issue a notice of intent to deny coverage under the new general permit. If coverage under the general permit is denied, the permittee would then be required to cease the activities authorized by the continued general permit or be subject to enforcement action for operating without a state permit;
- c. Issue a new state permit with appropriate conditions; or
- d. Take other actions authorized by the State Water Control Law, VPDES (9VAC25-31), and ~~VSMR (9VAC25-870)~~ regulations the Virginia Erosion and Stormwater Management Regulation (9VAC25-875).

9VAC25-890-30. Registration statement.

A. Deadline for submitting a registration statement.

1. Operators of MS4s described under ~~9VAC25-870-400~~ 9VAC25-875-970 B that are applying for initial coverage under this general permit must submit a complete registration statement to the department within 180 days of notice of designation, unless the department grants a later date.

2. In order to continue uninterrupted coverage under the general permit, operators of MS4s shall submit a new

registration statement no later than October 1, 2023, unless permission for a later date has been granted by the department. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing state permit.

B. The registration statement shall include the following information:

1. The name and location of the MS4;
2. The name of the owner or operator of the MS4;
3. The mailing address of the owner or operator of the MS4;
4. The type of MS4 (e.g., city, county, incorporated town, unincorporated town, college or university, local school board, military installation, transportation system, federal or state facility, or other);
5. If the MS4 is operated under the authority of a city council or a county board of supervisors, indicate if public school facilities are included in the application.
6. The name, title, mailing address, telephone number, and email address for the following individuals:
 - a. The responsible official who meets the criteria established in ~~9VAC25-870-370~~ 9VAC25-875-940 A 3;
 - b. The MS4 permit contact; and
 - c. The annual permit maintenance fee contact;
7. The following receiving waters information:
 - a. The names of the receiving surface waters to which the MS4 system discharges; and
 - b. Whether or not the receiving waters are listed as impaired in the Virginia 2022 305(b)/303(d) Water Quality Assessment Integrated Report;
8. The names of any physically interconnected MS4s to which the MS4 discharges;
9. A list of all existing signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures;
10. For permittees previously covered under the General VPDES Permit for Discharges of Stormwater from MS4 effective November 1, 2018, whose regulated MS4 is located partially or entirely in the Chesapeake Bay watershed, a draft third phase Chesapeake Bay TMDL action plan; and
11. The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or

those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 9VAC25-890-40 Part IV K 4.

D. An operator may file its own registration statement, or the operator and other operators of MS4s may jointly submit a registration statement. If responsibilities for meeting the stormwater minimum control measures will be shared with other municipalities or governmental entities, the registration statement must describe which stormwater minimum control measures the operator will implement and identify the entities that will implement the other stormwater minimum control measures within the area served by the MS4.

E. The registration statement may be delivered to the DEQ Central Office, Office of VPDES Permits or by electronic mail to an electronic mailbox specified by the department. Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements) as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months of notice provided between the notification from the department and the date after which such forms must be submitted electronically.

9VAC25-890-40. General permit.

Any MS4 operator whose registration statement is accepted by the department will receive coverage under the following general permit and shall comply with the requirements in this general permit and be subject to all applicable requirements of the Virginia Erosion and Stormwater Management Program (VSMP) Regulations (9VAC25-870) Regulation (9VAC25-875) and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations (9VAC25-31).

General Permit No.: VAR04

Effective Date: November 1, 2023

Expiration Date: October 31, 2028

GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER MANAGEMENT PROGRAM REGULATIONS, VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM REGULATIONS, AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the State Water Control Law and

regulations adopted pursuant thereto, permittees of small municipal separate storm sewer systems are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in State Water Control Board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with the registration statement filed with the department, this cover page, Part I - Discharge Authorization and Special Conditions, Part II - TMDL Special Conditions, Part III - DEQ BMP Warehouse Reporting, and Part IV - Conditions Applicable to All State and VPDES Permits, as set forth in this general permit.

Part I

Discharge Authorization and Special Conditions

A. Coverage under this state permit. During the period beginning with the date of coverage under this general permit and lasting until the expiration and reissuance of this state permit, the permittee is authorized to discharge stormwater and those authorized nonstormwater discharges described in 9VAC25-890-20 D in accordance with this state permit from the small municipal separate storm sewer system identified in the registration statement into surface waters within the boundaries of the Commonwealth of Virginia and consistent with 9VAC25-890-30.

B. The permittee shall develop, implement, and enforce an MS4 program designed to reduce the discharge of pollutants from the MS4 to the MEP in accordance with this permit, to protect water quality, and to satisfy the appropriate water quality requirements of the State Water Control Law and its attendant regulations. The permittee shall utilize the legal authority provided by the laws and regulations of the Commonwealth of Virginia to control discharges to and from the MS4. This legal authority may be a combination of statute, ordinance, permit, policy, specific contract language, order, or interjurisdictional agreements. The MS4 program shall include the minimum control measures (MCM) described in Part I E. For the purposes of this permit term, implementation of MCMs in Part I E and the Chesapeake Bay and local TMDL requirements in Part II (as applicable) consistent with the provisions of an iterative MS4 program required pursuant to this general permit constitutes compliance with the standard of reducing pollutants to the MEP, provides adequate progress in meeting water quality standards, and satisfies the appropriate water quality requirements of the State Water Control Law and its attendant regulations.

C. The MS4 program plan.

1. The MS4 program plan shall include, at a minimum, the following written items:

a. The roles and responsibilities of each of the permittee's divisions and departments in the implementation of the

Regulations

requirements of the permit tasked with ensuring that the permit requirements are met;

b. If the permittee utilizes another entity to implement portions of the MS4 program, a copy of the written agreement. The description of each party's roles and responsibilities, including any written agreements with third parties, shall be updated as necessary;

c. For each MCM in Part I E, the following information shall be included:

(1) Each specific requirement as listed in Part I E for each MCM;

(2) A description of the BMPs or strategies that the permittee anticipates will be implemented to demonstrate compliance with the permit conditions in Part I E;

(3) All standard operating procedures or policies necessary to implement the BMPs;

(4) The measurable goal by which each BMP or strategy will be evaluated; and

(5) The persons, positions, or departments responsible for implementing each BMP or strategy; and

d. A list of documents incorporated by reference, including the version and date of the document being incorporated.

2. If the permittee is receiving initial coverage under this general VPDES permit for the discharge of stormwater, the permittee shall:

a. No later than six months following the date of permit coverage, submit to the department a schedule for the development of each component of the MS4 program plan in accordance with Part I C 1 that does not exceed October 31, 2028, unless the department grants a later date; and

b. Provide to the department a copy of the MS4 program plan upon completion of development.

3. If the permittee was previously covered under the General VPDES Permit for Discharges of Stormwater from MS4 effective November 1, 2018, the permittee shall update the MS4 program plan to meet the requirements of this permit no later than six months after the effective date of this permit unless otherwise specified in another permit condition and shall post the most up-to-date version of MS4 program plan on the permittee's website or location where the MS4 program plan can be obtained as required by Part I E 2 within 30 days of updating the MS4 program plan. Until such time that the MS4 program plan is updated in accordance with Part I E, the permittee shall continue to implement the MS4 program plan in effect at the time that coverage is issued under this general permit.

4. Revisions to the MS4 program plan are expected throughout the life of this permit as part of the iterative process to reduce pollutant loading and protect water quality to the MEP. As such, revisions made in accordance with this

permit as a result of the iterative process do not require modification of this permit. The permittee shall summarize revisions to the MS4 program plan as part of the annual report as described in Part I D 3.

5. The permittee may demonstrate compliance with one or more MCM in Part I E through implementation of separate statutory or regulatory programs provided that the permittee's MS4 program plan identifies and fully describes any program that will be used to satisfy one or more of the minimum control measures of Part I E. If the program that the permittee is using requires the approval of a third party, the program shall be fully approved by the third party, or the permittee shall be working toward getting full approval. Documentation of the program's approval status or the progress toward achieving full approval shall be included in the annual report required by Part I D. The permittee shall remain responsible for compliance with the permit requirements if the other entity fails to implement one or more components of the control measures.

6. The permittee may rely on another entity to satisfy the permit requirements to implement a minimum control measure if:

a. The other entity, in fact, implements the control measure;

b. The particular control measure, or component thereof, is at least as stringent as the corresponding permit requirement;

c. The other entity agrees to implement the control measure on behalf of the permittee; and

d. The agreement between the parties is documented in writing and retained by the permittee with the MS4 program plan for as long as the agreement is active.

The permittee shall remain responsible for compliance with requirements of the permit and shall document in the annual reports required in accordance with Part I D that another entity is being relied on to satisfy all or part of the state permit requirements. The permittee shall provide the information required in Part I D.

7. If the permittee relies on another governmental entity regulated under ~~9VAC25-870-380~~ 9VAC25-875-950 to satisfy all of the state permit obligations, including the obligation to file periodic reports required by Part I D, the permittee must note that fact in the registration statement, but is not required to file the periodic reports. The permittee remains responsible for compliance with the state permit requirements if the other entity fails to implement the control measures or components thereof.

D. Annual reporting requirements.

1. The permittee shall submit an annual report to the department no later than October 1 of each year in a method, (i.e., how the permittee must submit) and format (i.e., how

the report shall be laid out) as specified by the department; the required content of the annual report is specified in Part I E and Part II B. The report shall cover the previous year from July 1 to June 30.

2. Following notification from the department of the start date for the required electronic submission of annual reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least a three-month notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

3. The annual report shall include the following general information:

- a. The permittee, system name, and permit number;
- b. The reporting period for which the annual report is being submitted;
- c. A signed certification as per Part IV K;
- d. Each annual reporting item as specified in an MCM in Part I E; and
- e. An evaluation of the MS4 program implementation, including a review of each MCM, to determine the MS4 program's effectiveness and whether or not changes to the MS4 program plan are necessary.

4. For permittees receiving initial coverage under this general VPDES permit for the discharge of stormwater, the annual report shall include a status update on each component of the MS4 program plan being developed. Once the MS4 program plan has been updated to include implementation of a specific MCM in Part I E, the permittee shall follow the reporting requirements established in Part I D 3.

5. For those permittees with requirements established under Part II B, the annual report shall include a status report on the implementation of the local TMDL action plans in accordance with Part II B including any revisions to the plan.

6. For the purposes of this permit, the MS4 program plan, annual reports, the Chesapeake Bay TMDL action plan, and Chesapeake Bay TMDL implementation annual status reports shall be maintained as separate documents and submitted to the department as required by this permit as separate documents.

E. Minimum control measures.

1. Public education and outreach.

- a. The permittee shall implement a public education and outreach program designed to:
 - (1) Increase the public's knowledge of how to reduce stormwater pollution, placing priority on reducing impacts

to impaired waters and other local water pollution concerns;

(2) Increase the public's knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications; and

(3) Implement a diverse program with strategies that are targeted toward individuals or groups most likely to have significant stormwater impacts.

b. The permittee shall identify no fewer than three high-priority stormwater issues to meet the goal of educating the public in accordance with Part I E 1 a. High-priority issues may include the following examples: Chesapeake Bay nutrients, pet wastes, local receiving water impairments, TMDLs, high-quality receiving waters, litter control, BMP maintenance, anti-icing and deicing agent application, planned green infrastructure redevelopment, planned ecosystem restoration projects, and illicit discharges from commercial sites.

c. The high-priority public education and outreach program, as a whole, shall:

- (1) Clearly identify the high-priority stormwater issues;
- (2) Explain the importance of the high-priority stormwater issues;
- (3) Include measures or actions the public can take to minimize the impact of the high-priority stormwater issues; and
- (4) Provide a contact and telephone number, website, or location where the public can find out more information.

d. The permittee shall use two or more of the strategies listed in Table 1 per year to communicate to the target audience the high-priority stormwater issues identified in accordance with Part I E 1 b, including how to reduce stormwater pollution.

Table 1 Strategies for Public Education and Outreach	
Strategies	Examples (provided as examples and are not meant to be all inclusive or limiting)
Traditional written materials	Informational brochures, newsletters, fact sheets, utility bill inserts, or recreational guides for targeted groups of citizens
Alternative materials	Bumper stickers, refrigerator magnets, t-shirts, or drink koozies
Signage	Temporary or permanent signage in public places or facilities, vehicle signage, bill boards billboards, or storm drain stenciling
Media materials	Information disseminated through electronic media, radio, televisions, movie theater, newspaper, or GIS story maps

Regulations

Speaking engagements	Presentations to school, church, industry, trade, special interest, or community groups
Curriculum materials	Materials developed for school-aged children, students at local colleges or universities, or extension classes offered to local citizens
Training materials	Materials developed to disseminate during workshops offered to local citizens, trade organization, or industrial officials
Public education activities	Booth at community fair, demonstration of stormwater control projects, presentation of stormwater materials to schools to meet applicable education Standards of Learning or curriculum requirements, or watershed walks
Public meetings	Public meetings on proposed community stormwater management retrofits, green infrastructure redevelopment, ecosystem restoration projects, TMDL development, climate change's effects on stormwater management, voluntary residential low impact development, or other stormwater issues

e. The permittee may coordinate its public education and outreach efforts with other MS4 permittees; however, each permittee shall be individually responsible for meeting all of its state permit requirements.

f. The MS4 program plan shall include:

- (1) A list of the high-priority stormwater issues the permittee will communicate to the public as part of the public education and outreach program;
- (2) The rationale for selection of each high-priority stormwater issue and an explanation of how each education or outreach strategy is intended to have a positive impact on stormwater discharges;
- (3) Identification of the target audience to receive each high-priority stormwater message;
- (4) Nontraditional permittees may identify staff, students, members of the general public, and other users of facilities operated by the permittee as the target audience for education and outreach strategies;
- (5) Traditional permittees may identify staff and students as part of the target audience for education and outreach strategies; however, staff shall not be the majority of the target audience;
- (6) Staff training required in accordance with Part I E 6 d does not qualify as a strategy for public education and outreach;

(7) The strategies from Table 1 of Part I E 1 d to be used to communicate each high-priority stormwater message; and

(8) The anticipated time periods the messages will be communicated or made available to the public.

g. The annual report shall include the following information:

(1) A list of the high-priority stormwater issues the permittee addressed in the public education and outreach program;

(2) A summary of the public education and outreach activities conducted for the report year, including the strategies used to communicate the identified high-priority issues;

(3) A description of any changes in high-priority stormwater issues, including, strategies used to communicate high-priority stormwater issues or target audiences for the public education and outreach plan. The permittee shall provide a rationale for any of these changes; and

(4) A description of public education and outreach activities conducted that included education regarding climate change.

2. Public involvement and participation.

a. The permittee shall develop and implement procedures for the following:

(1) The public to report potential illicit discharges, improper disposal, or spills to the MS4, complaints regarding ~~land-disturbing~~ land-disturbing activities, or other potential stormwater pollution concerns;

(2) The public to provide comments on the permittee's MS4 program plan;

(3) Responding to public comments received on the MS4 program plan; and

(4) Maintaining documentation of public comments received on the MS4 program and associated MS4 program plan and the permittee's response.

b. No later than three months after this permit's effective date, the existing permittee shall update and maintain the webpage dedicated to the MS4 program and stormwater pollution prevention. The following information shall be posted on this webpage:

(1) The effective MS4 permit and coverage letter;

(2) The most current MS4 program plan or location where the MS4 program plan can be obtained;

(3) The annual report for each year of the term covered by this permit no later than 30 days after submittal to the department;

(4) For permittees whose regulated MS4 is located partially or entirely in the Chesapeake Bay watershed, the most current Chesapeake Bay TMDL action plan or

location where the Chesapeake Bay TMDL action plan can be obtained;

(5) For permittees whose regulated MS4 is located partially or entirely in the Chesapeake Bay watershed, the Chesapeake Bay TMDL implementation annual status reports for each year of the term covered by this permit no later than 30 days after submittal to the department;

(6) A mechanism for the public to report potential illicit discharges, improper disposal, or spills to the MS4, complaints regarding ~~land-disturbing~~ land-disturbing activities, or other potential stormwater pollution concerns in accordance with Part I E 2 a (1);

(7) Methods for how the public can provide comments on the permittee's MS4 program plan in accordance with Part I E 2 a (2) and if applicable, the Chesapeake Bay TMDL action plan in accordance with Part II A 13; and

(8) Federal and state nontraditional permittees with security policies preventing a MS4 program and stormwater pollution prevention webpage from being publicly accessible may utilize an internal staff accessible webpage such as an intranet webpage to meet the requirements of Part I E 2 b.

c. Traditional permittees shall implement no fewer than four activities per year from two or more of the categories listed in Table 2 to provide an opportunity for public involvement to improve water quality and support local restoration and clean-up projects.

d. Nontraditional permittees shall implement, promote, participate in, or coordinate on no fewer than four activities per year from two or more of the categories listed in Table 2 to provide an opportunity for public involvement to improve water quality and support local restoration and clean-up projects.

Public meetings	Public meetings on proposed community stormwater management retrofits, green infrastructure redevelopment, ecosystem restoration projects, TMDL development, voluntary residential low impact development, climate change's effects on stormwater management, or other stormwater issues
Disposal or collection events	Household hazardous chemicals collection, vehicle fluids collection
Pollution prevention	Adopt-a-storm drain program, implement a storm drain marking program, promote use of residential stormwater BMPs, implement pet waste stations in public areas, adopt-a-street program.

e. The permittee may coordinate the public involvement opportunities listed in Table 2 with other MS4 permittees; however, each permittee shall be individually responsible for meeting all of the permit requirements.

f. The permittee may include staff and students in public participation events; however, the activity cannot solely include or be limited to staff participants with stormwater, groundskeeping, and maintenance duties in order for an event to qualify as a public participation event.

g. Staff training required in accordance with Part I E 6 d does not qualify as a public participation event unless the training activity solicits participation from target audiences beyond staff or contractors with stormwater, groundskeeping, and maintenance duties.

h. The MS4 program plan shall include:

(1) The webpage address where mechanisms for the public to report (i) potential illicit discharges, improper disposal, or spills to the MS4, (ii) complaints regarding ~~land-disturbing~~ land-disturbing activities, or (iii) other potential stormwater pollution concerns;

(2) The webpage address that contains the methods for how the public can provide input on the permittee's MS4 program; and

(3) A description of the public involvement activities to be implemented by the permittee, the anticipated time period the activities will occur, and a metric for each activity to determine if the activity is beneficial to water quality. An example of metrics may include the weight of trash collected from a stream cleanup or the number of participants in a hazardous waste collection event.

i. The annual report shall include the following information:

(1) A summary of any public comments on the MS4 program received and how the permittee responded;

Public involvement opportunities	Examples (provided as example and are not meant to be all inclusive or limiting)
Monitoring	Establish or support citizen monitoring group
Restoration	Stream, watershed, shoreline, beach, or park clean-up day, adopt-a-waterway program, tree plantings, and riparian buffer plantings
Public education activities	Booth at community fair, demonstration of stormwater control projects, climate change's effects on stormwater management, presentation of stormwater materials to schools to meet applicable education Standards of Learning or curriculum requirements, or watershed walks

Regulations

(2) A summary of stormwater pollution complaints received under the procedures established in Part I E 2 a (1), excluding natural flooding complaints, and how the permittee responded;

(3) A webpage address to the permittee's MS4 program and stormwater website;

(4) Federal and state nontraditional permittees with security policies preventing the MS4 program and stormwater pollution prevention webpage from being publicly accessible utilizing an internal staff accessible website, such as intranet, shall provide evidence of the current internal MS4 program and stormwater pollution prevention webpage;

(5) A description of the public involvement activities implemented by the permittee, including any efforts to reach out and engage all economic and ethnic groups;

(6) A description of public education and outreach activities conducted that also included education regarding climate change;

(7) A report of the metric as defined for each activity and an evaluation as to whether or not the activity is beneficial to improving water quality; and

(8) The name of other MS4 permittees with whom the permittee collaborated in the public involvement opportunities.

3. Illicit discharge detection and elimination.

a. The permittee shall develop and maintain an accurate MS4 map and information table as follows:

(1) An updated map of the MS4 owned or operated by the permittee within the MS4 regulated service area no later than 24 months after the permit effective date that includes, at a minimum:

(a) MS4 outfalls discharging to surface waters, except as follows:

(i) In cases where the outfall is located outside of the MS4 permittee's legal responsibility, the permittee may elect to map the known point of discharge location closest to the actual outfall; and

(ii) In cases where the MS4 outfall discharges to receiving water channelized underground, the permittee may elect to map the point downstream at which the receiving water emerges above ground as an outfall discharge location. If there are multiple outfalls discharging to an underground channelized receiving water, the map shall identify that an outfall discharge location represents more than one outfall. This is an option a permittee may choose to use and recognizes the difficulties in accessing outfalls to underground channelized stream conveyances for purposes of mapping, screening, or monitoring;

(b) A unique identifier for each mapped item required in Part I E 3;

(c) The name and location of receiving waters to which the MS4 outfall or point of discharge discharges;

(d) MS4 regulated service area; and

(e) Stormwater management facilities owned or operated by the permittee.

(2) The permittee shall maintain an outfall information table associated with the MS4 map that includes the following information for each outfall or point of discharge for those cases in which the permittee elects to map the known point of discharge in accordance with Part I E 3 a (1) (a). The outfall information table may be maintained as a shapefile attribute table. The outfall information table shall contain the following:

(a) A unique identifier as specified on the MS4 map;

(b) The latitude and longitude of the outfall or point of discharge;

(c) The estimated regulated acreage draining to the outfall or point of discharge;

(d) The name of the receiving water;

(e) The 6th Order Hydrologic Unit Code of the receiving water;

(f) An indication as to whether the receiving water is listed as impaired in the Virginia 2022 305(b)/303(d) Water Quality Assessment Integrated Report; and

(g) The name of any EPA approved TMDLs for which the permittee is assigned a wasteload allocation.

(3) No later than 24 months after permit issuance, the permittee shall submit to DEQ, a format file geodatabase or two shapefiles that contain at a minimum:

(a) A point feature class or shapefile for outfalls with an attribute table containing outfall data elements required in accordance with Part I E 3 a (2); and

(b) A polygon feature class or shapefile for the MS4 service area as required in accordance with Part I E 3 a (1) (d) with an attribute table containing the following information:

(i) MS4 operator name;

(ii) MS4 permit number (VAR04); and

(iii) MS4 service area total acreage rounded to the nearest hundredth.

(4) All file geodatabase feature classes or shapefiles shall be submitted in the following data format standards:

(a) Point data in NAD83 or WGS84 decimal degrees global positional system coordinates;

(b) Data projected in Virginia Lambert Conformal Conic format;

(c) Outfall location accuracy shall be represented in decimal degrees rounded to at least the fifth decimal place for latitude and longitude to ensure point location accuracy (e.g., 37.61741, -78.15279); and

(d) Metadata that shall provide a description of each feature class or shapefile dataset, units of measure as applicable, coordinate system, and projection.

(5) No later than October 1 of each year, the permittee shall update the MS4 map and outfall information table to include any new outfalls constructed or TMDLs approved or both during the immediate preceding reporting period.

(6) The permittee shall provide written notification to any downstream adjacent MS4 of any known physical interconnection established or discovered after the effective date of this permit.

b. The permittee shall prohibit, through ordinance, policy, standard operating procedures, or other legal mechanism, to the extent allowable under federal, state, or local law, regulations, or ordinances, unauthorized nonstormwater discharges into the MS4. Nonstormwater discharges or flows identified in 9VAC25-890-20 D 3 shall only be addressed if they are identified by the permittee as a significant contributor of pollutants discharging to the MS4. Flows that have been identified by the department as de minimis discharges are not significant sources of pollutants to surface water.

c. The permittee shall maintain, implement, and enforce illicit discharge detection and elimination (IDDE) written procedures designed to detect, identify, and address unauthorized nonstormwater discharges, including illegal dumping, to the MS4 to effectively eliminate the unauthorized discharge. Written procedures shall include:

(1) A description of the legal authorities, policies, standard operating procedures, or other legal mechanisms available to the permittee to eliminate identified sources of ongoing illicit discharges, including procedures for using legal enforcement authorities.

(2) Dry weather field screening protocols to detect, identify, and eliminate illicit discharges to the MS4. The protocol shall include:

(a) A prioritized schedule of field screening activities and rationale for prioritization determined by the permittee based on such criteria as age of the infrastructure, land use, historical illegal discharges, dumping, or cross connections;

(b) If the total number of MS4 outfalls is equal to or less than 50, a schedule to screen all outfalls annually;

(c) If the total number of MS4 outfalls is greater than 50, a schedule to screen a minimum of 50 outfalls annually such that no more than 50% are screened in the previous 12-month period. The 50% criteria is not applicable if all outfalls have been screened in the previous three years;

(d) The permittee may adopt a risk-based approach to dry weather screening identifying observation points based upon illicit discharge risks upstream of an outfall. Observation points may include points of interconnection, manholes, points of discharge, conveyances, or inlets

suspected to have a high likelihood of receiving illicit discharges;

(e) Each observation point screened may be counted as one outfall screening activity equivalent and counted towards the requirements of Part I E 3 c (2) (b) or (2) (c); however, at least 50% of the minimum annual screening events must include outfall screening;

(f) Illicit discharges reported by the public and subsequent investigations may not be counted as screening events; however once the resolution of the investigation and the date the investigation was closed has been documented, an observation point may be established for future screening events; and

(g) A checklist or mechanism to track the following information for dry weather screening events:

(i) The unique identifier for the outfall or observation point;

(ii) Time since the last precipitation event;

(iii) The estimated quantity of the last precipitation event;

(iv) Site descriptions (e.g., conveyance type and dominant watershed land uses);

(v) Observed indicators of possible illicit discharge events, such as floatables, deposits, stains, and vegetative conditions (e.g., dying or dead vegetation, excessive vegetative growth);

(vi) Whether or not a discharge was observed;

(vii) If a discharge was observed, the estimated discharge rate and visual characteristics of the discharge (e.g., odor, color, clarity) and the physical condition of the outfall; and

(viii) For observation points, the location, downstream outfall unique identifier, and risk factors or rationale for establishing the observation point.

(3) A timeframe upon which to conduct an investigation to identify and locate the source of any observed unauthorized nonstormwater discharge. Priority of investigations shall be given to discharges of sanitary sewage and those believed to be a risk to human health and public safety. Discharges authorized under a separate VPDES or state permit require no further action under this permit.

(4) Methodologies to determine the source of all illicit discharges. If the permittee is unable to identify the source of an illicit discharge within six months of beginning the investigation, then the permittee shall document that the source remains unidentified. If the observed discharge is intermittent, the permittee shall document that attempts to observe the discharge flowing were unsuccessful.

(5) Methodologies for conducting a follow-up investigation for illicit discharges that are continuous or that permittees expect to occur more frequently than a one-time discharge to verify that the discharge has been eliminated except as provided for in Part I E 3 c (4);

Regulations

(6) A mechanism to track all illicit discharge investigations to document the following:

- (a) The dates that the illicit discharge was initially observed, reported, or both;
- (b) The results of the investigation, including the source, if identified;
- (c) Any follow-up to the investigation;
- (d) Resolution of the investigation; and
- (e) The date that the investigation was closed.

d. The MS4 program plan shall include:

(1) The MS4 map and outfall information table required by Part I E 3 a. The map and outfall information table may be incorporated into the MS4 program plan by reference. The map shall be made available to the department within 14 days upon request;

(2) Copies of written notifications of physical interconnections given by the permittee to other MS4s; and

(3) The IDDE procedures described in Part I E 3 c.

e. The annual report shall include:

(1) A confirmation statement that the MS4 map and outfall information table have been updated to reflect any changes to the MS4 occurring on or before June 30 of the reporting year;

(2) The total number of outfalls and observation points screened during the reporting period as part of the dry weather screening program; and

(3) A list of illicit discharges to the MS4, including spills reaching the MS4 with information as follows:

- (a) The location and source of illicit discharge;
- (b) The dates that the discharge was observed, reported, or both;
- (c) Whether the discharge was discovered by the permittee during dry weather screening, reported by the public, or other method (describe);
- (d) How the investigation was resolved;
- (e) A description of any follow-up activities; and
- (f) The date the investigation was closed.

4. Construction site stormwater runoff and erosion and sediment control.

a. The permittee shall utilize its legal authority, such as ordinances, permits, orders, specific contract language, and interjurisdictional agreements, to address discharges entering the MS4 from regulated construction site stormwater runoff. The permittee shall control construction site stormwater runoff as follows:

(1) If the traditional permittee is a city, county, or town that has adopted a Virginia Erosion and ~~Sediment Control~~ Stormwater Management Program (~~VESCP~~ VESMP), the permittee shall implement the ~~VESCP~~ VESMP consistent

with the Virginia Erosion and ~~Sediment Control Law~~ (~~§ 62.1-44.15:51~~ Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and Virginia Erosion and ~~Sediment Control Regulations~~ (9VAC25-840) Stormwater Management Regulation (9VAC25-875);

(2) If the traditional permittee is a town that ~~has not adopted a VESCP, implementation is required to adopt and administer a VESMP, the town may, pursuant to § 62.1-44.15:27 C of the Code of Virginia, enter into an agreement with the county the town lies within to become subject to the county's VESMP. If a town lies within the boundaries of more than one county, it may enter into an agreement with any of those counties that operates a VESMP. Implementation of a VESCP~~ VESMP, consistent with the Virginia Erosion and ~~Sediment Control Law~~ (~~§ 62.1-44.15:51 et seq. of the Code of Virginia~~) Stormwater Management Act and Virginia Erosion and ~~Sediment Control Regulations~~ (9VAC25-840) Stormwater Management Regulation by the ~~surrounding~~ county shall constitute compliance with Part I E 4 a; such town shall notify the ~~surrounding~~ county of erosion, sedimentation, or other construction stormwater runoff problems;

(3) If the nontraditional permittee is a state agency; public institution of higher education, including community colleges, colleges, and universities; or federal entity and has developed standards and specifications in accordance with the Virginia Erosion and ~~Sediment Control Law~~ (~~§ 62.1-44.15:51 et seq. of the Code of Virginia~~) Stormwater Management Act and Virginia Erosion and ~~Sediment Control Regulations~~ (9VAC25-840) Stormwater Management Regulation, the permittee shall implement the most recent department approved standards and specifications; or

(4) If the nontraditional permittee is a state agency; public institution of higher education, including community colleges, colleges, and universities; or federal entity and has not developed standards and specifications in accordance with the Virginia Erosion and ~~Sediment Control Law~~ (~~§ 62.1-44.15:51 et seq. of the Code of Virginia~~) Stormwater Management Act and Virginia Erosion and ~~Sediment Control Regulations~~ (9VAC25-840) Stormwater Management Regulation, the permittee shall inspect all ~~land-disturbing~~ land-disturbing activities as defined in § ~~62.1-44.15:51~~ 62.1-44.15:24 of the Code of Virginia that result in the disturbance of 10,000 square feet or greater, or 2,500 square feet or greater in accordance with areas designated under the Chesapeake Bay Preservation Act, as follows:

- (a) During or immediately following initial installation of erosion and sediment controls;
- (b) At least once per every two-week period;

(c) Within 48 hours following any runoff producing storm event; and

(d) At the completion of the project prior to the release of any performance bond.

(5) If the nontraditional permittee is a school board or other local government body, the permittee shall inspect those projects resulting in a land disturbance as defined in § ~~62.1-44.15-51~~ 62.1-44.15-24 of the Code of Virginia occurring on lands owned or operated by the permittee that result in the disturbance of 10,000 square feet or greater, 2,500 square feet or greater in accordance with areas designated under the Chesapeake Bay Preservation Act, or in accordance with more stringent thresholds established by the local government, as follows:

(a) During or immediately following initial installation of erosion and sediment controls;

(b) At least once per every two-week period;

(c) Within 48 hours following any runoff producing storm event; and

(d) At the completion of the project prior to the release of any performance bond.

b. The permittee shall require implementation of appropriate controls to prevent nonstormwater discharges to the MS4, such as wastewater, concrete washout, fuels and oils, and other illicit discharges identified during ~~land disturbing~~ land-disturbing activity inspections. The discharge of nonstormwater discharges other than those identified in 9VAC25-890-20 D through the MS4 is not authorized by this state permit.

c. Employees and contractors serving as plan reviewers, inspectors, program administrators, and construction site operators shall obtain the appropriate certifications as required under the Virginia Erosion and ~~Sediment Control Law~~ Stormwater Management Act and its attendant regulations;

d. The permittee's MS4 program plan shall include:

(1) If the permittee implements ~~an erosion and sediment control program~~ a VESMP for construction site stormwater runoff in accordance with Part I E 4 a (1), the local ordinance citations for the ~~VESCP program~~ VESMP;

(2) If the permittee is a town that does not implement an erosion and ~~sediment control~~ stormwater management program for construction site stormwater runoff in accordance with Part I E 4 a (2), the county ordinance citations for the ~~VESCP~~ VESMP program the town is subject to;

(3) If the permittee implements ~~annual~~ standards and specifications for erosion and sediment control and construction site stormwater runoff in accordance with Part I E 4 a (3):

(a) The most recently approved standards and specifications or if incorporated by reference, the location where the standards and specifications can be viewed; and

(b) A copy of the most recent standards and specifications approval letter from the department;

(4) A description of the legal authorities utilized to ensure compliance with Part I E 4 a for erosion and sediment control and construction site stormwater runoff control, such as ordinances, permits, orders, specific contract language, policies, and interjurisdictional agreements;

(5) For traditional permittees, written inspection procedures to ensure ~~VESCP construction site stormwater runoff and erosion and sediment control~~ requirements are maintained in accordance with ~~9VAC25-840-90 A~~ 9VAC25-875-190 and onsite erosion and sediment controls are properly implemented in accordance with ~~9VAC25-840-60 B~~ 9VAC25-875-140;

(6) For nontraditional permittees, erosion and sediment control plans or ~~annual~~ standards and specifications shall be approved by the department in accordance with § ~~62.1-44.15-55~~ 62.1-44.15-34 or 62.1-44.15-31, respectively, of the Code of Virginia. Compliance with approved erosion and sediment control plans or ~~annual~~ standards and specifications shall be ensured by the permittee with written inspection procedures that at minimum include the following:

(a) An inspection checklist for documenting onsite erosion and sediment control structures and systems are properly maintained and repaired as needed to ensure continued performance of their intended function; and

(b) A list of all associated documents utilized for inspections, including checklists, department approved erosion and sediment control plans, or the most recently department approved ~~annual~~ standards and specifications, and any other documents utilized;

(7) Traditional permittees shall maintain written procedures for requiring ~~VESCP~~ compliance through corrective action or enforcement action in accordance with ~~§ 62.1-44.15-58~~ the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia);

(8) Nontraditional permittees shall maintain written procedures for requiring compliance with department approved erosion and sediment control plans and ~~annual~~ standards and specifications through corrective action or enforcement action to the extent allowable under federal, state, or local law, regulation, ordinance, or other legal mechanisms; and

(9) The roles and responsibilities of each of the permittee's departments, divisions, or subdivisions in implementing erosion and sediment control and construction site stormwater runoff control requirements in Part I E 4.

e. The annual report shall include the following:

Regulations

- (1) Total number of erosion and sediment control inspections conducted;
- (2) Total number of each type of compliance action and enforcement action implemented; and
- (3) For nontraditional permittees:
 - (a) A confirmation statement that ~~land-disturbing~~ land-disturbing projects that occurred during the reporting period have been conducted in accordance with the current department approved ~~annual~~ standards and specifications for erosion and sediment control; and
 - (b) If any ~~land-disturbing~~ land-disturbing projects were conducted without department approved ~~annual~~ standards and specifications, a list of all ~~land-disturbing~~ land-disturbing projects that occurred during the reporting period with erosion and sediment control plan approval dates for each project.

5. Post-construction stormwater management for new development and development on prior developed lands.

a. The permittee shall address post-construction stormwater runoff that enters the MS4 from the following ~~land-disturbing~~ land-disturbing activities by implementing a post-construction stormwater runoff management program as follows:

- (1) If the traditional permittee is a city, county, or town, with an approved Virginia Erosion and Stormwater Management Program (~~VSMP~~) (VESMP), the permittee shall implement the ~~VSMP~~ VESMP consistent with the Virginia Erosion and Stormwater Management Act (~~§ 62.1-44.15:24 et seq. of the Code of Virginia~~) and ~~VSMP Regulations (9VAC25-870)~~ Virginia Erosion and Stormwater Management Regulation as well as maintain an inspection and maintenance program in accordance with Part I E 5 b and c;
- (2) If the traditional permittee is a town that has not adopted a ~~VSMP~~ VESMP, entering into an agreement for the implementation of a VSMP VESMP consistent with the Virginia Erosion and Stormwater Management Act (~~§ 62.1-44.15:24 et seq. of the Code of Virginia~~) and ~~VSMP Regulations (9VAC25-870)~~ Virginia Erosion and Stormwater Management Regulation by the surrounding county shall constitute compliance with Part I E 5 a; such town shall notify the surrounding county of erosion, sedimentation, or other post-construction stormwater runoff problems and maintain an inspection and maintenance program in accordance with Part I E 5 c and d;
- (3) If the traditional permittee is a city, county, or town receiving initial permit coverage during the permit term and must obtain ~~VSMP~~ VESMP approval from the department, the permittee shall implement the ~~VSMP~~ VESMP consistent with the Virginia Erosion and Stormwater Management Act (~~§ 62.1-44.15:24 et seq. of the Code of Virginia~~) and ~~VSMP Regulations (9VAC25-~~

~~870)~~ Virginia Erosion and Stormwater Management Regulation as well as develop an inspection and maintenance program in accordance with Part I E 5 b and c no later than 60 months after receiving permit coverage;

(4) If the nontraditional permittee is a state agency; public institution of higher education, including community colleges, colleges, and universities; or federal entity and has ~~not~~ developed standards and specifications in accordance with the Virginia Erosion and Stormwater Management Act (~~§ 62.1-44.15:24 et seq. of the Code of Virginia~~) and ~~VSMP Regulations (9VAC25-870)~~ Virginia Erosion and Stormwater Management Regulation, the permittee shall implement the most recent department approved standards and specifications and maintain an inspection and maintenance program in accordance with Part I E 5 b;

(5) If the nontraditional permittee is a state agency; public institution of higher education, including community colleges, colleges, and universities; or federal entity, and has not developed standards and specifications in accordance with the Virginia Erosion and Stormwater Management Act (~~§ 62.1-44.15:24 et seq. of the Code of Virginia~~) and ~~VSMP Regulations (9VAC25-870)~~ Virginia Erosion and Stormwater Management Regulation, the permittee shall implement a post-construction stormwater runoff control program through compliance with ~~9VAC25-870~~ 9VAC25-875 and with the implementation of a maintenance and inspection program consistent with Part I E 5 b no later than 60 months after receiving permit coverage; or

(6) If the nontraditional permittee is a school board or other local government body, the permittee shall implement a post-construction stormwater runoff control program through compliance with ~~9VAC25-870~~ 9VAC25-875 or in accordance with more stringent local requirements, if applicable, and with the implementation of a maintenance and inspection program consistent with Part I E 5 b.

b. The permittee shall implement an inspection and maintenance program for those stormwater management facilities owned or operated by the permittee as follows:

(1) Within six months of the permit effective date, the permittee shall develop and maintain written inspection and maintenance procedures in order to ensure adequate long-term operation and maintenance of its stormwater management facilities. The permittee may use inspection and maintenance specifications available from the Virginia Stormwater BMP Clearinghouse or inspection and maintenance plans developed in accordance with the department's Stormwater Local Assistance Fund (SLAF) guidelines;

(2) Employees and contractors implementing the stormwater program shall obtain the appropriate certifications as required under the Virginia Erosion and

Stormwater Management Act and its attendant regulations;

(3) The permittee shall inspect stormwater management facilities owned or operated by the permittee no less frequently than once per year. The permittee may choose to implement an alternative schedule to inspect these stormwater management facilities based on facility type and expected maintenance needs provided that the alternative schedule and rationale is included in the MS4 program plan. The alternative inspection frequency shall be no less often than once per five years; and

(4) If during the inspection of the stormwater management facility conducted in accordance with Part I E 5 b (2), it is determined that maintenance is required, the permittee shall conduct the maintenance in accordance with the written procedures developed under Part I E 5 b (1).

c. For traditional permittees described in Part I E 5 a (1), (2), or (3), the permittee shall:

(1) Implement an inspection and enforcement program for stormwater management facilities not owned by the permittee (i.e., privately owned) that includes:

(a) An inspection frequency of no less often than once per five years for all privately owned stormwater management facilities that discharge into the MS4; and

(b) Adequate long-term operation and maintenance by the owner of the stormwater management facility by requiring the owner to develop and record a maintenance agreement, including an inspection schedule to the extent allowable under state or local law or other legal mechanism;

(2) Utilize its legal authority for enforcement of the maintenance responsibilities in accordance with ~~9VAC25-870-112~~ 9VAC25-875-535 if maintenance is neglected by the owner;

(3) The permittee may develop and implement a progressive compliance and enforcement strategy provided that the strategy is included in the MS4 program plan;

(4) The permittee may utilize the inspection reports provided by the owner of a stormwater management facility as part of an inspection and enforcement program in accordance with ~~9VAC25-870-114 C~~ 9VAC25-875-140 D.

d. The MS4 program plan shall include:

(1) If the permittee implements a ~~V~~VSMP ~~V~~VESMP in accordance with Part I E 5 a (1), (2), or (3):

(a) A copy of the ~~V~~VSMP ~~V~~VESMP approval letter issued by the department;

(b) Written inspection procedures and all associated documents utilized in the inspection of privately owned stormwater management facilities; and

(c) Written procedures for compliance and enforcement of inspection and maintenance requirements for privately owned stormwater management facilities;

(2) If the permittee implements a post-development stormwater runoff control program in accordance with Part I E 5 a (4):

(a) The most recently approved standards and specifications or if incorporated by reference, the location where the standards and specifications can be viewed; and

(b) A copy of the most recent standards and specifications approval letter from the department;

(3) A description of the legal authorities utilized to ensure compliance with Part I E 5 a for post-construction stormwater runoff control such as ordinances (provide citation as appropriate), permits, orders, specific contract language, and interjurisdictional agreements;

(4) Written inspection and maintenance procedures and other associated template documents utilized during inspection and maintenance of stormwater management facilities owned or operated by the permittee; and

(5) The roles and responsibilities of each of the permittee's departments, divisions, or subdivisions in implementing the post-construction stormwater runoff control program.

e. The annual report shall include the following information:

(1) If the traditional permittee implements a ~~V~~VSMP ~~V~~VESMP in accordance with Part I E 5 a (1), (2), or (3):

(a) The number of privately owned stormwater management facility inspections conducted; and

(b) The number of enforcement actions initiated by the permittee to ensure long-term maintenance of privately owned stormwater management facilities including the type of enforcement action;

(2) Total number of inspections conducted on stormwater management facilities owned or operated by the permittee;

(3) A description of the significant maintenance, repair, or retrofit activities performed on the stormwater management facilities owned or operated by the permittee to ensure it continues to perform as designed. This does not include routine activities such as grass mowing or trash collection;

(4) For traditional permittees as specified in Part I E 5 a (1), a confirmation statement that the permittee submitted stormwater management facility information through the Virginia Construction Stormwater General Permit database for those ~~land-disturbing~~ land-disturbing activities for which the permittee was required to obtain coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities in accordance with Part III B 1 or a statement that the permittee did not complete any projects requiring coverage under the

Regulations

General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880);

(5) A confirmation statement that the permittee electronically reported stormwater management facilities using the DEQ BMP Warehouse in accordance with Part III B 1 and 2; and

(6) A confirmation statement that the permittee electronically reported stormwater management facilities inspected using the DEQ BMP Warehouse in accordance with Part III B 5.

6. Pollution prevention and good housekeeping for facilities owned or operated by the permittee within the MS4 service area.

a. The permittee shall maintain and implement written good housekeeping procedures for those activities listed in Part I E 6 b at facilities owned or operated by the permittee designed to meet the following objectives:

(1) Prevent illicit discharges;

(2) Ensure permittee staff or contractors properly dispose of waste materials, including landscape wastes and prevent waste materials from entering the MS4;

(3) Prevent the discharge of wastewater or wash water not authorized in accordance with 9VAC25-890-20 D 3 u, into the MS4 without authorization under a separate VPDES permit; and

(4) Minimize the pollutants in stormwater runoff.

b. The permittee shall develop and implement written good housekeeping procedures that meet the objectives established in Part I E 6 a for the following activities:

(1) Road, street, sidewalk, and parking lot maintenance and cleaning:

(a) Within 24 months of permit issuance, permittees that apply anti-icing and deicing agents shall update and implement procedures in accordance with Part I E to include implementation of best management practices for anti-icing and deicing agent application, transport, and storage;

(b) Procedures developed in accordance with Part I E shall prohibit the application of any anti-icing or deicing agent containing urea or other forms of nitrogen or phosphorus;

(2) Renovation and significant exterior maintenance activities (e.g., painting, roof resealing, and HVAC coil cleaning) not covered under a separate ~~VSM~~ VPDES construction general permit. The permittee shall develop and implement procedures no later than 36 months after permit issuance;

(3) Discharging water pumped from construction and maintenance activities not covered by another permit covering such activities;

(4) Temporary storage of landscaping materials;

(5) Maintenance of permittee owned or operated vehicles and equipment (i.e., prevent pollutant discharges from leaking permittee vehicles and equipment);

(6) Application of materials, including pesticides and herbicides shall not exceed manufacturer's recommendations; and

(7) Application of fertilizer shall not exceed maximum application rates established by applicable nutrient management plans. For areas not covered under nutrient management plans where fertilizer is applied, application rates shall not exceed manufacturer's recommendations.

c. The permittee shall require through the use of contract language, training, written procedures, or other measures within the permittee's legal authority that contractors employed by the permittee and engaging in activities described in Part I E 6 b follow established good housekeeping procedures and use appropriate control measures to minimize the discharge of pollutants to the MS4.

d. The written procedures established in accordance with Part I E 6 a and b shall be utilized as part of the employee training program, and the permittee shall develop a written training plan for applicable field personnel that ensures the following:

(1) Applicable field personnel shall receive training in the prevention, recognition, and elimination of illicit discharges no less often than once per 24 months;

(2) Employees performing road, street, sidewalk, and parking lot maintenance shall receive training in good housekeeping procedures required under Part I E 6 b (1) no less often than once per 24 months;

(3) Employees working in and around facility maintenance, public works, or recreational facilities shall receive training in applicable Part I E 6 a and b good housekeeping procedures required no less often than once per 24 months;

(4) Employees working in and around high-priority facilities with a stormwater pollution prevention plan (SWPPP) shall receive training in applicable site specific SWPPP procedures no less often than once per 24 months;

(5) Employees whose duties include emergency spill control and response shall be trained in spill control and response. Emergency responders, such as firefighters and law-enforcement officers, trained on the handling of spill control and response as part of a larger emergency response training shall satisfy this training requirement and be documented in the training plan; and

(6) Employees and contractors hired by the permittee who apply pesticides and herbicides shall be trained and certified in accordance with the Virginia Pesticide Control Act (§ 3.2-3900 et seq. of the Code of Virginia). Certification by the Virginia Department of Agriculture and Consumer Services (VDACS) Pesticide and

Herbicide Applicator program shall constitute compliance with this requirement. Contracts for the application of pesticide and herbicides executed after the effective date of this permit shall require contractor certification.

e. The permittee shall maintain documentation of each training activity conducted by the permittee to fulfill the requirements of Part I E 6 d for a minimum of three years after training activity completion. The documentation shall include the following information:

- (1) The date when applicable employees have completed the training activity;
- (2) The number of employees who have completed the training activity; and
- (3) The training objectives and good housekeeping procedures required under Part I E 6 a covered by training activity.

f. The permittee may fulfill the training requirements in Part I E 6 d, in total or in part, through regional training programs involving two or more MS4 permittees; however, the permittee shall remain responsible for ensuring compliance with the training requirements.

g. Within 12 months of permit coverage, the permittee shall identify any new high-priority facilities located in expanded 2020 census urban areas with a population of at least 50,000.

h. Within 36 months of permit coverage, the permittee shall implement SWPPPs for high-priority facilities meeting the conditions of Part I E 6 i and which are located in expanded 2020 census urban areas with a population of at least 50,000.

i. The permittee shall maintain and implement a site specific SWPPP for each high-priority facility as defined in 9VAC25-890-1 that does not have or require separate VPDES permit coverage, and which any of the following materials or activities occur and are expected to have exposure to stormwater resulting from rain, snow, snowmelt, or runoff:

- (1) Areas where residuals from using, storing, or cleaning machinery or equipment remain and are exposed to stormwater;
- (2) Materials or residuals on the ground or in stormwater inlets from spills or leaks;
- (3) Material handling equipment;
- (4) Materials or products that would be expected to be mobilized in stormwater runoff during loading or unloading or transporting activities (e.g., rock, salt, fill dirt);
- (5) Materials or products stored outdoors (except final products intended for outside use where exposure to stormwater does not result in the discharge of pollutants);
- (6) Materials or products that would be expected to be mobilized in stormwater runoff contained in open,

deteriorated, or leaking storage drums, barrels, tanks, and similar containers;

(7) Waste material except waste in covered, nonleaking containers (e.g., dumpsters);

(8) Application or disposal of process wastewater (unless otherwise permitted); or

(9) Particulate matter or visible deposits of residuals from roof stacks, vents, or both not otherwise regulated (i.e., under an air quality control permit) and evident in the stormwater runoff.

j. Each SWPPP as required in Part I E 6 g shall include the following:

(1) A site description that includes a site map identifying all outfalls, direction of stormwater flows, existing source controls, and receiving water bodies;

(2) A description and checklist of the potential pollutants and pollutant sources;

(3) A description of all potential nonstormwater discharges;

(4) A description of all structural control measures, such as stormwater management facilities and other pollutant source controls, applicable to SWPPP implementation (e.g., permeable pavement or oil-water separators that discharge to sanitary sewer are not applicable to the SWPPP), such as oil-water separators, and inlet protection designed to address potential pollutants and pollutant sources at risk of being discharged to the MS4;

(5) A maintenance schedule for all stormwater management facilities and other pollutant source controls applicable to SWPPP implementation described in Part I E 6 h (4);

(6) Site specific written procedures designed to reduce and prevent pollutant discharge that incorporate by reference applicable good housekeeping procedures required under Part I E 6 a and b;

(7) A description of the applicable training as required in Part I E 6 d (4);

(8) An inspection frequency of no less often than once per year and maintenance requirements for site specific source controls. The date of each inspection and associated findings and follow-up shall be logged in each SWPPP;

(9) A log of each unauthorized discharge, release, or spill incident reported in accordance with Part IV G including the following information:

- (a) Date of incident;
- (b) Material discharged, released, or spilled; and
- (c) Estimated quantity discharged, released, or spilled;

(10) A log of modifications to the SWPPP made as the result of any unauthorized discharge, release, or spill in accordance Part I E 6 j or changes in facility activities and operation requiring SWPPP modification; and

Regulations

(11) The point of contact for SWPPP implementation.

k. No later than June 30 of each year, the permittee shall annually review any high-priority facility owned or operated by the permittee for which an SWPPP has not been developed to determine if the facility meets any of the conditions described in Part I E 6 g. If the facility is determined to need an SWPPP, the permittee shall develop an SWPPP meeting the requirements of Part I E 6 h no later than December 31 of that same year. The permittee shall maintain a list of all high-priority facilities owned or operated by the permittee not required to maintain an SWPPP in accordance with Part I E 6 g and this list shall be available upon request.

l. The permittee shall review the contents of any site specific SWPPP no later than 30 days after any unauthorized discharge, release, or spill reported in accordance with Part IV G to determine if additional measures are necessary to prevent future unauthorized discharges, releases, or spills. If necessary, the SWPPP shall be updated no later than 90 days after the unauthorized discharge.

m. The SWPPP shall be kept at the high-priority facility and utilized as part of employee SWPPP training required in Part I E 6 d (4). The SWPPP and associated documents may be maintained as a hard copy or electronically as long as the documents are available to employees at the applicable site.

n. If activities change at a facility such that the facility no longer meets the definition of a high-priority facility, the permittee may remove the facility from the list of high-priority facilities with a high potential to discharge pollutants.

o. If activities change at a facility such that the facility no longer meets the criteria requiring SWPPP coverage as described in Part I E 6 g, the permittee may remove the facility from the list of high-priority facilities that require SWPPP coverage.

p. The permittee shall maintain and implement turf and landscape nutrient management plans that have been developed by a certified turf and landscape nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia on all lands owned or operated by the permittee where nutrients are applied to a contiguous area greater than one acre. If nutrients are being applied to achieve final stabilization of a ~~land-disturbance~~ land-disturbance project, application shall follow the manufacturer's recommendations.

q. Within 12 months of permit coverage, the permittee shall identify contiguous areas greater than one acre located in expanded 2020 census urban areas with population of at least 50,000 and within the permittee's MS4 service area requiring turf and landscape nutrient management plans.

r. Within 36 months of permit coverage, the permittee shall implement turf and landscape nutrient management plans on contiguous areas greater than one acre located in expanded 2020 census urban areas with a population of least 50,000 and within the permittee's MS4 service area.

s. If nutrients are being applied to achieve final stabilization of a ~~land-disturbance~~ land-disturbance project, application shall follow the manufacturer's recommendations. For newly established turf where nutrients are applied to a contiguous area greater than one acre, the permittee shall implement a nutrient management plan no later than six months after the site achieves final stabilization.

t. Nutrient management plans developed in accordance with Part I E 6 n shall be submitted to the Department of Conservation and Recreation (DCR) for approval.

u. Nutrient management plans that are expired as of the effective date of this permit shall be submitted to DCR for renewal within six months after the effective date of this permit. Thereafter, all nutrient management plans shall be submitted to DCR at least 30 days prior to nutrient management plan expiration. Within 36 months of permit coverage, no nutrient management plans maintained by the permittee in accordance with Part I E 6 n shall be expired due to DCR documented noncompliance with 4VAC50-85-130 provided to the permittee.

v. Nutrient management plans may be maintained as a hard copy or electronically as long as the documents are available to employees at the applicable site.

w. Nontraditional permittees with lands regulated under § 10.1-104.4 of the Code of Virginia, including state agencies, state colleges and universities, and other state government entities, shall continue to implement turf and landscape nutrient management plans in accordance with this statutory requirement.

x. The MS4 program plan shall include:

(1) A list of written good housekeeping procedures for the operations and maintenance activities as required by Part I E 6 a and b;

(2) A list of all high-priority facilities owned or operated by the permittee required to maintain an SWPPP in accordance with Part I E 6 g that includes the facility name, facility location, and the location of the SWPPP hardcopy or electronic document being maintained. The SWPPP for each high-priority facility shall be incorporated by reference;

(3) A list of locations for which turf and landscape nutrient management plans are required in accordance with Part I E 6 n and s, including the following information:

(a) The total acreage covered by each nutrient management plan;

(b) The DCR approval date and expiration date for each nutrient management plan;

(c) The location of the nutrient management plan hardcopy or electronic document being maintained;

(4) A summary of mechanisms the permittee uses to ensure contractors working on behalf of the permittees implement

the necessary good housekeeping and pollution prevention procedures, and stormwater pollution plans as appropriate; and

(5) The written training plan as required in Part I E 6 d.

y. The annual report shall include the following:

(1) A summary of any written procedures developed or modified in accordance with Part I E 6 a and b during the reporting period;

(2) A confirmation statement that all high-priority facilities were reviewed to determine if SWPPP coverage is needed during the reporting period;

(3) A list of any new SWPPPs developed in accordance Part I E 6 i during the reporting period;

(4) A summary of any SWPPPs modified in accordance with Part I E 6 j, 6 l, or 6 m;

(5) The rationale of any high-priority facilities delisted in accordance with Part I E 6 l or m during the reporting period;

(6) The status of each nutrient management plan as of June 30 of the reporting year (e.g., approved, submitted and pending approval, and expired);

(7) A list of the training activities conducted in accordance with Part I E 6 d, including the following information:

(a) The completion date for the training activity;

(b) The number of employees who completed the training activity; and

(c) The objectives and good housekeeping procedures covered by the training activity.

Part II

TMDL Special Conditions

A. Chesapeake Bay TMDL special condition.

1. The Commonwealth in its Phase I, Phase II, and Phase III Chesapeake Bay TMDL Watershed Implementation Plans (WIPs) committed to a phased approach for MS4s, affording MS4 permittees up to three full five-year permit cycles to implement necessary reductions. This permit is consistent with the Chesapeake Bay TMDL and the Virginia Phase I, Phase II, and Phase III WIPs to meet the Level 2 (L2) scoping run for existing developed lands as it represents an implementation of

an additional 60% of L2 as specified in the Phase I, Phase II, and Phase III WIPs. In combination with the 40% reduction of L2 that has already been achieved, a total reduction no later than October 31, 2028, of 100% of L2 shall be achieved. Conditions of future permits will be consistent with the TMDL or WIP conditions in place at the time of permit issuance.

2. The following definitions apply to Part II of this state permit for the purpose of the Chesapeake Bay TMDL special condition for discharges in the Chesapeake Bay Watershed:

"Existing sources" means pervious and impervious urban land uses served by the MS4 as of June 30, 2009.

"New sources" means pervious and impervious urban land uses served by the MS4 developed or redeveloped on or after July 1, 2009.

"Pollutants of concern" or "POC" means total nitrogen and total phosphorus.

"Transitional sources" means regulated ~~land-disturbing~~ land-disturbing activities that are temporary in nature and discharge through the MS4.

3. Reduction requirements for permittees previously covered under the General VPDES Permit for Discharges of Stormwater from MS4 effective November 1, 2018. No later than October 31, 2028, the permittee shall reduce the load of total nitrogen and total phosphorus from existing developed lands served by the MS4 as of June 30, 2009, within the 2010 Census urbanized areas by at least 100% of the Level 2 (L2) Scoping Run Reductions. The 100% reduction is the sum of (i) the first phase reduction of 5.0% of the L2 Scoping Run Reductions based on the lands located within the 2000 Census urbanized areas required by June 30, 2018; (ii) the second phase reduction of at least 35% of the L2 Scoping Run based on lands within the 2000 Census urbanized areas required by June 30, 2023; (iii) the second phase reduction of at least 40% of the L2 Scoping Run, which shall only apply to the additional lands that were added by the 2010 expanded Census urbanized areas required by June 30, 2023; and (iv) the third phase reduction of least 60% of the L2 Scoping Run based on lands within the 2000 and 2010 expanded Census urbanized areas required by October 31, 2028. The required reduction shall be calculated using Tables 3a, 3b, 3c, and 3d as applicable:

Table 3a Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the James River, Lynnhaven, and Little Creek Basins							
		A	B	C	D	E	F
Pollutant	Subsource	Loading rate (lbs/ac/yr) ¹	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres) ²	Load(lbs/yr) ³	Percentage of MS4 required Chesapeake Bay total L2 loading reduction	100% cumulative reduction Required by 10/31/2028 (lbs/yr) ⁴	Sum of 100% cumulative reduction (lb/yr) ⁵

Regulations

Nitrogen	Regulated urban impervious	9.39			9%		
	Regulated urban pervious	6.99			6%		
Phosphorus	Regulated urban impervious	1.76			16%		
	Regulated urban pervious	0.5			7.25%		

¹Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.

²To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

³Column C = Column A x Column B.

⁴Column E = Column C x Column D.

⁵Column F = The sum of the subsorce cumulative reduction required by 10/31/2028 (lbs/yr) as calculated in Column E.

		A	B	C	D	E	F
Pollutant	Subsource	Loading rate (lbs/ac/yr) ¹	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres) ²	Load (lbs/yr) ³	Percentage of MS4 required Chesapeake Bay total L2 loading reduction	100% cumulative reduction required by 10/31/2028 (lbs/yr) ⁴	Sum of 100% cumulative reduction (lb/yr) ⁵
Nitrogen	Regulated urban impervious	16.86			9%		
	Regulated urban pervious	10.07			6%		
Phosphorus	Regulated Urban Impervious	1.62			16%		

	Regulated urban pervious	0.41			7.25%		

¹Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2

²To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

³Column C = Column A x Column B.

⁴Column E = Column C x Column D.

⁵Column F = The sum of the subsorce cumulative reduction required by 10/31/2028 (lbs/yr) as calculated in Column E.

Table 3c Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the Rappahannock River Basin							
		A	B	C	D	E	F
Pollutant	Subsource	Loading rate (lbs/ac/yr) ¹	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres) ²	Load (lbs/yr) ³	Percentage of MS4 required Chesapeake Bay total L2 loading reduction	100% cumulative reduction Required by 10/31/2028 (lbs/yr) ⁴	Sum of 100% cumulative reduction (lb/yr) ⁵
Nitrogen	Regulated urban impervious	9.38			9%		
	Regulated urban pervious	5.34			6%		
Phosphorus	Regulated urban impervious	1.41			16%		
	Regulated urban pervious	0.38			7.25%		

¹Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.

²To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

³Column C = Column A x Column B.

⁴Column E = Column C x Column D.

⁵Column F = The sum of the subsorce cumulative reduction required by 10/31/2028 (lbs/yr) as calculated in Column E.

Regulations

Table 3d Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the York River and Poquoson Coastal Basin							
		A	B	C	D	E	F
Pollutant	Subsource	Loading rate (lbs/ac/yr) ¹	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres) ²	Load (lbs/yr) ³	Percentage of MS4 required Chesapeake Bay total L2 loading reduction	100% cumulative reduction required by 10/31/2028 (lbs/yr) ⁴	Sum of 100% cumulative reduction (lb/yr) ⁵
Nitrogen	Regulated urban impervious	7.31			9%		
	Regulated urban pervious	7.65			6%		
Phosphorus	Regulated urban impervious	1.51			16%		
	Regulated urban pervious	0.51			7.25%		

¹Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.
²To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.
³Column C = Column A x Column B.
⁴Column E = Column C x Column D.
⁵Column F = The sum of the subsourse cumulative reduction required by 10/31/2028 (lbs/yr) as calculated in Column E.

4. No later than October 31, 2028, the permittee shall offset 100% of the increased loads from new sources initiating construction between July 1, 2009, and October 31, 2023, and designed in accordance with ~~9VAC25-870-48 Part II C (9VAC25-870-93 et seq.)~~ Article 4 (9VAC25-875-670 et seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation if the following conditions apply:

- a. The activity disturbed one acre or greater; and
- b. The resulting total phosphorous load was greater than 0.45 lb/acre/year, which is equivalent to an average land cover condition of 16% impervious cover.

The permittee shall utilize Table 4 of Part II A 5 to develop the equivalent pollutant load for new sources of nitrogen meeting the requirements of this condition.

5. No later than October 31, 2028, the permittee shall offset the increased loads from projects grandfathered in accordance with ~~9VAC25-870-48~~ 9VAC25-875-490 that begin construction after July 1, 2014, if the following conditions apply:

- a. The activity disturbs one acre or greater; and
- b. The resulting total phosphorous load was greater than 0.45 lb/acre/year, which is equivalent to an average land cover condition of 16% impervious cover.

The permittee shall utilize Table 4 to develop the equivalent pollutant load for grandfathered sources of nitrogen meeting the requirements of this condition.

Ratio of Phosphorus to Other POCs (Based on All Land Uses 2009 Progress Run)	Phosphorus Loading Rate (lbs/acre)	Nitrogen Loading Rate (lbs/acre)
James River Basin, Lynnhaven, and Little Creek Basins	1.0	5.2
Potomac River Basin	1.0	6.9
Rappahannock River Basin	1.0	6.7
York River Basin (including Poquoson Coastal Basin)	1.0	9.5

6. Reductions achieved in accordance with the General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems effective July 1, 2013, and November 1, 2018, shall be applied toward the total reduction requirements to demonstrate compliance with Part II A 3, A 4, and A 5.

7. 40% of L2 reductions for total nitrogen and total phosphorus shall be maintained by the permittee during the permit term.

8. Reductions shall be achieved in each river basin as calculated in Part II A 3 or for reductions in accordance with Part II A 4 and A 5 in the basin in which the new source or grandfathered project occurred.

9. Loading and reduction values greater than or equal to 10 pounds calculated in accordance with Part II A 3, A 4, and A 5 shall be calculated and reported to the nearest pound without regard to mathematical rules of precision. Loading and reduction values of less than 10 pounds reported in accordance with Part II A 3, A 4, and A 5 shall be calculated and reported to two significant digits.

10. Reductions required in Part II A 3, A 4, and A 5 shall be achieved through one or more of the following:

- a. BMPs approved by the Chesapeake Bay Program;
- b. BMPs approved by the department; or
- c. A trading program described in Part II A 11.

11. The permittee may acquire and use total nitrogen and total phosphorus credits in accordance with § 62.1-44.19:21 of the Code of Virginia for purposes of compliance with the

required reductions in Table 3a, Table 3b, Table 3c, and Table 3d of Part II A 3; Part II A 4; and Part II A 5, provided the use of credits has been approved by the department. The exchange of credits is subject to the following requirements:

- a. The credits are generated and applied to a compliance obligation in the same calendar year;
- b. The credits are generated and applied to a compliance obligation in the same tributary;
- c. The credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied;
- d. No later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on an MS4 Nutrient Credit Acquisition Form that the permittee has acquired the credits; and
- e. Total nitrogen and total phosphorus credits shall be either point source credits generated by point sources covered by the Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed general permit issued pursuant to § 62.1-44.19:14 of the Code of Virginia or nonpoint source credits certified pursuant to § 62.1-44.19:20 of the Code of Virginia.

12. Chesapeake Bay TMDL action plan requirements.

a. Permittees applying for initial coverage under this general permit shall submit a draft first phase Chesapeake Bay TMDL action plan to the department no later than October 31, 2028, unless the department grants a later date. The required reduction shall be calculated using Tables 3a, 3b, 3c, and 3d as applicable. The first phase action plan shall achieve a minimum reduction of least 40% of the L2 Scoping Run based on lands within the 2000 and 2010 expanded Census urbanized areas no later than October 31, 2033. The action plan shall include the following information:

- (1) The load and cumulative reduction calculations for each river basin calculated in accordance with Part II A 3, A 4, and A 5;
- (2) The BMPs to be implemented by the permittee to achieve 40% of the reductions calculated in Part II A 13 a:
 - (a) Type of BMP;
 - (b) Project name;
 - (c) Location;
 - (d) Percent removal efficiency for each pollutant of concern; and
 - (e) Calculation of the reduction expected to be achieved by the BMP calculated and reported in accordance with the methodologies established in Part II A 9 for each pollutant of concern;

Regulations

(3) A preliminary schedule for implementation of the BMPs included in the Chesapeake Bay TMDL action plan; and

(4) A summary of any comments received as a result of public participation required in Part II A 14, the permittee's response, identification of any public meetings to address public concerns, and any revisions made to Chesapeake Bay TMDL action plan as a result of public participation.

b. For permittees previously covered under the General VPDES Permit for the Discharge of Stormwater from MS4 effective November 1, 2018, no later than 12 months after the permit effective date, the permittee shall submit a third phase Chesapeake Bay TMDL action plan for the reductions required in Part II A 3, A 4, and A 5 that includes the following information:

(1) Any new or modified legal authorities, such as ordinances, permits, policy, specific contract language, orders, and interjurisdictional agreements, implemented or needing to be implemented to meet the requirements of Part II A 3, A 4, and A 5.

(2) The load and cumulative reduction calculations for each river basin calculated in accordance with Part II A 3, A 4, and A 5.

(3) The total reductions achieved as of November 1, 2023, for each pollutant of concern in each river basin.

(4) A list of BMPs implemented prior to November 1, 2023, to achieve reductions associated with the Chesapeake Bay TMDL, including:

- (a) The date of implementation; and
- (b) The reductions achieved.

(5) The BMPs to be implemented by the permittee within 60 months of the effective date of this permit to meet the cumulative reductions calculated in Part II A 3, A 4, and A 5, including as applicable:

- (a) Type of BMP;
- (b) Project name;
- (c) Location;
- (d) Percent removal efficiency for each pollutant of concern;

(e) Calculation of the reduction expected to be achieved by the BMP calculated and reported in accordance with the methodologies established in Part II A 9 for each pollutant of concern; and

(f) A preliminary schedule for implementation of the BMPs included in the Chesapeake Bay TMDL action plan.

(6) A summary of any comments received as a result of public participation required in Part II A 13, the permittee's response, identification of any public meetings to address public concerns, and any revisions made to

Chesapeake Bay TMDL action plan as a result of public participation.

13. Prior to submittal of the action plan required in Part II A 12 a and b, permittees shall provide an opportunity for public comment for no fewer than 15 days on the additional BMPs proposed in the third phase Chesapeake Bay TMDL action plan.

14. Chesapeake Bay TMDL implementation annual status report.

a. Permittees previously covered under the General VPDES Permit for Discharges of Stormwater from MS4 effective November 1, 2018, shall submit a Chesapeake Bay TMDL implementation annual status report in a method (i.e., how the permittee must submit) and format (i.e., how the report shall be laid out) as specified by the department no later than October 1 of each year. The report shall cover the previous year from July 1 to June 30.

b. Following notification from the department of the start date for the required electronic submission of Chesapeake Bay TMDL implementation annual status reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with 9VAC25-31-1020 and this section. There shall be at least a three-month notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

c. The year two Chesapeake Bay TMDL implementation annual status report shall contain a summary of any public comments on the Chesapeake Bay TMDL action plan received and how the permittee responded.

d. Each Chesapeake Bay TMDL implementation annual status report shall include the following information:

(1) A list of Chesapeake Bay TMDL action plan BMPs, not including annual practices, implemented prior to the reporting period that includes the following information for reported BMP;

- (a) The number of BMPs for each BMP type;
- (b) The estimated reduction of pollutants of concern achieved by each BMP type and reported in pounds of pollutant reduction per year; and

(c) A confirmation statement that the permittee electronically reported Chesapeake Bay TMDL action plan BMPs inspected using the DEQ BMP Warehouse in accordance with Part III B 5.

(2) A list of newly implemented BMPs including annual practices implemented during the reporting period that includes the following information for each reported BMP or a statement that no BMPs were implemented during the reporting period:

- (a) The BMP type and a description of the location for each BMP;

(b) The estimated reduction of pollutants of concern achieved by each BMP and reported in pounds of pollutant reduction per year; and

(c) A confirmation statement that the permittee electronically reported BMPs using the DEQ BMP Warehouse in accordance with Part III B 3.

e. If the permittee acquired credits during the reporting period to meet all or a portion of the required reductions in Part II A 3, A 4, or A 5, a statement that credits were acquired.

f. Pollutant load reductions generated by annual practices, such as street and storm drain cleaning, shall only be applied to the compliance year in which the annual practice was implemented.

g. The progress, using the final design efficiency of the BMPs, toward meeting the required cumulative reductions for total nitrogen and total phosphorus.

h. Any revisions made to the Chesapeake Bay TMDL action plan.

i. A list of BMPs that are planned to be implemented during the next reporting period.

15. Within 60 months after permit issuance, the permittee shall update the Phase III Chesapeake Bay TMDL action plan to offset the increased loads from new sources initiating construction between July 1, 2009, and October 31, 2023, that are located in the expanded 2020 census urban areas with a population of at least 50,000, and within the permittee's MS4 service area, and designed in accordance with ~~9VAC25-870 Part II C (9VAC25-870-93 et seq.)~~ Article 4 (9VAC25-875-670 et seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation, if the following conditions apply:

- a. The activity disturbed one acre or greater; and
- b. The resulting total phosphorous load was greater than 0.45 pounds per acre per year, which is equivalent to an average land cover condition of 16% impervious cover.

The permittee shall utilize Table 4 of Part II A 5 to develop the equivalent nitrogen pollutant load for new sources meeting the requirements of this condition.

16. Within 60 months after permit issuance, the permittee shall update the Phase III Chesapeake Bay TMDL action plan to offset the increased loads from projects grandfathered in accordance with ~~9VAC25-870-48~~ 9VAC25-875-490 that are located in the expanded 2020 census urban areas with a population of least 50,000, and within the permittee's MS4 service area, and began construction after July 1, 2014, if the following conditions apply:

- a. The activity disturbs one acre or greater; and

b. The resulting total phosphorous load was greater than 0.45 pounds per acre per year, which is equivalent to an average land cover condition of 16% impervious cover.

The permittee shall utilize Table 4 of Part II A 6 to develop the equivalent nitrogen pollutant load for grandfathered sources meeting the requirements of this condition.

B. Local TMDL special condition.

1. Permittees applying for initial coverage under this general permit shall develop a local TMDL action plan designed to reduce loadings for pollutants of concern if the permittee discharges the pollutants of concern to an impaired water for which a TMDL has been approved by the U.S. Environmental Protection Agency (EPA) prior to October 31, 2023, and in which an individual or aggregate wasteload has been allocated to the permittee. The permittee shall develop action plans to meet the conditions of Part II B 4, B 5, B 6, B 7, and B 8 as applicable. Each local TMDL action plan shall be provided to the department no later than October 31, 2028, unless the department grants a later date.

2. Permittees previously covered under the General VPDES Permit for Discharges of Stormwater from MS4 effective November 1, 2018, shall develop and maintain a local TMDL action plan designed to reduce loadings for pollutants of concern if the permittee discharges the pollutants of concern to an impaired water for which a TMDL has been approved by the U.S. Environmental Protection Agency (EPA) as described in Part II B 2 a and 2 b:

- a. For TMDLs approved by EPA prior to July 1, 2018, and in which an individual or aggregate wasteload has been allocated to the permittee, the permittee shall develop and initiate or update as applicable the local TMDL action plans to meet the conditions of Part II B 4, B 6, B 7, and B 8, as applicable, no later than 18 months after the permit effective date and continue implementation of the action plan. Updated action plans shall include:

- (1) An evaluation of the results achieved by the previous action plan; and
- (2) Any adaptive management strategies incorporated into updated action plans based on action plan evaluation.

b. For TMDLs approved by EPA on or after July 1, 2018, and prior to October 31, 2023, and in which an individual or aggregate wasteload has been allocated to the permittee, the permittee shall develop and initiate implementation of action plans to meet the conditions of Part II B 4, B 5, B 6, B 7, and B 8, as applicable no later than 30 months after the permit effective date.

3. The permittee shall complete implementation of the TMDL action plans as determined by the schedule. TMDL action plans may be implemented in multiple phases over more than one permit cycle using the adaptive iterative approach provided adequate progress is achieved in the

Regulations

implementation of BMPs designed to reduce pollutant discharges in a manner that is consistent with the assumptions and requirements of the applicable TMDL.

4. Each local TMDL action plan developed by the permittee shall include the following:

- a. The TMDL project name;
- b. The EPA approval date of the TMDL;
- c. The wasteload allocated to the permittee (individually or in aggregate), and the corresponding percent reduction, if applicable;
- d. Identification of the significant sources of the pollutants of concern discharging to the permittee's MS4 that are not covered under a separate VPDES permit. For the purposes of this requirement, a significant source of pollutants of concern means a discharge where the expected pollutant loading is greater than the average pollutant loading for the land use identified in the TMDL;
- e. The BMPs designed to reduce the pollutants of concern in accordance with Part II B 5, B 6, B 7, and B 8;
- f. Any calculations required in accordance with Part II B 5, B 6, B 7, or B 8;
- g. For action plans developed in accordance with Part II B 5, B 6, and B 8, an outreach strategy to enhance the public's education (including employees) on methods to eliminate and reduce discharges of the pollutants; and
- h. A schedule of anticipated actions planned for implementation during this permit term.

5. Bacterial TMDLs.

- a. Traditional permittees shall select and implement at least three of the strategies listed in Table 5 designed to reduce the load of bacteria to the MS4. Selection of the strategies shall correspond to sources identified in Part II B 4 d.
- b. Nontraditional permittees shall select at least one strategy listed in Table 5 designed to reduce the load of bacteria to the MS4 relevant to sources of bacteria applicable within the MS4 regulated service area. Selection of the strategies shall correspond to sources identified in Part II B 4 d.

Table 5 Strategies for Bacteria Reduction Stormwater Control/Management Strategy	
Source	Strategies (provided as an example and not meant to be all inclusive or limiting)
Domestic pets (dogs and cats)	Provide signage to pick up dog waste, providing pet waste bags and disposal containers.

	<p>Adopt and enforce pet waste ordinances or policies, or leash laws or policies.</p> <p>Place dog parks away from environmentally sensitive areas.</p> <p>Maintain dog parks by removing disposed of pet waste bags and cleaning up other sources of bacteria.</p> <p>Protect riparian buffers and provide unmanicured vegetative buffers along streams to dissuade stream access.</p>
Urban wildlife	<p>Educate the public on how to reduce food sources accessible to urban wildlife (e.g., manage restaurant dumpsters and grease traps, residential garbage, feed pets indoors).</p> <p>Install storm drain inlet or outlet controls.</p> <p>Clean out storm drains to remove waste from wildlife.</p> <p>Implement and enforce urban trash management practices.</p> <p>Implement rooftop disconnection programs or site designs that minimize connections to reduce bacteria from rooftops.</p> <p>Implement a program for removing animal carcasses from roadways and properly disposing of the same (either through proper storage or through transport to a licensed facility).</p>
Illicit connections or illicit discharges to the MS4	<p>Implement an enhanced dry weather screening and illicit discharge, detection, and elimination program beyond the requirements of Part I E 3 to identify and remove illicit connections and identify leaking sanitary sewer lines infiltrating to the MS4 and implement repairs.</p> <p>Implement a program to identify potentially failing septic systems.</p> <p>Educate the public on how to determine whether their septic system is failing.</p> <p>Implement septic tank inspection and maintenance program.</p> <p>Implement an educational program beyond any requirements in Part I E 1 though E 6 to explain to citizens why</p>

	they should not dump materials into the MS4.
Dry weather urban flows (irrigations, car washing, powerwashing, etc.)	Implement public education programs to reduce dry weather flows from storm sewers related to lawn and park irrigation practices, car washing, powerwashing and other nonstormwater flows. Provide irrigation controller rebates. Implement and enforce ordinances or policies related to outdoor water waste. Inspect commercial trash areas, grease traps, washdown practices, and enforce corresponding ordinances or policies.
Birds (Canadian geese, gulls, pigeons, etc.)	Identify areas with high bird populations and evaluate deterrents, population controls, habitat modifications and other measures that may reduce bird-associated bacteria loading. Prohibit feeding of birds.
Other sources	Enhance maintenance of stormwater management facilities owned or operated by the permittee. Enhance requirements for third parties to maintain stormwater management facilities. Develop BMPs for locating, transporting, and maintaining portable toilets used on permittee-owned sites. Educate third parties that use portable toilets on BMPs for use. Provide public education on appropriate recreational vehicle dumping practices.

6. Local sediment, phosphorus, and nitrogen TMDLs.

- a. The permittee shall reduce the loads associated with sediment, phosphorus, or nitrogen through implementation of one or more of the following:
 - (1) One or more of the BMPs from the Virginia Stormwater BMP Clearinghouse listed in ~~9VAC25-870-65~~ 9VAC25-875-590 or other approved BMPs found ~~on~~ through the Virginia Stormwater BMP Clearinghouse ~~website~~;
 - (2) One or more BMPs approved by the Chesapeake Bay Program. Pollutant load reductions generated by annual practices, such as street and storm drain cleaning, shall

only be applied to the compliance year in which the annual practice was implemented; or

- (3) Land disturbance thresholds lower than Virginia's regulatory requirements for erosion and sediment control and post development stormwater management.
- b. The permittee may meet the local TMDL requirements for sediment, phosphorus, or nitrogen through BMPs implemented or sediment, phosphorus, or nitrogen credits acquired. BMPs implemented and nutrient and sediment credits acquired to meet the requirements of the Chesapeake Bay TMDL in Part II A may also be utilized to meet local TMDL requirements as long as the BMPs are implemented or the credits are generated in the watershed for which local water quality is impaired.
- c. The permittee shall calculate the anticipated load reduction achieved from each BMP and include the calculations in the action plan required in Part II B 4 f.
- d. No later than 36 months after the effective date of this permit, the permittee shall submit to the department an update on the progress made toward achieving local TMDL action plan goals and the anticipated end dates by which the permittee will meet each wasteload allocation for sediment, phosphorus, or nitrogen. The proposed end date may be developed in accordance with Part II B 3.

7. Polychlorinated biphenyl (PCB) TMDLs.

- a. For each PCB TMDL action plan, the permittee shall include an inventory of potentially significant sources of PCBs owned or operated by the permittee that drains to the MS4 that includes the following information:
 - (1) Location of the potential source;
 - (2) Whether or not the potential source is from current site activities or activities previously conducted at the site that have been terminated (i.e., legacy activities); and
 - (3) A description of any measures being implemented or to be implemented to prevent exposure to stormwater and the discharge of PCBs from the site.
- b. If at any time during the term of this permit, the permittee discovers a previously unidentified significant source of PCBs within the permittee's MS4 regulated service area, the permittee shall notify DEQ in writing within 30 days of discovery.
- c. As part of its annual reporting requirements, the permittee shall submit results of any action plan PCB monitoring or product testing conducted and any adaptive management strategies that have been incorporated into the updated action plan based upon monitoring or product testing results if the permittee has elected to perform monitoring or product testing or both.

8. Chloride TMDLs.

- a. No later than 36 months after the permit effective date, permittees shall develop an anti-icing and deicing agent education and outreach strategy that identifies target

audiences for increasing awareness of anti-icing and deicing agent application impacts on receiving waters and encourages implementation of enhanced BMPs for application, handling, and storage of anti-icing and deicing agents used for snow and ice management.

b. Anti-icing and deicing agent education and outreach strategies shall contain a schedule to implement two or more of the strategies listed in Part I E 1 d Table 1 per year to communicate to target audiences the importance of responsible anti-icing and deicing agent application, transport, and storage.

c. No later than 36 months after permit issuance, the permittee shall review good housekeeping procedures for anti-icing and deicing agent application, handling, storage, and transport activities required under Part I E 6 b (1) (a) and identify a minimum of two strategies for implementing enhanced BMPs that promote efficient management and application of anti-icing and deicing agents while maintaining public safety.

9. Prior to submittal of the action plan required in Part II B 2, the permittee shall provide an opportunity for public comment for no fewer than 15 days on the proposal to meet the local TMDL action plan requirements.

10. The MS4 program plan as required by Part I B of this permit shall incorporate each local TMDL action plan. Local TMDL action plans may be incorporated by reference into the MS4 program plan provided that the program plan includes the date of the most recent local TMDL action plan and identification of the location where a copy of the local TMDL action plan may be obtained.

11. For each reporting period, each annual report shall include a summary of actions conducted to implement each local TMDL action plan.

C. Inspection and maintenance of ecosystem restoration projects used for TMDL compliance.

1. Within 36 months of permit issuance the permittee shall develop and maintain written inspection and maintenance procedures in order to ensure adequate long-term operation and maintenance of ecosystem restoration projects as defined in 9VAC25-890-1 and implemented as part of a TMDL action plan developed in accordance with Part II A, B, or both. The permittee may utilize inspection and maintenance protocols developed by the Chesapeake Bay Program or inspection and maintenance plans developed in accordance with the department's Stormwater Local Assistance Fund (SLAF) guidelines.

2. The permittee shall inspect ecosystem restoration projects owned or operated by the permittee and implemented as part of a current TMDL action plan developed in accordance with Part II A or B no less than once every 60 months.

Part III

DEQ BMP Warehouse Reporting

A. For the purpose of Part III of this permit, "best management practice" or "BMP" means a practice that achieves quantifiable nitrogen, phosphorus, or total suspended solids reductions, including stormwater management facilities, ecosystem restoration projects, annual practices, and other practices approved by the department for reducing nitrogen, phosphorus, and total suspended solids pollutants.

B. No later than October 1 of each year the permittee shall electronically report new BMPs implemented and inspected as applicable between July 1 and June 30 of each year using the DEQ BMP Warehouse.

1. The permittee shall use the associated reporting template for stormwater management facilities not reported in accordance with Part III B 5, including stormwater management facilities installed to control post-development stormwater runoff from ~~land-disturbing~~ land-disturbing activities less than one acre in accordance with the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), if applicable, and for which a General VPDES Permit for Discharges of Stormwater from Construction Activities was not required.

2. The permittee shall use the DEQ BMP Warehouse to report BMPs that were not reported in accordance with Part III B 1 or B 5 and were implemented as part of a TMDL action plan to achieve nitrogen, phosphorus, and total suspended solids reductions in accordance with Part II A or B.

3. The permittee shall use the DEQ BMP Warehouse to report any BMPs that were not reported in accordance with Part III B 1, B 2, or B 5.

4. The permittee shall use the DEQ BMP Warehouse to report the most recent inspection date for BMPs in accordance with Part I E 5 b or 5 c, or in accordance with Part II C and the most recent associated TMDL action plan.

5. Traditional permittees specified in Part I E 5 a (1) shall use the DEQ Construction Stormwater Database or other application as specified by the department to report each stormwater management facility installed after July 1, 2014, to address the control of post-construction runoff from ~~land-disturbing~~ land-disturbing activities for which the permittee is required to obtain a General VPDES Permit for Discharges of Stormwater from Construction Activities.

C. The following information for each new BMP reported in accordance with Part III B 1, B 2, B 3, or B 5 shall be reported to the DEQ BMP Warehouse as applicable:

1. The BMP type;

2. The BMP location as decimal degree latitude and longitude;
3. The acres treated by the BMP, including total acres and impervious acres;
4. The date the BMP was brought online (MM/YYYY). If the date brought online is not known, the permittee shall use 06/2005;
5. The 6th Order Hydrologic Unit Code in which the BMP is located;
6. Whether the BMP is owned or operated by the permittee or privately owned;
7. Whether or not the BMP is part of the permittee's Chesapeake Bay TMDL action plan required in Part II A or local TMDL action plan required in Part II B, or both;
8. If the BMP is privately owned, whether a maintenance agreement exists;
9. The date of the permittee's most recent inspection of the BMP; and
10. Any other information specific to the BMP type required by the DEQ BMP Warehouse (e.g., linear feet of stream restoration).

D. No later than October 1 of each year, the permittee shall electronically report the most recent inspection date for any existing BMP that was previously reported and re-inspected between July 1 and June 30 using the BMP Warehouse. If an existing BMP has not been previously reported, the BMP shall be reported as new in accordance with Part III B and Part III C. No later than October 1 of each year the DEQ BMP Warehouse shall be updated if an existing BMP is discovered between July 1 and June 30 that was not previously reported to the DEQ BMP Warehouse.

E. No later than October 1 of each year the DEQ BMP Warehouse shall be updated if an existing BMP is discovered between July 1 and June 30 that was not previously reported to the DEQ BMP Warehouse.

Part IV

Conditions Applicable to All State and VPDES Permits

NOTE: Discharge monitoring is not required for compliance purposes by this general permit. If the operator chooses to monitor stormwater discharges for informational or screening purposes, the operator does not need to comply with the requirements of Part IV A, B, or C.

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency,

unless other procedures have been specified in this state permit. Analyses performed according to test procedures approved under 40 CFR Part 136 shall be performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

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

B. Records.

1. Monitoring records and reports shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individuals who performed the sampling or measurements;
- c. The dates and times analyses were performed;
- d. The individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this state permit, and records of all data used to complete the registration statement for this state permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the department.

C. Reporting monitoring results.

1. The operator shall submit the results of the monitoring as may be performed in accordance with this state permit with the annual report unless another reporting schedule is specified elsewhere in this state permit.

2. Monitoring results shall be reported on a discharge monitoring report (DMR); on forms provided, approved, or specified by the department; or in any format provided that the date, location, parameter, method, and result of the monitoring activity are included. Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with 9VAC25-31-1020 and this section. There shall be at least a three-month notice provided between the notification from the department and the date

Regulations

after which such forms and reports must be submitted electronically.

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

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

D. Duty to provide information. The operator shall furnish within a reasonable time, any information that the department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this state permit or to determine compliance with this state permit. The department or EPA may require the operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the permittee's discharge on the quality of surface waters, or such other information as may be necessary to accomplish the purposes of the CWA and Virginia Erosion and Stormwater Management Act. The operator shall also furnish to the department or EPA upon request, copies of records required to be kept by this state permit.

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

F. Unauthorized stormwater discharges. Pursuant to § 62.1-44.5 of the Code of Virginia, except in compliance with a state permit issued by the department, it shall be unlawful to cause a stormwater discharge from a MS4.

G. Reports of unauthorized discharges. Any operator of a MS4 who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, or § 62.1-44.34:19 of the Code of Virginia that occurs during a 24-hour period into or upon surface waters or who discharges or causes or allows a discharge that may reasonably be expected to enter surface waters shall notify the department of the discharge immediately (see Part IV I 4) upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this state permit.

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge, including a bypass in Part IV U or an upset in Part IV V, should occur from a facility and the discharge enters or could be expected to enter surface waters, the operator shall promptly notify (see Part IV I 4), in no case later than within 24 hours, the department after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The operator shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part IV I 2. Unusual and extraordinary discharges include any discharge resulting from:

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

I. Reports of noncompliance.

1. The operator shall report any noncompliance that may adversely affect surface waters or may endanger public health.
 - a. A report to the department shall be provided within 24 hours from the time the operator becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under Part IV I:
 - (1) Any unanticipated bypass; and
 - (2) Any upset that causes a discharge to surface waters.
 - b. A written report shall be submitted within five days and shall contain:

- (1) A description of the noncompliance and its cause;
- (2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The department may waive the written report on a case-by-case basis for reports of noncompliance under Part IV I if the report has been received within 24 hours and no adverse impact on surface waters has been reported.

2. The operator shall report all instances of noncompliance not reported under Part IV I 1 b, in writing, as part of the annual reports that are submitted. The reports shall contain the information listed in Part IV I 2.

3. The immediate (within 24 hours) reports required in Part IV G, H, and I shall be made to the department. Reports may be made by telephone, email, or online at <https://www.deq.virginia.gov/our-programs/pollution-response/pollution-data-and-reporting>. For reports outside normal working hours, the online portal shall be used. For emergencies, call the Virginia Department of Emergency Management's Emergency Operations Center (24-hours) at 1-800-468-8892.

4. Where the operator becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report, including a registrations statement, to the department, the operator shall promptly submit such facts or correct information.

J. Notice of planned changes.

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

- a. The operator plans an alteration or addition to any building, structure, facility, or installation that may meet one of the criteria for determining whether a facility is a new source in ~~9VAC25-870-420~~ 9VAC25-875-990;
- b. The operator plans an alteration or addition that would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this state permit; or

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

K. Signatory requirements.

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

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

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

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this chapter, a principal executive officer of a public agency includes:

- (1) The chief executive officer of the agency, or
- (2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports and other information. All reports required by state permits, including annual reports, and other information requested by the department shall be signed by a person described in Part IV K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described in Part IV K 1;
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the operator. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and
- c. The signed and dated written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part IV K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the MS4, a new authorization satisfying the requirements of Part

Regulations

IV K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

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

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

L. Duty to comply. The operator shall comply with all conditions of this state permit. Any state permit noncompliance constitutes a violation of the Virginia Erosion and Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this state permit may constitute a violation of the Virginia Erosion and Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for state permit termination, revocation and reissuance, or modification; or denial of a state permit renewal application.

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

M. Duty to reapply. If the operator wishes to continue an activity regulated by this state permit after the expiration date of this state permit, the operator shall submit a new registration statement at least 90 days before the expiration date of the existing state permit, unless permission for a later date has been granted by the department. The department shall not grant permission for registration statements to be submitted later than the expiration date of the existing state permit.

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

O. State law. Nothing in this state permit shall be construed to preclude the institution of any legal action under, or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in state permit conditions on bypassing in

Part IV U and upset in Part IV V nothing in this state permit shall be construed to relieve the operator from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this state permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean Water Act.

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

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering surface waters and in compliance with all applicable state and federal laws and regulations.

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

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

U. Bypass.

1. "Bypass," as defined in 9VAC25-870-10 9VAC25-875-850, means the intentional diversion of waste streams from any portion of a treatment facility. The operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part IV U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the operator knows in advance of the need for a bypass, the operator shall submit prior notice to the department, if possible at least 10 days before the date of the bypass.

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

3. Prohibition of bypass.

a. Except as provided in Part IV U 1, bypass is prohibited, and the department may take enforcement action against an operator for bypass, unless:

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

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

(3) The operator submitted notices as required under Part IV U 2.

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

V. Upset.

1. An "upset," as defined in ~~9VAC25-870-10~~ 9VAC25-875-850, means an exceptional incident in which there is unintentional and temporary noncompliance with technology based state permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based state permit effluent limitations if the requirements of Part IV V 4 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

3. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

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

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

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

c. The operator submitted notice of the upset as required in Part IV I; and

d. The operator complied with any remedial measures required under Part IV S.

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

W. Inspection and entry. The operator shall allow the department, EPA, or an authorized representative (including an authorized contractor), upon presentation of credentials and other documents as may be required by law, to:

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

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

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

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the Clean Water Act and the Virginia Erosion and Stormwater Management Act, any substances or parameters at any location.

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

X. State permit actions. State permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the operator for a state permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any state permit condition.

Y. Transfer of state permits.

1. State permits are not transferable to any person except after notice to the department. Except as provided in Part IV Y 2, a state permit may be transferred by the operator to a new operator only if the state permit has been modified or revoked and reissued, or a minor modification made, to identify the new operator and incorporate such other requirements as may be necessary under the Virginia Erosion and Stormwater Management Act and the Clean Water Act.

2. As an alternative to transfers under Part IV Y 1, this state permit may be automatically transferred to a new operator if:

Regulations

- a. The current operator notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new operators containing a specific date for transfer of state permit responsibility, coverage, and liability between them; and
- c. The department does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the state permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part IV Y 2 b.

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

9VAC25-900-10. Definitions.

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

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

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

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

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

"Bankfull event" means the storm event that corresponds with the stream stage at its incipient point of flooding. The bankfull discharge associated with the bankfull event is the flow that transports the majority of a stream's sediment load over time and thereby forms and maintains the channel dimension, pattern, and profile.

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

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

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations,

including regulations to establish general permits, "Board" means the Department of Environmental Quality.

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

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

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

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

"DCR" means the Department of Conservation and Recreation.

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

"Department" means the Department of Environmental Quality.

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

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

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

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

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

"HUC" means the hydrologic unit code.

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

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

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

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

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

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

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

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

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

"Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is developed and

approved in accordance with all applicable federal and state laws or regulations for the establishment, use and operation of mitigation banks and is operating under a signed mitigation banking instrument.

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

"MS4" means a municipal separate storm sewer system as defined in ~~9VAC25-870-10~~ 9VAC25-875-20.

"MS4 service area" means (i) for Phase I MS4 permittees, the service area delineated in accordance with the permit issued pursuant to ~~9VAC25-870-380 A-3~~ 9VAC25-875-950 A; and (ii) for Phase II MS4 permittees, the term as described in 9VAC25-890.

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

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

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

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

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

"Nutrient credit-generating project" or "project" means a project developed to reduce the load of nitrogen and phosphorous nonpoint source pollution in order to generate nutrient credits for certification pursuant to this chapter.

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

"Owner" means the Commonwealth or any of its political subdivisions, including sanitation district commissions and authorities and any public or private institution, corporation, association, firm, or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters,

Regulations

rents, or otherwise exercises control over or is responsible for any nutrient credit-generating project.

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

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

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

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

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

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

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

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

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

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

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

"Site protection instrument" means a deed restriction, conservation easement, or other legal mechanism approved by the department that provides assurance that the credits will be

maintained in accordance with this chapter and the certification requirements.

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

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

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

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

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

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

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

"Tributary" means those river basins for which separate tributary strategies were prepared pursuant to § 2.2-218 of the Code of Virginia and includes the Potomac, Rappahannock, York, and James River basins, and the Eastern Coastal Basin, which encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay. For areas outside of the Chesapeake Bay Watershed, "tributary" includes the following watersheds: Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston (Upper Tennessee); New River; Roanoke; and Yadkin.

"Urban lands" means lands characterized by developed areas with buildings, asphalt, concrete, suburban gardens, and a systematic street pattern. Classes of urban development include residential, commercial, industrial, institutional, transportation, communications, utilities, and mixed urban.

Undeveloped land surrounded by developed areas, such as cemeteries, golf courses, and urban parks is recognized as urban lands.

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

"VESMP authority" means a Virginia erosion and stormwater management program authority as defined in 9VAC25-875-20.

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

"Virginia Erosion and Stormwater Management Program" or "VESMP" means a program established by a VESMP authority for the effective control of soil erosion and sediment deposition and the management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The program shall include such items as local ordinances, rules, requirements for permits and land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement consistent with the requirements of the Virginia Erosion and Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia).

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

"Virginia Stormwater Management Program" or "VSMP" means a program to manage the quality and quantity of runoff resulting from land-disturbing activities and includes such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement, where authorized in the Stormwater Management Act and pursuant to 9VAC25-870, 9VAC25-880, or 9VAC25-890 established by the department pursuant to § 62.1-44.15:27.1 of the Code of Virginia on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or more of land disturbance.

"Virginia Water Protection permit" or "VWP permit" means an individual or general permit issued by the department under

§ 62.1-44.15:20 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as Virginia's Section 401 certification.

"VPA" means Virginia Pollution Abatement.

"VPDES" means Virginia Pollutant Discharge Elimination System.

"VSMP authority" means a Virginia stormwater management program authority as defined in ~~9VAC25-870-10~~ 9VAC25-875-20.

"VWP" means Virginia Water Protection.

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

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

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

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

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

1. Virginia Erosion and Stormwater Management Program (~~VSMP~~) Regulation (~~9VAC25-870~~ 9VAC25-875).

a. ~~VSMP~~ Individual VPDES Permits for Discharges from Construction Activities. As specified in § 62.1-44.19:21 B of the Act, those applicants required to comply with water quality requirements for land-disturbing activities operating under a construction individual permit issued pursuant to ~~9VAC25-870~~ 9VAC25-875 may acquire and use perpetual nutrient credits placed on the registry for exchange.

b. ~~VSMP~~ Individual Permits for Municipal Separate Storm Sewer Systems. As specified in § 62.1-44.19:21 A of the Act, an MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance with any wasteload allocations established as effluent limitations in an MS4 individual permit issued pursuant to ~~9VAC25-870~~ 9VAC25-875. Such method of compliance may be approved by the department following review of a compliance plan submitted by the permittee that includes

Regulations

the use of nutrient credits and is in accordance with the provisions of § 62.1-44.19:21 A.

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

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

4. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). As specified in § 62.1-44.19:21 C of the Act, owners of confined or concentrated animal feeding operations issued individual permits pursuant to 9VAC25-31 may acquire, use, and transfer credits for compliance with any wasteload allocations contained in the provisions of a VPDES permit. Such method of compliance may be approved by the department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

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

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

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

9VAC25-900-60. Limitations, liability, and prohibitions.

A. Except to the extent it may be an owner as defined by this chapter, none of the following shall have responsibility or liability for the performance of practices at a nutrient credit-generating project evaluated using the procedures established in this chapter: (i) the department, (ii) a ~~VSM~~ VESMP authority, or (iii) any political subdivision of the Commonwealth.

B. Those persons with whom the department contracts, including those serving as technical evaluators on an advisory committee, are advisors to the department, and the department remains solely responsible for decisions made regarding implementation of this chapter.

C. For the purposes of this chapter, the certification of nutrient credits that are generated from practices funded in part or in whole by federal or state water quality grant funds is prohibited other than controls and practices under § 62.1-44.19:20 B 1 a of the Act; however, establishing baseline as specified in 9VAC25-900-100 may be achieved through the use of such grants.

D. The option to acquire nutrient credits for compliance purposes shall not eliminate any requirement to comply with local water quality requirements, including such requirements lawfully imposed by a locality or local MS4.

E. The issuance of a nutrient credit certification under this chapter does not convey any property rights of any sort or any exclusive privilege.

F. The issuance of a nutrient credit certification under this chapter does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

G. Nutrient credit certifications are not transferable except in accordance with 9VAC25-900-180. The department may require modification or revocation and reissuance of nutrient credit certifications to change the name of the owner of the nutrient credit-generating project and incorporate such other requirements as may be necessary under the State Water Control Law or the Clean Water Act.

H. No person shall offer for exchange nutrient credits except in compliance with the provisions of this chapter.

I. No nutrient credit shall be generated by practices previously implemented to comply with: (i) the requirements for a VPDES

(9VAC25-31), VPA (9VAC25-32), VWP (9VAC25-210), or ~~VSMP (9VAC25-870)~~ VPDES construction general permit (9VAC25-880); (ii) erosion and sedimentation control requirements pursuant to ~~9VAC25-840~~ 9VAC25-875; or (iii) the requirements of the Chesapeake Bay Preservation Act pursuant to § 62.1-44.15:67-79 of the Code of Virginia.

J. Nutrient credit generation and use shall be contemporaneous with the applicable permit's compliance period.

9VAC25-900-90. Nutrient credit release and registration.

A. Retirement of credits.

1. Pursuant to the requirements of § 62.1-44.19:20 of the Act, 5.0% of the total credits certified will be retired by the department at the time of nutrient credit certification and will not be placed on the registry for exchange.

2. When phosphorus credits are acquired in accordance with ~~9VAC25-870-69~~ 9VAC25-875-610, the associated nitrogen credits generated by the nutrient credit-generating project will be retired and removed from the registry by the department.

3. When nitrogen credits are acquired for purposes other than compliance with ~~9VAC25-870-69~~ 9VAC25-875-610, the associated phosphorus credits generated by the nutrient credit-generating project shall not be available for compliance under ~~9VAC25-870-69~~ 9VAC25-875-610.

4. Except as limited by this subsection, associated nitrogen and phosphorus credits generated by a nutrient credit-generating project may be exchanged independently.

B. Schedule of release of nutrient credits. The department shall establish a schedule for release of credits as follows:

1. For nutrient credit-generating projects using land use conversion, 25% of the credits will be released by the department after the department has verified completion of the conditions of the nutrient credit certification. For afforestation projects, an additional 25% of credits will be released by the department after the site has been planted with a minimum of 400 woody stems per acre. The remaining balance of credits will be released by the department after it is satisfied that the implementation plan's performance criteria required pursuant to 9VAC25-900-120 has been achieved. When a request for credit release is made concurrently with the application for nutrient credit certification from land conversion practices, the concurrent 25% initial release, and additional 25% release if planting has occurred, shall be processed on the same timeline as the application as provided in 9VAC25-900-80 C. When the request for credit release is from a previously approved land conversion project, the department shall schedule a site visit, if warranted, within 30 days of the request and shall deny, approve, or approve with conditions the release of the

remaining 75% of the nutrient credits within 15 days of the site visit or determination that a site visit is not warranted.

2. For nutrient credit-generating projects using wetland or stream restoration, after construction 25% of the credits may be released by the department after the department has verified completion of the conditions of the nutrient credit certification. Every monitoring year thereafter, 25% of the credits may be released if all performance standards are met, the area or channel is stable, and, for streams, evidence is presented that a bankfull event occurred within the monitoring year. For streams, if a bankfull event did not occur, but performance standards are met and the channel is stable, 10% of the credits may be released. No additional credits will be released after the fourth monitoring year until a bankfull event has occurred. After the fourth monitoring year, if a bankfull event occurs, the channel is stable, and all performance standards are met, 25% of the credits may be released that monitoring year, not to exceed the remaining credits available. The schedule for release of credits shall also require, prior to the release of credits, the approval of any required financial assurance mechanism established pursuant to Part VI (9VAC25-900-230 et seq.) of this chapter. The department may accelerate the release of a maximum of 50% of nutrient credits from a stream restoration project based on (i) a determination that the level of risk for restoration failure is low; (ii) the provision of additional financial assurance in an amount adequate to cover the cost of project repair or replacement in the event of failure; and (iii) the experience of the applicant or the applicant's agents who will implement the stream restoration project.

3. For nutrient credit-generating projects using practices other than land use conversion or wetland or stream restoration, the schedule for release of credits will be determined by the department on a case-by-case basis and provided to the applicant with the nutrient credit certification. For projects using structural BMPs, the schedule shall also require, prior to release of credits, the approval of any required financial assurance mechanism established pursuant to Part VI (9VAC25-900-230 et seq.) of this chapter.

C. Registration of nutrient credits. Credits will be placed on the registry and classified as term or perpetual credits by the department. The registry will also indicate the number of credits that have been released for exchange. Only credits released by the department are available for exchange.

9VAC25-900-100. Establishing baseline.

A. Practices for establishing baseline must be in place prior to the generation of any credits by a nutrient credit-generating project except in the case of land use conversion as described in subsection E of this section. The practices for establishing baselines, as provided in this section, shall be implemented and properly maintained for each type of operation within the

Regulations

management area. Baselines are applicable statewide for nutrient credit-generating projects including those located in either the Chesapeake Bay Watershed or the Southern Rivers watersheds. Baseline practices are, at a minimum, in accordance with the requirements of the WIP or an approved TMDL, whichever is more stringent.

B. Cropland, hayland, and pastures. Baselines for cropland, hayland, or pastures within the management area shall be established in accordance with subdivision 1, 2, or 3 of this subsection.

1. The owner holds a valid Certificate of Resource Management Plan Implementation for the management area that has been issued pursuant to the Resource Management Plans regulation (4VAC50-70).

2. If the owner does not hold a valid Certificate of Resource Management Plan Implementation for the management area, the owner shall implement the following practices for establishing baseline:

a. Soil conservation. Soil conservation practices for the management area shall be implemented and maintained to achieve a maximum soil loss rate not to exceed "T" and to address gross erosion when it is present as gullies or other severely eroding conditions.

b. Nutrient management. Implementation and maintenance of the nutrient management practices required by the nutrient management plan written by a certified nutrient management planner pursuant to the Nutrient Management Training and Certification Regulations (4VAC50-85).

c. Riparian buffer. A woodland or grass riparian buffer shall be installed and maintained around all water bodies with perennial flow within the management area and shall be installed and maintained along all water bodies with perennial flow bordering the management area. The riparian buffer shall be a minimum width of 35 feet as measured from the top of the channel bank to the edge of the cropland, hayland, or pasture and in accordance with DCR Specifications for NO. FR-3 or DCR Specifications for NO. WQ-1 contained in the VACS BMP Manual.

d. Cover crop. For croplands, cover crops shall be planted to meet the standard planting date and other specifications in accordance with DCR Specifications for NO. SL-8B contained in the VACS BMP Manual. This requirement applies to all croplands where summer annual crops are grown and the summer annual crop receives greater than a total of 50 pounds per acre of nitrogen application from any nutrient source; however, if the cropland is planted to winter cereal crops for harvest in the spring, then cover crops do not need to be planted on these croplands during that production year.

e. Livestock water body exclusion. For pastures or when livestock are present within the management area, livestock exclusion fencing shall be placed around

perennial streams, rivers, lakes, ponds, or other water bodies having perennial flow. This exclusionary fencing shall be constructed in accordance with DCR Specification NO. WP-2W contained in the VACS BMP Manual in order to restrict livestock access to the water body. Livestock shall be provided with an alternative watering source. The livestock exclusion fencing shall be placed at least 35 feet from the top of the channel bank and this exclusion zone shall contain the riparian buffer required by subdivision 2 c of this subsection. Access points for livestock watering or crossing over a water body shall be a hardened surface constructed to DCR Specifications for NO. WP-2W contained in the VACS BMP Manual and shall be fenced to limit livestock access to the water body at the crossing point. Ponds that have been specifically built for the purpose of livestock watering and that do not have perennial flow through an overflow pipe or spillway are not required to meet the provisions of this subdivision 2 e.

3. The department may approve a load-based baseline determination equivalent to full implementation of the practices identified in subdivision 2 of this subsection.

C. Agricultural animal feeding operations. Baselines for agricultural animal feeding operations within the management area shall be established in accordance with either subdivision 1 or 2 of this subsection:

1. The animal feeding operation is in compliance with a valid VPDES or VPA permit in compliance with the board's regulations.

2. For animal feeding operations excluded from or not required to hold a VPDES or VPA permit under the board's regulations, the practices for establishing baseline shall be implemented and properly maintained as required in this subdivision 2.

a. Implementation and maintenance of the nutrient management practices required by the nutrient management plan written by a certified nutrient management planner pursuant to the Nutrient Management Training and Certification Regulations (4VAC50-85).

b. For animal feeding operations, except confined poultry operations, a storage facility designed and operated to prevent point source discharges of pollutants to state waters except in the case of a storm event greater than a 25-year/24-hour storm and to provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste shall be implemented and maintained.

c. For confined poultry operations, storage of poultry waste according to the nutrient management plan and in a

manner that prevents contact with surface water and groundwater. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility or at a location that provides adequate storage. Adequate storage management practices shall meet the following minimum requirements:

- (1) The poultry waste shall be covered to protect it from precipitation and wind.
- (2) Stormwater shall not run onto or under the area where the poultry waste is stored.
- (3) The ground surface of the poultry waste storage area shall have a minimum of two feet separation distance to the seasonal high water table. If poultry waste is stored in an area where the seasonal high groundwater table lies within two feet of the ground surface, the storage area shall be underlain by a low-permeability, hard-surfaced barrier such as concrete or asphalt.
- (4) For poultry waste that is not stored inside or under a roofed structure, the storage area must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

D. Urban practices. Achievement of baseline for new development, redevelopment, or retrofits to existing development shall be required prior to generation of credits. These baselines are:

1. For new development and redevelopment, baseline shall be achieved through compliance with the post-construction water quality design criteria requirements of the Virginia Erosion and Stormwater Management Program (VSMP) Regulation under ~~9VAC25-870-63~~ 9VAC25-875-580. Additionally, for development in a locality with a local stormwater management design criteria more stringent than ~~9VAC25-870-63~~ 9VAC25-875-580, baselines shall be achieved through compliance with the local stormwater management ordinance.
2. For retrofits within the Chesapeake Bay Watershed, baseline shall be at a level necessary to achieve the nutrient reduction assigned in the urban sector of the WIP or the approved local TMDL, whichever is more stringent.
3. For retrofits within the Southern Rivers watersheds and within a watershed with an approved TMDL with total phosphorus or total nitrogen allocations, baselines shall be at a level necessary to achieve reductions of the approved TMDL. For all other retrofits within the Southern Rivers watersheds, baseline shall be achieved through compliance with the post-construction water quality design criteria requirements for development on prior developed lands pursuant to ~~9VAC25-870-63~~ 9VAC25-875-580 A 2.
4. No credits may be certified for a nutrient credit-generating project owned by an MS4 permittee and located within the permittee's MS4 service area until the level of nutrient reduction required by the WIP or approved TMDL,

whichever is more stringent, is achieved for the entire MS4 service area. MS4 permittees generating credits for exchange shall have an accounting system demonstrating that the exchanged credits are not used to satisfy the MS4 permit requirements.

E. Land use conversions. Baselines for land use conversion shall be established using the preconversion land use. The preconversion land use shall be based on the land use as of (i) July 1, 2005, for a nutrient credit-generating project located within the Chesapeake Bay Watershed; (ii) the date of the approved TMDL for a nutrient credit-generating project located within a TMDL watershed but not within the Chesapeake Bay Watershed; or (iii) July 1, 2009, for a nutrient credit-generating project not within an approved TMDL watershed or the Chesapeake Bay Watershed.

F. Stream or wetland restoration. Baseline for stream restoration shall be established using the pre-restoration condition of the stream. Baseline for wetland restoration shall be established on a case-by-case basis, depending on the current land use of the proposed wetland restoration area.

G. Other nutrient credit-generating projects. The department shall establish baselines for other nutrient credit-generating projects not otherwise regulated by subsections B through F of this section. The practices necessary for establishing baseline at these other nutrient credit-generating projects shall be in accordance with the requirements of the WIP or the approved TMDL and shall utilize the best available scientific and technical information regarding the practices.

9VAC25-900-110. Credit calculation procedures.

A. Pursuant to this section, the applicant shall calculate the potential nutrient credits generated by the practices implemented at the nutrient credit-generating projects. The applicable delivery factors, dependent upon the tributary in which the nutrient credit-generating project is located, shall be applied when calculating the potential credits generated.

B. For agricultural practices, except land use conversion, the potential nutrient credits shall be calculated using removal efficiencies for practices approved by the department. In the Chesapeake Bay Watershed, these practices shall be approved by the department based on the efficiencies assigned by the Chesapeake Bay Program. In the Southern Rivers watersheds, these practices shall be approved by the department based on submitted calculations and demonstrations. The standards and specifications for implementation of the practices will be established by the department and shall be in accordance with the VACS BMP Manual or the FOTG, as applicable.

C. For urban practices, the potential nutrient credits shall be calculated using the applicable removal efficiencies pursuant to ~~9VAC25-870-65~~ 9VAC25-875-590 or using the best available scientific and technical information available at the time of nutrient credit certification as approved by the

Regulations

department. Limitations on potential nutrient credits from certain BMPs are:

1. In the Chesapeake Bay Watershed, nutrient load reductions from practices in place prior to July 1, 2005, may not be used to generate credits. Removal efficiencies shall be based upon those efficiencies approved by the Chesapeake Bay Program partnership where applicable. These efficiencies shall be reviewed at the time of certification renewal and adjusted as necessary based upon changes made by the Chesapeake Bay Program Partnership.

2. In the Southern Rivers watersheds, nutrient load reductions from practices in place prior to July 1, 2009, may not be used to generate credits.

D. For land use conversions, conversion of land to a more intensive land use activity will not generate nutrient credits. The number of potential nutrient credits shall be determined by calculating the nutrient credits per acre and multiplying that number by the total acreage that will undergo land use conversion. The nutrient credits per acre is equal to the amount calculated by subtracting the load per acre of nutrient nonpoint source pollution for the proposed land use after conversion from the load per acre for the preconversion land use. The values used for the loadings per acre in this calculation shall be based on the applicable loading levels provided in the WIP or the approved TMDL, where applicable. The preconversion land use shall be based on the land use as of the date specified in 9VAC25-900-100 E. The load per acre for the preconversion land use shall reflect the implementation of any applicable baseline practices necessary to comply with 9VAC25-900-100 B, C, and D. No credits shall be generated from the conversion of land within 35 feet of a water body with perennial water flow as measured from the top of the channel bank.

E. For wetland or stream restoration, an existing conditions assessment survey will be completed prior to restoration activities to use as a pre-restoration condition (baseline pursuant to of 9VAC25-900-100 F) and will be used for comparison to post-restoration conditions. The potential number of credits shall be determined by applying protocols or guidance on a case-by-case basis using the best available scientific and technical information, as approved by the department.

F. For a practice not previously approved by the department, the department will perform a case-by-case review in order to calculate the number of potential nutrient credits generated. The owner shall submit the removal efficiency calculation information for the practice and the calculation of the potential number of credits generated using that efficiency. The department may also request that the submittal include requirements for demonstration projects, the collection of sufficient data to evaluate the results, and any other information the department deems necessary to determine the validity of the credits. In the Chesapeake Bay Watershed, for a practice not approved by the Chesapeake Bay Program

Partnership, the department will perform a case-by-case review in order to calculate the number of potential nutrient credits generated on a term basis.

G. In the certification and recertification of credits, the department may substitute a delivery factor that is deemed by the director to be based on the best available scientific and technical information appropriate for the tributaries located outside of the Chesapeake Bay Watershed as an alternative to any delivery factor derived from the application of the Chesapeake Bay Program watershed model.

9VAC25-900-120. Implementation plan.

A. The implementation plan submitted pursuant to 9VAC25-900-80 shall provide information detailing how the nutrient credit-generating project will generate credits for the term of the credits. The implementation plan will include the applicable information as required in subsections B through J of this section.

B. For all nutrient credit-generating projects, the implementation plan shall include:

1. An operation and maintenance plan that provides a description and schedule of operation and maintenance requirements and detailed written specifications and process diagrams for the practices used at the nutrient credit-generating project. The plan must be adhered to for the term of the credits and shall include a description of site management activities to be performed after meeting all performance standards to ensure long-term sustainability of the site.

2. The performance standards that shall be used to evaluate whether the nutrient credit-generating project is generating credits as calculated in 9VAC25-900-110.

3. Applicable requirements for the project required pursuant to Part IV (9VAC25-900-140 et seq.) of this chapter.

C. For nutrient credit-generating projects utilizing managed afforestation land use conversion, the implementation plan shall also include:

1. A project plan submitted in the form required by the department and prepared by a person trained in (i) forestry management, (ii) nutrient management, or (iii) other applicable land management training that includes an understanding of whole land management planning. The project plan shall include (i) methods for invasive plant species control and eradication if woody invasive plant species impacts 5.0% or more of the nutrient credit-generating project's acreage; (ii) a requirement that any harvesting of timber shall adhere to best management practices as set forth by Department of Forestry's Water Quality Guide and any other applicable local, state, or federal laws or requirements; (iii) the land management goals; (iv) a statement that no fertilizer is to be used on the nutrient credit-generating project's land conversion acreage

for the term of the credit generated; (v) a planting plan to include size, species, and spacing of trees; and (vi) any planting phases planned for the project if the area will not be planted all at one time, but will be planted in different phases. Additionally, if timbering is planned within the land conversion area, a copy of the timbering plan shall be submitted to the department at least 90 days prior to the occurrence of any land disturbance or timbering.

2. Provisions for planting forests to achieve an initial survival density of a minimum of 400 deciduous tree or evergreen tree woody stems per acre including any noninvasive volunteers. Survival of planted deciduous trees shall not be established until the start of the second complete growing season following planting. Survival of planted evergreen trees may be established after completion of the first complete growing season following planting. Survival of mixed specie plantings with a minimum of 200 evergreen trees per acre may be established after completion of the first complete growing season following planting.

3. A description of agricultural baseline requirements implemented in accordance with 9VAC50-900-100 B and C that apply to any remaining portions of the management area that are not undergoing land use conversion.

4. Performance standards and reporting procedures demonstrating ongoing compliance with the baseline requirements of 9VAC25-900-100 B and C.

D. For nutrient credit-generating projects utilizing natural succession land use conversion, the implementation plan shall also include provisions for:

1. Forests to achieve an initial density of a minimum of 400 noninvasive woody stems per acre.

2. Invasive plant species control and eradication if woody invasive plant species impacts 5.0% or more of the nutrient credit-generating project's acreage.

3. A description of agricultural baseline requirements implemented in accordance with 9VAC25-900-100 B and C that apply to any remaining portions of the management area not undergoing land use conversion.

4. Performance standards for demonstrating ongoing compliance with the agricultural baseline requirements of 9VAC25-900-100 B and C.

E. For nutrient credit-generating projects utilizing other land use conversion not subject to either subsection C, D, or G of this section, the implementation plan shall also include:

1. Description of the land use conversion project and its implementation and maintenance criteria.

2. Description of the applicable baseline practices implemented in accordance with 9VAC25-900-100 for the management area including the nutrient credit-generating project.

3. Performance standards and reporting procedures demonstrating ongoing compliance with the baseline practices requirements of 9VAC25-900-100.

F. For nutrient credit-generating projects utilizing non-land use conversion agricultural practices, the implementation plan shall also include:

1. A description of the entire management area. This description shall include (i) the acreage and use including descriptions for the proposed practices of the nutrient credit-generating project and baseline area; (ii) water features including all streams, ponds, lakes, and wetlands; (iii) environmentally sensitive sites as defined in 4VAC50-85-10; (iv) areas with highly erodible soils; and (v) the current agricultural operations, crops, or animal facilities.

2. Copies of the current nutrient management plans developed by a certified nutrient management planner and approved by the department and any soil conservation plans completed by a certified conservation planner.

3. Information on the location and status of all existing and proposed BMPs including implementation schedules, lifespan, and maintenance procedures for each BMP that constitutes the baseline requirements.

G. For nutrient credit-generating projects utilizing approved wetland and stream mitigation projects pursuant to § 62.1-44.15:23 of the Code of Virginia, the implementation plan shall also include:

1. A copy of the approved mitigation banking instrument.

2. A plan view map clearly delineating and labeling areas to be considered for credit conversion.

3. A spreadsheet or table listing each labeled area. For each labeled area, the table shall include:

- a. The type of eligible land use conversion or restoration practice;
- b. The acreage or linear feet of the area;
- c. The available mitigation credits;
- d. The potential nutrient credits; and
- e. The ratio of mitigation credits to nutrient credits.

4. Documentation that complies with the department-approved procedure to ensure credits are not used for both wetland or stream credit and nutrient credit purposes.

5. Documentation shall include written approval from the Interagency Review Team, which oversees stream and wetland mitigation projects pursuant to 33 CFR 332.8 and § 62.1-44.15:23 of the Code of Virginia, to establish a nutrient credit generating site within an approved mitigation bank.

H. For nutrient credit-generating projects utilizing proposed new wetland or stream restoration projects not subject to 33 CFR 332.8 and § 62.1-44.15:23 of the Code of Virginia, the

Regulations

implementation plan shall also include, where appropriate to the type of restoration and project:

1. Certification that the owner will obtain all appropriate permits or other authorizations needed to construct and maintain the restoration activities, prior to initiating work in state waters.
2. An initial wetland restoration plan, which shall include the following:
 - a. The goals and objectives in terms of proposed nutrient reductions and restoration activities;
 - b. A detailed location map (e.g., a U.S. Geologic Survey topographic quadrangle map) including latitude and longitude to the nearest second and the hydrologic unit code (HUC) at the center of the site;
 - c. A description of the surrounding land use;
 - d. A hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year;
 - e. The groundwater elevation data or, if not available, the proposed location of groundwater monitoring wells to collect this data;
 - f. Wetland delineation confirmation and data sheets and maps for existing surface water areas on the proposed site;
 - g. A preliminary grading plan;
 - h. A preliminary wetland planting scheme, including suggested plant species and zonation of each vegetation type proposed;
 - i. Descriptions of existing soils, including general information on topsoil and subsoil conditions, permeability, and the need for soil amendments;
 - j. A preliminary design of any water control systems or structures for wetland restoration or establishment;
 - k. Depiction of any land conversion or other buffer areas associated with the nutrient credit-generating entity;
 - l. A description of any structures or features necessary for the success of the site; and
 - m. A preliminary schedule for site construction.
3. An initial stream restoration plan, which shall include the following:
 - a. The goals and objectives in terms of proposed nutrient reductions and restoration activities;
 - b. A detailed location map (e.g., a U.S. Geologic Survey topographic quadrangle map), including the latitude and longitude (to the nearest second) and the hydrologic unit code (HUC) at the center of the site;
 - c. A description of the surrounding land use;
 - d. The preliminary proposed stream segment restoration locations, including plan view, profile, and cross-section sketches;

- e. The existing stream deficiencies that need to be addressed;
- f. The proposed restoration measures to be employed, including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme for streambank plantings;
- g. Reference stream data, if available;
- h. Depiction of any land conversion or other buffer areas associated with the nutrient credit-generating project; and
- i. A preliminary schedule for site construction.

4. Prior to construction of the restoration site, the following final plans shall be submitted where appropriate to the type of restoration:

- a. The final wetland restoration plan, which shall include all of the items listed in subdivision H 2 of this section and the following:
 - (1) A summary of the type and acreage of existing stream and wetland impacts anticipated during the construction of the restoration site and the proposed compensation for these impacts;
 - (2) A site access plan;
 - (3) An erosion and sediment control plan meeting the requirements of ~~9VAC25-840~~ 9VAC25-875;
 - (4) The final construction schedule; and
 - (5) A monitoring plan as detailed in subdivision H 4 c of this section.
- b. A final stream restoration plan, which shall include the items listed in subdivision H 3 of this section of this section and the following:
 - (1) A summary of the type and acreage or linear feet of impacts to state waters anticipated during the construction of the restoration site and the proposed compensation for these impacts;
 - (2) A detailed plan view, profile, and cross-section sketches with the location of proposed restoration measures;
 - (3) A site access plan;
 - (4) An erosion and sediment control plan meeting the requirements of ~~9VAC25-840~~ 9VAC25-875;
 - (5) The final construction schedule; and
 - (6) A monitoring plan as detailed in subdivision H 4 c of this section.
- c. A monitoring plan, which shall include: (i) monitoring goals; (ii) proposed performance standards; (iii) parameters to be monitored; (iv) methods of monitoring; (v) length of monitoring period; (vi) monitoring and reporting schedule; (vii) reporting requirements; and (viii) projects responsible for monitoring and reporting.
 - (1) Performance standards for wetland or stream restoration shall include specific, measureable parameters

for determination of performance in comparison to as-built conditions. For wetland restoration, performance standards may include applicable parameters to demonstrate characteristics of wetland formation and stability for the type of wetland restored, including hydrology, soils, vegetation, and stability of any water control structures or berms. For stream restoration, performance standards may include applicable parameters to demonstrate characteristics of channel stability, including dimension, pattern, profile, materials, and stability of the channel and any structures.

(2) Monitoring methods and parameters shall be selected based on type of wetland or stream restoration, the implementation plan, and performance standards of the nutrient credit-generating project, and will be outlined in the monitoring plan. For wetland restoration, the monitoring plan shall include the location and number of photo stations, monitoring wells, vegetation sampling points, other monitoring equipment, and reference wetlands, if available. For stream restoration, the plan shall include the location and number of stations utilized for photo-monitoring, cross-sections, profiles, pattern measurements, streambank stability measurements, streambank vegetation surveys, bank pins, scour chains, stream gages, rain gages, other monitoring equipment, and reference streams, if available.

(3) The monitoring and reporting schedule shall include an as-built survey conducted directly following construction and at least six monitoring and reporting events over a 10-year monitoring period following construction. All monitoring activities shall occur during the growing season, with the exception that after year three, physical monitoring of stream condition (cross-section, profiles, pattern) may be conducted outside the growing season. For any year in which planting was conducted, monitoring of woody vegetation shall take place no earlier than October and at least six months following planting. If all performance standards have not been met in the 10th year, then a monitoring report shall be required for each consecutive year until two sequential annual reports indicate that all performance standards have been successfully satisfied. The extent of monitoring may be reduced, upon approval by the department, on a case-by-case basis, in response to exceptional attainment of performance standards. Submittal of a final monitoring report, typically prepared the 10th growing season following construction completion, shall be required as a baseline for long-term management.

5. A long-term management plan, which shall include:

a. Restoration projects shall include minimization of active engineering features (e.g., pumps) that require long-term management and appropriate site selection to ensure that natural hydrology and landscape context will support long-term sustainability;

b. Long-term management and maintenance shall include basic management as necessary to ensure long-term sustainability of the nutrient credit-generating project such as long-term repair or replacement, maintenance of water control or other structures, or easement enforcement;

c. The owner shall designate a responsible long-term steward in the plan. The owner of the nutrient credit-generating project is the default long-term steward and is responsible for implementing the long term management plan and management of the financial assurance. However, the owner may transfer the long-term management responsibilities and management of the long-term financial assurance to a long-term steward or land stewardship project, such as a public agency, nongovernmental organization, or private land manager, upon review and approval by the department;

d. Long-term management needs, annual cost estimates for these needs, and identifying the funding mechanism that will be used to meet these needs shall be included.

I. For nutrient credit-generating projects utilizing urban practices, the implementation plan shall also include:

1. A description of the contributing drainage area (CDA) for the proposed nutrient credit-generating project's BMP. This description shall include (i) the acreage and land covers (e.g., impervious, forest or open space, managed turf); (ii) water features including all streams, ponds, lakes, and wetlands; (iii) identification of all impaired waters and approved TMDLs; and (iv) identification or mapping of the soil types within the CDA, by USDA hydrological soil group.

2. A list of all of the current urban nutrient management plans developed by a certified nutrient management planner and being implemented within the CDA.

3. Information on the location and description of existing BMPs within the CDA. For BMPs that constitute the baseline requirements include implementation schedules, lifespan, and maintenance procedures.

4. For development and redevelopment projects, the implementation plan shall include the erosion and sediment control plan and the stormwater management plan developed in accordance ~~9VAC25-870~~ 9VAC25-875.

5. For retrofits, the implementation plan shall include relevant credit calculations and documentation as deemed appropriate by the department.

J. For other types of activities or projects not presented in subsections C through I of this section, the implementation plan shall include information as deemed appropriate by the department in order to evaluate the credits for nutrient credit certification.

Regulations

9VAC25-900-230. Financial assurance applicability.

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

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

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

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

2. A long-term management fund financial assurance mechanism shall be established in support of required long-term management plan tasks pursuant to 9VAC25-900-120 for any nutrient credits generated from wetland or stream restoration. Long-term management funds shall be placed in a separate interest bearing trust account in an appropriate financial institution and may be funded from a sufficient

percentage of all credit sale proceeds, a single lump sum payment, or an approved schedule of payments, subject to department approval. No long-term management funds shall be used to finance any expense or activity other than those specified in the long-term management plan unless approved by the department. Responsibility for and access to the long-term management fund is given to the owner or long-term steward and may be transferred to any new long-term steward that is designated by the owner and approved by the department; and

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

D. When the nutrient credits are generated or used by a locality, authority, utility, sanitation district, or owner operating an MS4 or a point source permitted under ~~9VAC25-870~~ 9VAC25-875, the existence of tax or rate authority may be used by such entity at its option in satisfaction of the financial assurance required pursuant to this part.

VA.R. Doc. No. R25-7886; Filed July 24, 2024, 12:55 p.m.

Final Regulation

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

Titles of Regulations: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-200).**

9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (amending 9VAC25-32-190).

9VAC25-790. Sewage Collection and Treatment Regulations (amending 9VAC25-790-300).

Statutory Authority:

§§ 62.1-44.15 and 62.1-44.19:3.5 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, 124, 403, and 503 (9VAC25-31-200).

§§ 62.1-44.15 and 62.1-44.19:3.5 of the Code of Virginia (9VAC25-32-190).

§§ 62.1-44.19 and 62.1-44.19:3.5 of the Code of Virginia (9VAC790-300).

Effective Date: September 25, 2024.

Agency Contact: Rebecca W. Rochet, Deputy Director, Division of Water Permitting, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2950, or email rebecca.rochet@deq.virginia.gov.

Summary:

Pursuant to Chapter 178 of the 2024 Acts of Assembly, the amendments require sewage treatment works, classified waterworks, and classified water treatment facilities to employ a licensed operator.

9VAC25-31-200. Additional conditions applicable to specified categories of VPDES permits.

The following conditions, in addition to those set forth in 9VAC25-31-190, apply to all VPDES permits within the categories specified below in this section:

A. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the department as soon as they know or have reason to believe:

1. That any activity has occurred or will occur ~~which~~ that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following notification levels:
 - a. One hundred micrograms per liter (100 µg/l);
 - b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - c. Five times the maximum concentration value reported for that pollutant in the permit application; or
 - d. The level established by the department in accordance with 9VAC25-31-220 F.
2. That any activity has occurred or will occur ~~which~~ that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following notification levels:
 - a. Five hundred micrograms per liter (500 µg/l);
 - b. One milligram per liter (1 mg/l) for antimony;
 - c. Ten times the maximum concentration value reported for that pollutant in the permit application; or
 - d. The level established by the department in accordance with 9VAC25-31-220 F.

B. Publicly and privately owned treatment works. All POTWs and PVOTWs must provide adequate notice to the department of the following:

1. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger that would be subject to § 301 or 306 of the CWA and the law if it were directly discharging those pollutants; and
 2. Any substantial change in the volume or character of pollutants being introduced into that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at the time of issuance of the permit.
 3. For purposes of this subsection, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW or PVOTW; and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or PVOTW.
 4. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPDES permit for each month of any three-month period, the owner shall within 30 days notify the department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.
 - a. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem ~~which~~ that could be reasonably anticipated, resulting from high influent flows.
 - b. Upon receipt of the owner's plan of action, the department shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.
 - c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.
 - d. Nothing herein shall in any way impair the authority of the department to take enforcement action under § 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.
- C. Wastewater works operator requirements.
1. The permittee shall employ or contract at least one wastewater works operator who holds a current wastewater license appropriate for the permitted facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and Waterworks and Wastewater Works Operators Licensing Regulations (18VAC160-30). Notwithstanding the foregoing requirement, unless the discharge is determined by the department on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:
 - a. That have a design hydraulic capacity equal to or less than 0.04 mgd;
 - b. That discharge industrial waste or other waste from coal mining operations; or
 - c. That do not utilize biological or ~~physical/chemical~~ physical or chemical treatment.

Regulations

2. In making this case-by-case determination, the department shall consider the location of the discharge with respect to state waters, the size of the discharge, the quantity and nature of pollutants reaching state waters, and the treatment methods used at the wastewater works.

3. The permittee shall notify the department in writing whenever ~~he~~ the permittee is not complying, or has grounds for anticipating ~~he~~ the permittee will not comply with the requirements of subdivision 1 of this subsection. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

4. Every sewage treatment works owner shall employ or contract an operator who holds a current wastewater operator license, issued in accordance with Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia, of the appropriate class for the type of facility, as determined by the department, or higher class at the owner's option. If the position of the licensed operator of the appropriate class is unexpectedly vacated due to death, extended illness, firing for cause, resignation, or similar cause, the treatment works owner shall notify the department promptly and in accordance with any specific timeframe directed by the department. The department shall temporarily waive the licensed operator requirement for the interim, provided the owner (i) informs the department in writing of the owner's designation of another licensed operator or professional engineer responsible for interim operations within five days of the vacancy, (ii) informs the department in writing within 10 days of the vacancy arising of the owner's plan to hire a replacement licensed operator of the appropriate class as soon as practicable, (iii) implements the hiring plan diligently, and (iv) provides a monthly report to the department on the implementation and progress of such hiring plan. The department may revoke the temporary waiver if the department finds that continued operation pursuant to the waiver presents a public health or water quality threat due to statutory, regulatory, or permit violations.

5. Where the facility is equipped with adequate technological capability, the department shall credit remote monitoring of the facility by a licensed operator of the appropriate class as operator attendance toward recommended licensed operator attendance hours, provided that the owner submits and the department approves a remote monitoring plan demonstrating that the facility possesses sufficient technology for the remote operator to adequately monitor the facility and manage onsite operators with a lower license class, mechanics, or other staff to operate the facility under the remote operator's direct supervision. In determining whether to approve a remote monitoring plan for multiple facilities, the department may consider the number of facilities the remote operator is monitoring simultaneously, whether the multiple facilities being monitored remotely are under common ownership,

whether the remote operator is employed by the owner of the multiple facilities, and whether occasional in-person attendance is provided, among other factors. The department may cease crediting remote monitoring if the department finds that continued operation pursuant to the remote monitoring plan presents a public health or water quality threat due to statutory, regulatory, or permit violations. The department shall not credit remote monitoring by an operator without the appropriate license class who is operating the waterworks or treatment facility pursuant to a temporary waiver issued under subdivision 4 of this subsection.

D. Lake level contingency plans. Any VPDES permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions, and such plan shall take into account and minimize any adverse effects of any release reduction requirements on downstream users. This subsection shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

E. Concentrated animal feeding operations (CAFOs). The activities of the CAFO shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter, or process wastewater to surface waters of the state except in the case of an overflow caused by a storm event greater than the 25-year, 24-hour storm. Agricultural stormwater discharges as defined in subdivision C 3 of 9VAC25-31-130 are permitted. Domestic sewage or industrial waste shall not be managed under the Virginia Pollutant Discharge Elimination System General Permit for CAFOs (9VAC25-191). Any permit issued to a CAFO shall include:

1. Requirements to develop, implement, and comply with a nutrient management plan. At a minimum, a nutrient management plan shall include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have ~~their~~ their nutrient management plans developed and implemented and be in compliance with the nutrient management plan as a requirement of the permit. The nutrient management plan must, to the extent applicable:

- a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, stormwater, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

- c. Ensure that clean water is diverted, as appropriate, from the production area;
 - d. Prevent direct contact of confined animals with surface waters of the state;
 - e. Ensure that chemicals and other contaminants handled on site are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
 - f. Identify appropriate ~~site-specific~~ site-specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface waters of the state;
 - g. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
 - h. Establish protocols to land apply manure, litter, or process wastewater in accordance with ~~site-specific~~ site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and
 - i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described ~~above~~ in this subdivision 1.
2. Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the director upon request the following records:
- a. All applicable records identified pursuant to subdivision 1 i of this subsection; and
 - b. In addition, all CAFOs subject to EPA Effluent Guidelines for Feedlots (40 CFR Part 412) must comply with recordkeeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c);₂
- A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the director upon request.
3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter, or process wastewater to other persons, large CAFOs must provide the recipient of the manure, litter, or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of EPA Effluent Guidelines for Feedlots (40 CFR Part 412). Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter, or process wastewater transferred to another person.
4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the director. As of the start date in Table 1 of 9VAC25-31-1020, all annual reports submitted in compliance with this subsection shall be submitted electronically by the permittee to the department

in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, the permittee may be required to report electronically if specified by a particular permit. The annual report must include:

- a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
 - b. Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (~~tons/gallons~~) in tons or gallons;
 - c. Estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous 12 months (~~tons/gallons~~) in tons or gallons;
 - d. Total number of acres for land application covered by the nutrient management plan developed in accordance with subdivision 1 of this subsection;
 - e. Total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous 12 months;
 - f. Summary of all manure, litter, and process wastewater discharges from the production area that occurred in the previous 12 months, including for each discharge the date of discovery, duration of discharge, and approximate volume;
 - g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and
 - h. The actual crops planted and actual yield for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with subdivisions 5 a (2) and 5 b (4) of this subsection, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with subdivision 5 b of this subsection, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with subdivision 5 b (4) of this subsection, and the amount of any supplemental fertilizer applied during the previous 12 months.
5. Terms of the nutrient management plan. Any permit issued to a CAFO shall require compliance with the terms of the CAFO's site-specific nutrient management plan. The

Regulations

terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the department to be necessary to meet the requirements of subdivision 1 of this subsection. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by subdivision 4 h of this subsection and, as applicable, 40 CFR 412.4(c), shall include the fields available for land application; field-specific rates of application properly developed, as specified in subdivisions 5 a and b of this subsection, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms shall address rates of application using one of the following two approaches, unless the department specifies that only one of these approaches may be used:

a. Linear approach. An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

(1) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the department, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field, such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the department for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of ~~plant available~~ plant-available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be ~~land applied~~ land applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(2) Large CAFOs that use this approach shall calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; or

b. Narrative rate approach. An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:

(1) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the department, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses, such as pasture or fallow fields, including alternative crops identified in accordance with subdivision 5 b (2) of this subsection; the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the department for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by subdivision 1 g of this subsection; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of ~~plant available~~ plant-available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

(2) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops shall be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan shall include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the department for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied shall be determined in accordance with the methodology described in subdivision 5 b (1) of this subsection.

(3) For CAFOs using this approach, the following projections shall be included in the nutrient management plan submitted to the department, but are not terms of the

nutrient management plan: the CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of ~~plant-available~~ plant-available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

(4) CAFOs that use this approach shall calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in subdivision 5 b (1) of this subsection before land applying manure, litter, and process wastewater and shall rely on the following data:

(a) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by subdivision 5 b (1) of this subsection, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the department; and

(b) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

9VAC25-32-190. Operator requirements.

A. The permittee shall employ or contract at least one operator who holds a current wastewater license appropriate for the permitted facility, if required by the VPA permit. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators (18VAC160-20-10 et seq.). Notwithstanding the foregoing requirement, unless the pollutant management activity is determined by the department on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

1. That have a design hydraulic capacity equal to or less than 0.04 million gallons per day;
2. That discharge industrial waste or other waste from coal mining operations; or
3. That do not utilize biological or ~~physical/chemical~~ physical or chemical treatment.

B. In making this case-by-case determination, the following shall be considered:

1. The location of the pollutant management activity with respect to state waters;
2. The size of the pollutant management activity;
3. The quantity and nature of pollutants reaching state waters; and
4. The treatment methods used at the treatment works.

C. The permittee shall notify the department in writing whenever ~~he~~ the permittee is not complying; or has grounds for anticipating ~~he~~ the permittee will not comply; with the requirements of subsection A of this section. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

D. Every sewage treatment works owner shall employ or contract an operator who holds a current wastewater operator license, issued in accordance with Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia, of the appropriate class for the type of facility, as determined by the department, or higher class at the owner's option. If the position of the licensed operator of the appropriate class is unexpectedly vacated due to death, extended illness, firing for cause, resignation, or similar cause, the treatment works owner shall notify the department promptly and in accordance with any specific timeframe directed by the department. The department shall temporarily waive the licensed operator requirement for the interim, provided the owner (i) informs the department in writing of the owner's designation of another licensed operator or professional engineer responsible for interim operations within five days of the vacancy, (ii) informs the department in writing within 10 days of the vacancy arising of the owner's plan to hire a replacement licensed operator of the appropriate class as soon as practicable, (iii) implements the hiring plan diligently, and (iv) provides a monthly report to the department on the implementation and progress of such hiring plan. The department may revoke the temporary waiver if the department finds that continued operation pursuant to the waiver presents a public health or water quality threat due to statutory, regulatory, or permit violations.

E. Where the facility is equipped with adequate technological capability, the department shall credit remote monitoring of the facility by a licensed operator of the appropriate class as operator attendance toward recommended licensed operator attendance hours, provided that the owner submits and the department approves a remote monitoring plan demonstrating that the facility possesses sufficient technology for the remote operator to adequately monitor the facility and manage onsite operators with a lower license class, mechanics, or other staff to operate the facility under the remote operator's direct supervision. In determining whether to approve a remote monitoring plan for multiple facilities, the department may consider the number of facilities the remote operator is monitoring simultaneously, whether the multiple facilities being monitored remotely are under common ownership,

Regulations

whether the remote operator is employed by the owner of the multiple facilities, and whether occasional in-person attendance is provided, among other factors. The department may cease crediting remote monitoring if the department finds that continued operation pursuant to the remote monitoring plan presents a public health or water quality threat due to statutory, regulatory, or permit violations. The department shall not credit remote monitoring by an operator without the appropriate license class who is operating the waterworks or treatment facility pursuant to a temporary waiver issued under subsection D of this section.

9VAC25-790-300. Reliability.

A. Additional operation and maintenance documentation may be necessary where performance reliability has not been established or worker safety and public health protection is questioned.

B. Operability. Independently operated essential equipment or components of sewerage systems and treatment works shall be provided with sufficient duplication or alternative operation so that the average daily design flow may be transported, stored, treated, or otherwise managed in accordance with reliability requirements with the largest component out of service. Sufficient spare parts to ensure continuous operability of essential unit operations and equipment shall be kept in a central storeroom located at the treatment works or at other readily accessible locations, and the minimum quantities shall be in accordance with the operation and maintenance manual. The need for spare parts should be determined from review of manufacturer's recommendations, evaluation of past maintenance requirements, ~~etc.~~ and any other relevant factors. A spare parts inventory shall be included in the operation and maintenance manual. The inventory shall list the minimum and maximum quantities of the spare parts to be kept on hand, the equipment in which ~~they~~ the spare parts are used, ~~their~~ the storage location of the spare parts, replacement procedures, and other pertinent information. A suggested spare parts inventory system is contained in Part IV (9VAC25-790-940 et seq.) of this chapter.

C. Maintenance. A regular program of preventive maintenance shall be adhered to. The Operations and Maintenance Manual shall contain a system of maintenance requirements to be accomplished.

1. A minimum preventive maintenance system shall be provided in accordance with the Operations and Maintenance Manual. Such a system should provide for advanced scheduling of preventive maintenance and should be continually assessed in order to reflect increased service requirements as equipment ages or flow rates increase.

2. Adequate records, files, and inventories to assist the operator in ~~his~~ this task should also be maintained.

3. A schedule for testing the integrity of all auxiliary standby power equipment, portable pumps, automatic electrical

switchover gear, and diversion piping should be developed and adhered to on a regular basis. A suggested maintenance system is outlined in this chapter. In cases where certain components of the treatment process may be damaged by flooding from natural events in such a manner as to cause excessive delays in restoring the treatment process to the design operating level, the means of removal of such components prior to flooding should be described in the Operational and Maintenance Manual.

D. Personnel.

1. Every sewage treatment works owner shall employ or contract an operator who holds a current wastewater operator license, issued in accordance with Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia, of the appropriate class for the type of facility, as determined by the department, or higher class at the owner's option. If the position of the licensed operator of the appropriate class is unexpectedly vacated due to death, extended illness, firing for cause, resignation, or similar cause, the treatment works owner shall notify the department promptly and in accordance with any specific timeframe directed by the department. The department shall temporarily waive the licensed operator requirement for the interim, provided the owner (i) informs the department in writing of the owner's designation of another licensed operator or professional engineer responsible for interim operations within five days of the vacancy, (ii) informs the department in writing within 10 days of the vacancy arising of the owner's plan to hire a replacement licensed operator of the appropriate class as soon as practicable, (iii) implements the hiring plan diligently, and (iv) provides a monthly report to the department on the implementation and progress of such hiring plan. The department may revoke the temporary waiver if the department finds that continued operation pursuant to the waiver presents a public health or water quality threat due to statutory, regulatory, or permit violations.

2. The recommended attendance hours by a licensed operator and the minimum daily hours that the treatment works should be manned by operating staff are contained in Table 1. The number of operating staff provided daily at a treatment works depends upon these requirements, as well as upon the permit compliance status and the operational conditions, such as:

~~1. a.~~ a. The design capacity (flow);

~~2. b.~~ b. The quality of the effluent;

~~3. c.~~ c. The complexity of the treatment processes used; and

~~4. d.~~ d. The fact that only a licensed operator may be specified as the individual in charge of overseeing permit compliance.

In instances where the recommended hours of attendance by a licensed operator are less than the daily hours the treatment

works is to be manned by operating staff (see Table 1), a licensed operator is not required to be physically located at the treatment works site during the remaining designated manning hours, provided that the licensed operator is able to respond to requests for assistance in a satisfactory manner, as described in the Operation and Maintenance Manual.

3. Where the facility is equipped with adequate technological capability, the department shall credit remote monitoring of the facility by a licensed operator of the appropriate class as operator attendance toward recommended licensed operator attendance hours, provided that the owner submits and the department approves a remote monitoring plan demonstrating that the facility possesses sufficient technology for the remote operator to adequately monitor the facility and manage onsite operators with a lower license class, mechanics, or other staff to operate the facility under the remote operator's direct supervision. In determining whether to approve a remote monitoring plan for multiple facilities, the department may consider the number of facilities the remote operator is monitoring simultaneously, whether the multiple facilities being monitored remotely are under common ownership, whether the remote operator is employed by the owner of the multiple facilities, and whether occasional in-person attendance is provided, among other factors. The department may cease crediting remote monitoring if the department finds that continued operation pursuant to the remote monitoring plan presents a public health or water quality threat due to statutory, regulatory, or permit violations. The department shall not credit remote monitoring by an operator without the appropriate license class who is operating the waterworks or treatment facility pursuant to a temporary waiver issued under subdivision 1 of this subsection.

with permit requirements, while providing for safe working conditions. Operational health and safety provisions are critical. ~~Cross-media~~ Cross-media pollution prevention measures should be evaluated and developed where practical, and material safety data sheets for toxic chemicals used should be readily available.

1. Alternate operating provisions shall be utilized as necessary in accordance with the reliability classification. An all-weather road shall be provided to permit access to and from the treatment works during normal weather conditions. Escape routes and methods should be established for emergency situations.
2. Pretreatment requirements as set forth in the State Water Control Board's ~~Regulations~~ regulations should be established and monitored in accordance with local regulations specific to such requirements.
3. Local standards and specifications approved in accordance with this chapter shall provide for the construction methods, as necessary in accordance with the local owner's sewer line maintenance program, to minimize excessive amounts of infiltration and inflow and prevent the accumulation of solids or debris that would interfere with the transmission of flow resulting in overflows, bypassing, or offline flow surcharges, such as in service connections.
4. Odor control measures should be established in accordance with ~~site specific~~ site-specific features and weather patterns. Development of objectionable odors shall be addressed by the best available odor control technology.

E. Conditions. The objective of treatment works operation should be to provide the most reliable and efficient performance that can be practically achieved in compliance

TABLE 1. CLASSIFICATION OF TREATMENT WORKS AND RECOMMENDED MINIMUM HOURS OF ATTENDANCE BY LICENSED OPERATORS AND OPERATING STAFF ⁽¹⁾ .				
Treatment Works Classification & Treatment Required Classification of the Operator in responsible charge <u>Responsible Charge</u>	Treatment Works Capacity (MGD)	Treatment Process Methods	Recommended Attendance by a Licensed Operator ^(2,3) Time-Hrs.	Recommended Daily Hours That that Works Should Be Manned ^(2,3)
I	Greater than 10 MGD	Biological Treatment Methods		
		(A) Suspended Growth Reactors	24	24
		(B) Aerated Lagoons or Constructed Wetlands	16	24

Regulations

		(C) Filters or Other Attached Growth Contactors	24	24
		(D) Processes Utilizing Biological Nutrient Control	24	24
		(E) Processes Utilizing Land Treatment	During Land Application	--
I	Equal to or less than 10 MGD but greater than 5 MGD	Biological Treatment Methods		
		(A) Suspended Growth Reactors	16	24
		(B) Aerated Lagoons or Constructed Wetlands	8	16
		(C) Filters or Other Attached Growth Contactors	16	24
		(D) Processes Utilizing Biological Nutrient Control	16	24
		(E) Processes Utilizing Land Treatment	During Land Application	--
I	Greater than 5 MGD	Advanced Waste Treatment (AWT)		
		(A) Ammonia Stripping	24	24
		(B) Breakpoint Chlorination	24	24
		(C) Carbon Adsorption	24	24
		(D) Chemical Coagulation, Flocculation, Precipitation	24	24
		(E) Filtration	24	24
		(F) Demineralization (Ion Exchange, Reverse Osmosis, Electrodialysis)	24	24
I	Equal to or less than 5 MGD but greater than 2.5 MGD	Advanced Waste Treatment		
		(A) Ammonia Stripping	16	24
		(B) Breakpoint Chlorination	16	24
		(C) Carbon Adsorption	16	24
		(D) Chemical Coagulation, Flocculation, Precipitation	16	24
		(E) Filtration	16	24
		(F) Demineralization (Ion Exchange, Reverse Osmosis, Electrodialysis)	16	24

Regulations

		(G) Microstraining/Screening	16	24
II	Greater than 2.5 MGD but equal to or less than 5.0 MGD	Biological Treatment Methods		
		(A) Suspended Growth Reactors	8	24
		(B) Aerated Lagoons or Constructed Wetlands	8	26
		(C) Filters or Other Attached Growth Contactors	8	24
		(D) Processes Utilizing Biological Nutrient Control	8	24
		(E) Processes Utilizing Land Treatment	During Land Application	--
II	Greater than 0.5 MGD but equal to or less than 2.5 MGD	Biological Treatment Methods		
		(A) Suspended Growth Reactors	8	16
		(B) Aerated Lagoons	4	8
		(C) Filters or Other Attached Growth Contactors	8	16
		(D) Processes Utilizing Biological Nutrient Control	8	16
		(E) Processes Utilizing Land Treatment	During Land Application	--
II	Greater than 0.1 MGD but equal to or less than 2.5 MGD	Advanced Waste Treatment		
		(A) Ammonia Stripping	8	16
		(B) Breakpoint Chlorination	8	16
		(C) Carbon Adsorption	8	16
		(D) Chemical Coagulation, Flocculation, Precipitation	8	16
		(E) Filtration	8	16
		(F) Demineralization (Ion Exchange, Reverse Osmosis, Electrodialysis)	8	16
III	Greater than 0.04 MGD but Equal to or less than 0.5 MGD	Biological Treatment Methods		
		(A) Suspended Growth Reactors	8	8
		(B) Aerated Lagoons or Constructed Wetlands	8	8

Regulations

		(C) Filters or Other Attached Growth Contractors	8	8
		(D) Processes Utilizing Biological Nutrient Control	8	8
		(E) Processes Utilizing Land Treatment	During Land Application	--
III	Greater than 1.00 MGD	Natural Treatment Methods	4	8
III	Greater than 0.001 MGD but equal to or less than 0.1 MGD	Advanced Waste Treatment		
		(A) Ammonia Stripping	8	8
		(B) Breakpoint Chlorination	8	8
		(C) Carbon Adsorption	8	8
		(D) Chemical Coagulation, Flocculation, Precipitation	8	8
		(E) Filtration	8	8
		(F) Demineralization (Ion Exchange, Reverse Osmosis, Electrodialysis)	8	8
IV	Greater than 0.001 MGD but equal to or less than 0.04 MGD	Biological Mechanical Methods ⁽⁴⁾	4 ⁽⁵⁾	4 ⁽⁵⁾
IV	Greater than 0.001 MGD but equal to or less than 1.00 MGD	Natural Treatment Methods ⁽⁴⁾	4 ⁽⁵⁾	4 ⁽⁵⁾

Notes:

⁽¹⁾Specific requirements for the number of licensed operators and the number and qualifications of the operating staff specified in accordance with this chapter and in consultation with and concurrence by the director are to be evaluated on a case-by-case basis in accordance with operational reliability and permit compliance data. Such requirements are to be included in the Operation and Maintenance Manual.

⁽²⁾If a particular treatment unit or units are discontinued or not in use for a significant period of time and the remaining treatment processes result in a lower classification for the treatment works, the licensed operator and operating staff requirements during that period may be reduced to that required for the type and classification of treatment process remaining in service, after concurrence by the director.

⁽³⁾If more than one sewage treatment process is used, the more stringent requirements among the processes will apply. In some cases, complexity of operation for several AWT processes in sequence may require more than the minimum coverage.

⁽⁴⁾Mechanical treatment processes are defined as those containing aerated and mixed flows using electrical or outside energy sources.

⁽⁵⁾An operator is not required unless the facility is designated as a wastewater treatment works by DEQ.

VA.R. Doc. No. R25-7894; Filed July 24, 2024, 12:52 p.m.

Final Regulation

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

Titles of Regulations: **9VAC25-210. Virginia Water Protection Permit Program Regulation (adding 9VAC25-210-315).**

9VAC25-610. Groundwater Withdrawal Regulations (amending 9VAC25-610-110).

Statutory Authority: §§ 62.1-256 and 62.1-44.15 of the Code of Virginia.

Effective Date: September 25, 2024.

Agency Contact: Eric Seavey, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 754-6250, or email eric.seavey@deq.virginia.gov.

Summary:

Chapter 251 of the 2024 Acts of Assembly revises § 62.1-44.15:55 of the Code of Virginia, authorizing the board to utilize and incorporate comprehensive groundwater, surface water, and aquifer data in surface water and groundwater permit decisions. Such data may include information relating to water levels, flow rates, and water quality. The amendments conform regulation to statute.

9VAC25-210-315. Use of data in permit decision for surface water withdrawals.

The department is authorized to utilize and incorporate comprehensive groundwater, surface water, and aquifer data in permit decisions. Such data may include information relating to water levels, flow rates, and water quality.

9VAC25-610-110. Evaluation criteria for permit applications.

A. The department shall not issue any permit for more groundwater than will be applied to the proposed beneficial use.

B. The department shall issue groundwater withdrawal permits to persons withdrawing groundwater or who have rights to withdraw groundwater prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Area and not excluded from requirements of this chapter by 9VAC25-610-50 based on the following criteria:

1. The department shall issue a groundwater withdrawal permit for persons meeting the criteria of subdivision 1 of

9VAC25-610-90 for the total amount of groundwater withdrawn in any consecutive 12-month period between July 1, 1987, and June 30, 1992; however, with respect to a political subdivision, an authority serving a political subdivision or a community waterworks regulated by the Virginia Department of Health, the department shall issue a groundwater withdrawal permit for the total amount of water withdrawn in any consecutive 12-month period between July 1, 1980, and June 30, 1992.

2. The department shall issue a groundwater withdrawal permit for persons meeting the criteria of subdivision 2 of 9VAC25-610-90 for the total amount of groundwater withdrawn and applied to a beneficial use in any consecutive 12-month period between July 1, 1992, and June 30, 1995.

3. The department shall issue a groundwater withdrawal permit for persons meeting the criteria of subdivision 4 of 9VAC25-610-90 for the total amount of groundwater withdrawn in any consecutive 12-month period between July 1, 1983, and June 30, 1993. The department shall evaluate all estimates of groundwater withdrawal based on projected water demands for crops and livestock as published by the Virginia Cooperative Extension Service, the United States Natural Resources Conservation Service, or other similar references and ~~make a determination~~ determine whether they are reasonable. In all cases only reasonable estimates will be used to document a permit limit.

4. The department shall issue a groundwater withdrawal permit for persons meeting the criteria of subdivision 5 of 9VAC25-610-90 for the amount of groundwater withdrawal needed to annually meet human consumption needs as proven in the water conservation and management plan approved by the department. The department shall include conditions in such permits that require the implementation of mandatory use restrictions before such withdrawals can be exercised.

5. When requested by persons described in subdivisions 1, 2, and 4 of 9VAC25-610-90, the department may issue groundwater withdrawal permits that include withdrawal amounts in excess of those ~~which that~~ an applicant can support based on historic usage. These additional amounts shall be based on documentation of water savings achieved through water conservation measures. The applicant shall demonstrate withdrawals prior to implementation of water conservation measures, type of water conservation measure implemented, and withdrawals after implementation of water conservation measures. The applicant shall provide evidence of withdrawal amounts through metered withdrawals and estimated amounts shall not be accepted to claim additional withdrawal amounts due to water conservation. Decreases in withdrawal amounts due to production declines, climatic conditions, population declines, or similar events shall not be used as a basis to

Regulations

claim additional withdrawal amounts based on water conservation.

C. The department shall issue groundwater withdrawal permits to persons withdrawing groundwater when a groundwater management area is declared or expanded after July 1, 1992, and not excluded from requirements of this chapter by 9VAC25-610-50 based on the following criteria:

1. The department shall issue a groundwater withdrawal permit to nonagricultural users for the total amount of groundwater withdrawn in any consecutive 12-month period during the five years preceding the effective date of the regulation creating or expanding the groundwater management area.

2. The department shall issue a groundwater withdrawal permit to agricultural users for the total amount of groundwater withdrawn in any consecutive 12-month period during the 10 years preceding the effective date of the regulation creating or expanding the groundwater management area. The department shall evaluate all estimates of groundwater withdrawal based on projected water demands for crops and livestock as published by the Virginia Cooperative Extension Service, the United States Natural Resources Conservation Service, or other similar references and ~~make a determination~~ determine whether ~~they~~ the estimates are reasonable. In all cases only reasonable estimates will be used to document a permit limit.

3. When requested by the applicant, the department may issue groundwater withdrawal permits that include withdrawal amounts in excess of those ~~which~~ that an applicant can support based on historic usage. These additional amounts shall be based on documentation of water savings achieved through water conservation measures. The applicant shall demonstrate withdrawals prior to implementation of water conservation measures, type of water conservation measure implemented, and withdrawals after implementation of water conservation measures. The applicant shall provide evidence of withdrawal amounts through metered withdrawals and estimated amounts shall not be accepted to claim additional withdrawal amounts due to water conservation. Decreases in withdrawal amounts due to production declines, climatic conditions, population declines, or similar events shall not be used as a basis to claim additional withdrawal amounts based on water conservation.

D. The department shall issue groundwater withdrawal permits to persons wishing to initiate a new withdrawal, expand an existing withdrawal, or reapply for a current withdrawal in any groundwater management area who have submitted complete applications and are not excluded from requirements of this chapter by 9VAC25-610-50 based on the following criteria:

1. The applicant shall provide all information required in subdivision 2 of 9VAC25-610-94 prior to the department's determination that an application is complete. The department may require the applicant to provide any information contained in subdivision 3 of 9VAC25-610-94 prior to considering an application complete based on the anticipated impact of the proposed withdrawal on existing groundwater users or the groundwater resource.

2. The department shall perform a technical evaluation to determine the areas of any aquifers that will experience at least one foot of water level declines due to the proposed withdrawal and may evaluate the potential for the proposed withdrawal to cause salt water intrusion into any portions of any aquifers or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing groundwater users or the groundwater resource. Prior to public notice of a draft permit developed in accordance with the findings of the technical evaluation and at the request of the applicant, the results of the technical evaluation, including all assumptions and input, will be provided to the applicant for review.

3. The department shall issue a groundwater withdrawal permit when it is demonstrated, by a complete application and the department's technical evaluation, to the department's satisfaction that the maximum safe supply of groundwater will be preserved and protected for all other beneficial uses and that the applicant's proposed withdrawal will have no significant unmitigated impact on existing groundwater users or the groundwater resource. In order to ~~assure~~ ensure that the applicant's proposed withdrawal complies with ~~the above stated~~ these requirements, the demonstration shall include, ~~but not be limited to,~~ compliance with the following criteria:

a. The applicant demonstrates that no other sources of water supply, including reclaimed water, are practicable.

b. The applicant demonstrates that the groundwater withdrawal will originate from the aquifer that contains the lowest quality water that will support the proposed beneficial use.

c. The applicant demonstrates that no pumps or water intake devices are placed lower than the top of the uppermost confined aquifer that a well utilizes as a groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

d. The applicant demonstrates that the amount of groundwater withdrawal requested is the smallest amount of withdrawal necessary to support the proposed beneficial use and that the amount is representative of the amount necessary to support similar beneficial uses when adequate conservation measures are employed.

e. The applicant provides a water conservation and management plan as described in 9VAC25-610-100 and implements the plan as an enforceable condition of the groundwater withdrawal permit.

f. The applicant provides certification by the local governing body that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

g. The department's technical evaluation demonstrates that the area of impact of the proposed withdrawal will remain on property owned by the applicant or that there are no existing groundwater withdrawers within the area of impact of the proposed withdrawal.

In cases where the area of impact does not remain on the property owned by the applicant or existing groundwater withdrawers will be included in the area of impact, the applicant shall provide and implement a plan to mitigate all adverse impacts on existing groundwater users. Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as an enforceable permit conditions condition:

(1) The rebuttable presumption that water level declines that cause adverse impacts to existing wells within the area of impact are due to the proposed withdrawal;

(2) A commitment by the applicant to mitigate undisputed adverse impacts due to the proposed withdrawal in a timely fashion;

(3) A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant; and

(4) The requirement that the claimant provide documentation that ~~he~~ the claimant is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens and any other construction information that the claimant possesses; the location of the well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.

h. The department's technical evaluation demonstrates that the stabilized effects from the proposed withdrawal in combination with the stabilized combined effects of all existing lawful withdrawals will not lower water levels, in any confined aquifer that the withdrawal impacts, below a point that represents 80% of the distance between the land surface and the top of the aquifer. Compliance with the 80% drawdown criteria will be determined at the points

where the predicted one-foot drawdown contour is predicted for the proposed withdrawal.

i. The department's technical evaluation demonstrates that the proposed groundwater withdrawal will not result in salt water intrusion or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing groundwater users or the groundwater resource. This provision shall not exclude the withdrawal of brackish water, provided that the proposed withdrawal will not result in unmitigated adverse impacts.

4. The department shall also take the following factors into consideration when evaluating a groundwater withdrawal permit application or special conditions associated with a groundwater withdrawal permit:

- a. The nature of the use of the proposed withdrawal;
- b. The public benefit provided by the proposed withdrawal;
- c. The proposed use of innovative approaches, such as aquifer storage and recovery systems, surface water and groundwater conjunctive use systems, multiple well systems that blend withdrawals from aquifers that contain different quality groundwater in order to produce potable water, and desalinization of brackish groundwater;
- d. Prior public investment in existing facilities for withdrawal, transmission, and treatment of groundwater;
- e. Climatic cycles;
- f. Economic cycles;
- g. The unique requirements of nuclear power stations;
- h. Population and water demand projections during the term of the proposed permit;
- i. The status of land use and other necessary approvals; and
- j. Other factors that the department deems appropriate.

E. When proposed uses of groundwater are in conflict or available supplies of groundwater are not sufficient to support all those who desire to use them, the department shall prioritize the evaluation of applications in the following manner:

- 1. Applications for human consumption shall be given the highest priority;
- 2. Should there be conflicts between applications for human consumption, applications will be evaluated in order based on the date that ~~said~~ the applications were considered complete; and
- 3. Applications for all uses, other than human consumption, will be evaluated following the evaluation of proposed human consumption in order based on the date that ~~said~~ the applications were considered complete.

F. Criteria for review of reapplications for groundwater withdrawal permit.

Regulations

1. The department shall consider all criteria in subsection D of this section prior to reissuing a groundwater withdrawal permit. Existing permitted withdrawal amounts shall not be the sole basis for determination of the appropriate withdrawal amounts when a permit is reissued.

2. The department shall reissue a permit to any public water supply user for an annual amount no less than the amount equal to that portion of the permitted withdrawal that was used by ~~said~~ the system to support human consumption during 12 consecutive months of the previous term of the permit.

G. The department is authorized to utilize and incorporate comprehensive groundwater, surface water, and aquifer data in permit decisions. Such data may include information relating to water levels, flow rates, and water quality.

VA.R. Doc. No. R25-7872; Filed July 24, 2024, 12:58 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 14 of the Code of Virginia, which exempts adoption, amendment, or repeal of wasteload allocations by the State Water Control Board pursuant to State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) if the board (i) provides public notice in the Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period, forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary response to written comments; and (iv) conducts at least one public meeting.

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-60, 9VAC25-720-70).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1313(e) of the Clean Water Act.

Effective Date: September 25, 2024.

Agency Contact: Mark Richards, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4392, or email mark.richards@deq.virginia.gov.

Background: The Clean Water Act (CWA) (33 USC § 1251 et seq.) and the U.S. Environmental Protection Agency (EPA) Water Quality Management and Planning Regulation (40 CFR 130) require states to identify waters that are in violation of water quality standards and to place these waters on the state's § 303(d) List of Impaired Waters. Also, the CWA and the EPA enabling regulation require that a total maximum daily load (TMDL) be developed for those waters identified as impaired. In addition, § 62.1-44.19:7 C of the Code of Virginia requires DEQ to develop TMDLs for impaired waters. A TMDL is a determination of the amount of a specific pollutant that a waterbody is capable of receiving without violating water quality standards for that pollutant. TMDLs are required to identify all sources of a pollutant and calculate the pollutant loads from each source, which is necessary for the attainment of a water quality standard. 40 CFR § 130.7(d)(2) directs Virginia to incorporate TMDLs in the Water Quality Management Plan (9VAC25-720). Also, 40 CFR § 122.44(d)(1)(vii)(B) requires that new or reissued Virginia Pollutant Discharge Elimination System (VPDES) permits be consistent with the TMDL wasteload allocation (WLA). This means that the WLA component of the TMDL incorporated into the regulation will be implemented through the requirements specified in the VPDES permits, for example, through numeric water quality-based effluent limitations or, in certain cases, best management practices.

Summary:

The amendments add (i) nine new TMDL WLAs in the James River Basin and (ii) one new TMDL WLA in the Rappahannock River Basin.

9VAC25-720-60. James River Basin.

A. Total maximum daily loads (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA ¹	Units
EDITOR'S NOTE: Rows 1 through 184 of 9VAC25-720-60 are not amended; therefore, the text of those rows is not set out.							
<u>185.</u>	<u>Bailey Creek</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Prince George, Hopewell</u>	<u>G03R</u>	<u>Sediment</u>	<u>424,000</u>	<u>lbs/yr</u>
<u>186.</u>	<u>Nuttree Branch</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Chesterfield</u>	<u>J17R</u>	<u>Sediment</u>	<u>303,000</u>	<u>lbs/yr</u>

187.	<u>Oldtown Creek</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Chesterfield, Colonial Heights</u>	<u>J15R</u>	<u>Sediment</u>	<u>253,000</u>	<u>lbs/yr</u>
188.	<u>Oldtown Creek</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Chesterfield, Colonial Heights</u>	<u>J15R</u>	<u>Phosphorous</u>	<u>404</u>	<u>lbs/yr</u>
189.	<u>Proctors Creek</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Chesterfield</u>	<u>G01R</u>	<u>Sediment</u>	<u>573,000</u>	<u>lbs/yr</u>
190.	<u>Rohoic Creek</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Dinwiddie, Petersburg</u>	<u>J15R</u>	<u>Sediment</u>	<u>377,000</u>	<u>lbs/yr</u>
191.	<u>Rohoic Creek</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Dinwiddie, Petersburg</u>	<u>J15R</u>	<u>Phosphorous</u>	<u>426</u>	<u>lbs/yr</u>
192.	<u>Swift Creek</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Chesterfield, Powhatan</u>	<u>J17R</u>	<u>Sediment</u>	<u>2,870,000</u>	<u>lbs/yr</u>
193.	<u>Swift Creek</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Chesterfield, Powhatan</u>	<u>J17R</u>	<u>Phosphorous</u>	<u>3,145</u>	<u>lbs/yr</u>

Notes:

¹The total WLA can be increased prior to modification provided that the Department of Environmental Quality tracks these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria.

²GS means growing season.

Regulations

EDITOR'S NOTE: Subsections B and C of 9VAC25-720-60 are not amended; therefore, the text of those subsections is not set out.

9VAC25-720-70. Rappahannock River Basin.

A. Total maximum daily loads (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA ¹	Units
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EDITOR'S NOTE: Rows 1 through 82 of 9VAC25-720-70 are not amended; therefore, the text of those rows is not set out.

83.	Mountain Run	PCB Total Maximum Daily Load Development for Mountain Run, Culpeper County, Virginia	Culpeper	E09R	PCBs	2.775	mg/year
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Notes:

¹The total WLA can be increased prior to modification provided that the Department of Environmental Quality tracks these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria.

²There were no point source dischargers in the modeled TMDL area.

EDITOR'S NOTE: Subsections B and C of 9VAC25-720-70 are not amended; therefore, the text of those subsections is not set out.

VA.R. Doc. No. R25-7819; Filed July 24, 2024, 1:07 p.m.

Action Withdrawn

Statutory Authority: §§ 62.1-44.15:24 and 62.1-44.15:28 of the Code of Virginia.

The State Water Control Board has WITHDRAWN the regulatory action for **9VAC25-870, Virginia Stormwater Management Program (VSMP) Regulation**, which was published as a Notice of Intended Regulatory Action in [38:2 VA.R. 179 September 13, 2021](#). The purpose of the action was to amend the regulation to allow for changes in the statewide permit fee schedule supporting the Virginia Stormwater Management Program in accordance with Item 337 L 2 of Chapter 552 of the 2021 Acts of Assembly, Special Session I, which directs the board to amend or modify the existing statewide permit fee schedule so that the fees for the Virginia Pollutant Discharge Elimination System Permit for Discharges of Stormwater from Construction Activities and municipal separate storm sewer system (MS4) permits are set at an amount representing no less than 60%, not to exceed 62%, of the direct costs for the administration, compliance, and enforcement of those permits. This action was withdrawn because it was related to a chapter that is no longer effective. 9VAC25-870 was repealed and replaced by 9VAC25-875 in [40:8 VA.R. 461-557 December 4, 2023](#). The board will reinstate the process to make this amendment in the appropriate chapter.

Agency Contact: Rebecca W. Rochet, Deputy Director, Division of Water Permitting, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2950, or email rebecca.rochet@deq.virginia.gov.

VA.R. Doc. No. R22-6840; Filed July 25, 2024, 9:23 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-875. Virginia Erosion and Stormwater Management Regulation (amending 9VAC25-875-300).**

Statutory Authority: §§ 62.1-44.15:28 and 62.1-44.15:55 of the Code of Virginia.

Effective Date: September 25, 2024.

Agency Contact: Rebecca W. Rochet, Deputy Director, Division of Water Permitting, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2950, or email rebecca.rochet@deq.virginia.gov.

Background: Chapters 68 and 758 of the 2016 Acts of Assembly prohibit a locality that does not operate a Virginia Stormwater Management Program from approving an erosion and sediment control plan for a project until the Department of Environmental Quality (DEQ) has issued stormwater permit coverage for the project. However, another provision in this law prohibits DEQ from issuing stormwater permit coverage for a project until the locality has approved the erosion and

sediment control plan for the project. This creates a situation disallowing the issuance of land-disturbing approval.

Summary:

Chapters 5 and 104 of the 2024 Acts of Assembly revise § 62.1-44.15:55 of the Code of Virginia resolving a conflict in statute and creating a process where a locality reviews and approves an erosion and sediment control plan, then obtains evidence of stormwater permit coverage before issuing a land-disturbance approval. The amendments conform regulation to statute.

9VAC25-875-300. Plan review requirements.

A. The VESCP authority shall review erosion and sediment control plans that detail the criteria, techniques, and methods as defined in 9VAC25-875-550 for land-disturbing activities described in 9VAC25-875-560. Activities not required to comply with VESCL are defined in 9VAC25-875-280.

B. When ~~determined~~ the VESCP authority determines that the plan meets the minimum criteria, techniques, and methods as defined in 9VAC25-875-550, the VESCP authority shall review erosion and sediment control plans submitted and grant written approval within 60 days of the receipt of the plan.

C. When the VESCP authority determines a plan is inadequate, written notice stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that are necessary for approval of the plan. If no action is taken by the VESCP authority within 45 days, the plan shall be deemed approved and the proposed activity authorized. The VESCP authority shall act on any erosion and sediment control plan that has been previously deemed inadequate within 45 days after receipt of a revised plan if deemed adequate.

D. For sites requiring coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities, the VESCP authority shall obtain evidence of such permit coverage from the department's online reporting system prior to ~~approving the erosion and sediment control plan~~ issuing a land-disturbance approval.

E. The person responsible for carrying out the plan shall provide to the VESCP authority the name of an individual holding a certificate ~~to the VESCP authority~~ who will be in charge of and responsible for carrying out the land-disturbing activity. However, the VESCP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:55 of the Code of Virginia.

F. The VESCP authority may require approval of an erosion and sediment control plan for any land identified as an erosion impact area in accordance with § 62.1-44.15.55 of the Code of Virginia.

G. All erosion and sediment control structures and systems shall be maintained, inspected, and repaired as needed to ensure continued performance of ~~their~~ intended function. A statement describing the maintenance responsibilities of the individual responsible for carrying out the land-disturbing activity shall be included in the approved erosion and sediment control plan.

VA.R. Doc. No. R25-7901; Filed July 24, 2024, 1:01 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-325).**

Statutory Authority: § 32.1-325 of the Code of Virginia, 42 USC § 1396 et seq.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 25, 2024.

Effective Date: October 10, 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, FAX (804) 786-1680, TDD (800) 343-0634, or email meredith.lee@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations, and § 32.1-324 of the Code of Virginia grants the Director of the Department of Medical Assistance Services (DMAS) the authority of the board when it is not in session.

Purpose: The proposed changes are essential to protect the public health, safety, and welfare of citizens of the Commonwealth because the rate methodology helps ensure the continued financial viability of the Virginia Medicaid program.

Rationale for Using the Fast-Track Rulemaking Process: These regulatory changes are expected to be noncontroversial because the changes align with current DMAS rate-setting practices.

Substance: The proposed changes update the Medicaid capitation rate methodology to align with current DMAS Program of All-Inclusive Care for the Elderly (PACE) rate-setting practices. DMAS has transitioned from fee-for-service data to managed care encounter data for development of the amount that would otherwise have been paid under the State

Regulations

Plan for a comparable population. Rates are set at a percentage discount off of the amount that would have otherwise been paid for the comparable population.

Issues: The advantage to the public is transparency and updated text to reflect the current rate-setting methodology for the PACE population. The advantage to the DMAS and the Commonwealth is that the Virginia Administrative Code will reflect the rate-setting practice that is already being used for PACE and that has already been approved by the Centers for Medicare and Medicaid Services. These changes create no disadvantages to the public, DMAS, the Commonwealth, or the regulated community.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. On behalf of the State Board of Medical Assistance Services (board), the Director of the Department of Medical Assistance Services (DMAS) proposes to update the rate-setting methodology for the Program of All-Inclusive Care for the Elderly (PACE) services in order to reflect the capitation methodology currently being used.

Background. PACE services are provided to Medicaid members who are 55 years of age or older and who are medically qualified for nursing homes or home-based care. Members may select PACE as an alternative community-based and more holistic approach to their care needs. These individuals neither overnight at the PACE facility nor necessarily receive services each day. While medical care, such as doctor appointments, physical therapy appointments, and occupational therapy appointments is available at the PACE facilities, the facilities provide social support services as well as occasional transportation services. According to DMAS, the General Assembly passed a directive in 2011 to expand the "principles of care coordination to all geographic areas, populations, and services." Based on this mandate, DMAS gradually transitioned more and more Medicaid members into managed care from fee-for-service. As this occurred, DMAS transitioned from using fee-for-service data to managed care data to determine PACE payment rates. To set PACE rates, DMAS has to use data from a comparable population that is not enrolled in PACE. This comparable population consists of non-enrolled PACE members who receive long-term services and supports (LTSS). For many years, this LTSS population was enrolled in fee-for-service. However, in response to General Assembly mandates mentioned previously, DMAS enrolled more and more populations into managed care, including this LTSS population. Consequently, over time, DMAS had to transition

from using fee-for-service data to managed care data to set the PACE rates because the comparable LTSS population transitioned from fee-for-service to managed care.

In managed care, a per-member per-month capitation payment is made to the provider. PACE payments are made using capitation rates that represent a percentage of the amount that would otherwise been paid for the comparable population under fee-for-service. The DMAS actuary has transitioned from using fee-for service data to managed care encounter data when determining the amount that would otherwise have been paid for a comparable population. However, the current text of the regulation does not reflect the change in the rate methodology. The proposal would update the text so that it reflects the capitation payment methodology that is already being used for these members, and that has already been approved by the Centers for Medicare and Medicaid Services.²

Estimated Benefits and Costs. The main benefit of this action is to amend the regulation to reflect current rate-setting practices for the PACE population and improve the clarity and the accuracy of the text. Generally, the total payments to the PACE population are to be lower than the payments would have been under the fee-for-service methodology. However, no data are available to demonstrate that this expectation for this mandated change in service delivery method has been met. According to DMAS, there were 1,600 members receiving PACE services as of March 2022, and the approximate cost of these services in fiscal year 2022 was \$96 million.

Businesses and Other Entities Affected. DMAS reports that as of March 2022, there were 1,600 members receiving PACE services from 12 providers. No members or providers appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.³ 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 proposal merely updates the text to reflect the rate-setting methodology for the PACE population. Thus, no adverse impact is indicated.

Small Businesses⁴ Affected.⁵ The proposed amendments do not adversely affect small businesses.

Localities⁶ Affected.⁷ No localities are disproportionately affected. There are no costs to local governments as a result of these changes.

Projected Impact on Employment. The proposed amendments do not affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments do not affect the use and value of private property or the real estate development costs.

¹Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed

regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² <https://www.dmas.virginia.gov/media/4598/va-22-0004-approval-package.pdf>.

³ 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.

⁴ 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."

⁵ 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.

⁶ "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.

⁷ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department of Medical Assistance Services has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

The amendments update the Medicaid capitation rate methodology to align with current Department of Medical Assistance Services (DMAS) Program of All-Inclusive Care for the Elderly (PACE) rate-setting practices. DMAS has transitioned from fee-for-service data to managed care encounter data for development of the amount that would otherwise have been paid under the State Plan for Medical Assistance (State Plan) for a comparable population. Rates are set at a percentage discount to the amount that would have otherwise been paid for the comparable population. DMAS submitted a State Plan amendment to the Centers for Medicare & Medicaid Services that was approved on April 26, 2022.

12VAC30-50-325. Rates and payments.

A. The Commonwealth assures that the capitated rates will be equal to or less than the cost to the agency of providing those same fee for service State Plan approved services on a fee for

~~service basis, to an equivalent nonenrolled population group based upon the following methodology rates are set at a percent of fee for service costs. Rates are set at a percentage of fee for service costs.~~

B. To determine the amount that would otherwise have been paid (AWOP) under the State Plan for a comparable population, the Commonwealth uses base period encounter data adjusted for comparable populations and services to those provided by the Program of All-Inclusive Care for the Elderly (PACE) program, specifically individuals 55 years of age or older who historically receive services in an institutional setting or enrolled in a home and community based services (HCBS) § 1915(c) waiver. The historical data is adjusted to reflect modifications of payment arrangements between the data period and the contract period as well as benefit or eligibility changes that occurred prior to the beginning of the contract period. The base period data is also updated to reflect expected increases in utilization and cost for the contract period covered by the rates. An allowance for administrative costs is added to the AWOPs along with a provision for underwriting gain.

C. The final capitation rates are determined as a percentage discount off of the amount that would otherwise have been paid for these populations.

D. The PACE capitation rates vary by region and by eligibility status (dual-eligible and non-dual-eligible).

E. The State Medicaid Agency Commonwealth assures that the rates were set in a reasonable and predictable manner.

~~E.~~ F. The Commonwealth will submit all capitated rates to the Centers for Medicare and Medicaid Services (CMS) regional office for prior approval.

VA.R. Doc. No. R25-7183; Filed August 6, 2024, 1:34 p.m.

Fast-Track Regulation

Title of Regulation: **12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-301 through 12VAC30-60-315).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 25, 2024.

Effective Date: October 10, 2024.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to

Regulations

promulgate regulations, and § 32.1-324 of the Code of Virginia grants the Director of the Department of Medical Assistance Services (DMAS) the authority of the board when it is not in session.

Purpose: The amendments protect public health, safety, and welfare by protecting individual choice for the setting and provider of long term services and supports (LTSS) screening for every individual who applies for or requests institutional or community-based services.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is expected to be noncontroversial because it provides protection of individual choice for the setting and provider of LTSS services for every individual who applies for or requests institutional or community-based services.

Substance: The amendments (i) allow qualified nursing facility staff to complete LTSS screening for individuals who apply for or request LTSS and who are receiving non-Medicaid skilled nursing services in an institutional setting following discharge from an acute care hospital and (ii) include the protection of individual choice for the setting and provider of LTSS services for every individual who applies for or requests institutional or community-based services.

Issues: The primary advantage of this regulatory action is the protection of individual choice for the setting and provider of LTSS services for every individual who applies for or requests institutional or community-based services. There are no disadvantages to the public, 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.¹

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 304 and 365 (identical) of the 2020 General Assembly,² the Director of the Department of Medical Assistance Services (DMAS) proposes on behalf of the State Board of Medical Assistance Services (board) to make an emergency regulation permanent that (i) allows qualified nursing facility staff to complete the long-term services and supports (LTSS) screening for individuals who apply for or request LTSS and who are receiving non-Medicaid skilled nursing services in an institutional setting following discharge from an acute care hospital; (ii) requires that qualified nursing facility staff receive training and be certified in the use of the LTSS screening tool and conduct screenings in accordance with state regulations; and (iii) protects individual choice for the setting and provider of LTSS services for every individual who applies for or requests institutional or community-based services.

Background. An individual's level of care for a nursing facility is determined through the LTSS screening packet. LTSS screening is also used to determine whether a nursing facility is the appropriate setting for the individual (i.e., that the nursing facility has the capacity to provide to the individual the services and level of care they require). Before the legislative changes, when private pay individuals were discharged from acute care hospitals and admitted to nursing facilities, the hospitals were responsible for conducting LTSS screening to determine whether the patient would become eligible for Medicaid in the next six months.³ Nursing facilities could not do this screening because they were not authorized under Virginia law or regulation to do so. Chapters 304 and 365 changed that and now allow nursing facilities to conduct the screenings. According to DMAS, the enabling legislation resulted from a request by the Virginia Health Care Association. Further, the legislative mandate required that nursing facility staff be trained in LTSS screening and that the affected Medicaid member is afforded a choice on the type (i.e., community or institutional) of setting and a specific provider. The LTSS screening team also administers the required choice of setting forms (i.e., community or institutional care) and choice of provider.

The provisions of the mandate were implemented by an emergency regulation effective on February 16, 2022.⁴ This action would permanently replace the emergency regulation.

Estimated Benefits and Costs. Allowing nursing facilities to conduct LTSS screening would replace some of the screening that was previously conducted by other screeners. Since this change affects only who is allowed to conduct a screening, the total number of LTSS screenings should not be affected. DMAS does not anticipate any significant costs, and notes that LTSS screening is already required and conducted by community-based providers and hospitals and that this action merely allows nursing facilities to also screen. The anticipated benefits of this legislatively driven change include additional flexibility to adjust to the changing financial situations of patients, improvements in the information available to nursing facilities regarding an incoming patient's financials, and an overall improvement in the ability for people to be screened and admitted to nursing facilities. As mandated by the legislation, this proposed permanent regulation also requires nursing facility staff to have the same training and certification as other LTSS screeners. According to DMAS, the existing training and certification process used for nursing facility screening teams has already been updated to enable nursing facility staff to be trained with minimal effort. Finally, the legislation and consequently this regulation protect individual choice for the setting and provider of LTSS services for every individual who applies for or requests institutional or community-based services. In addition to bolstering an individual's right to choose the setting and a particular provider, this legislatively mandated change may also improve competition among providers and lead to improvements in service quality.

It is worth noting that all of the proposed changes to this regulation have been mandated by the legislation and almost all costs and benefits should be attributed to the legislation rather than this regulation. Additionally, the proposed changes have already been implemented through an emergency regulation effective February 2022. Thus, no economic impact is expected from this action, which makes this regulation permanent. Instead, the main impact of the proposed permanent regulation is an improvement in the accuracy of the text by reflecting current practices and aligning it with the requirements in the Code of Virginia.

Businesses and Other Entities Affected: From 2020 through October 31, 2022, on average about 43,000 total screenings were conducted annually by all providers. Since nursing facilities began conducting screenings on January 1, 2020, the screenings conducted by nursing facilities have increased from 14 in 2020 and 990 in 2021, to 3,376 in the January 1, 2022, through October 31, 2022, timeframe. None of the providers appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁵ 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, all of the proposed changes discussed are mandated by the legislation and not discretionary for the board. Thus, the main economic impact of this regulatory action is to align it with the Code of Virginia. Thus, no adverse impact is indicated by the proposed regulatory changes.

Small Businesses⁶ Affected.⁷ The proposed amendments do not adversely affect small businesses.

Localities⁸ Affected.⁹ The proposed amendments do not disproportionately affect particular localities or introduce costs for local governments.

Projected Impact on Employment. The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments do not affect the use and value of private property or the real estate development costs.

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

² <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0304&201+ful+CHAP0304> and <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0365>.

³ Other authorized LTSS screeners include hospital LTSS screening teams and community-based LTSS Screening teams consisting of (i) a registered nurse, nurse practitioner (ii) a social worker or other assessors designated by DMAS; and (iii) a physician. The Uniform Assessment Instrument (UAI) is one of the required forms in the LTSS screening packet. Section 32.1-330 of the Code of Virginia and DMAS regulations designate the UAI as Virginia's screening tool to evaluate an individual's functional eligibility for community or institutional long-term care services. The Centers for Medicare and Medicaid approved the

UAI as the single comprehensive pre-screening tool to determine an individual's care needs. Completion of the Level I and if needed, Level II, preadmission screening and resident review, a federally-required assessment, to assess for a mental illness, intellectual disability or related condition is also a part of the LTSS screening packet.

⁴ <https://townhall.virginia.gov/ViewStage.cfm?stageid=9150>.

⁵ 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.

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

⁷ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁸ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁹ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department of Medical Assistance Services has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

The amendments (i) allow qualified nursing facility staff to complete long-term services and supports (LTSS) screening for individuals who apply for or request LTSS and who are receiving non-Medicaid skilled nursing services in an institutional setting following discharge from an acute care hospital and (ii) include the protection of individual choice for the setting and provider of LTSS services for every individual who applies for or requests institutional or community-based services. The amendments conform regulation to Chapters 304 and 365 of the 2020 Acts of Assembly.

12VAC30-60-301. Definitions.

The following words and terms as used in 12VAC30-60-302 through 12VAC30-60-315 shall have the following meanings unless the context clearly indicates otherwise:

"Activities of daily living" or "ADLs" means personal care tasks such as bathing, dressing, toileting, transferring, and

Regulations

eating or feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Acute care hospital" or "hospital" means an acute care hospital, a rehabilitation hospital, a rehabilitation unit in an acute care hospital, or a psychiatric unit in an acute care hospital.

"Adult" means a person ~~age~~ 18 years of age or older who may need Medicaid-funded long-term services and supports (LTSS) or who becomes functionally eligible to receive Medicaid-funded LTSS.

"Appeal" means the processes used to challenge actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and Part XII (12VAC30-20-500 et seq.) of 12VAC30-20.

"At risk" means the need for the level of care provided in a hospital, or nursing facility, or an intermediate care facility for individuals with intellectual disability (ICF/IID) when there is reasonable indication that the individual is expected to need the services ~~in the near future (that is, 30 days or less)~~ within the next 30 days in the absence of home or community-based services.

"Child" means a person up to ~~the age of~~ 18 years of age who may need Medicaid-funded LTSS or who becomes functionally eligible to receive Medicaid-funded LTSS.

"Choice" means the individual is provided the option of either ~~home and community based waiver services the Commonwealth Coordinated Care (CCC) Plus Waiver, the Program of All-Inclusive Care for the Elderly (PACE), if available and appropriate,~~ or institutional services and supports, ~~including the Program of All-Inclusive Care for the Elderly (PACE), if available and appropriate,~~ after the individual has been determined likely to need LTSS.

"Communication" means all forms of sharing information and includes oral speech and augmented or alternative communication used to express thoughts, needs, wants, and ideas, such as the use of a communication device, interpreter, gestures, and picture or symbol communication boards.

"Community-based team" or "CBT" means (i) a registered nurse or nurse practitioner; (ii) a social worker or other assessor designated by DMAS; and (iii) a physician. The CBT members are employees of, or contracted with, the Virginia Department of Health or the local department of social services. The authorization or denial for Medicaid LTSS (DMAS-96 form) is signed and attested to by the screener and physician members of the CBT.

"CSB" means a local community services board.

"DARS" means the Virginia Department for Aging and Rehabilitative Services.

"Day" means calendar day unless specified otherwise.

"DBHDS" means the Virginia Department of Behavioral Health and Developmental Services.

"DMAS" means the Department of Medical Assistance Services.

"DMAS designee" means the public or private entity with ~~an agreement a contract~~ with the Department of Medical Assistance Services to complete ~~preadmission~~ LTSS screenings pursuant to § 32.1-330 of the Code of Virginia when an LTSS screening team cannot complete LTSS screenings within the required 30 days of the LTSS screening request date.

~~"ePAS" "eMLS" means the DMAS automated system or a DMAS approved~~ electronic Medicaid long-term services and supports screening record system for use used by LTSS screening entities contracted by DMAS to perform record results from LTSS screenings pursuant to § 32.1-330 of the Code of Virginia.

"Face-to-face" means an in-person meeting with the individual seeking Medicaid-funded LTSS.

"Feasible alternative" means a range of services that can be provided in the community via waiver or PACE, for less than the cost of comparable institutional care, in order to enable an individual to continue living in the community.

"Functional capacity" means the degree of independence that an individual has in performing ADLs, ~~ambulation, and instrumental ADLs~~ as measured on the UAI and as used as a basis for differentiating levels of long-term ~~care~~ services and supports.

"Functional eligibility" means the demonstrable degree to which an individual requires assistance with activities of daily living.

"Home and community-based services" means community-based waiver services or the Program of All-Inclusive Care for the Elderly (PACE).

"Home and community-based services provider" means a provider or agency enrolled with Virginia Medicaid to offer services to individuals eligible for ~~home and community based waivers~~ the Commonwealth Coordinated Care (CCC) Plus waiver services or PACE.

"Home and community-based services waiver," "HCBS," or "waiver services" means the range of community services and supports, ~~including PACE,~~ approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to § 1915(c) of the Social Security Act to be offered to individuals as an alternative to institutionalization.

"Hospital screening team" means persons designated by the hospital who are responsible for conducting and submitting the LTSS screening documents for inpatients to ~~ePAS eMLS.~~ The authorization or denial for Medicaid LTSS (DMAS-96 form) is signed and attested to by the screener and physician members of the hospital team.

"Inpatient" means an individual who has a physician's order for admission to an acute care hospital, rehabilitation hospital, or a rehabilitation unit in an acute care hospital and shall not apply to outpatients, patients in observation beds, and patients of the hospital's emergency department.

"Local department of social services" or "LDSS" means the entity established under § 63.2-324 of the Code of Virginia by the governing city or county in the Commonwealth.

"Local health department" or "LHD" means the entity established under § 32.1-31 of the Code of Virginia.

"Long-term services and supports" or "LTSS" means a variety of services that help individuals with health or personal care needs and ADLs over a period of time that can be provided in the home, the community, or nursing facilities.

"Long-term services and supports screening" or "LTSS screening" means the face-to-face process to (i) evaluate the functional, medical or nursing, and social support needs and at-risk status of individuals referred for certain long-term services requiring nursing facility level of care eligibility; (ii) assist individuals in determining what specific services the individual needs; (iii) evaluate whether a service or a combination of existing community services are available to meet the individual's needs; and (iv) provide a list to individuals of appropriate providers for Medicaid-funded nursing facility, PACE plan services, or the Commonwealth Coordinated Care (CCC) Plus waiver for those individuals who meet nursing facility level of care.

"Long-term services and supports screening team" or "LTSS screening team" means the hospital LTSS screening team, community-based team (CBT), nursing facility LTSS screening team, or DMAS designee contracted to perform screenings pursuant to § 32.1-330 of the Code of Virginia.

"Managed care organization" or "MCO" means a health plan selected to participate in the Commonwealth's CCC Plus program and that is a party to a contract with DMAS.

"Medicaid" means the program set out in the 42 USC § 1396 et seq. and administered by the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Medical or nursing need" means (i) the individual's condition requires observation and assessment to ensure evaluation of needs due to an inability for self-observation or evaluation; (ii) the individual has complex medical conditions that may be unstable or have the potential for instability; or (iii) the individual requires at least one ongoing medical or nursing service.

"Medicare" means the Health Insurance for the Aged and Disabled program as administered by the Centers for Medicare and Medicaid Services pursuant to 42 USC 1395ggg.

"Minimum data set" or "MDS" means the ~~evaluation assessment~~ form used by nursing facilities, as federally required, for the purpose of documenting ongoing level of care required for all of an NF's residents.

"Nursing facility" or "NF" means any nursing home as defined in § 32.1-123 of the Code of Virginia.

"Nursing facility LTSS screening team" means nursing facility staff trained and certified in the use of the LTSS screening tools who are responsible for performing LTSS screenings for individuals who apply for or request LTSS while receiving skilled nursing services in a setting not covered by Medicaid and after discharge from a hospital. Nursing facility LTSS screening teams include at least one registered nurse and a certifying physician. The authorization or denial for Medicaid LTSS (DMAS-96 form) is signed and attested to by the screeners and physician members of the nursing facility LTSS screening team.

"Ongoing" means continuous medical or nursing needs that ~~shall not be~~ are not temporary.

"Other assessor designated by DMAS" means an employee of the local department of social services holding the occupational title of family services specialist or an employee of a DMAS designee.

~~"Preadmission screening" or "screening" means the face-to-face process to (i) evaluate the functional, medical or nursing, and social support needs of individuals referred for screening for certain long term care services requiring NF eligibility; (ii) assist individuals in determining what specific services the individual needs; (iii) evaluate whether a service or a combination of existing community services are available to meet the individual's needs; and (iv) provide a list to individuals of appropriate providers for Medicaid-funded nursing facility or home and community based services for those individuals who meet nursing facility level of care.~~

"Private pay individual" means individuals who are not eligible for Medicaid or not expected to become eligible for Medicaid ~~within six months following admission and have alternate payment sources for care.~~

"Program of All-Inclusive Care for the Elderly" or "PACE" means the community-based service pursuant to § 32.1-330.3 of the Code of Virginia.

"Provider" means an individual professional or an agency enrolled with Virginia Medicaid to offer services to eligible individuals.

"Referral for LTSS screening" means information obtained from an interested person or other third party having knowledge of an individual who may need Medicaid-funded LTSS and may include, for example, a physician, PACE provider, service provider, family member, or neighbor who is able to provide sufficient information to enable contact with the individual.

Regulations

"Representative" means a person who is legally authorized to make decisions on behalf of the individual.

"Request date for LTSS screening" or "request date" means the date (i) that an individual, an emancipated child, the individual's representative, an adult protective services worker, child protective services worker, physician, or the managed care organization (MCO) (health plan) care coordinator contacts the LTSS screening entity in the jurisdiction where the individual resides asking for assistance with LTSS, or (ii) for hospital inpatients, that a physician orders case management consultation or a hospital's case management service determines the need for LTSS upon discharge from the hospital.

"Request for LTSS screening" means (i) communication from an individual, an emancipated child, individual's representative, adult protective services worker, child protective services worker, physician, managed care organization (MCO) care coordinator, or CSB support coordinator, expressing the need for LTSS or (ii) for hospital inpatients, a physician order for case management consultation or case management determination of the need for LTSS upon discharge from a hospital.

"Residence" means the location in which an individual is living, for example, an individual's private home, apartment, assisted living facility, nursing facility, jail or correctional facility.

"Screening entity" means the employer of the hospital LTSS screening team, community-based team, nursing facility LTSS screening team, or DMAS designee contracted to perform screenings pursuant to § 32.1-330 of the Code of Virginia.

"Significant change in condition" means a change in an individual's condition that is expected to last longer than 30 days and ~~shall does~~ not include (i) short-term changes that resolve with or without intervention; (ii) a short-term illness or episodic event; or (iii) a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Submission" means the transmission of the LTSS screening findings via ~~ePAS~~ eMLS, the electronic portal for LTSS screenings.

"Uniform Assessment Instrument" or "UAI" means the standardized multidimensional assessment instrument that is completed by the LTSS screening entity team that assesses an individual's physical health, mental health, and psycho/social and functional abilities to determine if the individual meets the nursing facility level of care.

"VDH" means the Virginia Department of Health.

12VAC30-60-302. Access to Medicaid-funded long-term services and supports.

A. Medicaid-funded long-term services and supports (LTSS) may be provided in either home and community-based or institutional-based settings. To receive LTSS, the individual's condition shall first be evaluated using the designated assessment instrument, the Uniform Assessment Instrument (UAI), and other DMAS-designated forms. ~~Screening entities~~ LTSS screening teams shall also use the DMAS-designated forms (~~DMAS-95, DMAS-96, and DMAS-97~~); if selecting nursing facility placement, the DMAS-95 Level I (~~MI/IDD/RC~~), ~~as appropriate, the DMAS-108, and the DMAS-409~~. If screening must be completed and if indicated by the DMAS-95 Level I results, the individual shall be referred to DBHDS for completion of the DMAS-95 Level II (~~for nursing facility placements only~~) evaluation and determination prior to admission to the nursing facility. For private duty nursing services under the Commonwealth Coordinated Care (CCC) Plus waiver, the DMAS-108 (adult), or the DMAS-109 (pediatric), shall be used to document needs.

1. An individual's need for LTSS shall meet the established criteria (12VAC30-60-303) before any authorization for reimbursement by Medicaid or its designee is made for LTSS.
2. Appropriate home and community-based services shall be evaluated as an option for long-term services and supports prior to consideration of nursing facility placement.

B. The evaluation shall be the LTSS screening as designated in § 32.1-330 of the Code of Virginia, which, if eligible, shall preauthorize a continuum of LTSS covered by Medicaid. These LTSS screenings shall be conducted face to face.

1. Such LTSS screenings, using the UAI, shall be conducted by teams of representatives of (i) acute care hospitals for individuals (adults and children) who are inpatients; (ii) local departments of social services and local health departments, known ~~herein in this part~~ as CBTs, for adults and children residing in the community and who are not inpatients; (iii) a DMAS designee for adults and children residing in the community ~~who are not inpatients; and or~~ hospital inpatients who cannot be screened by the LTSS screening team within 30 days of the request date; and (iv) ~~a DMAS designee for adults residing in the community who are not inpatients and who cannot be screened by the CBT within 30 days of the request date~~ nursing facility LTSS screening teams for individuals receiving skilled or rehabilitative nursing services that are not covered by Medicaid in an institutional setting following discharge from an acute care hospital. All of these entities Hospitals, CBTs, and DMAS designees shall be contracted with DMAS or authorized by DMAS to perform this activity and be reimbursed by DMAS.

2. All LTSS screenings shall be comprehensive, accurate, standardized, and reproducible evaluations of individual functional capacities, medical or nursing needs, and whether the individual is at risk for institutional placement within 30 days of the LTSS screening.

C. Individuals shall not be required to be financially eligible for receipt of Medicaid or have submitted an application for Medicaid in order to be screened for LTSS for admission to either a an NF or home and community-based services.

D. Pursuant to § 32.1-330 of the Code of Virginia, ~~individuals shall be screened if they are financially eligible for Medicaid or are anticipated to become financially eligible for Medicaid reimbursement of their NF care within six months of NF admission or Medicaid reimbursement of home and community based services and supports every individual who applies for or requests Medicaid community or institutional long-term services and supports shall be screened prior to admission to such community or institutional LTSS to determine the individual's need for long-term services and supports, including nursing facility services.~~

E. Special circumstances.

1. Private pay individuals who ~~will not become financially eligible for Medicaid within six months from admission~~ seek admission to a Virginia nursing facility shall not be required to have a an LTSS screening in order to be admitted to the NF.

2. Individuals who reside out of state and seek direct admission to a Virginia nursing facility shall not be required to have a an LTSS screening. Individuals who need a an LTSS screening for HCBS waiver or PACE programs and request the LTSS screening shall be screened by the CBT ~~or DMAS designee, as appropriate,~~ serving the locality in which the individual resides once the individual has relocated to the Commonwealth.

3. Individuals who are inpatients in an out-of-state hospital, in-state or out-of-state veteran's hospital, or in-state or out-of-state military hospital and seek direct admission to a Virginia NF shall not be required to have a an LTSS screening. Individuals who need a an LTSS screening for HCBS waiver or PACE programs and request the LTSS screening shall be referred, upon discharge from one of the identified facilities, to the CBT ~~or DMAS designee, as appropriate,~~ serving the locality in which the individual resides once the individual has relocated to the Commonwealth.

4. Individuals who are patients or residents of a state owned or operated facility ~~that is licensed by DBHDS~~ and seek direct admission to a Virginia NF shall not be required to have a an LTSS screening. Individuals who need a an LTSS screening for HCBS waiver or PACE and request the LTSS screening shall be referred, upon discharge from the facility,

to the CBT ~~or DMAS designee, as appropriate,~~ serving the locality in which the individual resides.

5. ~~A~~ An LTSS screening shall not be required for enrollment in Medicaid hospice services as set out in 12VAC30-50-270 or home health services as set out in 12VAC30-50-160.

~~6. Wilson Workforce Rehabilitation Center (WWRC) staff shall perform screenings of the WWRC clients.~~

F. Failure to comply with DMAS requirements, including competency and training requirements applicable to staff, may result in retraction of Medicaid payments.

12VAC30-60-303. Screening criteria for Medicaid-funded long-term services and supports.

A. Functional capacity alone shall not be deemed sufficient to demonstrate the need for nursing facility care admission or authorization for home and community-based services and supports. An individual shall be determined to meet the nursing facility level of care criteria when:

1. The individual has ~~both~~ limited functional capacity; and medical or nursing needs; and is at risk of NF admission within 30 days according to the requirements of this section; or
2. The individual is rated dependent in some functional limitations; but does not meet the functional capacity requirements, and the individual requires the daily direct services or supervision of a licensed nurse that cannot be managed on an outpatient basis (e.g., clinic, physician visits, home health services).

B. In order to qualify for Medicaid-funded LTSS, the individual shall meet the following criteria:

1. The criteria for screening an individual's eligibility for Medicaid reimbursement of NF services shall consist of three components: (i) functional capacity (the degree of assistance an individual requires to complete ADLs); (ii) medical or nursing needs; and (iii) the ~~individual is at~~ individual's risk of NF admission within 30 days of the LTSS screening date. The rating of functional dependency on the UAI shall be based on the individual's ability to function in a community environment and exclude all institutionally induced dependencies.
2. In order for Medicaid-funded community-based LTSS to be authorized, an individual shall not be required to be physically admitted to a an NF. The criteria for screening an individual's eligibility for Medicaid reimbursement of community-based services shall consist of three components: (i) functional capacity; (ii) medical or nursing needs; and (iii) the individual's risk of NF placement within 30 days in the absence of community-based services.

C. Functional capacity.

Regulations

1. When documented on a UAI that is completed in a manner consistent with the definitions of activities of daily living (ADLs) and directions provided by DMAS for the rating of those activities, individuals may be considered to meet the functional capacity requirements for nursing facility care when one of the following describes ~~their~~ the individual's functional capacity:

a. Rated dependent in two ~~to four~~ or more of the ADLs, and also rated semi-dependent or dependent in Behavior Pattern and Orientation, and semi-dependent or dependent in Joint Motion or dependent in Medication Administration.

b. Rated dependent in five to seven of the ADLs, and also rated dependent in Mobility.

c. Rated semi-dependent or dependent in two to seven of the ADLs, and also rated dependent in Mobility and Behavior Pattern and Orientation.

2. The rating of functional capacity on the LTSS screening instrument shall be based on the individual's ability to function in a community environment, not including any institutionally induced dependence. The following abbreviations shall mean: I = independent; d = semi-dependent; D = dependent; MH = mechanical help; HH = human help.

a. Bathing.

- (1) Without help (I)
- (2) MH only (d)
- (3) HH only (D)
- (4) MH and HH (D)
- (5) Performed by Others (D)
- (6) Is not Performed (D)

b. Dressing.

- (1) Without help (I)
- (2) MH only (d)
- (3) HH only (D)
- (4) MH and HH (D)
- (5) Performed by Others (D)
- (6) Is not Performed (D)

c. Toileting.

- (1) Without help day or night (I)
- (2) MH only (d)
- (3) HH only (D)
- (4) MH and HH (D)
- (5) Performed by Others (D)
- (6) Is not Performed (D)

d. Transferring.

- (1) Without help (I)
- (2) MH only (d)

- (3) HH only (D)
- (4) MH and HH (D)
- (5) Performed by Others (D)
- (6) Is not Performed (D)

e. Bowel function.

- (1) Continent (I)
- (2) Incontinent less than weekly (d)
- (3) External/Indwelling Device/Ostomy -- ~~self-care~~ self-care (d)
- (4) Incontinent weekly or more (D)
- (5) Ostomy -- not ~~self-care~~ self-care (D)

f. Bladder function.

- (1) Continent (I)
- (2) Incontinent less than weekly (d)
- (3) External device/Indwelling Catheter/Ostomy -- ~~self-care~~ self-care (d)
- (4) Incontinent weekly or more (D)
- (5) External device -- not ~~self-care~~ self-care (D)
- (6) Indwelling catheter -- not ~~self-care~~ self-care (D)
- (7) Ostomy -- not ~~self-care~~ self-care (D)

g. Eating/Feeding.

- (1) Without help (I)
- (2) MH only (d)
- (3) HH only (D)
- (4) MH and HH (D)
- (5) Spoon fed (D)
- (6) Syringe or tube fed (D)
- (7) Fed by IV or clysis (D)

h. Behavior pattern and orientation.

- (1) Appropriate or Wandering/Passive less than weekly + Oriented (I)
- (2) Appropriate or Wandering/Passive less than weekly + Disoriented -- Some Spheres (I)
- (3) Wandering/Passive Weekly/or more + Oriented (I)
- (4) Appropriate or Wandering/Passive less than weekly + Disoriented -- All Spheres (d)
- (5) Wandering/Passive Weekly/Some or more + Disoriented -- All Spheres (d)
- (6) Abusive/Aggressive/Disruptive less than weekly + Oriented or Disoriented ~~(d)~~ (I)
- (7) Abusive/Aggressive/Disruptive weekly or more + Oriented (d)
- (8) Abusive/Aggressive/Disruptive + Disoriented -- All Spheres (D)

i. Mobility.

- (1) Goes outside without help (I)

- (2) Goes outside MH only (d)
- (3) Goes outside HH only (D)
- (4) Goes outside MH and HH (D)
- (5) Confined -- moves about (D)
- (6) Confined -- does not move about (D)

j. Medication administration.

- (1) No medications (I)
- (2) Self administered -- monitored less than weekly (I)
- (3) By lay persons, Administered/Monitored (D)
- (4) By Licensed/Professional nurse Administered/Monitored (D)

k. Joint motion.

- (1) Within normal limits or instability corrected (I)
- (2) Limited motion (d)
- (3) Instability -- uncorrected or immobile (D)

D. Medical or nursing needs. An individual with medical or nursing needs is an individual whose health needs require medical or nursing supervision or care above the level that could be provided through assistance with ADLs, medication administration, and general supervision and is not primarily for the care and treatment of mental diseases. Medical or nursing supervision or care beyond this level is required when any one of the following describes the individual's need for medical or nursing supervision:

1. The individual's medical condition requires observation and assessment to ensure evaluation of the individual's need for modification of treatment or additional medical procedures to prevent destabilization, and the person has demonstrated an inability to ~~self-observe~~ self-observe or evaluate the need to contact skilled medical professionals;
2. Due to the complexity created by the individual's multiple, interrelated medical conditions, the potential for the individual's medical instability is high or medical instability exists; or
3. The individual requires at least one ongoing medical or nursing service. The following is a nonexclusive list of medical or nursing services that may, but need not necessarily, indicate a need for medical or nursing supervision or care:
 - a. Application of aseptic dressings;
 - b. Routine catheter care;
 - c. Respiratory therapy;
 - d. Supervision for adequate nutrition and hydration for individuals who show clinical evidence of malnourishment or dehydration or have recent history of weight loss or inadequate hydration that, if not supervised, would be expected to result in malnourishment or dehydration;
 - e. Therapeutic exercise and positioning;

- f. Routine care of colostomy or ileostomy or management of neurogenic bowel and bladder;
- g. Use of physical (e.g., side rails, ~~poseys,~~ posey vests, geri-chairs, locked wards units) or chemical restraints (e.g., overuse of sedatives), or both;
- h. Routine skin care to prevent pressure ulcers for individuals who are immobile or whose medical condition increases the risk of skin breakdown;
- i. Care of small uncomplicated pressure ulcers and local skin rashes;
- j. Management of those with sensory, metabolic, or circulatory impairment with demonstrated clinical evidence of medical instability;
- k. Chemotherapy;
- l. Radiation;
- m. Dialysis, including observation of and care of the access port;
- n. Suctioning;
- o. Tracheostomy care;
- p. Infusion therapy; or
- q. Oxygen.

E. When screening a child, the screening entity who is conducting the screening for LTSS shall utilize the electronic Uniform Assessment Instrument (UAI) ~~interpretive guidance as referenced in DMAS' Medicaid Memo dated November 22, 2016, entitled "Reissuance of the Pre Admission Screening (PAS) Provider Manual, Chapter IV," which can be accessed on the DMAS website at <https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/MedicaidMemostoProviders>. Instructions for completing the UAI may be found in the Long-Term Screening and Supports Manual.~~

12VAC30-60-304. Requests and referrals for LTSS screening for adults and children living in the community and; adults and children in hospitals; and adults and children in nursing facilities.

A. ~~Screenings~~ LTSS screenings for adults living in the community. ~~Screenings~~ LTSS screenings for adults who are residing in the community ~~but~~ and who are not hospital inpatients shall be completed and submitted by the CBT to ~~ePAS~~ eMLS. If the individual, or any of the other persons permitted to make such requests, requests ~~a~~ an LTSS screening, the CBT shall be required to perform the requested LTSS screening; ~~otherwise, CBTs shall not be required to screen individuals who are not expected to become financially eligible for Medicaid-funded LTSS within six months of the screening.~~ Every individual who applies for or requests LTSS shall have the opportunity to choose the setting and provider of services, and have this choice documented.

1. Requests for LTSS screenings shall be accepted from either an individual, the individual's representative, an adult protective service worker, the individual's physician, or an

Regulations

MCO care coordinator having an interest in the individual. The CBT in the jurisdiction where the individual resides shall conduct such LTSS screening. For the LTSS screening to be scheduled by the CBT, the individual shall either agree to participate or, if refusing, shall be under order of a court of appropriate jurisdiction to have a an LTSS screening. Medicaid payment for services cannot be considered without agreement of the individual or the individual's representative to participate in the LTSS screening.

a. The LDSS or LHD in receipt of the request for a an LTSS screening shall contact the individual or ~~his~~ the individual's representative within seven days of the request date for screening to schedule a an LTSS screening with the individual and any other persons whom the individual selects to attend the screening.

b. When the CBT has not scheduled a an LTSS screening to occur within 21 days of the request date for screening, and the LTSS screening is not anticipated to be complete within 30 days of the request date for screening due to the screening entity's inability to conduct the LTSS screening, the LDSS and LHD shall, no later than seven days after the request date for screening, notify DARS and VDH staff designated for technical assistance.

2. Referrals for LTSS screenings may also be accepted by LDSS or LHD from an interested person having knowledge of an individual who may need LTSS. When the LDSS or LHD receives such a referral, the LDSS or LHD shall obtain sufficient information from the referral source to initiate contact with the individual or ~~his~~ the individual's representative to discuss the LTSS screening process. Within seven days of the referral date, the LDSS or LHD shall contact the individual or ~~his~~ the individual's representative to determine if the individual is interested in receiving LTSS and would participate in the LTSS screening. If the LDSS or LHD is unable to contact the individual or ~~his~~ the individual's representative, ~~the LDSS or LHD~~ shall document the attempt to contact the individual or ~~his~~ the individual's representative using the method adopted by the CBT.

a. After contact with the individual or ~~his~~ the individual's representative, or if the LDSS or LHD is unable to contact the individual or ~~his~~ the individual's representative, the LDSS or LHD shall advise the referring interested person that contact or attempt to contact has been made in response to the referral for a an LTSS screening.

b. Information about the results of the contact shall only be shared by the LDSS or LHD with the interested person who made the referral when the LDSS or LHD has the individual's written consent or the written consent of ~~his~~ the individual's legal representative who has such authority on behalf of the individual.

B. ~~Screenings~~ LTSS screenings for children living in the community. ~~Screenings~~ LTSS screenings for children who are

residing in the community ~~but~~ and who are not hospital inpatients shall be completed and submitted via ePAS eMLS. If the individual or parent or guardian, or any of the other persons permitted to make such requests, requests a an LTSS screening, the DMAS community screening designee shall perform the requested LTSS screening; ~~otherwise, the DMAS designee shall not be required to screen individuals who are not expected to become financially eligible for Medicaid-funded LTSS within six months of the screening.~~ Every individual who applies for or requests LTSS shall have the opportunity to choose the setting and provider of services and have this choice documented.

1. A child who is residing in the community and is not an inpatient shall receive a an LTSS screening from a DMAS community screening designee. The DMAS community screening designee may receive requests for LTSS screenings directly. Any requests for LTSS screenings for a child received by the CBT shall be forwarded directly to the DMAS designee. For the LTSS screening to be scheduled by the ~~CBT~~ DMAS community screening designee, the child shall either agree to participate or, if refusing, shall be under order of a court of appropriate jurisdiction to have a an LTSS screening. Medicaid payment for services cannot be considered without agreement of the individual or the individual's representative to participate in the LTSS screening.

2. The request for LTSS screening of a child residing in the community shall be accepted from the parent, legal guardian, the entity having legal custody of that child, an emancipated child, a physician, an MCO care coordinator, or a child protective service worker having an interest in the child.

3. Referrals for LTSS screenings may also be accepted from an interested person having knowledge of a child who may need LTSS. The process, timing, and limitations on the sharing of the results for referrals for LTSS screenings for children shall be the same as that set out for adults in subdivision A 2 of this section.

C. ~~Screenings~~ LTSS screenings in hospitals for adults and children who are inpatients. ~~Screenings~~ LTSS screenings in hospitals shall be completed when an adult or child who is an inpatient is discharged directly to an NF or may need LTSS in the community upon discharge or when the individual, MCO, or representative requests a an LTSS screening. Medicaid payment for services cannot be considered without agreement of the individual or the individual's representative to participate in the LTSS screening. Every individual who applies for or requests LTSS shall have the opportunity to choose the setting and provider of services and have this choice documented.

1. As a part of the discharge planning process, the hospital LTSS screening team shall ~~also~~ complete a face-to-face LTSS screening when:

a. The individual's physician, in collaboration with the individual or the individual's representative if there is one, makes a request of the hospital team. If the individual is a child, the LTSS screening shall be completed when the individual's physician, in collaboration with the child's parent, legal guardian, the entity having legal custody of the child, the emancipated child, adult protective services worker, child protective services worker, or MCO care coordinator makes a request of the hospital LTSS screening team; or

b. The individual, the individual's representative if there is one, parent, legal guardian, entity having legal custody, emancipated child, adult protective services worker, child protective services worker, or MCO care coordinator requests a consultation with hospital case management.

2. When there is a request, such individual shall receive ~~a~~ an LTSS screening conducted by the hospital LTSS screening team regardless of if ~~he~~ the individual is eligible for Medicaid or is anticipated to become eligible for Medicaid within six months after admission to ~~a~~ an NF.

3. The hospital LTSS screening team shall exclude all ~~institutionally induced~~ institutionally induced dependencies from the face-to-face LTSS screening documentation.

D. LTSS screenings for individuals needing LTSS after a skilled or rehabilitation nursing facility services admission. LTSS screenings for individuals who need LTSS after receiving skilled or rehabilitation nursing facility services that are not covered by the Commonwealth's program of medical assistance services after discharge from an acute care hospital shall be completed and submitted via eMLS by NF LTSS screening teams. Medicaid payment for services cannot be considered without agreement of the individual or the individual's representative to participate in the LTSS screening. Every individual who applies for or requests LTSS shall have the opportunity to choose the setting and provider of services and have this choice documented.

1. Requests for LTSS screening shall be accepted from either an individual, the individual's representative, the individual's physician, the NF LTSS screening team, or an MCO care coordinator having an interest in the individual. The nursing facility LTSS screening team shall contact the individual or the individual's representative prior to enrollment in LTSS to schedule an LTSS screening with the individual and any other persons whom the individual selects to attend the LTSS screening.

2. Nursing facility LTSS screening teams must include at least one registered nurse and physician but may include a social worker or other members of the interdisciplinary team. The authorization or denial for Medicaid LTSS (DMAS-96 form) must be signed and attested to by the nursing facility LTSS screener and a physician.

~~D. Screenings~~ E. LTSS screenings shall be submitted via ~~e-PAS~~ eMLS within 30 days of the screening request.

12VAC30-60-305. Screenings in the community and hospitals and nursing facilities for Medicaid-funded long-term services and supports.

A. Community LTSS screenings for adults.

1. Medical or nursing and functional eligibility for Medicaid-funded LTSS shall be determined by the CBT after completion of ~~a~~ an LTSS screening of the individual's needs and available supports. The CBT shall consider all the supports available for that individual in the community (i.e., the immediate family, other relatives, other community resources), and other services in the continuum of LTSS. The LTSS screening shall be documented on the DMAS-designated forms identified in 12VAC30-60-306.

~~2. Screenings~~ Upon receipt of an LTSS screening request, the CBT shall schedule an appointment to complete the requested LTSS screening. LTSS screenings shall be completed in the individual's residence unless the residence presents a safety risk for the individual or the CBT, or unless the individual or the representative requests that the LTSS screening be performed in an alternate location within the same jurisdiction. The individual shall be permitted to have another person present at the time of the screening. Other than situations when a court has issued an order for a screening, the individual shall also be afforded the right to refuse to participate. The CBT shall determine the appropriate degree of participation and assistance given by other persons to the individual during the screening and accommodate the individual's preferences to the extent feasible. ~~3. Community settings where LTSS screenings may occur include the individual's residence, other residences, residential facilities, or other settings with the exception of inpatients in acute care hospitals, rehabilitation units of acute care hospitals, and rehabilitation hospitals.~~

3. The individual shall be permitted to have another person present at the time of the screening. Other than situations when a court has issued an order for an LTSS screening, the individual shall also be afforded the right to refuse to participate. The CBT shall determine the appropriate degree of participation and assistance given by other persons to the individual during the LTSS screening and accommodate the individual's preferences to the extent feasible.

4. The CBT shall:

a. Observe the individual's ability to perform appropriate ADLs according to 12VAC30-60-303 and consider the individual's communication or responses to questions or ~~his~~ the individual's representative's communication or responses;

b. Observe, assess, and report the individual's medical, nursing, and functional condition. This information shall be used to ensure accurate and comprehensive evaluation

Regulations

of the individual's need for modification of treatment or additional medical procedures to prevent destabilization even when the individual has demonstrated an inability to self-observe or evaluate the need to contact skilled medical professionals;

c. Identify the medical or nursing needs, and functional needs of the individual; and

d. Consider services and settings that may be needed by the individual in order for the individual to safely perform ADLs.

4. ~~5.~~ Upon completion of the LTSS screening and in consideration of the communication from the individual or ~~his~~ the individual's representative, if appropriate, and observations obtained during the LTSS screening, the CBT shall determine whether the individual meets the criteria set out in 12VAC30-60-303. If the individual meets the criteria for LTSS, the CBT shall inform the individual or ~~his~~ the individual's representative, if appropriate, of this determination in writing and provide choice of the ~~feasible alternatives~~ the setting and provider of LTSS, such as PACE or ~~home and community-based~~ Commonwealth Coordinated Care (CCC) Plus waiver services, as alternative options to placement in ~~a~~ an NF.

5. ~~6.~~ If waiver services or PACE, where available, are declined, the reason for declining shall be recorded on the DMAS-97, Individual Choice - Institutional Care or Waiver Services Form. The CBT shall have this document signed by either the individual or ~~his~~ the individual's representative, if appropriate. In addition to the electronic document, a paper copy of the DMAS-97 form with the individual's or ~~his~~ the individual's representative's signature shall be retained in the individual's record by the LTSS screening entity.

6. ~~7.~~ If the individual meets criteria and selects home and community-based services, the CBT shall also document that the individual is at risk of NF placement in the absence of home and community-based services by finding that at least one of the following conditions exists:

a. The individual has been cared for in the home prior to the screening and evidence is available demonstrating a deterioration in the individual's health care condition, a significant change in condition, or a change in available supports. Examples of such evidence may include (i) recent hospitalizations, (ii) attending physician documentation, or (iii) reported findings from medical or social service agencies.

b. There has been no significant change in condition or available support but evidence is available that demonstrates the individual's functional, medical, or nursing needs are not being met. Examples of such evidence may include (i) recent hospitalizations, (ii) attending physician documentation, or (iii) reported findings from medical or social service agencies.

7. ~~8.~~ If the individual selects NF placement, the CBT shall follow the Level I identification and Level II evaluation process as outlined in Part III (12VAC30-130-140 et seq.) of 12VAC30-130.

8. ~~9.~~ If the CBT determines that the individual does not meet the criteria set out in 12VAC30-60-303, the CBT shall notify the individual or the individual's representative, as may be appropriate, in writing that LTSS are being denied for the individual. The denial notice shall include the individual's right to appeal consistent with DMAS client appeals regulations (12VAC30-110).

9. ~~10.~~ For those LTSS screenings conducted in accordance with clause iv of 12VAC30-60-302 B 1, the ~~DMAS designee~~ CBT shall follow the process outlined in this subsection.

B. Community LTSS screenings for children.

1. Medical or nursing and functional eligibility for Medicaid-funded LTSS shall be determined by the DMAS community screening designee after completion of ~~a~~ an LTSS screening of the child's needs and available supports. The DMAS community screening designee shall consider all the supports available for that child in the community (i.e., the immediate family, other community resources), and other services in the continuum of LTSS. The LTSS screening shall be documented on the designated DMAS forms identified in 12VAC30-60-306.

2. Upon receipt of ~~a~~ an LTSS screening request, the DMAS community screening designee shall schedule an appointment to complete the requested LTSS screening. LTSS screenings shall be completed in the child's residence unless the residence presents a safety risk for the child or the DMAS community screening designee, or unless the child's representative requests that the LTSS screening be performed in an alternate location within the same jurisdiction. Community settings where LTSS screenings may occur include the child's residence, other residences, children's residential facilities, or other settings with the exception of acute care hospitals, rehabilitation units of inpatients in acute care hospitals, and rehabilitation hospitals.

3. The child shall be permitted to have another person present at the time of the LTSS screening. The DMAS community screening designee shall determine the appropriate degree of participation and assistance given by other persons to the child during the LTSS screening and accommodate the individual's preferences to the extent feasible.

4. The DMAS community screening designee shall:

a. Determine the appropriate degree of participation and assistance given by other persons to the individual during the LTSS screening in recognition of the individual's preferences to the extent feasible;

- b. Observe the child's ability to perform appropriate ADLs according to 12VAC30-60-303 and consider the parent's, legal guardian's, or emancipated child's communications or responses to questions;
- c. Observe, assess, and report the child's medical or nursing and functional condition. This information shall be used to ensure accurate and comprehensive evaluation of the child's need for modification of treatment or additional medical procedures to prevent destabilization even when the child has demonstrated an inability to self-observe or evaluate the need to contact skilled medical professionals;
- d. Identify the medical or nursing and the functional needs of the child; and
- e. Consider services and settings that may be needed by the child in order for the child to safely perform ADLs in the community.

4. ~~5.~~ Upon completion of the LTSS screening and in consideration of the communication from the child or ~~his~~ the child's representative, if appropriate, and observations obtained during the LTSS screening, the DMAS community screening designee shall determine whether the child meets the criteria set out in 12VAC30-60-303. If the child meets the criteria for Medicaid-funded LTSS, the DMAS community screening designee shall inform the child and ~~his~~ the child's representative, if appropriate, of this determination in writing and provide choice of the ~~feasible alternatives setting and provider of LTSS, such as PACE or home and community-based Commonwealth Coordinated Care Plus waiver services, as alternative options to NF~~ placement in an NF.

5. ~~6.~~ If waiver services are declined, the reason for declining shall be recorded on the DMAS-97, Individual Choice - Institutional Care or Waiver Services Form. The DMAS community screening designee shall have this document signed by either the emancipated child or ~~his~~ the child's representative. In addition to the electronic document, a paper copy of the DMAS-97 form with the child's or ~~his~~ the child's representative's signature shall be retained in the child's record by the LTSS screening entity.

6. ~~7.~~ If the child meets criteria and selects home and community-based services, the DMAS community screening designee shall also document that the individual is at risk of NF placement in the absence of home and community-based services by finding that at least one of the following conditions exists:

- a. The child has been cared for in the home prior to the LTSS screening and evidence is available demonstrating a deterioration in the child's health care condition, a significant change in condition, or a change in available supports. Examples of such evidence may include (i) recent hospitalizations, (ii) attending physician

documentation, or (iii) reported findings from medical or social service agencies.

- b. There has been no significant change in condition or available support but evidence is available that demonstrates the child's functional, medical, or nursing needs are not being met. Examples of such evidence may include (i) recent hospitalizations, (ii) attending physician documentation, or (iii) reported findings from medical or social service agencies.

~~7.~~ ~~8.~~ If the parent, legal guardian, entity having legal custody of the child, or emancipated child selects NF placement, the DMAS community screening designee shall follow the Level I identification and Level II evaluation process as set out in Part III (12VAC30-130-140 et seq.) of 12VAC30-130.

~~8.~~ ~~9.~~ If the DMAS community screening designee determines that the child does not meet the criteria to receive Medicaid-funded LTSS as set out in 12VAC30-60-303, the DMAS community screening designee shall notify the parent, legal guardian, entity having legal custody of the child, or the emancipated child and representative, as may be appropriate, in writing that Medicaid-funded LTSS are being denied for the child. The denial notice shall include the child's right to appeal consistent with DMAS client appeals regulations (12VAC30-110).

C. Screenings for adults and children in hospitals. For the purpose of this subsection, the term "individual" shall mean either an adult or a child.

1. Medical or nursing and functional eligibility for Medicaid-funded LTSS shall be determined by the hospital LTSS screening team after completion of ~~a~~ an LTSS screening of the individual's medical or nursing and functional needs and available supports. The hospital LTSS screening team shall consider all the supports available for that individual in the community (i.e., the immediate family, other relatives, other community resources), and other services in the continuum of LTSS. The LTSS screening shall be documented on the DMAS-designated forms identified in 12VAC30-60-306 and entered into the eMLS system.

2. ~~Screenings~~ LTSS screenings shall be completed in the hospital prior to discharge. ~~The individual shall be permitted to have another person present at the time of the screening. Except when a court has issued an order for a screening, the individual shall also be afforded the right to refuse to participate. The hospital screening team shall determine the appropriate degree of participation and assistance given by other persons to the individual during the screening and accommodate the individual's preferences to the extent feasible.~~

3. The individual shall be permitted to have another person present at the time of the LTSS screening. Except when a court has issued an order for an LTSS screening, the

Regulations

individual shall also be afforded the right to refuse to participate. The hospital LTSS screening team shall determine the appropriate degree of participation and assistance given by other persons to the individual during the screening and accommodate the individual's preferences to the extent feasible.

4. The hospital LTSS screening team shall:

a. Observe the individual's ability to perform appropriate ADLs according to 12VAC30-60-303, excluding all institutionally induced dependencies, and consider the individual's communication or responses to questions or ~~his~~ the individual's representative's communication or responses;

b. Observe, assess, and report the individual's medical or nursing and functional condition. This information shall be used to ensure accurate and comprehensive evaluation of the individual's need for modification of treatment or additional medical procedures to prevent destabilization even when the individual has demonstrated an inability to self-observe or evaluate the need to contact skilled medical professionals;

c. Identify the medical, nursing, and functional needs of the individual; and

d. Consider services and settings that may be needed by the individual in order for the individual to safely perform ADLs.

~~4.~~ 5. Upon completion of the LTSS screening and in consideration of the communication from the individual or ~~his~~ the individual's representative, if appropriate, and observations obtained during the LTSS screening, the hospital LTSS screening team shall determine whether the individual meets the criteria set out in 12VAC30-60-303. If the individual meets the criteria for Medicaid-funded LTSS, the hospital LTSS screening team shall inform the individual or ~~his~~ the individual's representative, if appropriate, of this determination in writing and provide choice of the ~~feasible alternatives setting and provider of LTSS, such as PACE or home and community-based~~ Commonwealth Coordinated Care (CCC) Plus waiver services, as alternative options to placement in a ~~an~~ NF.

~~5.~~ 6. If waiver services or PACE, where available, are declined, the reason for declining shall be recorded on the DMAS-97, Individual Choice - Institutional Care or Waiver Services Form. The hospital LTSS screening team shall have this document signed by either the individual or ~~his~~ the individual's representative, if appropriate. In addition to the electronic document, a paper copy of the DMAS-97 form with the individual's or ~~his~~ the individual's representative's signature shall be retained in the individual's record.

~~6.~~ 7. If the individual meets criteria and selects home and community-based services, the hospital LTSS screening team shall also document that the individual is at risk of NF

placement in the absence of home and community-based services by finding that at least one of the following conditions exists:

a. Prior to the inpatient admission, the individual was cared for in the home and evidence is available demonstrating a deterioration in the individual's health care condition, a significant change in condition, or a change in available supports. Examples of such evidence may include (i) recent hospitalizations, (ii) attending physician documentation, or (iii) reported findings from medical or social service agencies.

b. There has been no significant change in condition or available support but evidence is available that demonstrates the individual's functional, medical, or nursing needs are not being met. Examples of such evidence may include (i) recent hospitalizations, (ii) attending physician documentation, or (iii) reported findings from medical or social service agencies.

~~7.~~ 8. If the individual selects NF placement, the hospital LTSS screening team shall follow the Level I identification and Level II evaluation process as outlined in Part III (12VAC30-130-140 et seq.) of 12VAC30-130.

~~8.~~ 9. If the hospital LTSS screening team determines that the individual does not meet the criteria set out in 12VAC30-60-303, the hospital LTSS screening team shall notify the individual or the individual's representative, as may be appropriate, in writing that LTSS are being denied for the individual. The denial notice shall include the individual's right to appeal consistent with DMAS client appeals regulations (12VAC30-110).

D. LTSS screenings for individuals receiving skilled or rehabilitation nursing services in a setting not covered by Medicaid and after discharge from an acute care hospital.

1. Medical or nursing and functional eligibility for Medicaid-funded LTSS shall be determined by the NF LTSS screening team after completion of an LTSS screening of the individual's medical or nursing and functional needs and available supports. The NF LTSS screening team shall consider all the supports available for that individual in the community (i.e., the immediate family, other relatives, other community resources) and other services in the continuum of LTSS. The LTSS screening shall be documented on the DMAS forms identified in 12VA30-60-306 and entered into the eMLS system.

2. LTSS screenings shall be completed prior to the enrollment or initiation of LTSS.

3. The individual shall be permitted to have another person present at the time of the LTSS screening. Except when a court has issued an order for an LTSS screening, the individual shall also be afforded the right to refuse to participate. The NF LTSS screening team shall determine the appropriate degree of participation and assistance given

by other persons to the individual during the LTSS screening and accommodate the individual's preferences to the extent feasible.

4. The nursing facility LTSS screening team shall:

- a. Observe the individual's ability to perform appropriate ADLs according to 12VAC30-60-303, excluding all institutionally induced dependencies, and consider the individual's communication or responses to questions or the individual's representative's communication or responses;
- b. Observe, assess, and report the individual's medical or nursing and functional condition. This information shall be used to ensure accurate and comprehensive evaluation of the individual's need for modification of treatment or additional medical procedures to prevent destabilization even when the individual has demonstrated an inability to self-observe or evaluate the need to contact skilled medical professionals;
- c. Identify the medical, nursing, and functional needs of the individual; and
- d. Consider services and settings that may be needed by the individual in order for the individual to safely perform ADLs.

5. Upon completion of the LTSS screening and in consideration of the communication from the individual or the individual's representative, if appropriate, and observations obtained during the LTSS screening, the NF LTSS screening team shall determine whether the individual meets the criteria set out in 12VAC30-60-303. If the individual meets the criteria for Medicaid-funded LTSS, the NF LTSS screening team shall inform the individual or the individual's representative, if appropriate, of this determination in writing and provide choice of the setting and provider of LTSS, such as PACE or Commonwealth Coordinated Care (CCC) Plus waiver services, as alternative options to placement in an NF.

6. If waiver services or PACE, where available, are declined, the reason for declining shall be recorded on the DMAS-97, Individual Choice - Institutional Care or Waiver Services Form. The NF LTSS screening team shall have this document signed by either the individual or the individual's representative, if appropriate. In addition to the electronic document, a paper copy of the DMAS-97 form with the individual's or the individual's representative's signature shall be retained in the individual's record.

7. If the individual meets criteria and selects home and community-based services, the NF LTSS screening team shall also document that the individual is at risk of NF placement in the absence of home and community-based services by finding that at least one of the following conditions exists:

- a. Prior to the admission to the acute care hospital, the individual was cared for in the home and evidence is available demonstrating a deterioration in the individual's health care condition, a significant change in condition, or a change in available supports. Examples of such evidence may include (i) recent hospitalizations, (ii) attending physician documentation, or (iii) reported findings from medical or social service agencies.
- b. There has been no significant change in condition or available support but evidence is available that demonstrates the individual's functional, medical, or nursing needs are not being met. Examples of such evidence may include (i) recent hospitalizations, (ii) attending physician documentation, or (iii) reported findings from medical or social service agencies.

8. If the individual selects NF placement, the NF LTSS screening team shall follow the Level I identification and Level II evaluation process as outlined in Part III (12VAC30-130-140 et seq.) of 12VAC30-130.

9. If the NF LTSS screening team determines that the individual does not meet the criteria set out in 12VAC30-60-303, the NF LTSS screening team shall notify the individual or the individual's representative, as may be appropriate, in writing that LTSS are being denied for the individual. The denial notice shall include the individual's right to appeal consistent with DMAS client appeals regulations (12VAC30-110).

12VAC30-60-306. Submission of LTSS screenings.

A. The LTSS screening entity shall complete and submit the following forms to DMAS electronically via ePAS eMLS:

- 1. DMAS-95 - ~~MI/ID/RC~~ MI/ID/RC (Supplemental Assessment Process Form Level I Screening for Mental Illness, Intellectual Disability, or Related Conditions Form and follow-up information), as appropriate;
- 2. DMAS-96 (Medicaid-Funded Long-Term Care Service Services and Supports Authorization Form);
- 3. DMAS-97 (Individual Choice - ~~Institutional Care or Waiver Services~~ Home and Community-Based or Institutional Care Form), as applicable;
- 4. UAI (Uniform Assessment Instrument);
- 5. DMAS-108 (~~Tech Waiver Adult Referral~~ Private Duty Nursing Adult form), as appropriate; and
- 6. DMAS-109 (~~Tech Waiver Pediatric Referral~~ Private Duty Nursing Pediatric form), as appropriate.

B. For LTSS screenings performed in the community, the LTSS screening entity shall submit to DMAS via ePAS eMLS each applicable screening form listed in subsection A of this section within 30 days of the individual's request date for screening.

Regulations

C. For LTSS screenings performed in a hospital, the LTSS screening hospital team shall submit to DMAS via ePAS eMLS each applicable screening form listed in subsection A of this section, which shall be completed prior to the individual's discharge to LTSS.

D. For LTSS screenings performed in a skilled or rehabilitation NF setting, the NF LTSS screening team shall submit to DMAS via eMLS each applicable screening form listed in subsection A of this section, which shall be completed prior to the individual's level of care change or enrollment in LTSS from skilled nursing or rehabilitation services.

12VAC30-60-308. Nursing facility admission for LTSS and level of care determination requirements.

Prior to an individual's LTSS admission, the NF shall review the completed LTSS screening forms to ensure that applicable NF admission criteria have been met, documented, and submitted via e-PAS eMLS unless the individual meets any of the special circumstances set out in 12VAC30-60-302 E. NFs shall not accept paper handwritten LTSS screening forms as proof that admission criteria have been met and documented.

The NF LTSS screening team shall be responsible for screening individuals admitted directly from a hospital for skilled nursing or rehabilitation not covered by the Commonwealth's program of medical assistance and having a change in level of care requiring LTSS.

12VAC30-60-310. Competency training and testing requirements.

By June 30, 2019, each person performing LTSS screenings on behalf of a screening entity shall complete required training and competency tests. A score of at least 80% on each module for each person who is required to give final approval on LTSS screenings on behalf of the screening entity shall constitute satisfactory competency test results. The most current competency test results shall be kept in the screening entity's personnel records for each person performing LTSS screenings for the screening entity. Such documentation results shall be provided to DMAS upon its request.

1. All persons who are required by the screening entity to give final approval of LTSS screenings shall complete the DMAS-approved training and pass the corresponding competency tests with a score of at least 80% for each module of the training prior to performing LTSS screenings. Each LTSS screener who has passed the competency training will be provided a certification number that shall be entered into the eMLS upon final approval of the Medicaid LTSS screening.

2. Upon successful completion of the initial training, each person who is required to give final approval of LTSS screenings on behalf of the screening entity shall complete the shortened refresher course no less than every three years. A score of at least 80% on the refresher module shall be required for a person to continue to perform LTSS

screenings or give final approval of LTSS screenings on behalf of the screening entity.

3. Failure to satisfy the training and competency tests requirements may result in the retraction of Medicaid payment.

12VAC30-60-313. Individuals determined to not meet criteria for Medicaid-funded long-term services and supports.

Notwithstanding 12VAC30-60-302 E, an individual shall be determined not to meet the ~~medical or nursing and functional~~ criteria level of care for Medicaid-funded LTSS when there is no LTSS screening or MDS to document the individual meets the medical or nursing and functional, or risk criteria or when one of the following specific care needs solely describes the individual's condition:

1. The individual requires minimal assistance with ADLs, including those individuals whose only need in all areas of functional capacity is for prompting to complete the activity;
2. The individual independently uses mechanical devices such as a wheelchair, walker, crutch, or cane;
3. The individual requires limited diets such as a mechanically altered, low-salt, low-residue, diabetic, reducing, or other restrictive diets;
4. The individual requires medications that can be independently self-administered or administered by the caregiver;
5. The individual requires protection to prevent ~~him~~ the individual from obtaining alcohol or drugs or to address a social or environmental problem;
6. The individual requires minimal staff observation or assistance for confusion, memory impairment, or poor judgment; or
7. The individual's primary need is for behavioral management that can be provided in a community-based setting.

12VAC30-60-315. Periodic evaluations for individuals receiving Medicaid-funded long-term services and supports.

A. Once an individual is enrolled in home and community-based services, the home and community-based services provider shall be responsible for conducting periodic evaluations to ensure that the individual meets, and continues to meet, the waiver program or PACE criteria, if appropriate. These periodic evaluations shall be conducted using the ~~Level of Care Review tab in the Medicaid portal at (<https://www.virginiamedicaid.dmas.virginia.gov/wps/portal>)~~ DMAS Care Management Solution (CRMS) module of the Department's Medicaid Enterprise System. The home and community-based services provider shall promptly evaluate the individual after ~~he~~ the individual experiences a significant change in his condition, as defined in 12VAC30-60-301.

B. Once an individual ~~is admitted to a~~ has been screened for LTSS and is enrolled in LTSS in an NF, the NF shall be responsible for conducting periodic evaluations to ensure that the individual meets, and continues to meet, the NF criteria. For this purpose, the NF shall use the federally required Minimum Data Set (MDS) form (see <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/MDS30RAIManual.html>). ~~The post admission evaluation shall be conducted~~ For individuals screened for LTSS by hospital teams and CBTs and admitted directly into NF LTSS, the individual shall be evaluated using the MDS no later than 14 days after the date of NF admission ~~and promptly after an individual's~~. Any individual receiving NF LTSS who experiences a significant change in ~~his~~ the individual's condition, as defined in 12VAC30-60-301, shall be evaluated using the MDS.

For individuals admitted to skilled or rehabilitation services in an NF, the NF shall be responsible for conducting periodic evaluations to ensure that the individual meets and continues to meet criteria. For this purpose, the NF shall use the federally required MDS form (see <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/MDS30RAIManual.html>). The post-enrollment evaluation shall be conducted no later than 14 days after the date of the NF admission and promptly after a significant change in the individual's condition, as defined in 12VAC30-60-301.

C. For individuals who are enrolled in an MCO that is responsible for providing LTSS, the MCO shall conduct periodic evaluations by qualified MCO staff to ensure the individual continues to meet criteria for LTSS. The MCO shall promptly evaluate the individual after he experiences a significant change in his condition, as defined in 12VAC30-60-301.

D. If an individual has been screened for LTSS and enrollment in LTSS has not occurred within one year of the completion date of the LTSS screening, a new LTSS screening shall be conducted to document the level of care and ensure continued need for services.

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 (12VAC30-60)

[DMAS-95, Level I Screening for Mental Illness, Intellectual Disability, or Related Conditions Form \(rev. 4/2019\)](#)

[DMAS-95, MI/ID/RC Supplement: Level II \(rev. 12/2015\)](#)

[DMAS-96, Medicaid-Funded Long-Term Services and Supports \(LTSS\) Authorization Form \(rev. 4/2019\)](#)

[DMAS-97, Individual Choice - Home and Community-Based Services or Institutional Care Form \(rev. 4/2019\)](#)

[DMAS-108, Private Duty Nursing Adult Referral for the Commonwealth Coordinated Care Plus \(CCC Plus\) Waiver \(rev. 4/2019\)](#)

[DMAS-109, Private Duty Nursing Pediatric Referral for the Commonwealth Coordinated Care Plus \(CCC Plus\) Waiver \(rev. 4/2019\)](#)

Virginia Individual Developmental Disabilities Eligibility Survey - Infants' Version, P235 (eff. 3/2016)

Virginia Individual Developmental Disabilities Eligibility Survey - Children's Version, P236 (eff. 3/2016)

Virginia Individual Developmental Disabilities Eligibility Survey - Adults' Version, P237 (eff. 3/2016)

[Virginia Uniform Assessment Instrument \(rev. 5/2000\)](#)

VA.R. Doc. No. R22-6578; Filed August 7, 2024, 9:08 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Proposed Regulation

Title of Regulation: 18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (amending 18VAC10-20-90, 18VAC10-20-170, 18VAC10-20-280, 18VAC10-20-400, 18VAC10-20-470, 18VAC10-20-630, 18VAC10-20-670).

Statutory Authority: §§ 54.1-201.4, 54.1-304.3, 54.1-308, and 54.1-113 of the Code of Virginia.

Public Hearing Information:

September 4, 2024 - 2 p.m. - Department of Professional and Occupational Regulations, 9960 Mayland Drive, Board Room 4, Richmond, VA 23233.

Public Comment Deadline: October 25, 2024.

Agency Contact: Kathleen R. Nobsch, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email apelscidla@dpor.virginia.gov.

Regulations

Basis: Section 54.1-113 of the Code of Virginia requires regulatory boards to periodically review and adjust fees. Section 54.1-201 of the Code of Virginia provides the authority to regulatory boards to levy and collect fees. Section 54.1-304 of the Code of Virginia describes the authority of the Department of Professional and Occupational Regulation (DPOR) to collect and account for fees. Section 54.1-308 of the Code of Virginia requires costs to be paid by regulatory boards.

Purpose: This change will allow the board to continue licensing architects, professional engineers, land surveyors, certified interior designers, landscape architects, and business entities providing services in Virginia, which protects the public health, safety, and welfare.

Substance: The board reviewed the fees listed in 18VAC10-20-90, 18VAC10-20-170, 18VAC10-20-280, 18VAC10-20-400, 18VAC10-20-470, 18VAC10-20-630, 18VAC10-20-670, and 18VAC10-20-680 and, based on projected revenues and expenses, developed a fee schedule that meets the requirements of the applicable statutes while being the least burdensome to the licensee population.

Issues: The advantage of this change to the public is that the board will continue to be financially solvent. There are no disadvantages to the public or the Commonwealth in raising the board's fees as proposed. The advantage to the board is continuing to conform to § 54.1-133 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (board) proposes to increase all license renewal fees, while decreasing some initial license fees, so that projected revenues are sufficient to cover projected expenditures while minimizing the cost of entering these professions.

Background. Section 54.1-406 of the Code of Virginia provides for licensure requirements for architects, engineers, surveyors, and landscape architects and § 54.1-414 of the Code of Virginia establishes the certification of interior designers. In general, § 54.1-201 A 4 of the Code of Virginia imposes a duty on professional boards to "levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportional share of the expenses of the Department of Professional and Occupational Regulation (DPOR)." In addition, § 54.1-113 of the Code of Virginia, known as the Callahan Act, requires DPOR boards to distribute excess revenue to current regulants and reduce the fees when

"unspent and unencumbered revenue exceeds \$100,000 or 20% of the total expenses allocated to the regulatory board for the past biennium, whichever is greater."² Lastly, the Appropriation Act was amended in 2019 to require DPOR to hold funds in reserve to "offset the anticipated, future costs of restructuring its organization, including additional staffing needs and the replacement or upgrade of the department's information technology systems requirements." The most recent version of this language appears in Item 369 of the 2022 Appropriation Act.³

The board last increased fees in 2004 to comply with the Callahan Act requirements in place at that time.⁴ DPOR reports that all costs have increased in the interim: specifically, the costs due to the department's information technology services have increased 193% and staffing expenses have increased 67%.⁵ DPOR also notes that expenses have consistently exceeded revenue, and that they expect the gap to widen as the agency continues to fill vacancies and costs grow with inflation.⁶ DPOR further states that the unfilled vacancies are causing current staff to work extra hours in an unsustainable manner (for example, three licensing specialists are processing licensing applications for five different boards covering 19 different professions and occupations).⁷ Based on DPOR's projections for board revenues and expenditures at the current fee levels, the board indicates that its fees are no longer sufficient to cover expenses in accordance with the cited statutes. Unless fees are increased, the board is projected to incur a deficit in the 2026-2028 biennium. Accordingly, the board proposes to increase the license renewal fees charged to architects, professional engineers, land surveyors, and certified interior designers, as well as the registration fees for business entities and business entity branches. Initial license fees for architects, engineers, surveyors, and landscape architects, as well as the initial registration fees for business entities would be reduced; however, the initial certification fee for interior designers would be modestly increased. The board seeks to make all initial fees and all renewal fees the same across the five professions, which has now become standard for other boards, such as the Board for Professional Soil Scientists, Wetland Professionals, and Geologists.⁸ As a result, certified interior designers would see the highest percent increase in renewal fees. Late renewal fees would also be increased. The proposed fee increases are expected to increase the board's revenues by approximately \$1.18 million per biennium.⁹ The fee changes are summarized in the table.

Estimated Benefits and Costs. DPOR reports that the board had a balance of \$1,633,365 at the end of the 2020-2022 biennium, of which \$1,448,807 was held in the Dedicated Special Revenue Fund.¹⁰ If fees remain unchanged, the board's balance is projected to be \$970,922 at the end of the current biennium (2022-2024), \$183,789 at the end of the following biennium (2024-2026), and -\$638,589 (a deficit) at the end of the 2026-2028 biennium. Further, DPOR projections indicate that the fee increases would bring in an additional \$1,183,411 in biennial revenue, starting in fiscal year (FY) 2025.¹¹ Based on

the board's projected expenditures, the Callahan Act Cap (20% of the previous biennium's expenditures) would be (i) exceeded by the projected balance for the current biennium without the additional \$1.18 million fee revenue, and (ii) exceeded by the projected balances for the next two biennia, which include the additional fee revenues. However, since this board is part of the Dedicated Special Revenue Fund, some portion of the projected balances may be held in reserve pursuant to Item 369 B of the 2022 Appropriations Act, provided that language continues to be included in the budget each year.

Fees	Current Fee	Proposed Fee	Change Per Fee	
			\$ Change	% Change
INITIAL FEES				
Architect	\$75	\$50	-25	-33.33
Professional Engineer	\$60	\$50	-10	-16.67
Land Surveyor	\$90	\$50	-40	-44.44
Land Surveyor B	\$90	\$50	-40	-44.44
Surveyor Photogrammetrist	\$90	\$50	-40	-44.44
Surveyor-in-Training Designation	\$60	\$30	-30	-50.00
Certified Interior Designer	\$45	\$50	5	11.11
Landscape Architect	\$125	\$50	-75	-60.00
Business Entity Registration	\$90	\$50	-40	-44.44
Business Entity Branch Registration	\$45	\$40	-5	-11.11
RENEWAL FEES				
Architect	\$55	\$95	40	72.73
Professional Engineer	\$80	\$95	15	18.75
Land Surveyor	\$90	\$95	5	5.56
Land Surveyor B	\$90	\$95	5	5.56
Surveyor Photogrammetrist	\$90	\$95	5	5.56

Certified Interior Designer	\$45	\$95	50	111.11
Landscape Architect	\$110	\$95	-15	-13.64
Business Entity Registration	\$45	\$105	60	133.33
Business Entity Branch Registration	\$35	\$75	40	114.29
LATE FEES				
For all licenses, certification, and registration	\$25	\$35	10	40.00

Businesses and Other Entities Affected. DPOR reports that as of December 1, 2022, there were 7,674 architects, 30,533 professional engineers, 1,232 land surveyors, 63 land surveyors B, 101 land surveyor photogrammetrists, 470 certified interior designers, 951 landscape architects, and 4,858 businesses.¹² Of the businesses, 3,918 were business entities and 940 were business entity branch offices. With the exception of landscape architects, all these professionals and entities would incur higher costs when renewing their credentials. The proposed amendments would also affect new applicants. DPOR reports that there were 2,920 total new applicants in FY 2021 and 2,951 in FY 2022.¹³ Of the 2,951 new applicants in FY 2022, there were 401 architects, 1519 professional engineers, 17 applicants for the surveyor-in-training designation, 26 land surveyors, no new applicants for land surveyor B or photogrammetrists, 48 landscape architects, 22 interior designers, 286 business entities, and 92 business entity branch offices. All such applicants, with the exception of certified interior designers, would benefit from lower initial fees.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.¹⁴ 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. Because the proposal raises fees, an adverse impact is indicated.

Small Businesses¹⁵ Affected.¹⁶ Types and Estimated Number of Small Businesses Affected: DPOR reports that most of the 4,858 currently licensed business entities mentioned above are considered small businesses and would be affected by the higher fees. However, the Board does not collect information regarding the size of firms or business entities and does not charge different fees to those that are small businesses and those that are not.

Alternative Method that Minimizes Adverse Impact: If the board collected information on the size of the firm or business entity at the time of license application and renewal, they could

Regulations

charge different fees accordingly. However, if most businesses in this industry are small firms, such cross-subsidization may not be practicable. Moreover, the costs incurred by DPOR do not appear to vary by the size of the firm.

Localities¹⁷ Affected.¹⁸ Localities would not be directly affected by the proposed fee changes and local governments would not incur new costs. Local government entities that choose to assume the license application fee costs for employees to obtain and maintain architect licenses may be indirectly impacted as a result of the change.

Projected Impact on Employment. The decreases in initial fees and increases in renewal fees are unlikely to have a significant impact on individual incentives to obtain or maintain a license in these professions relative to the salaries offered in those professions. Further, employment levels in these professions are likely driven by the level of activity in the real estate market. If the relatively robust real estate market in Virginia in the 2020-2022 biennium continues in future years, then the proposed fee increases are unlikely to negatively impact employment in these professions.

Effects on the Use and Value of Private Property. Registered business entities would face increased costs due to the higher renewal fees, whereas new business entities would face lower costs due to the lower initial registration fees. However, these changes in cost would not likely be large enough to substantively affect the actions and value of these private businesses. The proposed amendments do not directly affect real estate development costs. In theory, these professionals could pass on additional costs to the developers and entities that hire them. However, the magnitude of any such changes is likely too small relative to the overall costs of real estate development.

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

² See <https://law.lis.virginia.gov/vacode/title54.1/chapter1/section54.1-113/> for the full requirements of the Act. The new requirements regarding unspent revenue took effect on July 1, 2022; these changes were made by Chapters 517 and 697 of the 2019 Acts of Assembly. The Callahan Act previously required DPOR boards, as well as those administered by the Department of Health Professions, to adjust fees in situations in which "expenses allocated to the board for the past biennium are more than ten percent greater or less than money collected on behalf of the board."

³ See <https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/369/>. Under Item 4-13.00 of the Appropriation Act, "the provisions of this act shall prevail over any conflicting provision of any other law, without regard to whether such other law is enacted before or after this act." Consequently, if a situation were to arise where the Appropriation Act conflicted with the new provisions of the Callahan Act, the language in the Appropriation Act would apply.

⁴ See <https://townhall.virginia.gov/ViewAction.cfm?actionid=1251>.

⁵ Agency Background Document (ABD), page 4. See https://townhall.virginia.gov/GetFile.cfm?File=7\5594\9911\AgencyStatement_DPOR_9911_v3.pdf.

⁶ Email from DPOR dated February 7, 2023.

⁷ Email from DPOR dated February 22, 2023.

⁸ Email from DPOR dated February 7, 2022.

⁹ ABD, page 6.

¹⁰ Email from DPOR dated February 7, 2023. The Dedicated Special Revenue Fund is one of the funds included in Item 369 of the 2022 Appropriations Act discussed previously in footnote 3.

¹¹ Although the ABD (p.3) indicates that the new fees are expected to go into effect in FY 2023, DPOR's projections that were shared with DPB assumed that additional revenue would be added FY 2025.

¹² ABD, page 7.

¹³ For each of the professional licenses, a significant majority of new licenses are acquired by comity rather than by examination. Thus entry fees largely affect experienced workers new to practicing their profession in Virginia, who may also be establishing new small businesses, and not necessarily newly trained workers.

¹⁴ 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.

¹⁵ 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."

¹⁶ 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.

¹⁷ "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.

¹⁸ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

Pursuant to § 54.1-113 of the Code of Virginia, the proposed amendments adjust fees charged by the board.

18VAC10-20-90. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application for Initial Architect License	\$75 \$50
Application for Architect License by Comity	\$75 \$50
Renewal	\$55 \$95

18VAC10-20-170. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application for Engineer-in-Training Designation	\$30
Application for Initial Professional Engineer License	\$60 \$50
Application for Professional Engineer License by Comity	\$60 \$50
Renewal	\$80 \$95

18VAC10-20-280. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application for Surveyor-in-Training Designation	\$60 \$30
Application for Initial Land Surveyor License	\$90 \$50
Application for Initial Surveyor Photogrammetrist License	\$90 \$50
Application for Initial Land Surveyor B License	\$90 \$50
Application for License by Comity	\$90 \$50
Renewal	\$90 \$95

18VAC10-20-400. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application for Initial Landscape Architect License	\$125 \$50
Application for Landscape Architect License by Comity	\$125 \$50
Renewal	\$110 \$95

18VAC10-20-470. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application for Initial Interior Designer Certification	\$45 \$50
Application for Interior Designer Certification by Comity	\$45 \$50
Renewal	\$45 \$95

18VAC10-20-630. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application for business entity registration	\$90 \$50
Application for business entity branch office registration	\$45 \$40
Renewal of business entity registration	\$45 \$105
Renewal of business entity branch office registration	\$35 \$75

18VAC10-20-670. Renewal.

A. Regulants shall not practice with an expired license, certificate, or registration. The following timeframes shall determine the required fees for renewal based on the date the fee is received in the board's office:

1. If the renewal fee is received by the board by the expiration date of the license, certificate, or registration, no additional fee shall be required to renew.
2. If the renewal fee is not received by the board within 30 days following the expiration date of the branch office registration, the registration shall be subject to the requirements of 18VAC10-20-680.
3. If the renewal fee is not received by the board within 30 days following the expiration date of the license, certificate, or nonbranch office registration, a ~~\$25~~ \$35 late fee shall be required in addition to the renewal fee.
4. If the renewal fee and applicable late fee are not received by the board within six months following the expiration date of the license, certificate, or nonbranch office registration, the reinstatement fee shall be required pursuant to 18VAC10-20-680.

B. Upon receipt of the required fee, licenses, certificates, and registrations not currently sanctioned by the board shall be renewed for a two-year period from ~~their~~ the previous expiration date.

C. Branch offices shall not renew or reinstate until the main office registration is properly renewed or reinstated.

D. The board may deny renewal of a license, certificate, or registration for the same reasons as it may refuse initial licensure, certification, or registration or for the same reasons that it may discipline a regulant for noncompliance with the standards of practice and conduct as well as the continuing education requirements contained in this chapter. The regulant has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

E. By submitting the renewal fee, the regulant is certifying continued compliance with the standards of practice and conduct as established by the board. In addition, by submitting

Regulations

the renewal fee, licensees are certifying ~~their~~ compliance with the continuing education requirements as contained in this chapter.

F. Failure to receive a renewal notice shall not relieve the regulant of the responsibility to renew. In the absence of a renewal notice, the regulant may submit a copy of the license, certificate, or registration with the required fee for renewal.

G. A license, certificate, or registration that is renewed shall be regarded as having been current without interruption and under the authority of the board.

H. Failure to pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in a delay or withholding of services provided by the department, such as, but not limited to, renewal, reinstatement, processing a new application, or exam administration.

VA.R. Doc. No. R22-6512; Filed July 31, 2024, 3:26 p.m.

AUCTIONEERS BOARD

Proposed Regulation

Title of Regulation: **18VAC25-21. Regulations of the Virginia Auctioneers Board (amending 18VAC25-21-70).**

Statutory Authority: §§ 54.1-201 and 54.1-602 of the Code of Virginia.

Public Hearing Information:

October 2, 2024 - noon - Department of Professional and Occupational Regulations, 9960 Mayland Drive, Board Room 3, Richmond, VA 23233.

Public Comment Deadline: October 25, 2024.

Agency Contact: Kathleen R. Nosbisch, Board Executive Director, Auctioneers Board, 9960 Mayland Drive Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email auctioneers@dpor.virginia.gov.

Basis: Section 54.1-113 of the Code of Virginia requires regulatory boards to periodically review and adjust fees. Section 54.1-201 of the Code of Virginia provides the authority to regulatory boards to levy and collect fees. Section 54.1-304 of the Code of Virginia describes the authority of the Department of Professional and Occupational Regulation (DPOR) to collect and account for fees. Section 54.1-308 of the Code of Virginia requires costs to be paid by regulatory boards.

Purpose: The proposed amendments will allow the board to continue regulating individuals and firms that conduct or offer to conduct an auction by requiring that such individuals and firms obtain a license to sell at auction, which protects the public health, safety, and welfare.

Substance: Pursuant to § 54.1-113 of the Code of Virginia, the amendments adjust board fees.

Issues: The advantage of this change to the public is that the board will continue to be financially solvent. There are no disadvantages to the public or the Commonwealth in raising the board's fees as proposed here. The advantage to the board is continuing to conform to § 54.1-113 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Auctioneers Board (board) proposes to raise fees for auctioneers and auctioneer firms so that projected revenues are sufficient to cover projected expenditures.

Background. Section 54.1-603 of the Code of Virginia provides for licensure requirements for auctioneers and auctioneer firms. In general, § 54.1-201 A 4 of the Code of Virginia imposes a duty on professional boards to "levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportional share of the expenses of the Department of Professional and Occupational Regulation (DPOR)." In addition, § 54.1-113 of the Code of Virginia, known as the Callahan Act, newly requires DPOR boards to distribute excess revenue to current regulants and reduce the fees when "unspent and unencumbered revenue exceeds \$100,000 or 20% of the total expenses allocated to the regulatory board for the past biennium, whichever is greater."² The Callahan Act previously required DPOR boards, as well as those administered by the Department of Health Professions, to adjust fees in situations in which "expenses allocated to [the board] for the past biennium" are more than 10% greater or less than money collected on behalf of the board." Lastly, the Appropriation Act was amended in 2019 to require DPOR to hold funds in reserve to "offset the anticipated, future costs of restructuring its organization, including additional staffing needs and the replacement or upgrade of the department's information technology systems requirements." The most recent version of this language appears in Item 369 of the 2022 Appropriation Act.³

DPOR reports that the board last increased fees in 1995 and that expenditures exceeded revenues by \$28,175 in the 2020-2022 biennium. The agency projects that expenditures would exceed revenues by greater amounts in future biennia without fee increases. The agency estimates that the proposed fee increases would increase the board's revenues by approximately \$58,000 biennially.⁴ The proposed fee increases with percentage changes are listed in the Table 1.

Table One: Current and Proposed Fees

Regulations

FEE TYPE	CURRENT FEE	NEW FEE	DOLLAR CHANGE	PERCENTAGE CHANGE
Individual auctioneer license	\$25	\$60	\$35	140%
Auctioneer firm license	\$55	\$90	\$35	64%
Renewal for individual auctioneer's license	\$55	\$95	\$40	73%
Renewal for firm or corporation license	\$115	\$65	\$50	77%
Late renewal for an individual auctioneer's license	\$80	\$130	\$50	63%
Late renewal for an auction firm or corporate license	\$90	\$150	\$60	67%
Reinstatement of the individual auctioneer's license	\$105	\$155	\$50	48%
Reinstatement of the firm or corporate license	\$115	\$205	\$90	78%

Estimated Benefits and Costs. DPOR reports that the board had a balance of \$102,421 at the end of the 2020-2022 biennium. If fees remain unchanged, the agency projects that the board's end-of-biennium balance would be in deficit for 2026-2028. In contrast, DPOR projections indicate that the fee increases would bring in an additional \$58,000 biennially, and the new fees would become effective in the 2024-2026 biennium. With the proposed fees, the agency projects that the biennium ending balance in 2026-2028 would no longer be in deficit. These balances would be well under the amount that would trigger the new Callahan Act requirements to reduce fees or redistribute revenues to regulants. The projected end of biennium balances under the current fee structure, and with the new fee structure, are listed in Table 2.

Table 2: Projected Balances by Current and Proposed Fee Structure

BIENNIUM	CURRENT FEE STRUCTURE	PROPOSED FEE STRUCTURE
2022-24	\$54,628	\$54,628
2024-26	\$2,489	\$55,694
2026-28	\$ -51,370	\$55,666

The proposed changes would increase fees for auctioneers and auctioneer firms. Thus, individuals and businesses that are currently licensed, as well as individuals and businesses who seek licensure in the future, would incur additional costs. As detailed, individuals and businesses would face fees that would be 48% to 140% higher than current fees. To the extent that the licensure of auctioneers and auctioneer firms is not possible without sufficient revenue, and that this licensure improves the

welfare of the public, the proposed fee increases would benefit licensees and consumers of licensee services.

Businesses and Other Entities Affected. The proposed fee increases affect the 1,010 auctioneers and 235 auctioneer firms licensed in the Commonwealth, as well as future applicants for such licenses.⁵

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁶ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. The proposed fee increases would increase costs for auctioneers and their firms. Thus, an adverse impact is indicated.

Small Businesses⁷ Affected.⁸

Types and Estimated Number of Small Businesses Affected: Either all or most of the licensed 235 auctioneer firms would qualify as small businesses and be affected.⁹

Costs and Other Effects: The proposed amendments increase costs for auctioneers and auctioneer firms by the amounts described in Table 1.

Alternative Method that Minimizes Adverse Impact: If the board has information on the size of the firm or business entity at the time of license application and renewal, they could charge different fees accordingly. This scenario may minimize adverse impact on small businesses, but larger businesses would have to pay higher fees to make up the difference, so that the board still receives adequate revenues. On the whole, the board cannot increase its revenues without increasing fees.

Localities¹⁰ Affected.¹¹ There are more than 10 licensed auctioneers in each of the following localities: Abingdon, Chesapeake, Edington, Richmond, Roanoke, and Virginia Beach. There are multiple licensed auctioneer firms in the

Regulations

following localities: Chesapeake, Danville, Lynchburg, Norfolk, Richmond, Roanoke, Salem, Suffolk, and Virginia Beach. The proposed amendments do not substantively affect costs for local governments.

Projected Impact on Employment. Unless there are some auctioneers or auctioneer firms that do very little business, the proposed fee increases are unlikely to be enough to substantively affect employment.

Effects on the Use and Value of Private Property. The proposed fee increases moderately increase costs for auctioneer firms, and thus would have a small negative impact on the value of those firms. The proposed amendments do not affect real estate development costs.

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

² See <https://law.lis.virginia.gov/vacode/title54.1/chapter1/section54.1-113/> for the full requirements of the Act. The new requirements regarding unspent revenue took effect on July 1, 2022; these changes were made by Chapters 517 and 697 of the 2019 Acts of Assembly.

³ See <https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/369/>. Under Item 4-13.00 of the Appropriation Act, "the provisions of this act shall prevail over any conflicting provision of any other law, without regard to whether such other law is enacted before or after this act." Consequently, if a situation were to arise where the Appropriation Act conflicted with the new provisions of the Callahan Act, the language in the Appropriation Act would apply.

⁴ Agency Background Document (ABD), page 6. See https://townhall.virginia.gov/l/GetFile.cfm?File=5\5659\9707\AgencyStatement_DPOR_9707_v2.pdf.

⁵Data source: DPOR.

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

⁷ 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁸ 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."

⁹ 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.

¹⁰ "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.

¹¹ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

Pursuant to § 54.1-113 of the Code of Virginia, the proposed amendments adjust fees charged by the board.

18VAC25-21-70. Fees.

Fees are nonrefundable and shall not be prorated. The following fees shall apply:

1. Individual auctioneer license	\$25 \$60
2. Auctioneer firm license	\$55 \$90
3. Renewal for individual auctioneer's license	\$55 \$95
4. Renewal for firm or corporation license	\$65 \$115
5. Late renewal for an individual auctioneer's license	\$80 \$130
6. Late renewal for an auction firm or corporate license	\$90 \$150
7. Reinstatement of the individual auctioneer's license	\$105 \$155
8. Reinstatement of the firm or corporate license	\$115 \$205

The fee for examination or reexamination is subject to contracted charges by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The board may adjust the fee charged to candidates in accordance with these contracts.

VA.R. Doc. No. R22-6589; Filed July 31, 2024, 8:41 a.m.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Fast-Track Regulation

Title of Regulation: **18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology (amending 18VAC30-21-170).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 25, 2024.

Effective Date: October 10, 2024.

Agency Contact: Kelli Moss, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4132, FAX (804) 939-5238, or email kelli.moss@dhp.virginia.gov.

Basis: Regulations of the Board of Audiology and Speech-Language Pathology are promulgated under the general authority of § 54.1-2400, which authorizes health regulatory boards to promulgate regulations that are reasonable and necessary to effectively administer the regulatory system.

Purpose: This action protects the public health, safety, and welfare by allowing agency subordinates to hear credentials cases, which expedites the review process for practitioners with nonroutine applications, getting practitioners into the workforce faster.

Rationale for Using Fast-Track Rulemaking Process: This action is noncontroversial because it is conforming to statutory change and will lead to faster adjudication of applicant cases.

Substance: The amendment deletes the phrase "upon determination that probable cause exists that a practitioner may be subject to disciplinary action."

Issues: There are no primary advantages or disadvantages to 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.¹

Summary of the Proposed Amendments to Regulation. The current Regulations Governing the Practice of Audiology and Speech-Language Pathology (regulation) allows the Board of Audiology and Speech-Language Pathology (board) to delegate an informal fact-finding proceeding to an agency subordinate² only upon a determination that probable cause exists that a practitioner may be subject to a disciplinary action. Following recent statutory changes governing these proceedings, the board proposes to remove this restriction from the regulation.

Background. Section 54.1-2400 of the Code of Virginia authorizes the board to appoint a special conference committee to ascertain the fact basis for decisions of cases through informal conference or consultation proceedings. The statute provides that this may occur "upon receipt of information that a practitioner or permit holder of the appropriate board may be

subject to disciplinary action or to consider an application for a license." Prior to legislation this year, the same Code subdivision indicated that the Board may delegate to an appropriately qualified agency subordinate the authority to conduct informal fact-finding proceedings, but only "upon receipt of information that a practitioner may be subject to a disciplinary action." This effectively prevented delegation from occurring to "consider an application for a license." Chapter 191 of the 2023 Acts of Assembly³ (legislation) removed the requirement that a practitioner must be subject to a disciplinary action in order for the board to make such delegation. Accordingly, the board is now proposing to remove that same restriction from the regulation as it is no longer mandated by statute.

Estimated Benefits and Costs. The legislation newly permitted the delegation of an informal fact-finding proceeding to occur for nonroutine⁴ applications for licensure. Currently, the regulation only allows such delegation to occur when there is information that a practitioner may be subject to a disciplinary action. When statute and regulation conflict, the statute prevails. Thus, amending the regulation to reflect the legislation would not affect what is permitted, but would be beneficial in accurately informing readers of the regulation concerning what is permitted.

Businesses and Other Entities Affected. According to the Department of Health Professions, there was one nonroutine application for board licensure that required evidentiary hearings in 2023. Such applicants, as well as potential delegated agency subordinates, would be particularly affected. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁵ 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 there is no increase in net cost nor reduction in net revenue, an adverse impact is not indicated.

Small Businesses⁶ Affected.⁷ The proposed amendment does not adversely affect small businesses.

Localities⁸ Affected.⁹ The proposed amendment neither disproportionately affects any particular locality nor introduces costs for local governments.

Projected Impact on Employment. The proposed amendment does not appear to affect total employment.

Effects on the Use and Value of Private Property. The legislation may quicken the licensing of audiologists and speech-language pathologists with nonroutine applications for licensure. Such licensees may start practicing in Virginia sooner. The proposed amendment does not affect the use and value of private property or real estate development costs.

¹Section 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

Regulations

regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² The current and proposed regulations state that "An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals."

³ See <https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0191+hil>.

⁴ Nonroutine applications may require evidentiary hearings. In contrast, routine applications for licensure do not require such proceedings.

⁵ 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.

⁶ 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁷ Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁸ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁹ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁰ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board of Audiology and Speech-Language Pathology concurs with the economic impact analysis prepared by the Department of Planning and Budget with one clarification. Prior to the 2023 General Assembly Session, subdivision 10 of § 54.1-2400 of the Code of Virginia stated that "this subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings in accordance with § 2.2-4019, upon receipt of information that a practitioner may be subject to disciplinary action." The underlined language limited boards to only using

agency subordinates for disciplinary matters. Chapter 191 of the 2023 Acts of Assembly removed the underlined language from the statute, thereby removing the limitation from the statute and allowing the board to use agency subordinates to hear disciplinary cases and credentials cases.

Summary:

Pursuant to Chapter 191 of the 2023 Acts of Assembly, the amendments remove a limitation that agency subordinates be used only for disciplinary matters and allow boards that use agency subordinates to employ those agency subordinates to hear credentials or applications cases as well as disciplinary cases.

18VAC30-21-170. Criteria for delegation to an agency subordinate.

A. Decision to delegate. In accordance with subdivision 10 of § 54.1-2400 of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate ~~upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.~~

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate are those that involve:

1. Intentional or negligent conduct that causes or is likely to cause injury to a patient;
2. Mandatory suspension resulting from action by another jurisdiction or a felony conviction;
3. Impairment with an inability to practice with skill and safety;
4. Sexual misconduct; and
5. Unauthorized practice.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of ~~their~~ training and experience in administrative proceedings involving the regulation and discipline of health professionals.
2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.
3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

VA.R. Doc. No. R25-7625; Filed July 24, 2024, 1:56 p.m.

COMMON INTEREST COMMUNITY BOARD

Final Regulation

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

Title of Regulation: **18VAC48-60. Common Interest Community Association Registration Regulations (amending 18VAC48-60-14).**

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Effective Date: October 1, 2024.

Agency Contact: Anika Coleman, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

Summary:

Chapters 54, 170, and 511 of the 2024 Acts of Assembly make technical amendments to the Resale Disclosure Act (§ 55.1-2307 et seq. of the Code of Virginia) addressing (i) failure to deliver a resale certificate and contract cancellation, (ii) delivery of resale certificates to a purchaser's agent, (iii) exemptions from the resale certificate requirements, and (iv) fees for preparation and delivery of resale certificates. The amendments conform regulation to statute.

18VAC48-60-14. Association registration, generally.

A. Within the meaning and intent of § 54.1-2349 A 8 of the Code of Virginia, an association is registered upon acceptance by the board of a current annual report and issuance of a certificate of filing by the board in accordance with 18VAC48-60-15 and 18VAC48-60-17.

B. In accordance with § 55.1-2316 ~~E~~ F of the Code of Virginia, an association that is not (i) registered with the board, (ii) current in filing the most recent annual report with the board pursuant to § 55.1-1835, 55.1-1980, or 55.1-2182 of the Code of Virginia, and (iii) current in paying any assessment made by the board pursuant to § 54.1-2354.5 of the Code of Virginia is prohibited from collecting fees for resale certificates authorized by § 55.1-2316 of the Code of Virginia.

C. In accordance with §§ 54.1-2351 and 54.1-2352 of the Code of Virginia, the board may take action against the governing board of an association that fails to register in accordance with this chapter, which action may include

issuance of a cease and desist order and an affirmative order to file an annual report or assessment of a monetary penalty of not more than \$1,000.

VA.R. Doc. No. R25-7881; Filed August 6, 2024, 2:33 p.m.

BOARD FOR CONTRACTORS

Final Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-260).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: October 1, 2024.

Agency Contact: Cameron Parris, Administrator, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-9183, FAX (866) 350-5354, or email cameron.parris@dpor.virginia.gov.

Summary:

The amendments (i) allow contractors to provide to consumers time and material contracts and cost-plus contracts in addition to the currently allowable total cost contract and (ii) stipulate what each type of contract must include, such as specific hourly rates, percentage markups, and caps on the total cost, to align the regulation with industry standards.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC50-22-260. Filing of charges; prohibited acts.

A. All complaints against contractors and residential building energy analyst firms may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

B. The following acts are prohibited acts:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.
2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.
3. Failure of the responsible management, designated employee, or qualified individual to report to the board, in writing, the suspension or revocation of a contractor license by another state or conviction in a court of competent jurisdiction of a building code violation.
4. Publishing or causing to be published any advertisement relating to contracting that contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.

Regulations

5. Negligence or incompetence in the practice of contracting or residential building energy analyses.

6. Misconduct in the practice of contracting or residential building energy analyses.

7. A finding of improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction or by the board.

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or ~~his~~ the licensee's agent.

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract that contains the following minimum requirements:

a. When work is to begin and the estimated completion date;

b. A statement ~~of the~~ regarding total cost of the project with regards to the type of contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment; being specified:

(1) Standard total value project: a statement of the total cost of the project;

(2) Cost plus: a statement identifying the type of cost-plus contract, fee or percentage, and a cap at which the total dollar amount cannot exceed; or

(3) Time and materials: a fixed price for labor that includes wages, overhead, general and administrative costs, and cost of materials;

c. The amounts and schedule for progress payments, including a specific statement on the amount of the down payment;

d. A listing of specified materials and work to be performed, which is specifically requested by the consumer;

~~f.~~ e. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating timeframes for payment or performance;

~~e.~~ f. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;

~~f.~~ g. Disclosure of the cancellation rights of the parties;

~~g.~~ h. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that ~~he~~ the consumer has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to ~~him~~ consumers through the Board for Contractors;

~~h.~~ i. Contractor's name, address, license number, class of license, and classifications or specialty services;

~~i.~~ j. A statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties; and

~~j.~~ k. Effective with all new contracts entered into after July 1, 2015, a statement notifying consumers of the existence of the Virginia Contractor Transaction Recovery Fund that includes information on how to contact the board for claim information.

10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.

11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including the contract and any addenda or change orders.

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

13. Failing to respond to an agent of the board or providing false, misleading, or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor. Failing or refusing to claim certified mail sent to the licensee's address of record shall constitute a violation of this regulation.

14. Abandonment, defined as the unjustified cessation of work under the contract for a period of 30 days or more.

15. The intentional and unjustified failure to complete work contracted for or to comply with the terms in the contract.

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

18. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or

combining or conspiring with or acting as agent, partner, or associate for another.

- 19. Allowing a firm's license to be used by another.
- 20. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.
- 21. Action by the firm, responsible management as defined in this chapter, designated employee, or qualified individual to offer, give, or promise anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of ~~his~~ the employee's duties, any federal, state, or local law, regulation, or ordinance governing the construction industry.
- 22. Where the firm, responsible management as defined in this chapter, designated employee, or qualified individual has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any felony or non-marijuana misdemeanor, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.
- 23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any non-marijuana misdemeanor conviction for activities carried out while engaged in the practice of contracting.
- 24. Having been disciplined by any county, city, town, or any state or federal governing body, including action by the Virginia Department of Health, which action shall be reviewed by the board before it takes any disciplinary action of its own.
- 25. Failure to abate a violation of the Virginia Uniform Statewide Building Code (13VAC5-63).
- 26. Failure of a contractor to comply with the notification requirements of the Virginia Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia (Miss Utility).
- 27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.
- 28. Failure to satisfy any judgments.
- 29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.
- 30. Failure to honor the terms and conditions of a warranty.

- 31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or ~~his~~ the licensee's agent, to an already existing contract.
- 32. Failure to ensure that supervision, as defined in this chapter, is provided to all helpers and laborers assisting licensed tradesman.
- 33. Failure to obtain a building permit or applicable inspection, where required.
- 34. Failure of a residential building energy analyst firm to ensure that residential building energy analyses conducted by the firm are consistent with the requirements set forth by the board, the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the Energy Star Program.
- 35. Failure of a residential building energy analyst firm to maintain the general liability insurance required in 18VAC50-22-62 C at any time while licensed by the board.
- 36. Failure of a contractor holding the drug lab remediation specialty to ensure that remediation work conducted by the firm or properly licensed subcontractors is consistent with the guidelines set forth by the U.S. Environmental Protection Agency, Virginia Department of Environmental Quality, Virginia Department of Health, or Virginia Department of Forensic Science.
- 37. Failure of a contractor to appropriately classify all workers as employees or as independent contractors as provided by law.

VA.R. Doc. No. R22-6909; Filed August 6, 2024, 2:12 p.m.

BOARD OF OPTOMETRY

Proposed Regulation

Title of Regulation: 18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-5, 18VAC105-20-10, 18VAC105-20-20, 18VAC105-20-60; adding 18VAC105-20-80 through 18VAC105-20-110).

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Public Hearing Information:

August 28, 2024 - 9:05 a.m. - Department of Health Professions, 9960 Mayland Drive, Conference Center, Board Room 3, Henrico, VA 23233.

Public Comment Deadline: October 25, 2024.

Agency Contact: Kelli Moss, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4077, FAX (804) 793-9145, or email kelli.moss@dhp.virginia.gov.

Basis: Regulations of the Board of Optometry are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which authorizes health regulatory boards to promulgate regulations that are reasonable and necessary to effectively administer the regulatory system. Chapters 16 and 17 of the 2022 Acts of Assembly require the board to

Regulations

promulgate regulations related to certification of optometrists to perform laser surgery.

Purpose: The agency is required by legislation to promulgate regulations. The legislation specifically states that the board "shall promulgate regulations establishing criteria for certification of an optometrist to perform certain procedures." The legislation requires provisions for (i) promotion of patient safety; (ii) identification and categorization of procedures for the purpose of issuing certificates; (iii) establishment of an application process for certification to perform such procedures; (iv) establishment of minimum education, training, and experience requirements for certification to perform such procedures; (v) development of protocols for proctoring and criteria for requiring such proctoring; and (vi) implementation of a quality assurance review process for such procedures performed by certificate holders.

Substance: The proposed amendments include (i) definitions specific to laser surgery; (ii) requirements to obtain a laser surgery certification, including fees, education, and clinical training, whether in a school setting or via proctored sessions; (iii) specific requirements for proctoring and proctors; (iv) reporting requirements, including reporting requirements to maintain a quality assurance review process; (v) fees related to certification; and (vi) renewal requirements.

Issues: The primary advantage to the public is that more practitioners will be available to perform laser surgery of the eye. There are no disadvantages to 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.¹

Summary of the Proposed Amendments to Regulation. As a result of a 2022 legislative mandate,² the Board of Optometry (board) seeks to establish a certification for optometrists to perform certain laser surgery procedures. The Board also proposes to standardize late renewal fees and remove outdated language.

Background. Chapter 16 of the 2022 Acts of Assembly directed the board to promulgate regulations establishing criteria for certification of an optometrist to perform three laser surgery procedures: peripheral iridotomy, selective laser trabeculoplasty, and YAG capsulotomy.³ In doing so, the board reports that the legislation expanded the scope of practice of optometry in the Commonwealth. The legislation also specified that the regulation must (i) establish the minimum education, training, and experience requirements for certification; (ii) develop protocols for proctoring and criteria for requiring such proctoring; and (iii) implement a quality

assurance review process for such procedures performed by certificate holders.⁴ Accordingly, the board seeks to make the following amendments to the regulation:

18VAC105-20-5 (Definitions) would be amended to add definitions for "laser surgery certification," "LSPE," "proctored session," and "proctoring."

18VAC105-20-10 (Requirements for Licensure) would be amended so that from January 1, 2033, onward, all applicants for a license to practice optometry in the Commonwealth shall meet the requirements for laser surgery in 18VAC105-20-80, which would be newly created by this action. Although the date was chosen at the board discretion, the Department of Health Professions (DHP) reports that professional licenses are intended to cover the scope of practice of the profession. Thus, even though the certification may be used initially to indicate which licensees are qualified to perform the surgery, the delayed date was selected so that all applicants would have sufficient notice that they would eventually need to be qualified to practice laser surgery as part of the expanded scope of the profession.

18VAC105-20-20 (Fees) would be amended to add a \$200 fee for applications for laser surgery certification, a \$350 fee for initial applications for licensure with TPA certification and laser surgery certification, and a \$250 fee for annual licensure renewal with TPA certification and laser surgery certification.

18VAC105-20-80 (Requirements for laser surgery certification) would be newly added. This section would require applicants to submit the application form, the prescribed fee, an educational attestation form covering specific subjects, and evidence of either passing the laser section of the LSPE (Laser and Surgical Procedures Examination) or proctored sessions as required by the newly created 18VAC105-20-90.

18VAC105-20-90 (Requirements for proctoring) would specify that applicants who have not provided the board with a passing score on the LSPE must submit a form providing evidence of at least two proctored sessions for each of the three procedures: peripheral iridotomy, selective laser trabeculoplasty, and YAG capsulotomy. This section would also specify who could proctor these sessions and what information must be provided on the form.

18VAC105-20-100 (Reporting requirements) would be newly added to require optometrists certified to perform laser surgery to provide quarterly reports to the board containing the number and type of laser surgeries performed, the conditions treated for each surgery, and any adverse treatment outcomes that required referral to an ophthalmologist for treatment. This requirement is identical to the fourth enacting clause of Chapter 16 of the 2022 Acts of Assembly and expires on July 1, 2025.

18VAC105-20-110 (Quality assurance review process) would also be newly added and would require optometrists certified to perform laser surgery to maintain documentation for at least three years of the number and type of laser surgeries performed

and any adverse treatment outcomes that required referral to an ophthalmologist for treatment. This requirement would become effective on July 1, 2025, effectively replacing the reporting requirements in 18VAC105-20-100. This section would also specify that the board may conduct a random audit of licensees, which would require the licensee to provide this documentation within 30 days of notification of the audit.

In addition, the board plans to change the late renewal fees to \$50 regardless of license type. Currently, the late renewal fees are \$50 for a license without TPA certification, \$65 for late renewal with TPA certification, and \$35 for an inactive license.

Estimated Benefits and Costs. The proposed amendments would primarily benefit optometrists who have already received the training to perform these laser eye surgeries and licensed optometrists who want to obtain such training by creating a pathway for those optometrists to become certified to perform these procedures. As of December 31, 2023, there were 1,852 TPA-certified optometrists in the Commonwealth who would be able to seek certification to perform laser surgery.⁵

The board reports that optometry students who graduated since roughly 2015 have already received the education required in these amendments as part of the standard instruction at schools of optometry.⁶ Licensed optometrists who graduated prior to 2015 may need to obtain appropriate training and proctored testing to pursue certification. The board reports that these programs run regularly and cost approximately \$1,200 according to the Oklahoma College of Optometry continuing education course offering.⁷

Representatives for the Virginia Optometric Association indicate that there are roughly 200 optometrists in Virginia who already meet the criteria for certification, and that the total number of providers of these laser procedures is likely to increase by up to 50% once this regulation becomes effective.⁸ These 200 candidates would be able to apply for certification as soon as it is available, either because they have received the required instruction as part of the standard curriculum or because they have completed separate training in other states that would meet the requirements in the proposed text. Representatives for the association also noted that equivalent certifications are not available in North Carolina, Maryland, West Virginia, or Washington, DC, which could lead some optometrists in those places to either relocate or obtain a Virginia license and practice in multiple jurisdictions depending on their location and proximity.

An increase in the supply of providers of these three laser surgery procedures would benefit patients who need any of these procedures by increasing the availability of appointments and lowering wait times. Patients may also face lower out-of-pocket costs to obtain treatment depending on their insurance coverage.

Lastly, suppliers of the laser equipment required to perform these procedures would benefit since optometrists who obtain the certification in Virginia would have to purchase this

equipment. Optometrists who seek to provide these surgeries would have to incur costs to invest in such equipment. However, this investment is not expected to be so high that solo or group private practices would find it cost-prohibitive.

As mentioned previously, initial applicants for licensure with TPA certification and laser surgery certification would have to pay a \$350 application fee, which is \$100 greater than the initial application fee with TPA certification alone. The standalone laser surgery certification would require payment of a \$200 fee. The annual license renewal fee with TPA and laser surgery certification would be \$250, which is \$50 greater than the annual license renewal fee with TPA certification. These fees are likely very small relative to the fixed cost of investing in the equipment and the expected revenue from payments for laser surgeries.

Businesses and Other Entities Affected. As described above, the proposed changes would benefit the TPA-certified optometrists who also become certified to provide these three laser eye surgery procedures as well individuals who need these treatments. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁹ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.¹⁰

Applicants for the optometry license after January 1, 2033, would be required to pay an additional \$100 for the license fee for the laser surgery certification, since they would no longer have the option of applying for an initial license with just the TPA certification. They may also incur additional indirect costs through higher tuition for optometry programs with instruction in subjects that would be required for the laser surgery certification; however, to the extent that these subjects are already part of the standard optometry curriculum, any associated costs may already be incurred by optometry students. Similarly, the broader scope of practice may lead to higher costs for liability insurance coverage.

The board reports that the 2022 legislation expands the scope of practice of the profession to include these three laser eye surgeries. However, the legislation does not appear to directly stipulate that the board require all applicants for the optometry license be certified to perform laser eye surgeries, or to set a date for such a requirement to go into effect. Since these requirements are at least partly discretionary, an adverse impact is indicated for optometry license applicants on or after January 1, 2033.

Small Businesses¹¹ Affected.¹² The proposed amendments would not directly affect small businesses. However, roughly 60% of optometrists in Virginia work in a group or solo private practice; these would meet the definition of small businesses.¹³ These private practices would benefit to the extent that those practitioners seek to obtain laser certification and offer laser eye surgeries. The requirement that from 2033 onward, all applicants for licensure in optometry must meet the criteria for laser surgery certification, and the resulting increase in the cost

Regulations

of obtaining licensure, could impact the creation of new private practices. However, since these arise from individual ability to practice in the Commonwealth, they are discussed under the Projected Impact on Employment.

Localities¹⁴ Affected.¹⁵ The proposed amendments neither disproportionately affect any particular localities, nor affect costs for local governments.

Projected Impact on Employment. The proposed regulation does not appear to directly affect total employment. However, there may be a nominal increase in the employment of optometry support staff if, for example, some optometrists moved to Virginia from neighboring states or opened practices to provide laser eye surgeries once the certification becomes effective. The requirement that from 2033 onward, all applicants for licensure in optometry must meet the criteria for laser surgery certification, and the resulting increase in the cost of obtaining licensure, could discourage some individuals who would otherwise have studied to enter the optometry profession from doing so.

Further, individuals with out-of-state licenses are currently required to obtain a Virginia license to practice in the Commonwealth. Since many other states do not include any laser eye surgeries in the scope of practice for optometry in their state, starting in 2033, such applicants may need to pay for additional education or additional testing or proctoring to meet the requirements in the proposed 18VAC105-20-80. The extent to which such costs are incurred would depend on the number of out-of-state licensees seeking to work or establish a private practice in Virginia in/after 2033, when they received their optometry education, and whether the subject areas required by 18VAC105-20-80 were covered by their programs.

Effects on the Use and Value of Private Property. The value of some private optometry practices that invest in laser technology and certification and provide laser eye surgery could increase since it may increase their operating profits. The proposed amendments do not affect real estate development costs.

the name of the laser, "Neodymium:yttrium-aluminum-garnet (Nd:YAG)," which contains the acronym, "YAG."

⁴ In addition, the legislation also required the board to promulgate regulations requiring all optometrists to register annually with the board and to report certain information as deemed appropriate by the Board, including certain mandatory reporting elements. The annual registration and reporting requirements are being implemented through a separate regulatory action. See <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=10029>.

⁵ See <https://www.dhp.virginia.gov/about/stats/2024Q2/04CurrentLicenseCountQ2FY2024.pdf>. Section 54.1-3225 of the Code of Virginia specifies that only TPA-certified optometrists are eligible for laser surgery certification.

⁶ See Agency Background Document (ABD), page 5: https://townhall.virginia.gov/L/GetFile.cfm?File=29\6072\10028\AgencyStatement_DHP_10028_v3.pdf

⁷ ABD, page 5.

⁸ This assumes that there are currently roughly 400 ophthalmologists who perform these surgeries.

⁹ 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.

¹⁰ 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

¹¹ 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."

¹² 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.

¹³ See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/opt/0618Optometrists2023.pdf>, page 14.

¹⁴ "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.

¹⁵ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The agency generally agrees with the economic impact analysis prepared by the Department of Planning and Budget. However, the agency would like to address two issues.

First, for clarification, the legislation that forms the basis of the current action changed the scope of practice of optometry in § 54.1-3201 of the Code of Virginia to include all actions

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

² See <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0016>.

³ "Peripheral iridotomy" is used to treat or prevent glaucoma or high eye pressure by creating a hole in the iris to free trapped fluid. See <https://glaucoma.org/treatment/laser/pi>. SLT is used to treat glaucoma by applying laser energy to the drainage tissue in the eye to lower eye pressure. See <https://glaucoma.org/articles/selective-laser-trabeculoplasty-10-commonly-asked-questions>. "YAG capsulotomy" is used to remove scar tissue after lens replacement. See <https://www.webmd.com/eye-health/cataracts/what-to-know-about-posterior-capsulotomy-yag-laser>. "YAG" derives from

previously within the scope of practice and additionally include the three laser surgeries at issue in the legislation. The legislation altered the scope of practice of optometry; therefore, it altered what a license from the Board of Optometry represents a bearer of the license as competent to perform according to the Commonwealth of Virginia. A license held by a physician in the Commonwealth, for example, demonstrates that the holder can perform medicine and surgery as that is the scope of practice included for physicians pursuant to § 54.1-2900 of the Code of Virginia. Physicians do not obtain a separate certification for surgery. Recognizing that this is an expansion of scope for optometrists, certifications must be initially offered separate from initial licensure and for any existing licensees. In fact, after January 1, 2033, existing licensees will still be able to obtain a certification to practice laser surgery separate from their existing license. New license applicants - those that have never held a license in Virginia - will need to obtain a license that incorporates the requirements for laser surgery after January 1, 2033.

Additionally, the agency disagrees with the following statement: "The requirement that from 2033 onward, all applicants for licensure in optometry must meet the criteria for laser surgery certification, and the resulting increase in the cost of obtaining licensure, could discourage some individuals who would otherwise have studied to enter the optometry profession from doing so." The current cost of tuition at optometric schools in the United States covers the study of these three laser procedures, which has been part of curricula covered prior to graduation since approximately the class of 2015. The cost of tuition far exceeds the comparatively minimal cost of obtaining licensure, even after 2033, when the cost of a new license to practice would include the cost of laser certification. The cost of optometry school may deter potential optometrists, but it is extremely unlikely that the cost of licensure would lead a potential optometrist to forgo attending optometry school, particularly given the cost of school and the number of optometrists carrying student loan debt. As noted in the Health Workforce Data Center 2023 Report on the Profession of Optometry: "More than two out of every five optometrists currently have education debt, including 75% of those who are under the age of 40. For those optometrists with education debt, the median debt amount is between \$120,000 and \$140,000" (<https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/opt/0618Optometrists2023.pdf>).

Summary:

Pursuant to Chapters 16 and 17 of the 2022 Acts of Assembly, the proposed amendments establish criteria for certification of optometrists to provide certain laser surgeries, including (i) adding definitions specific to laser surgery; (ii) requiring a laser surgery certification, including provisions for fees, education, and clinical training, whether in a school setting or via proctored sessions; (iii) specifying requirements for proctoring and proctors; (iv) adding reporting requirements, including reporting requirements to maintain a quality assurance

review process; (v) establishing fees related to certification; and (vi) providing renewal requirements

18VAC105-20-5. Definitions.

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

"Acute pain" means pain that occurs within the normal course of a disease or condition for which controlled substances may be prescribed for no more than three months.

"Active clinical practice" means an average of 20 hours per week or 640 hours per year of providing patient care.

"Adnexa" is defined as the conjoined, subordinate, or immediately associated anatomic parts of the human eye, including eyelids and eyebrows.

"Board" means the Virginia Board of Optometry.

"Chronic pain" means nonmalignant pain that goes beyond the normal course of a disease or condition for which controlled substances may be prescribed for a period greater than three months.

"Controlled substance" means drugs listed in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) in Schedules II through V.

"Laser surgery certification" means a certification issued by the board to a Virginia-licensed TPA-certified optometrist who has demonstrated compliance with the board's criteria for performance of peripheral iridotomy, selective laser trabeculoplasty, and YAG capsulotomy.

"LSPE" means the Laser and Surgical Procedures Examination administered by the NBEO.

"MME" means morphine milligram equivalent.

"NBEO" means the National Board of Examiners in Optometry.

"Prescription Monitoring Program" means the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

"Proctored session" means any surgery on a live patient or procedure performed on a model eye that is observed and evaluated by a proctor for the purpose of obtaining laser surgery certification pursuant to 18VAC105-20-80 4 b.

"Proctoring" means an objective evaluation of an optometrist's clinical competence to perform laser surgery pursuant to § 54.1-3225 of the Code of Virginia.

"TMOD" means the treatment and management of ocular disease portion of the NBEO examination.

"TPA" means therapeutic pharmaceutical agents.

Regulations

"TPA certification" means authorization by the Virginia Board of Optometry for an optometrist to treat diseases and abnormal conditions of the human eye and its adnexa and to prescribe and administer certain therapeutic pharmaceutical agents.

18VAC105-20-10. Requirements for licensure.

A. The applicant, in order to be eligible for licensure to practice optometry in the Commonwealth, shall meet the requirements for TPA certification in 18VAC105-20-16 and shall:

1. Be a graduate of a school of optometry accredited by the Accreditation Council on Optometric Education or other accrediting body deemed by the board to be substantially equivalent; and have an official transcript verifying graduation sent to the board;
2. Request submission of an official report from the NBEO of a score received on each required part of the NBEO examination or other board-approved examination;
3. Submit a completed application and the prescribed fee; and
4. Sign a statement attesting that the applicant has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.

B. On or after January 1, 2033, all applicants to practice optometry in the Commonwealth shall meet the requirements for laser surgery in 18VAC105-20-80.

C. The board may waive the requirement of graduation from an accredited school of optometry for an applicant who holds a current, unrestricted license in another United States jurisdiction and has been engaged in active clinical practice for 36 out of the 60 months immediately preceding application for licensure in Virginia.

~~C. D.~~ Required examinations. For the purpose of § 54.1-3211 of the Code of Virginia, the board adopts all parts of the NBEO examination as its written examination for licensure. After July 1, 1997, the board shall require passage as determined by the board of Parts I, II, and III of the NBEO examination, including passage of TMOD.

~~D. E.~~ If an applicant has been licensed in another jurisdiction, the following requirements shall also apply:

1. The applicant shall attest that the applicant is not a respondent in a pending or unresolved malpractice claim.
2. Each jurisdiction in which the applicant is or has been licensed shall verify that:
 - a. The license is current and unrestricted, or if the license has lapsed, it is eligible for reinstatement;
 - b. All continuing education requirements have been completed, if applicable;

c. The applicant is not a respondent in any pending or unresolved board action; and

d. The applicant has not committed any act that would constitute a violation of § 54.1-3204 or 54.1-3215 of the Code of Virginia.

3. An applicant licensed in another jurisdiction who has not been engaged in active practice within the 12 months immediately preceding application for licensure in Virginia shall be required to complete 20 hours of continuing education as specified in 18VAC105-20-70.

4. In the case of a federal service optometrist, the commanding officer shall also verify that the applicant is in good standing.

18VAC105-20-20. Fees.

A. Required fees.

Initial application and licensure (including with TPA certification)	\$250
<u>Initial application for licensure with TPA certification and laser surgery certification</u>	<u>\$350</u>
<u>Application for laser surgery certification</u>	<u>\$200</u>
Annual licensure renewal without TPA certification	\$150
Annual licensure renewal with TPA certification	\$200
<u>Annual licensure renewal with TPA certification and laser surgery certification</u>	<u>\$250</u>
Annual renewal of inactive license	\$100
Late renewal without TPA certification of <u>any license</u>	\$50
Late renewal with TPA certification	\$65
Late renewal of inactive license	\$35
Handling fee for returned check or dishonored credit card or debit card	\$50
Reinstatement application fee (including renewal and late fees)	\$400
Reinstatement application after disciplinary action	\$500
Duplicate wall certificate	\$25
Duplicate license	\$10
Licensure verification	\$10

B. Unless otherwise specified, all fees are nonrefundable.

C. From October 31, 2018, to December 31, 2018, the following fees shall be in effect:

Annual licensure renewal without TPA certification	\$75
Annual licensure renewal with TPA certification	\$100
Annual professional designation renewal (per location)	\$25

18VAC105-20-60. Renewal of licensure; reinstatement; renewal fees.

A. Every person authorized by the board to practice optometry shall, on or before ~~December 31 of 2018~~ March 31 of each year, submit a completed renewal form and pay the prescribed annual licensure fee. ~~Beginning with calendar year 2020, the renewal of licensure deadline shall be March 31 of each year. For calendar year 2019, no renewal is required.~~

B. It shall be the duty and responsibility of each licensee to ~~assure~~ ensure that the board has the licensee's current address of record and the public address, if different from the address of record. All changes of address or name shall be furnished to the board within 30 days after the change occurs. All notices required by law or by these rules and regulations are to be deemed to be validly tendered when mailed to the address of record given and shall not relieve the licensee of the obligation to comply.

C. The license of ~~every~~ any person who does not complete the renewal form and submit the renewal fee ~~each year for a licensure period~~ may be renewed for up to one year by paying the prescribed renewal fee and late fee, provided the requirements of 18VAC105-20-70 have been met. After the renewal deadline, a license that has not been renewed is lapsed. Practicing optometry in Virginia with a lapsed license may subject the licensee to disciplinary action.

D. An optometrist whose license has been lapsed for more than one year and who wishes to resume practice in Virginia shall apply for reinstatement. The executive director may grant reinstatement, provided that:

1. a. The applicant has a current, unrestricted license in another United States jurisdiction and has been engaged in active clinical practice within the 12 months immediately preceding application for reinstatement; or
2. ~~b.~~ The applicant has satisfied current requirements for continuing education as specified in 18VAC105-20-70 for the period in which the license has been lapsed, not to exceed two years; and
3. 2. The applicant has paid the prescribed reinstatement application fee.

18VAC105-20-80. Requirements for laser surgery certification.

An applicant for laser surgery certification shall submit to the board:

1. A completed application for laser surgery certification;
2. The prescribed fee;
3. An educational attestation from a dean or designee of a school of optometry or an instructor of a laser surgery certification course approved by the board that verifies that the applicant received didactic and clinical laser surgery training in the following subjects:
 - a. Laser physics, hazards, and safety;
 - b. Biophysics of laser;
 - c. Laser application in clinical optometry;
 - d. Laser tissue interactions;
 - e. Laser indications, contraindications, and potential complications;
 - f. Gonioscopy;
 - g. Laser therapy for open-angle glaucoma;
 - h. Posterior capsulotomy;
 - i. Common complications, lids, lashes, and lacrimal;
 - j. Medicolegal aspects of anterior segment procedures;
 - k. Peripheral iridotomy; and
 - l. Laser trabeculectomy.

The required attestation from the dean or designee of a school of optometry or an instructor of a laser surgery certification course approved by the board shall be submitted on a form prescribed by the board; and

4. Evidence of one of the following:
 - a. Passage of the Laser Section of the LSPE, for which the applicant must request submission of an official report from the NBEO of the score received on the Laser Section of the LSPE; or
 - b. Proctored sessions in compliance with 18VAC105-20-90, which may be obtained during education training described in subdivision 3 of this section.

18VAC105-20-90. Requirements for proctoring.

A. Applicants for laser surgery certification who have not provided the board with a passing score on the Laser Section of the LSPE must submit evidence on a form provided by the board of at least two proctored sessions for each of the following laser procedures:

1. Peripheral iridotomy;
2. Selective laser trabeculectomy; and
3. YAG capsulotomy.

B. Proctors.

Regulations

1. Pursuant to § 54.1-2400.01:1 of the Code of Virginia, a proctored session performed within the Commonwealth to qualify a TPA-certified optometrist for a laser surgery certification that consists of surgery on a live patient must be proctored by a licensed doctor of medicine or osteopathy who specializes in ophthalmology.

2. A proctored session performed within the Commonwealth to qualify a TPA-certified optometrist for a laser surgery certification that is performed on a model eye may be proctored by an individual holding a license in the Commonwealth or another jurisdiction who is authorized or certified to perform laser surgery on the eye and who does so as part of a regular course of practice.

3. The proctor must be in attendance in the room while the proctored session is performed, regardless of the jurisdiction in which the proctoring occurs.

4. Evidence of proctored sessions shall include a report by the proctor on a form provided by the board that:

- a. Evaluates the clinical competency of the individual being proctored;
- b. Describes the number and type of cases proctored; and
- c. Includes the proctor's name, license type, license number, and state of licensure.

18VAC105-20-100. Reporting requirements.

A. An optometrist certified to perform laser surgery by the board shall report the following information to the board on a quarterly basis:

1. The number and type of laser surgeries performed by the optometrist;
2. The conditions treated for each laser surgery performed; and
3. Any adverse treatment outcomes associated with such procedures that required a referral to an ophthalmologist for treatment.

B. The requirements of subsection A shall expire on July 1, 2025.

18VAC105-20-110. Quality assurance review process.

A. Effective July 1, 2025, an optometrist certified to perform laser surgery by the board shall maintain documentation of the following for not less than three years:

1. The number and type of laser surgeries performed by the optometrist; and
2. Any adverse treatment outcomes associated with such procedures that required referral to an ophthalmologist for treatment.

B. The board may conduct a random audit of licensees requiring a subject licensee to provide documentation required

in subsection A to the board within 30 days of notification of the audit.

VA.R. Doc. No. R23-7555; Filed July 24, 2024, 4:21 p.m.

Fast-Track Regulation

Title of Regulation: 18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-41).

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 25, 2024.

Effective Date: October 10, 2024.

Agency Contact: Kelli Moss, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4077, FAX (804) 793-9145, or email kelli.moss@dhp.virginia.gov.

Basis: Regulations of the Board of Optometry are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which authorizes health regulatory boards to promulgate regulations that are reasonable and necessary to effectively administer the regulatory system.

Purpose: This action protects the public health, safety, and welfare by allowing agency subordinates to hear credentials cases, which expedites the review process for practitioners with nonroutine applications, getting practitioners into the workforce faster.

Rationale for Using Fast-Track Rulemaking Process: This change is not controversial because it is conforming with a statutory change.

Substance: This action deletes the phrase "upon determination that probable cause exists that a practitioner may be subject to a disciplinary action."

Issues: The primary advantage to the public is faster licensing of optometrists with nonroutine applications for licensure. There are no disadvantages to 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.¹

Summary of the Proposed Amendments to Regulation. The current Regulations of the Virginia Board of Optometry (regulation) allows the Board of Optometry (board) to delegate an informal fact-finding proceeding to an agency subordinate² only upon a determination that probable cause exists that a practitioner may be subject to a disciplinary action. Following

recent statutory changes governing these proceedings, the board proposes to remove this restriction.

Background. Subdivision 10 of § 54.1-2400 of the Code of Virginia authorizes the board to appoint a special conference committee to ascertain the fact basis for decisions of cases through informal conference or consultation proceedings. The statute provides that this may occur "upon receipt of information that a practitioner or permit holder of the appropriate board may be subject to disciplinary action or to consider an application for a license." Prior to legislation this year, the same Code subdivision indicated that the Board may delegate to an appropriately qualified agency subordinate the authority to conduct informal fact-finding proceedings, but only "upon receipt of information that a practitioner may be subject to a disciplinary action." This effectively prevented delegation from occurring to "consider an application for a license." Chapter 191 of the 2023 Acts of Assembly³ removed the requirement that a practitioner must be subject to a disciplinary action in order for the board to make such delegation. Accordingly, the board is now proposing to remove that same restriction from the regulation as it is no longer mandated by statute.

Estimated Benefits and Costs. The proposed amendment would effectively newly permit the delegation of an informal fact-finding proceeding to occur for nonroutine⁴ applications for licensure. Currently, the regulation only allows such delegation to occur when there is information that a practitioner may be subject to a disciplinary action. This proposal could be beneficial in that it may speed the licensing of optometrists with nonroutine applications for licensure. Since this is optional, there do not appear to be any introduced costs.

Businesses and Other Entities Affected. According to the Department of Health Professions, there are typically fewer than three nonroutine applications for optometry licensure that require evidentiary hearings each year. Such applicants, as well as potential delegated agency subordinates, would be particularly affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁵ 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 there is no increase in net cost nor reduction in net revenue, an adverse impact is not indicated.

Small Businesses⁶ Affected.⁷ The proposed amendment does not adversely affect small businesses.

Localities⁸ Affected.⁹ The proposed amendment neither disproportionately affects any particular locality, nor introduces costs for local governments.

Projected Impact on Employment. The proposed amendment does not appear to affect total employment.

Effects on the Use and Value of Private Property. Since the proposed amendment may quicken the licensing of optometrists with nonroutine applications for licensure, such

optometrists may start practicing in Virginia sooner. The proposed amendment does not affect real estate development costs.

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

² The current and proposed regulations state that "An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals."

³ See <https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0191+hil>.

⁴Nonroutine applications may require evidentiary hearings. In contrast, routine applications for licensure do not require such proceedings.

⁵ 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.

⁶ 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁷ Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁸ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁹ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁰ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board of Optometry concurs with the economic impact analysis prepared by the Department of Planning and Budget with one clarification. Prior to the 2023 General Assembly Session,

Regulations

subdivision 10 of § 54.1-2400 of the Code of Virginia stated that "this subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings in accordance with § 2.2-4019, upon receipt of information that a practitioner may be subject to disciplinary action." The underlined language limited boards to only using agency subordinates for disciplinary matters. Chapter 191 of the 2023 Acts of Assembly removed the underlined language from the statute, thereby removing the limitation from the statute and allowing the board to use agency subordinates to hear disciplinary cases and credentials cases.

Summary:

Pursuant to Chapter 191 of the 2023 Acts of Assembly, the amendments remove a limitation that agency subordinates be used only for disciplinary matters and allow boards that use agency subordinates to employ those agency subordinates to hear credentials or applications cases as well as disciplinary cases.

18VAC105-20-41. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with subdivision 10 of § 54.1-2400 (~~40~~) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases may be delegated to an agency subordinate upon approval by a committee of the board, except those in which an optometrist may have conducted his practice in such a manner as to endanger the health and welfare of ~~his~~ patients or the public.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of ~~their~~ training and experience in administrative proceedings involving the regulation and discipline of health professionals.
2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.
3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

VA.R. Doc. No. R25-7607; Filed July 24, 2024, 1:59 p.m.

BOARD OF PHARMACY

Emergency Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-200, 18VAC110-20-275, 18VAC110-20-490, 18VAC110-20-555, 18VAC110-20-728).**

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

Effective Dates: August 12, 2024, through February 11, 2026.

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.

Preamble:

Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

Pursuant to Chapters 63 and 513 of the 2024 Acts of Assembly and based on the innovative pilot programs currently approved by the Board of Pharmacy pursuant to § 54.1-3307.2 of the Code of Virginia, the amendments (i) allow onsite storage and dispensing of necessary medications in crisis stabilization units (CSUs); (ii) permit the use of remote dispensing systems in certain health care facilities using the same requirements that are currently in place for automated drug dispensing systems; and (iii) permit state facilities and services licensed by the Department of Behavioral Health and Developmental Services that serve as site-based CSUs to use automated drug dispensing devices and remote dispensing systems.

18VAC110-20-200. Storage of drugs, devices, and controlled paraphernalia; expired drugs.

A. Prescriptions awaiting delivery. Prescriptions prepared for delivery to the patient may be placed in a secured area outside of the prescription department, not accessible to the public, where access to the prescriptions is restricted to individuals designated by the pharmacist. With the permission of the pharmacist, the prepared prescriptions may be transferred to the patient at a time when the pharmacist is not on duty. If a prescription is delivered at a time when the pharmacist is not on duty, written procedures shall be established and followed by the pharmacy that detail security of the dispensed prescriptions and a method of compliance with counseling requirements of § 54.1-3319 of the Code of Virginia. Additionally, a log shall be made and maintained of all prescriptions delivered to a patient when a pharmacist is not present to include the patient's name, prescription number, date of delivery, and signature of the person receiving the

prescription. Such log shall be maintained for a period of one year. Notwithstanding the provisions of this subsection, prescriptions prepared for delivery to the patient may also be secured in an area outside of the prescription department in a remote dispensing system as defined in § 54.1-3401 of the Code of Virginia and pursuant to subsection A of 18VAC110-20-490.

B. Dispersion of Schedule II drugs. Schedule II drugs shall either be dispersed with other schedules of drugs or shall be maintained within a securely locked cabinet, drawer, or safe or maintained in a manner that combines the two methods for storage. The cabinet, drawer, or safe may remain unlocked during hours that the prescription department is open and a pharmacist is on duty.

C. Safeguards for controlled paraphernalia and Schedule VI medical devices. Controlled paraphernalia and Schedule VI medical devices shall not be placed in an area completely removed from the prescription department whereby patrons will have free access to such items or where the pharmacist cannot exercise reasonable supervision and control.

D. Expired, or otherwise adulterated or misbranded drugs; security. Any drug that has exceeded the expiration date or is otherwise adulterated or misbranded shall not be dispensed or sold; it shall be separated from the stock used for dispensing. Expired prescription drugs shall be maintained in a designated area within the prescription department until proper disposal.

18VAC110-20-275. Delivery of dispensed prescriptions.

A. Pursuant to § 54.1-3420.2 B of the Code of Virginia, in addition to direct hand delivery to a patient or patient's agent or delivery to a patient's residence, a pharmacy may deliver a dispensed prescription drug order for Schedule VI controlled substances to another pharmacy, to a practitioner of the healing arts licensed to practice pharmacy or to sell controlled substances, or to an authorized person or entity holding a controlled substances registration issued for this purpose in compliance with this section and any other applicable state or federal law. Prescription drug orders for Schedule II through Schedule V controlled substances may not be delivered to an alternate delivery location unless such delivery is authorized by federal law and regulations of the board.

B. Delivery to another pharmacy.

1. One pharmacy may fill prescriptions and deliver the prescriptions to a second pharmacy for patient pickup or direct delivery to the patient provided the two pharmacies have the same owner; or have a written contract or agreement specifying the services to be provided by each pharmacy, the responsibilities of each pharmacy, and the manner in which each pharmacy will comply with all applicable federal and state law.
2. Each pharmacy using such a drug delivery system shall maintain and comply with all procedures in a current policy

and procedure manual that includes the following information:

- a. A description of how each pharmacy will comply with all applicable federal and state law;
- b. The procedure for maintaining required, retrievable dispensing records to include which pharmacy maintains the hard-copy prescription, which pharmacy maintains the active prescription record for refilling purposes, how each pharmacy will access prescription information necessary to carry out its assigned responsibilities, method of recordkeeping for identifying the pharmacist responsible for dispensing the prescription and counseling the patient, and how and where this information can be accessed upon request by the board;
- c. The procedure for tracking the prescription during each stage of the filling, dispensing, and delivery process;
- d. The procedure for identifying on the prescription label all pharmacies involved in filling and dispensing the prescription;
- e. The policy and procedure for providing adequate security to protect the confidentiality and integrity of patient information;
- f. The policy and procedure for ensuring accuracy and accountability in the delivery process;
- g. The procedure and recordkeeping for returning to the initiating pharmacy any prescriptions that are not delivered to the patient; and
- h. The procedure for informing the patient and obtaining consent for using such a dispensing and delivery process.

3. Drugs waiting to be picked up at or delivered from the second pharmacy shall be stored in accordance with subsection A of 18VAC110-20-200 and subsection A of 18VAC110-20-490, if applicable.

C. Delivery to a practitioner of the healing arts licensed by the board to practice pharmacy or to sell controlled substances or other authorized person or entity holding a controlled substances registration authorized for this purpose.

1. A prescription may be delivered by a pharmacy to the office of such a practitioner or other authorized person provided there is a written contract or agreement between the two parties describing the procedures for such a delivery system and the responsibilities of each party.
2. Each pharmacy using this delivery system shall maintain a policy and procedure manual that includes the following information:
 - a. Procedure for tracking and ~~assuring~~ ensuring security, accountability, integrity, and accuracy of delivery for the dispensed prescription from the time it leaves the pharmacy until it is handed to the patient or agent of the patient;
 - b. Procedure for providing counseling;

Regulations

- c. Procedure and recordkeeping for return of any prescription medications not delivered to the patient;
- d. The procedure for ~~assuring~~ ensuring confidentiality of patient information; and
- e. The procedure for informing the patient and obtaining consent for using such a delivery process.

3. Prescriptions waiting to be picked up by a patient at the alternate site shall be stored in a lockable room or lockable cabinet, cart, remote dispensing system as defined in § 54.1-3401 of the Code of Virginia and pursuant to subsection A of 18VAC110-20-490, or other device that cannot be easily moved and that shall be locked at all times when not in use. Access shall be restricted to the licensed practitioner of the healing arts or the responsible party listed on the application for the controlled substances registration, or either person's designee.

D. The contracts or agreements and the policy and procedure manuals required by this section for alternate delivery shall be maintained both at the originating pharmacy as well as the alternate delivery site.

E. A controlled substances registration as an alternate delivery site shall only be issued to an entity without a prescriber or pharmacist present at all times the site is open if there is a valid patient health or safety reason not to deliver dispensed prescriptions directly to the patient and if compliance with all requirements for security, policies, and procedures can be reasonably ~~assured~~ ensured.

F. The pharmacy and alternate delivery site shall be exempt from compliance with subsections B through E of this section if (i) the alternate delivery site is a pharmacy, a practitioner of healing arts licensed by the board to practice pharmacy or sell controlled substances, or other entity holding a controlled substances registration for the purpose of delivering controlled substances; (ii) the alternate delivery site does not routinely receive deliveries from the pharmacy; and (iii) compliance with subsections B through E of this section would create a delay in delivery that may result in potential patient harm. However, the pharmacy and alternate delivery site shall comply with following requirements:

- 1. To ensure appropriate coordination of patient care, the pharmacy shall notify the alternate delivery site of the anticipated arrival date of the shipment, the exact address to where the drug was shipped, the name of the patient for whom the drug was dispensed, and any special storage requirements.
- 2. The pharmacy shall provide counseling or ensure a process is in place for the patient to receive counseling.
- 3. Prescriptions delivered to the alternate delivery site shall be stored in a lockable room or lockable cabinet, cart, remote dispensing system as defined in § 54.1-3401 of the Code of Virginia and pursuant to subsection A of 18VAC110-20-

490, or other device that cannot be easily moved and that shall be locked at all times when not in use. Access shall be restricted to the licensed prescriber, pharmacist, or either person's designee.

4. The pharmacy shall provide a procedure for the return of any prescription drugs not delivered or subsequently administered to the patient.

G. A pharmacy shall not deliver dispensed drugs to a patient's residence that are intended to be subsequently transported by the patient or patient's agent to a hospital, medical clinic, prescriber's office, or pharmacy for administration and that require special storage, reconstitution or compounding prior to administration. An exception to this requirement may be made for patients with inherited bleeding disorders who may require therapy to prevent or treat bleeding episodes.

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

A. A hospital, state facility as defined in § 37.2-100 of the Code of Virginia that is established pursuant to Title 37.2 of the Code of Virginia, facility as defined in § 37.2-100 of the Code of Virginia that is licensed by the Department of Behavioral Health and Developmental Services and provides site-based crisis stabilization services, or other facility authorized by the board may use automated ~~devices~~ drug dispensing systems and remote dispensing systems 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. Unless prohibited under federal law, a remote dispensing system that solely stores drugs labeled and verified by the provider pharmacist for patients to obtain medication may be placed within close proximity of a permitted pharmacy or at a location issued a controlled substance registration pursuant to § 54.1-3420.2 of the Code of Virginia in a secure area under constant surveillance to ensure security of drugs, confidentiality of protected health information, and appropriate recordkeeping.

B. Policy and procedure manual; access codes.

- 1. Proper use of the automated drug dispensing devices system and remote dispensing system 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 drug dispensing device system and remote dispensing system shall have a specific access code ~~that records~~ or other means to record 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.

3. If a key may be used to access the automated drug dispensing system or remote dispensing system and the provider pharmacy is not located within the facility, a key may be maintained in the possession of the director of nursing or an individual designated by the director of nursing who is licensed to administer medications.

C. Distribution of drugs from the pharmacy.

1. Except when the automated drug dispensing system or remote dispensing system is used exclusively for administration of drugs for emergencies, a pharmacy located outside of the hospital or facility it services shall first obtain a controlled substance registration issued in the name of the pharmacy at the address of the hospital or facility and a registration from the Drug Enforcement Administration, if required, prior to stocking controlled substances in Schedules II through VI.

2. Drugs authorized pursuant to § 54.1-3434.02 of the Code of Virginia may be placed into and removed from automated drug dispensing systems or remote dispensing systems. Pharmacies servicing remote dispensing systems that package and label drugs for a specific patient may repackage drugs into bulk bins that are verified for accuracy by a pharmacist pursuant to 18VAC110-20-355. Pharmacies using a remote dispensing device that only stores patient-specific dispensed drugs for patients to obtain medication may place pharmacist-verified dispensed drug into the device.

3. Prior to removal of drugs from the pharmacy, a delivery record shall be generated for all drugs to be placed in an automated drug dispensing device system or remote dispensing system. The delivery record shall include the date; drug name, dosage form, and strength; quantity; hospital or facility unit and a unique identifier for the specific device receiving the drug; initials of the person loading the automated drug dispensing device system or remote dispensing system; and initials of the pharmacist checking the drugs to be removed from the pharmacy and the delivery record for accuracy.

2-4. 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 drug dispensing device system or remote dispensing system 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 and dispensing of drugs from the device.

1. Automated drug dispensing devices in hospitals and remote dispensing systems 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 drug dispensing device system or remote dispensing system 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.

3. Remote dispensing systems that dispense patient-specific drugs into an envelope shall satisfy compliance with 18VAC110-20-340 if the medication is assigned an expiration date of no more than 48 hours from the date of the packaging in an envelope.

4. Remote dispensing systems that dispense multiple medications into a single container for a specific patient shall include a medication description as set forth in 18VAC110-20-340 B on the label, medication envelope, or the medication run report.

5. Pharmacist verification of a patient-specific dispensed drug as required in 18VAC110-20-270 from a remote dispensing system is waived if a pharmacist verified the drug placed in the bulk bin that is placed in the device and the device incorporates sufficient technology to ensure accuracy of the dispensed drug.

E. 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. 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~~ system and remote dispensing system, to include procedures for timely termination of access codes when applicable, accuracy of distribution and dispensing 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 and dispensing of Schedules II through V drugs from each automated drug dispensing device system and remote dispensing system as follows:

a. The audit shall reconcile records of all quantities of Schedules II through V drugs dispensed from the

Regulations

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 drug dispensing device system and remote dispensing system as follows:

a. The audit shall include a review of administration and dispensing records, if applicable, for each device per month for possible diversion by fraudulent charting. The review shall include all Schedules II through V drugs administered and dispensed for a time period of not less than 24 consecutive hours during the audit period.

b. The hard-copy distribution, dispensing, 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 of this section.

G. Inspections. Automated drug dispensing devices systems and remote dispensing systems 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 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:

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~~ the 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. Records.

1. All records required by this section shall be maintained for a period of not less than two years. Records shall be maintained at the address of the pharmacy providing services to the hospital or facility except manual Schedule VI distribution records, reports auditing for indications of suspicious activity, and focused audits, all of which 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 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, dispensing, and administration records that are printed and reviewed in conducting required audits may be maintained at an ~~off-site~~ offsite 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 drug dispensing device system or remote dispensing system being audited, the time period covered by the audit and review, and the initials of all reviewers.

18VAC110-20-555. Use of automated dispensing devices and remote dispensing devices in nursing homes.

Nursing homes licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 of the Code of Virginia may use automated drug dispensing systems and remote dispensing systems, as defined in § 54.1-3401 of the Code of Virginia, upon meeting the following conditions:

1. Drugs placed in an automated drug dispensing system or remote dispensing system in a nursing home shall be under the control of the pharmacy providing services to the nursing home, the pharmacy shall have online communication with and control of the automated drug dispensing system, and access to any drug for a patient shall be controlled by the pharmacy.

2. A pharmacy that is not located within the nursing home without an in-house pharmacy it services shall obtain a controlled substances registration issued in the name of the pharmacy at the address of the nursing home and a registration from the Drug Enforcement Administration, if required, prior to using an automated dispensing system stocking drugs in Schedules II through VI, unless the automated drug dispensing system or remote dispensing system is exclusively stocked with drugs that would be kept in a stat-drug box pursuant to 18VAC110-20-550 or an emergency drug kit pursuant to 18VAC110-20-540 and are solely administered for stat or emergency administration.

3. ~~For facilities not required to obtain a controlled substance registration, access~~ Access to the automated drug dispensing device system or remote dispensing system shall be restricted to a licensed nurse, pharmacist, or prescriber; or a registered pharmacy technician for the purpose of stocking or reloading pursuant to designation by the PIC or pharmacist on duty.

4. Removal of drugs from any automated drug dispensing system or remote dispensing system for administration to patients can only be made pursuant to a valid prescription or lawful order of a prescriber under the following conditions:

a. A drug, including a drug that would be stocked in a stat-drug box pursuant to subsection B of 18VAC110-20-550, may not be administered to a patient from an automated drug dispensing device system or remote dispensing system until a pharmacist has reviewed the prescription order and electronically authorized the access of that drug for that particular patient in accordance with the order.

b. The PIC of the provider pharmacy shall ensure that a pharmacist who has online access to the system is available at all times to review a prescription order as needed and authorize administering pursuant to the order reviewed.

c. Drugs that would be stocked in an emergency drug kit pursuant to 18VAC110-20-540 may be accessed prior to receiving electronic authorization from the pharmacist provided that the absence of the drugs would threaten the survival of the patients.

d. Automated drug dispensing devices systems and remote dispensing systems shall be capable of producing a hard-copy record of distribution and dispensing, if applicable, that shall show patient name, drug name and strength, dose or quantity withdrawn, dose to be administered, if applicable, date and time of withdrawal from the device, and identity of person withdrawing the drug.

5. Drugs placed in automated drug dispensing devices systems shall be in the manufacturer's sealed original unit dose or unit-of-use packaging or in repackaged unit-dose containers in compliance with the requirements of 18VAC110-20-355 relating to repackaging, labeling, and records.

6. Drugs authorized pursuant to § 54.1-3434.02 of the Code of Virginia may be placed into and removed from automated drug dispensing systems or remote dispensing systems. Pharmacies servicing remote dispensing systems that package and label drugs for a specific patient may repackage drugs into bulk bins that are verified for accuracy by a pharmacist pursuant to 18VAC110-20-355. Drugs intended to be administered by the patient or a person not licensed to administer drugs must fully comply with the labeling requirements in §§ 54.1-3410 and 54.1-3463 of the Code of Virginia and board regulations. Directions for use may only be abbreviated when drugs are administered exclusively by persons licensed to administer drugs.

7. Prior to the removal of drugs from the pharmacy, a delivery record shall be generated for all drugs to be placed in an automated drug dispensing device system and remote dispensing system, which shall include the date; drug name, dosage form, and strength; quantity; nursing home; a unique identifier for the specific device receiving drugs; and initials of the pharmacist checking the order of drugs to be removed from the pharmacy and the records of distribution for accuracy.

~~7.~~ 8. At the direction of the PIC, drugs may be loaded in the device by a pharmacist or a pharmacy technician adequately trained in the proper loading of the system.

~~8.~~ 9. At the time of loading, the delivery record for all Schedules II through VI drugs shall be signed by a nurse or other person authorized to administer drugs from that specific device, and the record returned to the pharmacy.

Regulations

~~9.~~ 10. 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 drug dispensing device system or remote dispensing system is correct. Any discrepancy noted shall be recorded on the delivery record and immediately reported to the PIC, who shall be responsible for reconciliation of the discrepancy or the proper reporting of a loss.

~~10.~~ 11. Remote dispensing systems that dispense patient-specific drugs into an envelope shall satisfy compliance with 18VAC110-20-340 if the medication is assigned an expiration date of no more than 48 hours from the date of the packaging in an envelope and is not self-administered.

12. Remote dispensing systems that dispense multiple medications into a single container for a specific patient shall include a medication description as set forth in 18VAC110-20-340 on the label, medication envelope, or the medication run report.

13. Pharmacist verification of a patient-specific dispensed drug as required in 18VAC110-20-270 from a remote dispensing system is waived if a pharmacist verified the drug placed in the bulk bin that is placed in the device and the device incorporates sufficient technology assistance to ensure accuracy of the dispensed drug.

14. The PIC of the provider pharmacy or ~~his~~ the PIC's designee shall conduct at least a monthly audit to review distribution ~~and~~ administration, and dispensing, if applicable, of Schedules II through V drugs from each automated drug dispensing device system and remote dispensing system 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 drugs recorded as removed from the pharmacy were diverted rather than being placed in the proper device.
- b. A discrepancy report shall be generated for each discrepancy in the count of a drug on hand in the device. Each such report shall be 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.
- c. The audit shall include a review of a sample of administration and dispensing records, if applicable, from each device per month for possible diversion by fraudulent charting. A sample shall include all Schedules II through V drugs administered and dispensed for a time period of not less than 24 consecutive hours during the audit period.
- d. The audit shall include a check of medical records to ensure that a valid order exists for a random sample of doses recorded as administered or dispensed.

e. The audit shall also check for compliance with written procedures for security and use of the automated dispensing devices, accuracy of distribution from the device, and proper recordkeeping.

f. The hard copy distribution, dispensing, 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.

~~11.~~ 15. Automated drug dispensing devices systems and remote dispensing systems 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.

~~12.~~ 16. Personnel allowed access to an automated drug dispensing device system or remote dispensing system shall have a specific access code ~~which~~ that records the identity of the person accessing the device.

~~13.~~ 17. The PIC of the pharmacy providing services to the nursing home shall establish, maintain, and ~~assure~~ ensure compliance with written policy and procedure for the accurate stocking and proper storage of drugs in the automated drug dispensing system and remote dispensing system, accountability for and security of all drugs maintained in the ~~automated drug dispensing~~ system, preventing unauthorized access to the system, tracking access to the system, complying with federal and state regulations related to the storage and dispensing of controlled substances, maintaining patient confidentiality, maintaining required records, and ~~assuring~~ ensuring compliance with the requirements of this chapter. The manual shall be capable of being accessed at both the pharmacy and the nursing home.

~~14.~~ 18. All records required by this section shall be filed in chronological order from date of issue and maintained for a period of not less than two years. Records shall be maintained at the address of the pharmacy providing services to the nursing home except:

- a. Manual Schedule VI distribution records 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 storage is retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.
- b. Distribution and delivery records and required signatures may be generated or maintained electronically provided:
 - (1) 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.

(2) The records are maintained in a read-only format that cannot be altered after the information is recorded.

(3) The system used is capable of producing a hard-copy printout of the records upon request.

c. Schedules II through V distribution and delivery records may only be stored ~~offsite~~ off site or electronically as described in subdivisions ~~44 18~~ a and ~~44 18~~ b of this section if authorized by DEA or in federal law or regulation.

d. Hard-copy distribution ~~and~~ administration, and dispensing records that are printed and reviewed in conducting required audits may be maintained ~~offsite~~ off site 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 drug dispensing device system or remote dispensing system being audited, the time period covered by the audit and review, and the initials of all reviewers.

18VAC110-20-728. Drugs for immediate treatment in crisis stabilization units.

A. In accordance with § 54.1-3423 of the Code of Virginia, a crisis stabilization unit shall apply for and obtain a controlled substances registration in order to maintain a stock of ~~Schedule Schedules II through VI~~ controlled substances for immediate treatment of patients in crisis. ~~Schedule II through V controlled substances shall not be stocked.~~ The responsible party listed on the application shall be a nurse who regularly administers controlled substances at the crisis stabilization unit and the supervising practitioner shall be either the medical director for the unit or a pharmacist from a provider pharmacy.

B. In consultation with a provider pharmacist, the medical director for the unit shall determine the list of controlled substances to be stocked at the crisis stabilization unit. The list shall be limited to ~~Schedule VI controlled substances and only~~ those drugs routinely used for treatment of patients admitted for crisis stabilization. Only drugs on this drug list may be stocked.

C. A nurse administering a drug from this stock pursuant to an oral order of a prescriber in accordance with § 54.1-3423 of the Code of Virginia shall record such order in the patient's medical record.

D. Records.

1. A record shall be maintained of all drugs received as stock by the crisis stabilization unit.

2. A record shall be made documenting administration or other authorized disposition of stocked drugs that includes the following:

- a. Name of patient;
- b. Date and time of administration;
- c. Drug name, strength, and quantity administered;
- d. Name or initials of person administering; and
- e. Prescriber name.

3. Records shall be maintained at the same location listed on the controlled substances registration or, if maintained in an ~~off-site~~ offsite database, retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent. Any computerized system used to maintain records shall also provide retrieval via computer monitor display or printout of the history for drugs administered during the past two years. It shall also have the capacity of producing a printout of any data ~~which~~ that the registrant is responsible for maintaining.

4. Manual records may be maintained as an electronic image that provides an exact image of the document and is clearly legible.

VA.R. Doc. No. R25-7883; Filed August 11, 2024, 12:46 p.m.

BOARD OF COUNSELING

Action Withdrawn

Titles of Regulations: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-10, 18VAC115-20-40, 18VAC115-20-45, 18VAC115-20-51, 18VAC115-20-52, 18VAC115-20-106 through 18VAC115-20-140).**

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-10, 18VAC115-50-20, 18VAC115-50-40, 18VAC115-50-55, 18VAC115-50-60, 18VAC115-50-70, 18VAC115-50-96 through 18VAC115-50-120).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-10, 18VAC115-60-20, 18VAC115-60-40 through 18VAC115-60-90, 18VAC115-60-116 through 18VAC115-60-140).

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

The Virginia Board of Counseling has WITHDRAWN the regulatory action for **18VAC115-20, Regulations Governing the Practice of Professional Counseling; 18VAC115-50, Regulations Governing the Practice of Marriage and Family Therapy; and 18VAC115-60, Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners**, which was published as a Proposed Regulation in [38:12 VA.R. 1455-1485 January 31, 2022](#). The purpose of the proposed action was to implement the results of a periodic review and included updating regulations, clarifying language, achieving consistency among requirements for licensees, and facilitating obtaining a license by examination or by endorsement. Additional standards of practice and grounds for disciplinary action were considered for

Regulations

amendment for consistency with other behavioral health professional regulations. Amendments specific to 18VAC115-50 and 18VAC115-60 included elimination of the waiver of a licensing examination in marriage and family therapy or substance abuse treatment for counselors who wanted to obtain those specialized licenses. The board withdrew the action on August 2, 2024, due to intervening legislation, Chapter 431 of the 2024 Acts of Assembly, and because the changes have been pending since the 2018 periodic review.

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

VA.R. Doc. No. R19-5799; Filed August 2, 2024, 11:46 a.m.

REAL ESTATE BOARD

Final Regulation

Title of Regulation: **18VAC135-20. Virginia Real Estate Board Licensing Regulations (amending 18VAC135-20-80, 18VAC135-20-120, 18VAC135-20-140, 18VAC135-20-370).**

Statutory Authority: §§ 54.1-201 and 54.1-2105 of the Code of Virginia.

Effective Date: October 1, 2024.

Agency Contact: Anika Coleman, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email reboard@dpor.virginia.gov.

Summary:

Pursuant to of § 54.1-113 of the Code of Virginia, the amendments adjust fees charged by the board. Since the publication of the proposed regulation, (i) the adjustment to the fee amounts has changed and (ii) the board voted to include amending several required forms.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC135-20-80. Application fees.

A. All application fees for licenses are nonrefundable and the date of receipt by the board or its agent is the date that will be used to determine whether it is on time.

B. Application fees are as follows:

Salesperson by education and examination	\$150 [\$185 \$210]
Salesperson by reciprocity	\$150 [\$185 \$210]
Salesperson's or broker's license as a business entity	\$190 [\$220 \$265]

Broker by education and examination	\$190 [\$220 \$265]
Broker by reciprocity	\$190 [\$220 \$265]
Broker concurrent license	\$140 [\$185 \$195]
Firm license	\$250 [\$300 \$350]
Branch office license	\$190 [\$220 \$265]
Transfer application	\$60 \$90
Activate application	\$60 \$90
Downgrade to salesperson	\$120
Upgrade to broker	\$120

C. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts.

18VAC135-20-120. Fees for renewal.

A. All fees for renewals are nonrefundable, and the date of receipt by the board or its agent is the date that will be used to determine whether it is on time.

B. Renewal fees are as follows:

Salesperson	\$65 [\$95 \$100]
Salesperson's or broker's license as a business entity	\$90 [\$145 \$135]
Broker	\$80 [\$115 \$120]
Concurrent broker	\$80 [\$115 \$120]
Firm	\$160 [\$215 \$240]
Branch office	\$90 [\$145 \$135]

18VAC135-20-140. Failure to renew; reinstatement required.

A. All applicants for reinstatement must meet all requirements set forth in 18VAC135-20-101. Applicants for reinstatement who want to activate their license must have completed the continuing education requirement in order to reinstate and activate the license. Applicants for reinstatement of an inactive license are not required to complete the continuing education requirement for license reinstatement.

B. If the requirements for renewal of a license, including receipt of the fee by the board, are not completed by the licensee within 30 days of the expiration date noted on the license, a reinstatement fee is required as follows:

Salesperson	\$100 [\$145 \$155]
Salesperson's or broker's license as a business entity	\$135 [\$220 \$205]
Broker	\$120 \$180
Concurrent Broker	\$120 \$180
Firm	\$245 [\$315 \$370]
Branch Office	\$135 [\$220 \$205]

C. A license may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the license may not be reinstated under any circumstances and the applicant must meet all current educational and examination requirements and apply as a new applicant.

D. A licensee may not perform activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia with an expired license. Any real estate activity conducted subsequent to the expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

18VAC135-20-370. Fees.

A. The application fee for an original certificate for a proprietary school shall be \$190 [~~\$220~~ \$265].

B. The renewal fee for proprietary school certificates expiring every two years from the last day of the month in which they were issued shall be \$90 [~~\$145~~ \$135].

C. If the requirements for renewal of a proprietary school certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date noted on the certificate, a reinstatement fee of \$135 [~~\$220~~ \$205] is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant. If the renewal requirements are not completed within 30 days of the expiration date noted on the proprietary school approval, the proprietary school shall no longer offer board-approved courses.

D. The application for an original prelicense education instructor certificate shall be \$190 [~~\$220~~ \$265].

E. The renewal fee for a prelicense instructor certificate expiring every two years from the last day of the month in which it was issued shall be \$75 [~~\$120~~ \$115].

F. If the requirements for renewal of an instructor certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date on the certificate, a reinstatement fee of \$110 [~~\$180~~ \$170] is required. A

certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant.

G. The board in its discretion may deny renewal of a certificate for the same reasons it may deny initial approval.

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 (18VAC135-20)

~~Exchange to Salesperson License Application, A490-02DLIC-v3 (eff. 11/2015)~~

~~Pre license Education Instructor Certification Application, A490-0230INSTR-v5 (rev. 11/2015)~~

~~Proprietary School Certification Application, A490-0211SCHL-v2 (rev. 11/2015)~~

[Exchange to Salesperson License Application, A490-0225EXCHG-v5 \(eff. 10/2024\)](#)

[Prelicense Education Instructor Certification Application, A490-0230INSTR-v9 \(rev. 10/2024\)](#)

[Proprietary School Certification Application, A490-0211SCHL-vs4 \(rev. 10/2024\)](#)

[Real Estate Firm/Sole Proprietorship Audit, F490-02AUD \(rev. 7/2014\)](#)

[Individual - Name/Address Change Form, A954640-02NACHG-v2 \(rev. 5/2015\)](#)

~~Firm License Application, A490-0226FLIC-v2 (rev. 2/2013)~~

~~Branch Office License Application, A490-0226BRLIC-v2 (rev. 2/2013)~~

[Firm License Application, A490-0226FLIC-v6 \(rev. 10/2024\)](#)

[Branch Office License Application, A490-0226BRLIC-v6 \(rev. 10/2024\)](#)

[Business Entity License Transfer Application, A490-0226BETR-v2 \(rev. 2/2013\)](#)

~~Business Entity License/Reinstatement Application, A490-0226BELIC-v3 (rev. 4/2013)~~

[Business Entity License/Reinstatement Application, A490-0226BELIC-vs9 \(rev. 10/2024\)](#)

Regulations

[Add-on/Removal of Business Entity Member Application, A490-0226ARBEM-v2 \(rev. 2/2013\)](#)

~~[Salesperson License Application, A490-0225SLIC v2 \(rev. 2/2013\)](#)~~

~~[Salesperson - Activate/Transfer Application, A490-0225SAT v2 \(rev. 4/2015\)](#)~~

[Salesperson License Application, A490-0225SLIC-v12 \(rev. 10/2024\)](#)

[Salesperson - Activate/Transfer Application, A490-0225SAT-v8 \(rev. 10/2024\)](#)

[Place License Inactive Application, A490-0225INACT-v1 \(rev. 1/2013\)](#)

~~[Concurrent Broker License Application, A490-0225CONCUR-v3 \(rev. 6/2013\)](#)~~

[Concurrent Broker License Application, A490-0225CONCUR-v8 \(rev. 10/2024\)](#)

[Concurrent Broker Acknowledgment Form, A490-0225CBA-v1 \(rev. 2/2015\)](#)

~~[Broker License Application, A490-0225BLIC v2 \(rev. 2/2013\)](#)~~

~~[Broker - Activate/Transfer Application, A490-0225BAT v2 \(rev. 4/2015\)](#)~~

[Broker License Application, A490-0225BLIC-v13 \(rev. 10/2024\)](#)

[Broker - Activate/Transfer Application, A490-0225BAT-v9 \(rev. 10/2024\)](#)

[Online Approval - Broker Acknowledgment Form, A490-0225BACK-v1 \(rev. 12/2014\)](#)

[In-State Experience Verification Form, A490-02VAEXP-v2 \(rev. 2/2013\)](#)

[Signature Authority Application, A460-02SIG_AUT-v2 \(rev. 1/2013\)](#)

[Branch Office - Supervising Broker Change Form, A490-02SBCHG-v2 \(rev. 2/2013\)](#)

[Firm Principal Broker/Officer Change Form, A490-02PBOCHG-v2 \(rev. 2/2013\)](#)

[Out-of-State Experience Verification Form, A490-02OSEXP-v2 \(rev. 2/2013\)](#)

[Firm Name/Address Change Form, A490-02FNACHG-v1 \(rev. 1/2013\)](#)

[Supervising Broker Certification Form, A490-02CERTFRM-v1 \(rev. 1/2013\)](#)

[Prelicense Education Course Approval Application, A490-0214PRE-v2 \(rev. 1/2014\)](#)

[Additional Instructor Approval Application, A490-0214ADD-v3 \(rev. 5/2013\)](#)

[Continuing Education Course Approval Application, A490-0214CRS-v5 \(rev. 6/2015\)](#)

[Post License Education Course Approval Application, A490-0214PLE-v5 \(rev. 6/2015\)](#)

[Broker - Universal License Recognition \(ULR\) Application - A490-0225B-ULR-v3 \(eff. 10/2024\)](#)

[Salesperson - Universal License Recognition \(ULR\) Application - A490-0225S-ULR-v2 \(eff. 10/2024\) \]](#)

VA.R. Doc. No. R22-6767; Filed July 30, 2024, 2:22 p.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

Proposed Regulation

Titles of Regulations: **18VAC145-20. Professional Soil Scientists Regulations (amending 18VAC145-20-151).**

18VAC145-30. Regulations Governing Certified Professional Wetland Delineators (amending 18VAC145-30-90).

18VAC145-40. Regulations for the Geology Certification Program (amending 18VAC145-40-20).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 25, 2024.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email soilscientist@dpor.virginia.gov.

Basis: Section 54.1-113 of the Code of Virginia requires regulatory boards to periodically review and adjust fees. Section 54.1-201 of the Code of Virginia provides the authority to regulatory boards to levy and collect fees. Section 54.1-304 of the Code of Virginia describes the authority of the Department of Professional and Occupational Regulation (DPOR) to collect and account for fees. Section 54.1-308 of the Code of Virginia requires costs to be paid by regulatory boards.

Purpose: This regulation change will allow the board to continue licensing and certifying soil scientists, wetland professionals, and geologists, which protects the health, safety, and welfare of citizens.

Substance: Pursuant to § 54.1-113 of the Code of Virginia, the amendments adjust board fees.

Issues: The advantage of this change to the public is that the board will continue to be financially solvent. There are no disadvantages to the public or the Commonwealth in raising

the board's fees as proposed here. The advantage to the board is continuing to conform to § 54.1-113 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Board for Professional Soil Scientists, Wetland Professionals and Geologists (board) proposes to increase the fees charged to licensed and certified professionals so that future revenues are sufficient to cover projected expenditures.

Background. Section 54.1-2203 of the Code of Virginia provides for voluntary certification as a wetland delineator and authorizes the board to certify these individuals.² Similarly, § 54.1-2208.2 of the Code of Virginia authorizes the board to certify geologists; this program is also optional for these professionals. In contrast, § 54.1-2205 of the Code of Virginia requires soil scientists to be licensed according to board requirements. Thus, this board licenses one set of professionals and voluntarily certifies two other occupations.³

In general, § 54.1-201.4 of the Code of Virginia authorizes professional boards to levy fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board, and a proportional share of the expenses of the Department of Professional and Occupational Regulation (DPOR). In addition, § 54.1-113 of the Code of Virginia, known as the Callahan Act, newly requires DPOR boards to distribute excess revenue to current regulants and reduce the fees when "unspent and unencumbered revenue exceeds \$100,000 or 20% of the total expenses allocated to the regulatory board for the past biennium, whichever is greater."⁴ The Callahan Act previously required DPOR boards, as well as those administered by the Department of Health Professions, to adjust fees in situations in which "expenses allocated to the board for the past biennium" are more than 10 percent greater or less than money collected on behalf of the board.

Lastly, the Appropriation Act was amended in 2019 to require DPOR to hold funds in reserve to "offset the anticipated, future costs of restructuring its organization, including additional staffing needs and the replacement or upgrade of the Department's information technology systems requirements." The most recent version of this language appears in Item 369 of the 2022 Appropriation Act.⁵

DPOR reports fees for soil scientists and wetland professionals were last adjusted in 2010, when they were decreased to comply with Callahan Act requirements.⁶ Conversely, fees for geologists were last adjusted in 2015, when it was necessary to raise fees to comply with the Callahan Act requirements.⁷ Since the 2010 fee decreases took effect, DPOR reports that

the agency's information technology costs have increased by 86% and that the agency's staff costs have increased by 22%.⁸ Based on DPOR's projections for board revenues and expenditures at the current fee levels, the board indicates that its fees are no longer sufficient to cover expenses in accordance with the Code of Virginia provisions cited.

The proposed fee increases are expected to increase the board's revenues by approximately \$58,000 per biennium. Specifically, the board proposes to raise initial application fees, renewal fees, late renewal fees, and reinstatement fees for all three professions. These fees are currently the same for all three professions and would be increased by identical amounts across the three professions. Thus, the changes summarized in the table below reflect identical changes that would be made to sections 18VAC145-20-151 (fees for soil scientists), 18VAC145-30-90 (fees for wetland professionals), and 18VAC145-40-20 (fees for geologists.)

Current and Proposed Fees

Fee Type	Current Fee	Proposed Fee	Percentage increase
Application	\$90	\$120	33%
Renewal	\$70	\$120	71%
Late renewal	\$25	\$35	40%
Reinstatement	\$90	\$120	33%

In addition to the fees listed in the table, 18VAC145-30-90 includes an examination fee of \$150 for wetland professionals and 18VAC145-40-20 includes a \$20 fee to apply for the Geologist-in-Training designation as well as an examination fee, which is set by a contract with a private vendor. These fees would all remain the same.

Estimated Benefits and Costs. DPOR reports that the board had a balance of \$61,110 at the end of the 2020-2022 biennium.⁹ If fees remain unchanged, the board's balance is projected to be \$7,492 at the end of the current biennium (2022-2024) and -\$41,726 (a deficit) at the end of the following biennium (2024-2026).¹⁰ DPOR projections indicate that the fee increases would bring in an additional \$58,000 in biennial revenue and that the new fees will become effective in fiscal year 2024.¹¹ Since the proposed changes would increase fees for soil scientists, wetland professionals, and geologists, currently licensed or certified professionals in these areas as well as those seeking license or certification in the future would incur additional costs. However, the certifications for wetland professionals and geologists are voluntary and DPOR reports that the Board for Professional and Occupational Regulation recently recommended that soil scientists revert back to a certification program.¹² DPOR also noted that the 2015 fee increase for geologists did not reduce the number of geologists seeking certification. This indicates that the demand for

Regulations

voluntary certification may not be sensitive to fee increases, at least for this profession.

Businesses and Other Entities Affected. The proposed amendments would affect 81 licensed soil scientists, 117 certified wetland delineators, and 912 certified geologists. The proposed amendments would also affect new applicants for these professional designations. On average, there are 15 soil scientists, eight wetland delineators, and 75 geologists applying for initial licensure or certification each year.¹³

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.¹⁴ 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 the proposal raises fees, an adverse impact is indicated.

Small Businesses¹⁵ Affected.¹⁶

Types and Estimated Number of Small Businesses Affected: Small businesses may be affected to the extent that they employ licensed soil scientists, certified wetland delineators, or certified geologists and pay the fees for these employees to obtain or maintain their license or certification. DPOR does not have information on how many of these professionals are employed by small businesses.

Costs and Other Effects: To the extent that small businesses employ these individuals and pay for their professional designations, such firms may encounter a small increase in cost associated with the proposed higher fees.

Alternative Method that Minimizes Adverse Impact: Changing the soil scientist program to a voluntary certification could reduce adverse impact; however, this change requires legislative action and cannot be implemented through this regulation.

Localities¹⁷ Affected.¹⁸ Localities would not be directly affected by the proposed fee increases. To the extent that some local governments hire and pay the licensure or certification renewal fees for soil scientists, wetland delineators, or geologists, such localities may encounter the small increase in cost associated with the proposed higher fee. DPOR does not have information on whether any localities employ these professionals directly.

Projected Impact on Employment. These professionals have a specialized skillset and the demand for their services would not be affected by the proposed fee changes. Thus, the proposed amendments are unlikely to substantively affect their employment rates.

Effects on the Use and Value of Private Property. To the extent that some businesses that hire these professionals pay for them to maintain their license or certification, such firms may encounter a small increase in cost associated with the proposed higher fees. The potential increase in cost would not likely be large enough to substantively affect the actions and value of these firms. The proposed amendments do not affect real estate development costs.

¹Section 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.

²The "practice of wetland delineation" is defined in § 54.1-2200 of the Code of Virginia as "the delineation of wetlands by accepted principles and methods including observation, investigation, and consultation on soil, vegetation, and hydrologic parameters; and preparation of wetland delineations, descriptions, reports and interpretive drawings."

³Soil scientists were also permitted to become voluntarily certified until Chapters 777 and 859 of the 2011 Acts of Assembly established a mandatory licensure program for this profession to become effective on July 1, 2013. See <https://leg1.state.va.us/cgi-bin/legp504.exe?111+ful+CHAP0777> and <https://leg1.state.va.us/cgi-bin/legp504.exe?111+ful+CHAP0859>, respectively. More information about the subsequent regulatory action establishing the licensure requirements is available on the Virginia Regulatory Town Hall at <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=3539>. The regulation became effective March 1, 2015.

⁴See <https://law.lis.virginia.gov/vacode/title54.1/chapter1/section54.1-113/> for the full requirements of the Act. The new requirements regarding unspent revenue took effect on July 1, 2022; these changes were made by Chapters 517 and 697 of the 2019 Acts of Assembly.

⁵See <https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/369/>. Under Item 4-13.00 of the Appropriation Act, "the provisions of this act shall prevail over any conflicting provision of any other law, without regard to whether such other law is enacted before or after this act." Consequently, if a situation were to arise where the Appropriation Act conflicted with the new provisions of the Callahan Act, the language in the Appropriation Act would apply.

⁶See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=3291> and <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=3292>, respectively. Note that these actions were promulgated by the Board for Soil Scientists and Wetland Professionals, which did not include geologists in 2010.

⁷See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=3650>. The Board for Geologists was a separate board until 2012, when it was merged with the Board for Professional Soil Scientists and Wetland Professionals to create the Board as it currently exists. This post-merger action increased the geologists' certification fees to match the fees for soil scientists and wetland professionals.

⁸See Agency Background Document (ABD), page 8, https://townhall.virginia.gov/L/GetFile.cfm?File=15\5495\9706\AgencyStatement_DPOR_9706_v1.pdf.

⁹Geologists' certification fees are the most significant driver of revenues, since they are the largest group of regulants for this board. However, these certifications are valid for two years and renewed in even years, causing board revenues to fluctuate significantly between even and odd years. Thus, the projected balances and the expected impact of the fee changes are presented by biennium.

¹⁰Email from DPOR dated August 25, 2022.

¹¹Even if we assume the entire projected revenue increase were received in fiscal year 2024, the projected balance for the 2022-2024 biennium would be \$65,492, which would not be sufficient to trigger the new Callahan Act requirements to reduce fees or redistribute revenues to regulants.

¹²See <https://rga.lis.virginia.gov/Published/2020/RD690>. DPOR reported that no legislator carried a bill that would codify this change. (Email from DPOR to DPB dated August 25, 2022.)

¹³ABD, page 6.

¹⁴Pursuant 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.

¹⁵ 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."

¹⁶ 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.

¹⁷ "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.

¹⁸ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board for Professional Soil Scientists, Wetland Professionals, and Geologists concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

Pursuant to § 54.1-113 of the Code of Virginia, the proposed amendments adjust fees charged by the board.

18VAC145-20-151. Fees.

The fees for licensure are listed below in this section. Checks or money orders shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee plus an additional processing charge as authorized by § 2.2-614.1 C of the Code of Virginia.

Fee Type	When Due	Amount Due
New application	With application	\$90 <u>\$120</u>
Renewal fee	Prior to license expiration	\$70 <u>\$120</u>
Late renewal fee	More than 30 days after license expiration	\$25 <u>\$35</u>
Reinstatement fee	More than six months after license expiration	\$90 <u>\$120</u>

18VAC145-30-90. Fees.

All fees required by the board are nonrefundable and shall not be prorated.

Fee Type	Amount
Application	\$90 <u>\$120</u>
Renewal fee	\$70 <u>\$120</u>
Late renewal fee	\$25 <u>\$35</u>
Reinstatement fee	\$90 <u>\$120</u>
Examination fee	\$150

18VAC145-40-20. Fees.

All fees for application, examination, renewal, and reinstatement shall be established by the board pursuant to § 54.1-201 of the Code of Virginia. All fees are nonrefundable and shall not be prorated.

1. The application fee for certification shall be ~~\$90~~ \$120.
2. The fee for renewal of certification shall be ~~\$70~~ \$120.
3. The application fee for the Geologist-in-Training (GIT) designation shall be \$20.
4. The fee for examination or reexamination is subject to contracted charges to the department by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.
5. The penalty fee for late renewal shall be ~~\$25~~ \$35 in addition to the renewal fee.
6. The reinstatement fee shall be ~~\$90~~ \$120.

VA.R. Doc. No. R22-7058; Filed July 24, 2024, 1:50 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Board for Professional Soil Scientists, Wetland Professionals, and Geologists 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: **18VAC145-30. Regulations Governing Certified Professional Wetland Delineators (amending 18VAC145-30-40).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Regulations

Effective Date: October 1, 2024.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email soilscientist@dpor.virginia.gov.

Summary:

Pursuant to Chapter 545 of the 2024 Acts of Assembly, the amendments reduce to three years (i) the number of years of relevant experience an applicant with a bachelor's degree in a relevant field must have to be certified as a professional wetland delineator and (ii) the required experience that the applicant must have in wetland science research or as a teacher of wetlands curriculum in an accredited institution of higher education in order to be certified.

18VAC145-30-40. Qualification for examination.

A. In order to qualify for the examination, an applicant shall provide three written references that comply with subsection B of this section and satisfy one of the following criteria:

1. Hold a bachelor's degree from an accredited institution of higher education in a wetland science, biology, biological engineering, civil and environmental engineering, ecology, soil science, geology, hydrology, or any similar biological, physical, natural science, or environmental engineering curriculum that has been approved by the board; have successfully completed a course of instruction in state and federal wetland delineation methods that has been approved by the board; and have at least ~~four~~ three years of experience in wetland delineation, which meets the requirements of subdivision 1 or 2 of 18VAC145-30-50, the quality of which demonstrates to the board that the applicant is competent to practice as a certified professional wetland delineator;
2. Have a record of at least six years of experience in wetland delineation, which meets the requirements of subdivision 1 or 2 of 18VAC145-30-50, the quality of which demonstrates to the board that the applicant is competent to practice as a certified professional wetland delineator; or
3. Have a record of at least ~~four~~ three years of experience in wetland science research or as a teacher of wetlands curriculum in an accredited institution of higher education, which meets the requirements of subdivision 3 of 18VAC145-30-50, and the quality of which demonstrates to the board that the applicant is competent to practice as a certified professional wetland delineator.

B. Every applicant shall provide three written references, on a form provided by the board, from wetland professionals with at least one from a certified professional wetland delineator. Individuals who provide references shall not be related to the applicant and shall have known the applicant for at least one year. Individuals who provide references may not also verify experience, including research or teaching experience.

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 (18VAC145-30)

~~Professional Wetland Delineator Certification Application, A439-3402CERT-v1 (rev. 9/13)~~

[Professional Wetland Delineator Certification Application, A439-3402CERT-v2 \(rev. 7/2024\)](#)

[Professional Wetland Delineator Experience Log, A439-3402EXP-v2 \(rev. 3/2015\)](#)

[Professional Wetland Delineator Reference Form, A439-3402REF-v1 \(rev. 9/2013\)](#)

VA.R. Doc. No. R25-7857; Filed August 6, 2024, 4:15 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Board for Professional Soil Scientists, Wetland Professionals, and Geologists 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: **18VAC145-40. Regulations for the Geology Certification Program (amending 18VAC145-40-10).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: October 1, 2024.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email soilscientist@dpor.virginia.gov.

Summary:

Pursuant to Chapters 4 and 23 of the 2024 Acts of Assembly, the amendments (i) make changes to the definitions of "practice of geology," "geologist," and "geology" and (ii) add a definition for "geological mapping."

18VAC145-40-10. Definitions.

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

"Board" means the Board for Professional Soil Scientists, Wetland Professionals, and Geologists.

"Geological mapping" means the process of creating a map on which is recorded geological information, such as the distribution, nature, and age of relationships of rock units, in which surficial deposits may or may not be mapped separately, and the occurrence of structural features such as folds, faults, and joints; mineral deposits; and fossil localities. "Geological mapping" may indicate geologic structure by means of formational outcrop patterns, by conventional symbols giving the direction and amount of dip at certain points, or by structure-contour lines.

"Geologist" means a person engaged in the public practice of geology.

"Geologist-in-Training (GIT)" means an individual who has completed the academic requirements specified in this chapter and has passed the Fundamentals of Geology examination, but has not met all requirements to qualify as a Virginia certified professional geologist.

"Geology" means the science ~~dealing with~~ encompassing those principles methods related to (i) the earth and its history in general; (ii) the investigation, prediction, evaluation, and location of materials and structures ~~which that~~ compose the earth; (iii) the natural processes that cause changes in the earth; and (iv) the application of knowledge of the earth, its processes, and its constituent rocks, minerals, liquids, gases, and other natural materials.

"Practice of geology" means the performance of any professional service or work for the general public wherein the principles and methods of geology are applied, including (i) investigating, evaluating, and consulting; (ii) geological mapping; (iii) describing the natural processes that act upon the earth's materials; (iv) predicting the probable occurrence of natural processes; and (v) inspecting, planning, and performing and supervising geological work in order to enhance and protect the health, safety, and welfare of the public and the environment.

"Qualified geologist" means an uncertified person who possesses all the qualifications specified in § 54.1-2208.2 of the Code of Virginia for certification.

"Related geological science degree" means a degree that shall include, ~~but not be limited to,~~ a degree in economic geology or petroleum geology.

"Responsible charge" means the direct control and supervision of the practice of geology.

"Supervision" means quality control review of all significant data collection, interpretation, and conclusions.

"Virginia certified professional geologist" means a person who possesses all qualifications specified in this chapter for

certification and whose competence has been attested by the board through certification.

VA.R. Doc. No. R25-7856; Filed August 6, 2024, 3:36 p.m.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

Proposed Regulation

Title of Regulation: **18VAC155-20. Waste Management Facility Operators Regulations (amending 18VAC155-20-40).**

Statutory Authority: §§ 54.1-201 and 54.1-2211 of the Code of Virginia.

Public Hearing Information:

October 1, 2024 - 2 p.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Second Floor Conference Center, Board Room 3, Richmond, VA 23233.

Public Comment Deadline: October 25, 2024.

Agency Contact: Marjorie King, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, TDD (804) 527-4290, or email contractors@dpor.virginia.gov.

Basis: Section 54.1-113 of the Code of Virginia requires regulatory boards to periodically review and adjust fees. Section 54.1-201.4 of the Code of Virginia provides the authority to regulatory boards to levy and collect fees. Section 54.1-304.3 of the Code of Virginia describes the authority of the Department of Professional and Occupational Regulation (DPOR) to collect and account for fees. Section 54.1-308 of the Code of Virginia requires costs to be paid by regulatory boards.

Purpose: This regulation change will allow the board to continue licensing individuals to operate waste management facilities, which protects the public health, safety, and welfare.

Substance: Pursuant to § 54.1-113 of the Code of Virginia, the amendments adjust board fees.

Issues: The advantage of this change to the public is that the board will continue to be financially solvent. There are no disadvantages to the public or the Commonwealth in raising the board's fees as proposed here. The advantage for the board is continuing to conform to § 54.1-113 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

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

Regulations

Summary of the Proposed Amendments to Regulation. The Board for Waste Management Facility Operators (board) proposes to increase three of its four licensing fees for waste management facility operators.

Background. A "solid waste management facility" is defined as a site used for planned treating, long-term storage, or disposing of solid waste;² a facility may consist of several treatment, storage, or disposal units.³ Section 10.1-1408.2 of the Code of Virginia requires that all solid waste management facilities operate under the direct supervision of a waste management facility operator licensed by the board.⁴

Section 54.1-201 of the Code of Virginia states in part that:

"A. The powers and duties of regulatory boards shall be as follows:

4. To levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation."

For the last complete biennium, the board had \$49,622 of expenses allocated to it and \$41,000 collected on its behalf. Thus, expenses exceeded revenues by 21%.

The board proposes to raise licensure renewal, late licensure renewal, and licensure reinstatement fees for waste management facility operators as shown in Table 1 but keep the licensure application fee constant. The Department of Professional and Occupational Regulation (DPOR) reports that fees were last increased in November 1994.⁵

Table 1: Current and Proposed Fees

Fee Type	Current Fee	Proposed Fee
Licensure application	\$75	\$75
Licensure renewal	\$50	\$85
Late licensure renewal	\$75	\$120
Licensure reinstatement	\$125	\$160

Estimated Benefits and Costs. Table 2 shows DPOR's projections for the board's fiscal year-end balances with and without raising fees by the amounts listed in Table 1. For these estimates, DPOR assumed that the higher fees would be in place starting fiscal year 2024.

Table 2: Fiscal Year-End Balance Projections

	June 30, 2022	June 30, 2023	June 30, 2024	June 30, 2025
With current fees	\$38,040	\$30,107	\$21,329	\$11,655
With proposed fees	\$38,040	\$30,107	\$31,259	\$31,515

Based on DPOR's projection of relative stability in balances once the proposed fees are implemented, it does appear that the fees would be sufficient to cover expenses. The fees for waste management facility operator licensure were last changed (a reduction) in May 1999.⁶ Using the U.S. Bureau of Labor Statistics seasonally adjusted Consumer Price Index (CPI), price levels have risen 74% since May 1999.⁷ Table 3 compares the proposed fees with what the fees would be if they were increased by the same percentage since the fees were last adjusted.

Table 3: Comparison of Proposed Fees with Inflation-Adjusted Fees

	Current Fee	Proposed Fee	Fee if Adjusted for Inflation
Licensure application	\$75	\$75	\$130
Licensure renewal	\$50	\$85	\$87
Late licensure renewal	\$75	\$120	\$130
Licensure reinstatement	\$125	\$160	\$217

Table 3 shows that the proposed fees are all lower than what they would be if adjusted for the CPI-measured inflation that has occurred since the fees were last changed. As solid waste management facilities statutorily may only operate under the direct supervision of a waste management facility operator licensed by the board, enabling the board to have sufficient funds to keep the licensure program active is beneficial. If solid waste management facilities were to close down, solid waste could be left untreated, potentially causing harm to the environment and public health.

Businesses and Other Entities Affected. The proposed amendments affect the 603 licensed waste management facility operators⁸ and potentially affect the 198 public and 144 privately owned solid waste management facilities⁹ that employ such operators.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.¹⁰ 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 the proposal raises fees, an adverse impact is indicated.

Small Businesses¹¹ Affected.¹²

Types and Estimated Number of Small Businesses Affected: Data are not available to determine how many of the 144 privately owned solid waste management facilities are associated with small businesses.

Costs and Other Effects: To the extent that some small businesses with solid waste management facilities may pay the

licensure renewal fee for the waste management facility operator who is supervising the solid waste management facility, such firms may encounter a small increase in cost associated with the proposed higher fee.

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

Localities¹³ Affected.¹⁴ As there are solid waste management facilities throughout the Commonwealth, no specific localities are known to be disproportionately affected. To the extent that some localities may pay the licensure renewal fee for a waste management facility operator who is supervising their solid waste management facility, such localities may encounter a small increase in cost associated with the proposed higher fee.

Projected Impact on Employment. The proposed amendments are unlikely to substantively affect employment.

Effects on the Use and Value of Private Property. To the extent that some businesses with solid waste management facilities may pay the licensure renewal fee for the waste management facility operator who is supervising their solid waste management facility, such firms may encounter a small increase in cost associated with the proposed higher fee. The potential increase in cost would not likely be large enough to substantively affect the actions and value of these firms. The proposed amendments do not affect real estate development costs.

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

² Section 10.1-1400 of the Code of Virginia defines "Solid waste" as any garbage, refuse, sludge, and other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, commercial, mining, and agricultural operations, or community activities, but does not include (i) solid or dissolved material in domestic sewage; (ii) solid or dissolved material in irrigation return flows or in industrial discharges that are sources subject to a permit from the State Water Control Board; (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended; or (iv) post-use polymers or recovered feedstocks that are (a) processed at an advanced recycling facility or (b) held at or held for the purpose of conversion at such advanced recycling facility prior to conversion.

³ See <https://law.lis.virginia.gov/vacode/title10.1/chapter14/section10.1-1400/>

⁴ See <https://law.lis.virginia.gov/vacode/title10.1/chapter14/section10.1-1408.2>.

⁵ See page 90 at <http://register.dls.virginia.gov/vol11/iss01/v11i01.pdf>

⁶ Source: DPOR. See also page 1937 at <http://register.dls.virginia.gov/vol15/iss13/v15i13.pdf>

⁷ More precisely, the price level has risen by 73.89%. When this report was written, the most recent available datum for seasonally adjusted CPI was for April 2022. That datum was used to calculate the increase in price levels since May 1999.

⁸ Data source: DPOR.

⁹ Data source: Department of Environmental Quality.

¹⁰ 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.

¹¹ 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."

¹² 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.

¹³ "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.

¹⁴ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board for Waste Management Facility Operators concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

Pursuant to § 54.1-113 of the Code of Virginia, the proposed amendments adjust fees charged by the board.

18VAC155-20-40. Fees.

- A. All fees are nonrefundable and shall not be prorated.
- B. An application shall not be deemed complete and shall not be processed without the required fee.
 - 1. The application fee for licensure shall be \$75.
 - 2. The fee for renewal of licensure shall be ~~\$50~~ \$85.
 - 3. The fee for late renewal of licensure shall be ~~\$75~~ \$120.
 - 4. The fee for reinstatement of licensure shall be ~~\$125~~ \$160.
 - 5. The examination fee is charged to the applicant by an outside vendor competitively negotiated and contracted for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the applicant in accordance with this contract.
- C. All checks shall be made payable to the Treasurer of Virginia.

Regulations

D. Receipt and deposit of fees submitted with applications do not indicate licensure.

VA.R. Doc. No. R22-6804; Filed July 30, 2024, 7:53 a.m.

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TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF MOTOR VEHICLES

Fast-Track Regulation

Title of Regulation: 24VAC20-40. Rules and Regulations on Accident Prevention Courses for Older Drivers (amending 24VAC20-40-30).

Statutory Authority: §§ 46.2-203 and 38.2-2217 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 25, 2024.

Effective Date: October 10, 2024.

Agency Contact: Nicholas Megibow, Senior Policy Analyst, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-6701, FAX (804) 367-4336, or email nicholas.megibow@dmv.virginia.gov.

Basis: The Department of Motor Vehicles (DMV) regulations are promulgated under the general authority of § 46.2-203 of the Code of Virginia, which grants DMV statutory authority to promulgate regulations necessary to carry out the laws administered by the department. Section 38.2-2217 of the Code of Virginia mandates that schedule of rates, rate classifications, or rating plans for motor vehicle insurance must provide for an appropriate reduction in premium charges for those insured persons who are 55 years of age and older. Only those insured persons who have voluntarily and successfully completed a mature driver motor vehicle crash prevention course approved by the DMV shall qualify for a three-year period after the completion of the course for the reduction in rates.

Purpose: The amendments reduce the regulatory burden on mature driver training businesses without detrimentally affecting the health, safety, or welfare of citizens of the Commonwealth.

Rationale for Using the Fast-Track Rulemaking Process: DMV determined that these changes reduce the regulatory burden on mature driver training businesses without detrimentally affecting citizens of the Commonwealth; therefore, DMV anticipates that the proposed regulatory action will be noncontroversial.

Substance: The amendments remove the instructional methodology requirements for businesses that provide mature driver motor vehicle crash prevention courses for drivers 55 years of age and older, including that (i) instructional methods

must consider vision and other physical problems when designing instructional materials and aids and classroom setup; (ii) formatting and style of language for course materials must have certain mature driver-friendly attributes and avoid ageist language; and (iii) classes may not exceed 35 students or the maximum capacity of the accommodation and classroom facilities shall provide adequate lighting, space, ventilation, and freedom from distracting noise.

Issues: The advantage to the public and the Commonwealth is that this regulatory action would remove unnecessary regulatory requirements from DMV's regulations and lessen the regulatory burden on mature driver training businesses. The action does not present any disadvantages to the public 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.¹

Summary of the Proposed Amendments to Regulation. The Department of Motor Vehicles (DMV) proposes to eliminate certain requirements concerning course materials and classrooms from 24VAC20-40, Rules and Regulations on Accident Prevention Courses for Older Drivers.

Background. Section 38.2-2217 A of the Code of Virginia in part states that, "Any schedule of rates, rate classifications or rating plans for motor vehicle insurance as defined in § 38.2-2212 filed with the [State Corporation] Commission shall provide for an appropriate reduction in premium charges for those insured persons who are fifty-five years of age and older and who qualify as provided in this subsection. Only those insured persons who have voluntarily and successfully completed a mature driver motor vehicle crash prevention course approved by the Department of Motor Vehicles shall qualify for a three-year period after the completion of the course for the reduction in rates." The Rules and Regulations on Accident Prevention Courses for Older Drivers delineates the requirements for mature driver motor vehicle crash prevention courses to be approved by DMV. 24VAC20-40-30 of the regulation contains two subsections: 24VAC20-40-30 A on course content requirements, and 24VAC20-40-30 B on instructional methodology requirements. The proposed action does not alter course content requirements, but does eliminate the following instructional methodology requirements in 24VAC20-40-30 B: "3. Vision and other physical problems should be considered in designing instructional materials and aids and classroom setup. 5. Course materials shall be clearly and simply written, avoid technical terms, and be printed in large enough type to be easily legible. Insofar as practical, written materials should be personal in tone; e.g., use "you" instead of "the older driver." The materials should focus on

specific driving information needs, rather than present age itself as a problem. Terms which emphasize aging, such as "elderly," should be avoided, since research has shown that people do not tend to identify with such terms. Illustrations, in addition, should not present physical stereotypes of older persons. 8. Classes may not exceed 35 students or the maximum capacity of the accommodation, whichever is less. Classroom facilities shall provide adequate lighting, space, ventilation, and freedom from distracting noise."

Estimated Benefits and Costs. DMV states that it is proposing to remove subdivisions 3 and 5 because "Mature driver training businesses can determine the best instructional methods with regards to the student's physical needs without specific guideline requirements established by DMV." This may be moderately beneficial for the driver training businesses in that it allows additional flexibility in instructional methodology design, while not changing course content requirements.

Regarding subdivision 8, according to the agency there are relatively few attendees for the mature operator course, and it is highly unlikely that any class would ever exceed 35 people, even without a maximum capacity requirement. Thus, removing the cap on number of students would not likely have any impact.

Businesses and Other Entities Affected: The proposed amendments would apply to the five existing mature driver training businesses in the Commonwealth.² All five would be considered small businesses.³

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁴ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁵ The proposed amendments neither increase costs nor reduce benefits. Thus, no adverse impact is indicated.

Small Businesses⁶ Affected.⁷ The proposed amendments do not adversely affect small businesses.

Localities⁸ Affected.⁹ The proposed amendments neither disproportionately affect particular localities nor introduce costs for local governments.

Projected Impact on Employment. The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments neither substantively affect the use and value of private property nor affect real estate development costs.

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

² Data source: DMV.

³ Source: DMV.

⁴ 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.

⁵ 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

⁷ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁸ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁹ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department of Motor Vehicles has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendments remove three instructional methodology requirements for businesses that provide mature driver motor vehicle crash prevention courses for drivers 55 years of age and older, including that (i) instructional methods must consider vision and other physical problems when designing instructional materials and aids and classroom setup; (ii) course materials must have specific formatting and style of language geared toward mature drivers; and (iii) classes may not exceed 35 students or the maximum capacity of the accommodation and classroom facilities shall provide adequate lighting, space, ventilation, and freedom from distracting noise.

24VAC20-40-30. Course contents and instructional methodology.

A. Course contents shall focus specifically on the information needs of drivers aged 55 years of age and older. To allow maximum time for this focus, content which that is irrelevant

Regulations

or more appropriate to young or inexperienced drivers should be excluded. The curriculum shall include, ~~but not necessarily be limited to,~~ the following subjects:

1. Vision and other physical problems ~~which that~~ tend to accompany increasing age; how these problems may affect driving performance; how to compensate for the problems;
2. Fatigue; drugs, both over-the-counter and prescription; alcohol; the interaction of drugs, alcohol, fatigue and other conditions; effect on driving and precautionary measures;
3. Updates on recent signs, signals, and pavement markings;
4. Travel time and route selection for optimal driving conditions; alternatives to driving offered by public transportation, senior citizen groups, and other organizations;
5. Safety belts and the special needs of older people to use them;
6. Updates on safe and defensive driving under modern conditions; ~~e.g., such as the 3-second~~ three-second following distance, how to deal with tailgaters; lane positioning; safe passing; safe turning; freeway entrance and exit; maintaining prevailing speed; right-of-way rules; and the driver's responsibility to yield; and
7. Techniques to gain increased time for decisions; ~~e.g., such as~~ situations requiring greater following distance; pre-trip planning; passenger assistance; recognizing hazards in time; and unfamiliar areas and construction areas.

B. Instructional methods shall be used ~~which that~~ capitalize on the greater experience level of the older adult and ~~which that~~ provide ample opportunity for participants to relate the material to past experience and present needs.

1. Courses shall provide a minimum of eight hours of classroom presentation and discussion. This eight hours of time shall be divided over at least a two-day period, in order to allow time for better integration and comprehension of the safety concepts.
2. Courses shall incorporate a high level of student-instructor interaction and structured group discussions in order to relate the concepts to past experiences.
3. ~~Vision and other physical problems should be considered in designing instructional materials and aids and classroom setup.~~
4. ~~3.~~ Courses shall focus on factual information, its meaning, and how to apply it in driving. Shock effects and scare tactics are to be avoided.
5. ~~Course materials shall be clearly and simply written, avoid technical terms, and be printed in large enough type to be easily legible. Insofar as practical, written materials should be personal in tone; e.g., use "you" instead of "the older driver." The materials should focus on specific driving~~

~~information needs, rather than present age itself as a problem. Terms which emphasize aging, such as "elderly," should be avoided, since research has shown that people do not tend to identify with such terms. Illustrations, in addition, should not present physical stereotypes of older persons.~~

~~6.~~ 4. Films, filmstrips, and audio recordings shall not exceed an aggregate of one quarter of the total presentation time.

7. ~~5.~~ One or more written examinations shall be given to cover all subject areas, with scoring and feedback to reinforce learning.

~~8. Classes may not exceed 35 students or the maximum capacity of the accommodation, whichever is less. Classroom facilities shall provide adequate lighting, space, ventilation, and freedom from distracting noise.~~

VA.R. Doc. No. R25-7903; Filed August 7, 2024, 7:53 a.m.

Fast-Track Regulation

Title of Regulation: **24VAC20-40. Rules and Regulations on Accident Prevention Courses for Older Drivers (amending 24VAC20-40-40).**

Statutory Authority: §§ 46.2-203 and 38.2-2217 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 25, 2024.

Effective Date: October 10, 2024.

Agency Contact: Nicholas Megibow, Senior Policy Analyst, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-6701, FAX (804) 367-4336, or email nicholas.megibow@dmv.virginia.gov.

Basis: The Department of Motor Vehicles (DMV) regulations are promulgated under the general authority of § 46.2-203 of the Code of Virginia, which grants DMV statutory authority to promulgate regulations necessary to carry out the laws administered by the department. Section 38.2-2217 of the Code of Virginia mandates that schedule of rates, rate classifications, or rating plans for motor vehicle insurance must provide for an appropriate reduction in premium charges for those insured persons who are 55 years of age and older. Only those insured persons who have voluntarily and successfully completed a mature driver motor vehicle crash prevention course approved by the DMV shall qualify for a three-year period after the completion of the course for the reduction in rates.

Purpose: The amendments reduce the regulatory burden on mature driver training businesses without detrimentally affecting the health, safety, or welfare of citizens of the Commonwealth.

Rationale for Using the Fast-Track Rulemaking Process: DMV determined that these changes reduce the regulatory burden on mature driver training businesses without detrimentally

affecting citizens of the Commonwealth; therefore, DMV anticipates that the proposed regulatory action will be noncontroversial.

Substance: The amendments remove the requirements for businesses that provide mature driver motor vehicle crash prevention courses for drivers 55 years of age and older that instructors must (i) issue to each participant a student course evaluation form at the time of successful course completion and (ii) explain that the course evaluation form may be used for both positive and negative comments and should be returned to DMV at the address provided on the form.

Issues: The advantage to the public and the Commonwealth is that this regulatory action would remove unnecessary regulatory requirements from DMV's regulations and lessen the regulatory burden on mature driver training businesses. The action does not present any disadvantages to the public 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.¹

Summary of the Proposed Amendments to Regulation. The Department of Motor Vehicles (DMV) proposes to eliminate the requirements that instructors of motor vehicle accident prevention courses for older drivers (i) issue course evaluation forms to students and (ii) provide instructions on filling out the form and sending it to the agency.

Background. Section 38.2-2217 A of the Code of Virginia in part states that, "Any schedule of rates, rate classifications or rating plans for motor vehicle insurance as defined in § 38.2-2212 filed with the [State Corporation] Commission shall provide for an appropriate reduction in premium charges for those insured persons who are fifty-five years of age and older and who qualify as provided in this subsection. Only those insured persons who have voluntarily and successfully completed a mature driver motor vehicle crash prevention course approved by the Department of Motor Vehicles shall qualify for a three-year period after the completion of the course for the reduction in rates." Rules and Regulations on Accident Prevention Courses for Older Drivers Department of Motor Vehicles delineates the requirements for mature driver motor vehicle crash prevention courses to be approved by DMV.

One of the current requirements is that instructors issue to each participant at the time of successful course completion a student course evaluation form provided by DMV. The current regulation also states that instructors provide "Instructions which explain that the course evaluation form may be used for both positive and negative comments and should be returned

to DMV at the address provided on the form." The agency proposes to eliminate these requirements.

Estimated Benefits and Costs. According to DMV, in practice the agency has not been receiving any feedback through the evaluation form process. Thus, eliminating the evaluation form requirements would not appear to prevent DMV from receiving useful feedback, but would save mature driver training firms a small amount of staff time.

Businesses and Other Entities Affected: The proposed amendments would affect the five existing mature driver training businesses in the Commonwealth.² All five would be considered small businesses.³

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁴ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁵ The proposed amendments neither increase costs nor reduce benefits. Thus, no adverse impact is indicated.

Small Businesses⁶ Affected.⁷ The proposed amendments do not adversely affect small businesses.

Localities⁸ Affected.⁹ The proposed amendments neither disproportionately affect particular localities nor introduce costs for local governments.

Projected Impact on Employment. The proposed amendments do not affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments would save a small amount of staff time, but would not likely substantively affect the value of firms. The proposed amendments do not affect real estate development costs.

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

² Data source: DMV.

³ Source: DMV.

⁴ 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.

⁵ 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.

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

Regulations

⁷ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁸ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁹ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department of Motor Vehicles has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendments remove requirements for businesses that provide mature driver motor vehicle crash prevention courses for drivers 55 years of age and older. The removed provisions require instructors (i) to issue to each participant a student course evaluation form at the time of successful course completion and (ii) to explain that the course evaluation form may be used for both positive and negative comments and should be returned to the Department of Motor Vehicles at the address provided on the form.

24VAC20-40-40. Administrative requirements.

A. Fees, if any, charged for a course shall be a reasonable amount to be approved by the commissioner.

B. Course sponsors shall provide instructors who have received at least ~~twelve~~ 12 hours of training and who are competent to deliver the course; and furnish each instructor with all necessary materials for delivery of the course.

C. Course sponsors shall ensure that a record system is established and maintained of all course participants who are issued a certificate of completion; each record shall be maintained for a minimum of three years following course completion.

D. Course sponsors shall provide DMV with a list, in the format and frequency to be prescribed by the commissioner, of all course participants who are issued a certificate.

E. Course sponsors shall designate an individual as representative of the course sponsor, including address and telephone number, who is responsible for liaison with DMV, in order to provide efficient administration.

F. Course sponsors shall authorize DMV to audit course records and to monitor and evaluate any and all aspects of the course, including classroom facilities.

G. Course sponsors shall arrange for certificates of completion to be mailed promptly from a central location to course participants. Certificates shall be on a form ~~which~~ that has been approved by the commissioner.

H. Instructors shall issue to each participant at the time of successful course completion: ~~1. A printed statement, which has been approved by the commissioner, explaining that the certificate of completion will be mailed from a central office, and giving the name, address, and phone number of the person to contact if it is not received, the anticipated date that it should be received, and procedures for using the certificate to obtain an insurance rate discount; 2. A student course evaluation form which will be provided by DMV; 3. Instructions which explain that the course evaluation form may be used for both positive and negative comments and should be returned to DMV at the address provided on the form~~ a printed version of a statement that has been approved by the commissioner explaining that the certificate of completion will be mailed from a central office and giving (i) the name, address, and telephone number of the person to contact if the certificate is not received; (ii) the anticipated date that the certificate should be received; and (iii) procedures for using the certificate to obtain an insurance rate discount.

I. Course sponsors shall provide the commissioner, upon request, with a schedule of class dates, times, and locations.

VA.R. Doc. No. R25-7904; Filed August 7, 2024, 7:51 a.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn. The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Title of Document: [Label Approval of Cross-Over Products.](#)

Public Comment Deadline: September 25, 2024.

Effective Date: September 26, 2024.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, or email latonya.hucks-watkins@virginiaabc.com.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Documents: [Developmental Disability Waiver - Customized Rate Provider Guidelines.](#)

[Mental Health Services Manual, Appendix G.](#)

[Mental Health Services Manual, Chapter IV.](#)

Public Comment Deadline: September 25, 2024.

Effective Date: September 26, 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.

STATE BOARD OF SOCIAL SERVICES

Title of Document: [Child and Family Services Manual, Chapter B, Prevention Services.](#)

Public Comment Deadline: September 25, 2024.

Effective Date: September 26, 2024.

Agency Contact: Karin Clark, Regulatory Coordinator, Department of Social Services, 801 East Main Street, Room 1507, Richmond, VA 23219, telephone (804) 726-7017, or email karin.clark@dss.virginia.gov.

BOARD OF SOCIAL WORK

Title of Document: [Content for Training on Supervision for Clinical Social Work.](#)

Public Comment Deadline: September 25, 2024.

Effective Date: September 26, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Title of Document: [2025 Grant Manual for the Virginia Dam Safety, Flood Prevention and Protection Assistance Fund.](#)

Public Comment Deadline: September 25, 2024.

Effective Date: September 26, 2024.

Agency Contact: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-4378, or email lisa.mcgee@dcr.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Opportunity for Public Comment on the § 1915(c) Home and Community-Based Services Medicaid Waivers

The Department of Behavioral Health and Developmental Services (DBHDS) and the Department of Medical Assistance Services (DMAS) welcome public comment regarding the submission to the U.S. Centers for Medicare and Medicaid Services (CMS) amended applications for the following § 1915(c) Home and Community-Based Services (HCBS) Medicaid Waivers: Building Independence (BI) Waiver, Community Living (CL) Waiver, Family and Individual Support (FIS) Waiver, and Commonwealth Coordinated Care Plus (CCC+) Waiver.

This notice serves to inform interested parties that a 30-day public comment period closes September 5, 2024. The § 1915(c) HCBS Waiver amendment applications can be located at <https://dmas.virginia.gov/for-providers/long-term-care/waivers>.

The state is requesting amendments to:

1. Combine the annual service limits for Assistive Technology and Electronic Home-Based Services into one annual \$10,000 limit to be shared between the two services (BI, CL, FIS);
2. Permit the allowance for individuals offered a Developmental Disabilities Waiver slot to delay enrollment into the waiver for up to one year (BI, CL, FIS);
3. Disregard Social Security Disability Insurance (SSDI) benefits above the maximum Social Security Insurance (SSI) benefit limit as determined by the Social Security Administration for purposes of preeligibility treatment of income (BI, CL, FIS);
4. Amend the rules for when a legally responsible individual (spouse or parent of a minor) is a paid aide or attendant for personal care or personal assistance (CL, FIS, CCC+);
5. Add nursing facilities and Program for the All-Inclusive Care for the Elderly (PACE) providers to screen individuals in the community for waiver enrollment (CCC+);
6. Remove educational requirements for Services Facilitation providers (CL, FIS, CCC+);
7. Update language to match the newest version of the Supports Intensity Scale assessment instrument for service plans (BI, CL, FIS);

8. Update language to denote that the Virginia Individual Developmental Disability Eligibility Survey (VIDES) is used for level of care for both waiver and the alternative institution placement (BI, FIS);

9. Align quality measures across the Developmental Disabilities Waivers (BI, FIS, CL); and

10. Update language regarding who is responsible for conducting the annual level-of-care review (CCC+).

Instructions for public comment submissions: Comments may be submitted via the Virginia Town Hall public comment forum or via postal mail to Department of Medical Assistance Services, ATTN: Andrew Greer, Senior Policy Analyst, Office of Community Living, Suite 1300, 600 East Broad Street, Richmond, VA 23219.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Blackberry Land Company LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Blackberry Land Company LLC for violations of the State Water Control Law and regulations in Carroll County, Virginia. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. The DEQ contact will accept comments by email or postal mail from August 26, 2024, through September 25, 2024.

Contact Information: Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Proposed Enforcement Actions for Burwil Construction Company Inc.; J.A. Street & Associates Inc.; Lakeway Land Development Corporation; Roe Properties LLC; and Wall Development Corporation

The Virginia Department of Environmental Quality (DEQ) is proposing enforcement actions for Burwil Construction Company Inc.; J.A. Street & Associates Inc.; Lakeway Land Development Corporation; Roe Properties LLC; and Wall Development Corporation for violations of the State Water Control Law and regulations in Washington County, Virginia. The proposed orders are available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/>

[enforcement-orders](#). The DEQ contact will accept comments by email or postal mail from August 26, 2024, through September 25, 2024.

Contact Information: Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Proposed Enforcement Action for CCJ LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for CCJ LLC for violations of the State Water Control Law and regulations in King William County, Virginia. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notice/enforcement-orders>. The DEQ contact will accept comments by email or postal mail from August 26, 2024, through September 25, 2024.

Contact Information: Matt Richardson, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 659-2696, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for EMT Asphalt Inc.

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for EMT Asphalt Inc. for violations of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations Erosion and Sediment Control Plan, 1900 Block, Captain Drive, Salem, Virginia. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The DEQ contact will accept comments by email or postal mail from August 26, 2024, through September 25, 2024.

Contact Information: Timothy Fletcher, Enforcement Specialist, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 524-0665, or email timothy.fletcher@deq.virginia.gov.

Proposed Enforcement Action for Helm Building Enterprises LTD - St. John Place Grading

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for St. John Place Grading for violations of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations in Salem, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The DEQ contact will accept comments by email or postal mail from August 26, 2024, through September 25, 2024.

Contact Information: Michael Puckett, Enforcement Specialist, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 577-6719, or email michael.puckett@deq.virginia.gov.

Proposed Enforcement Action for Hour Homes at Forest View Inc.

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Hour Homes at Forest View Inc. for violations of State Water Control Law and regulations and applicable permit at the Kinsley Estates, Stafford, Virginia. A description of the proposed action is available from the DEQ contact or at <https://www.deq.virginia.gov/permits/public-notice/enforcement-orders>. The DEQ contact will accept written comments from August 26, 2024, to September 25, 2024.

Contact Information: Holly Shupe, Regional Enforcement Specialist Senior, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (571) 866-6923, or email holly.shupe@deq.virginia.gov.

Proposed Enforcement Action for Jarrell Properties Inc.

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Jarrell Properties Inc. for violations of State Water Control Law and regulations and applicable permit at the Fountain Park facility, Stafford, Virginia. A description of the proposed action is available from the DEQ contact or at <https://www.deq.virginia.gov/permits/public-notice>. The DEQ contact will accept written comments from August 27, 2024, to September 26, 2024.

Contact Information: Katherine Mann, Enforcement Specialist, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (571) 866-6095, or email katherine.mann@deq.virginia.gov.

Proposed Enforcement Action for McNeel Properties LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for McNeel Properties LLC for violations of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations at Caliber Collision, 1999 Roanoke Street, Christiansburg, Virginia. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or postal mail from August 26, 2024, through September 25, 2024.

Contact Information: Timothy Fletcher, Enforcement Specialist, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 625-0665, or email timothy.fletcher@deq.virginia.gov.

General Notices

Proposed Enforcement Action for Omega Construction

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Omega Construction, Glenmary Drive-Suncap for violations of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations in Salem, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or postal mail from August 26, 2024, through September 25, 2024.

Contact Information: Michael Puckett, Enforcement Specialist, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 25153, telephone (540) 577-6719, or email michael.puckett@deq.virginia.gov.

Proposed Enforcement Action for PAM Inc. - Borrow Site Stabilization

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for PAM Inc. - Borrow Site Stabilization for violations of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations in Danville, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or postal mail from August 26, 2024, through September 25, 2024.

Contact Information: Michael Puckett, Enforcement Specialist, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 577-6719, or email michael.puckett@deq.virginia.gov.

Proposed Enforcement Action for The R.A. Lawson Corp.

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for The R.A. Lawson Corp. for violations of State Water Control Law and regulations and applicable permit at the Landing at Masons Bridge, Woodbridge, Virginia. A description of the proposed action is available from the DEQ contact or at www.deq.virginia.gov/permits-regulations/public-notices. The DEQ contact will accept written comments from August 26, 2024, to September 25, 2024.

Contact Information: Holly Shupe, Regional Enforcement Specialist Senior, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (571) 866-6923, or email holly.shupe@deq.virginia.gov.

Proposed Enforcement Action for Stanley Martin Homes LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Stanley Martin Homes LLC for violations of the State Water Control Law and regulations in Henrico County, Virginia. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. The DEQ contact will accept comments by email or postal mail from August 26, 2024, through September 25, 2024.

Contact Information: Matt Richardson, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 659-2696, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for Wayne Development and Maddox and Sons Construction Inc.

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Wayne Development and Maddox and Sons Construction Inc. for violations of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations in Lynchburg, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or postal mail from August 26, 2024, through September 25, 2024.

Contact Information: Timothy Fletcher, Enforcement Specialist, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 524-0665, or email timothy.fletcher@deq.virginia.gov.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

COMMISSION ON LOCAL GOVERNMENT

MANUFACTURED HOUSING BOARD

Public Comment Opportunity - Planning District Boundary Review

The Board of Housing and Community Development (DHCD), the Commission on Local Government, and the Manufactured Housing Board are accepting public comments for the review of the boundaries of Virginia's 21 planning districts. The Regional Cooperation Act outlines the duties and responsibilities of the Virginia Planning District Commissions (PDCs), and DHCD is required by § 36-139.7 of the Code of Virginia to complete a review of planning district boundaries

following each United States decennial census of population. This review is based on the release of the 2020 Census data.

DHCD welcomes stakeholders to provide specific comments with robust analysis on addressing the need for retaining or modifying the current boundaries. The current map of planning district boundaries can be found at <https://www.dhcd.virginia.gov/sites/default/files/Docx/clg/general-info/localities-and-pdcs.pdf>.

DHCD will hold an in-person public meeting with a virtual option on October 2, 2024, at 10 a.m. at the Virginia Housing Center, 4224 Cox Road, Glen Allen, VA 23060, to provide stakeholders the opportunity to provide verbal feedback.

Comments on the planning district boundary review will be received through October 25, 2024, and should be submitted on the Virginia Regulatory Town Hall at <https://townhall.virginia.gov>. Written comments may also be sent to the contact listed.

Contact Information: Andrew Malloy, Policy Analyst, Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 232198, telephone (804) 863-5094, FAX (804) 371-7090, TDD (804) 371-7089, or email andrew.malloy@dhcd.virginia.gov.

VIRGINIA CODE COMMISSION Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

General Notices
