



VIRGINIA

REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

November 2024 through November 2025

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
42:2	August 20, 2025	September 8, 2025
42:3	September 3, 2025	September 22, 2025
42:4	September 17, 2025	October 6, 2025
42:5	October 1, 2025	October 20, 2025
42:6	October 15, 2025	November 3, 2025
42:7	October 29, 2025	November 17, 2025

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Initial Agency Notice

Title of Regulation: **9VAC5. None specified.**

Statutory Authority: §§ 2.2-4007.02 and 10.1-1308 of the Code of Virginia.

Name of Petitioner: Robert Hodson.

Nature of Petitioner's Request: On September 30, 2024, the Department of Environmental Quality (DEQ) received Robert Hodson's petition to initiate a new regulation governing ocean-class passenger cruise ships. Specifically, this petition requests that DEQ and the Commonwealth develop a regulation for cruise ships in Virginia waters as follows: (i) mandate the use of low-sulfur fuel; (ii) ban the use of exhaust gas cleaning systems (open-loop scrubbers); (iii) require the use of shore power; (iv) restrict the dumping of graywater, blackwater, and other environmentally detrimental waste products; and (v) require incident reporting and independent monitoring to ensure compliance.

A copy of the full petition is available from the agency contact.

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

Public Comment Deadline: November 11, 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.

VA.R. Doc. No. PFR25-10; Filed October 1, 2024, 3:43 p.m.

STATE WATER CONTROL BOARD

Initial Agency Notice

Title of Regulation: **9VAC25. None specified.**

Statutory Authority: §§ 2.2-4007.02 and 2.1-44.33 of the Code of Virginia.

Name of Petitioner: Robert Hodson.

Nature of Petitioner's Request: On September 30, 2024, the Department of Environmental Quality (DEQ) received Robert Hodson's petition to initiate a new regulation governing ocean-class passenger cruise ships. Specifically, this petition requests that DEQ and the Commonwealth develop a regulation for cruise ships in Virginia waters as follows: (i) mandate the use

of low-sulfur fuel; (ii) ban the use of exhaust gas cleaning systems (open-loop scrubbers); (iii) require the use of shore power; (iv) restrict the dumping of graywater, blackwater, and other environmentally detrimental waste products; and (v) require incident reporting and independent monitoring to ensure compliance.

A copy of the full petition is available from the agency contact.

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

Public Comment Deadline: November 11, 2024.

Agency Contact: William K. Norris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 350-2743, or email william.norris@deq.virginia.gov.

VA.R. Doc. No. PFR25-11; Filed October 1, 2024, 3:44 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Initial Agency Notice

Title of Regulation: **18VAC60-30. Regulations Governing the Practice of Dental Assistants.**

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

Name of Petitioner: American Medical Technologists.

Nature of Petitioner's Request: The petitioner requests that the Board of Dentistry amend 18VAC60-30-80 to recognize the Dental Assisting Radiography Exam given by American Medical Technologists as a qualifying pathway for certification to place or expose dental x-ray film.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on October 21, 2024. The petition will also be published on the Virginia Regulatory Town Hall to receive public comment, which opens October 21, 2024, and closes November 20, 2024. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. that meeting is currently scheduled for December 13, 2024. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: November 20, 2024.

Petitions for Rulemaking

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

V.A.R. Doc. No. PFR25-07; Filed September 17, 2024, 1:09 p.m.

BOARD OF COUNSELING

Initial Agency Notice

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

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

Name of Petitioner: Jenna Pagano.

Nature of Petitioner's Request: The petitioner requests that the Board of Counseling amend 18VAC115-20-40 to exempt licensed marriage and family counselors from passing the National Clinical Mental Health Counselor Examination or National Counselor Examination to apply for licensure as a professional counselor and accept passage of the National Marriage and Family Therapy Examination for those applicants.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on October 21, 2024. The petition will also be published on the Virginia Regulatory Town Hall to receive public comment, which opens October 21, 2024, and closes November 20, 2024. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. That meeting is currently scheduled for January 24, 2025. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: November 20, 2024.

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

V.A.R. Doc. No. PFR25-08; Filed September 24, 2024, 3:09 p.m.

Initial Agency Notice

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

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

Name of Petitioner: Jenna Pagano.

Nature of Petitioner's Request: The petitioner requests that the Board of Counseling amend 18VAC115-20-40 and 18VAC115-20-51 to create a pathway for licensed marriage and family therapists to obtain licensure as a professional

counselor similar to the pathway provided for licensed professional counselors to obtain licensure as a marriage and family therapist.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on October 21, 2024. The petition will also be published on the Virginia Regulatory Town Hall to receive public comment, which opens October 21, 2024, and closes November 20, 2024. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. That meeting is currently scheduled for January 24, 2025. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: November 20, 2024.

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

V.A.R. Doc. No. PFR25-09; Filed September 24, 2024, 3:15 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-370, Rules and Regulations for Enforcement of the Virginia Animal Remedies Law**, and determined that this regulation should be retained as is. 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 the requirements in this regulation are needed to administer the provisions of the Animal Remedies Law (§ 3.2-4900 et seq. of the Code of Virginia). The regulation is clearly written and easily understandable. The board recommends that the regulation stay in effect without change. The provisions of this regulation establish general requirements that are consistent with current industry practices and that are not unnecessarily burdensome. The board has determined that this regulation is not unnecessarily complex and that the regulation does not have an economic impact on small businesses. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The board has determined that no change in the animal remedy industry has occurred since the board's previous periodic review of this regulation that would necessitate the amendment or repeal of this regulation.

Contact Information: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, TDD (800) 828-1120, or email david.gianino@vdacs.virginia.gov.



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 **8VAC20-310, Rules Governing Instructions Concerning Drugs and Substance Abuse**, and determined that this regulation should be amended. The board is publishing its report of findings dated September 26, 2024, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare as the regulation establishes and encourages drug prevention programs and counseling for students, families, and school personnel. It is clearly written and easily understandable. The regulation should be amended for clarity and concision, and the board should consider moving the regulation's underlying requirements to 8VAC20-720. There is a continued need for substance abuse education and prevention, as well as counseling, in public schools. No comments were received during the periodic review, and the board is unaware of any complaints concerning the regulation. There does not appear to be any significant overlap between this regulation and state or federal law. The regulation has not been amended since it was promulgated in 1980. There is little to no expected impact on small businesses resulting from this decision.

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 **8VAC20-320, Regulations Governing Physical and Health Education**, and determined that this regulation should be repealed. The board is publishing its report of findings dated September 26, 2024, to support this decision.

This regulation is not necessary for the protection of public health, safety, and welfare; therefore, the regulation will be repealed. There is not a continued need for the regulation. The board received no comments during the periodic review and is not aware of any complaints concerning the regulation. The regulation is not overly complex. This regulation overlaps with the state law because subsection B of § 22.1-253.13:1 of the Code of Virginia requires the board to promulgate health and physical education Standards of Learning. The regulation has not been amended since it was promulgated in 1995, and it still reflects outdated terminology such as "curriculum guides." The board's decision is expected to have no 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 **8VAC20-565,**

Periodic Reviews and Small Business Impact Reviews

Regulations for the Protection of Students as Participants in Human Research, and determined that this regulation should be retained as is. The board is publishing its report of findings dated September 26, 2024, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare. It is clearly written and easily understandable. The regulation will be retained as is. There is a continued need for the regulation. The board did not receive any comments during the periodic review and is not aware of any complaints concerning the regulation. The regulation is not overly complex. The regulation overlaps with Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia. The extent of any further overlap with federal or state laws and regulations is currently unknown. The regulation has not been amended since it was promulgated in 1995. The board's decision is expected to have no 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 **8VAC20-730, Regulations Governing the Collection and Reporting of Truancy-Related Data and Student Attendance Policies**, and determined that this regulation should be repealed. The board is publishing its report of findings dated September 26, 2024, to support this decision.

There is not a continued need for this regulation. The regulation is not necessary for the protection of public health, safety, and welfare. The regulation conflicts and overlaps with § 22.1-258 of the Code of Virginia. The regulation also overlaps with 8VAC20-110. The provisions of 8VAC20-730-30 and the definitions for "excused absence," "instructional school day," "truancy," and "unexcused absence" will be moved to 8VAC20-720. The board is currently unaware of any complaints or comments concerning the regulation. The extent of any overlap with federal law is unknown. The regulation was last amended in 2021. The board's decision is not expected to have any economic impact on small business.

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 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **9VAC25-660, Virginia Water Protection General Permit for Impacts Less Than One-Half Acre; 9VAC25-670, Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities; 9VAC25-680, Virginia Water Protection General Permit for Linear Transportation Projects; and 9VAC25-690, Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities.** The Notices of Intended Regulatory Action to amend 9VAC25-660, 9VAC25-670, 9VAC25-680 and 9VAC25-690, which are published in this issue of the Virginia Register, serve as the agency notices of announcement.

Agency Contact: Dave Davis, Office of Wetland and Stream Protection, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4105, or email vwpublicnotices@deq.virginia.gov.

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and small business impact review: **9VAC25-900, Certification of Nonpoint Source Nutrient Credits.** The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether 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 October 21, 2024, and ends November 11, 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: Derick Winn, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 965-4875, or email derick.winn@deq.virginia.gov.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider amending **8VAC20-671, Regulations Governing the Operation of Private Day Schools for Students with Disabilities and Educational Programs Offered in Group Homes and Residential Facilities in the Commonwealth.** The purpose of the proposed action is to meet the mandate required by Item 130 H Chapter 1 of the 2023 Acts of Assembly, Special Session I to align the requirements for use of restraint and seclusion for private special education day schools with those for public schools. Proposed amendments being considered include (i) adding definitions; (ii) standardizing requirements related to the use of seclusion and application of restraints with those enforced at public schools; and (iii) altering reporting requirements on the use of seclusion and application of restraints.

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

Statutory Authority: §§ 22.1-16 and 22.1-321 of the Code of Virginia.

Public Comment Deadline: November 20, 2024.

Agency Contact: Jim Chapman, Regulatory and Legal Coordinator, Department of Education, James Monroe Building, 25th Floor, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2540, or email jim.chapman@doe.virginia.gov.

VA.R. Doc. No. R24-7025; Filed September 30, 2024, 9:36 a.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending **9VAC20-81, Solid Waste Management Regulations.** The purpose of the proposed action is to amend the current open burning allowances to provide conditions allowing the offsite open burning of vegetative waste when it is impractical or unsafe to destroy such waste at the site of generation or at a permitted solid waste landfill and add definitions for "impractical or unsafe" and other terms to accommodate the new regulatory conditions. These amendments are required pursuant to Chapter 235 of the 2024 Acts of Assembly.

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

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Part 258.

Public Comment Deadline: November 20, 2024.

Agency Contact: Rebecca Rathe, Regulatory Analyst, Department of Environmental Quality, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 830-7241, or email rebecca.rathe@deq.virginia.gov.

VA.R. Doc. No. R25-8041; Filed September 17, 2024, 3:14 p.m.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-660, Virginia Water Protection General Permit for Impacts Less Than One-Half Acre.** The purpose of the proposed action is to reissue the Virginia Water Protection General Permit for Impacts Less Than One-Half Acre authorized by the regulation that is expiring on August 1, 2026, and extend it for another 10-year term. The general permit is a streamlined permitting approach for impacts to the surface waters. The proposed action provides efficiency to the permit coverage process for activities having minor impacts to state surface waters, simplifies permit issuance procedures, and makes clarifying amendments for improved understanding of regulatory provisions and permit processes. Amendments being considered will provide clarity in provisions related to coverage expiration, transition, and continuation; correct citations and typographical errors; update forms and reference documents; and clarify administrative procedures. Specifically, the board is considering amendments related to transitioning between the expiring general permit and the next consecutive general permit.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be 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 intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Public Comment Deadline: November 20, 2024.

Agency Contact: Dave Davis, Office of Wetland and Stream Protection, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4105, or email vwpublicnotices@deq.virginia.gov.

VA.R. Doc. No. R25-8056; Filed September 17, 2024, 3:08 p.m.

Notices of Intended Regulatory Action

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-670, Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities**. The purpose of the proposed action is to reissue the Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities authorized by the regulation that is expiring on August 1, 2026, and extend it for another 10-year term. The general permit is a streamlined permitting approach for impacts to the surface waters. The proposed action provides efficiency to the permit coverage process for activities having minor impacts to state surface waters, simplifies permit issuance procedures, and makes clarifying amendments for improved understanding of regulatory provisions and permit processes. Amendments being considered will provide clarity in provisions related to coverage expiration, transition, and continuation; correct citations and typographical errors; update forms and reference documents; and clarify administrative procedures. Specifically, the board is considering amendments related to transitioning between the expiring general permit and the next consecutive general permit. The general permit covers the construction and maintenance of utility lines.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be 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 intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Public Comment Deadline: November 20, 2024.

Agency Contact: Dave Davis, Office of Wetland and Stream Protection, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4105, or email vwppublicnotices@deq.virginia.gov.

VA.R. Doc. No. R25-8057; Filed September 17, 2024, 3:10 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 State Water Control Board intends to consider amending **9VAC25-680, Virginia Water Protection General Permit for Linear Transportation Projects**. The purpose of the proposed action is to reissue the Virginia Water Protection General Permit for Linear Transportation Projects authorized by the regulation that is expiring on August 1, 2026, and extend it for another 10-year term. The general permit is a streamlined permitting approach for impacts to the surface waters. The proposed action provides efficiency to the permit coverage process for activities having minor impacts to state surface waters, simplifies permit issuance procedures, and makes clarifying amendments for improved understanding of regulatory provisions and permit processes. Amendments being considered will provide clarity in provisions related to coverage expiration, transition, and continuation; correct citations and typographical errors; update forms and reference documents; and clarify administrative procedures. Specifically, the board is considering amendments related to transitioning between the expiring general permit and the next consecutive general permit. The general permit covers the construction and maintenance of Virginia Department of Transportation or other linear transportation projects.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be 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 intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Public Comment Deadline: November 20, 2024.

Agency Contact: Dave Davis, Office of Wetland and Stream Protection, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4105, or email vwppublicnotices@deq.virginia.gov.

VA.R. Doc. No. R25-8058; Filed September 17, 2024, 3:11 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 State Water Control Board intends to consider amending **9VAC25-690, Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities**. The purpose of the proposed action is to reissue the Virginia Water Protection General

Notices of Intended Regulatory Action

Permit for Impacts from Development and Certain Mining Activities authorized by the regulation that is expiring on August 1, 2026, and extend it for another 10-year term. The general permit is a streamlined permitting approach for impacts to the surface waters. The proposed action provides efficiency to the permit coverage process for activities having minor impacts to state surface waters, simplifies permit issuance procedures, and makes clarifying amendments for improved understanding of regulatory provisions and permit processes. Amendments being considered will provide clarity in provisions related to coverage expiration, transition, and continuation; correct citations and typographical errors; update forms and reference documents; and clarify administrative procedures. Specifically, the board is considering amendments related to transitioning between the expiring general permit and the next consecutive general permit. The general permit covers the construction and maintenance of development activities and to activities directly associated with aggregate mining hard rock and mineral mining and surface coal, natural gas, and coalbed methane gas mining as authorized by the Virginia Department of Energy.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be 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 intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Public Comment Deadline: November 20, 2024.

Agency Contact: Dave Davis, Office of Wetland and Stream Protection, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4105, or email vwppublicnotices@deq.virginia.gov.

VA.R. Doc. No. R25-8059; Filed September 17, 2024, 3:11 p.m.



TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Labor and Industry intends to consider promulgating **16VAC15-70, Local**

Government Union Requirements and Employee Protections. The purpose of the proposed action is to permit counties, cities, and towns to adopt local ordinances authorizing them to (i) recognize any labor union or other employee association as a bargaining agent of any public officers or employees, except for Constitutional officers and employees, and including public school employees, and (ii) collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to the association or the employment of its members. This action is required pursuant to Chapter 1209 of the 2022 Acts of Assembly.

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

Statutory Authority: §§ 40.1-2.1 and 40.1-57.2 of the Code of Virginia.

Public Comment Deadline: November 20, 2024.

Agency Contact: Cristin Bernhardt, Regulatory Coordinator, Hearing Legal Services Office, Department of Labor and Industry, 6606 West Broad Street, Suite 500, Richmond, VA 23230, telephone (804) 786-2392, or email cristin.bernhardt@doli.virginia.gov.

VA.R. Doc. No. R25-8060; Filed October 1, 2024, 11:21 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF CONSERVATION AND RECREATION

Fast-Track Regulation

Title of Regulation: 4VAC5-20. Standards for Classification of Real Estate As Devoted to Open Space Use under the Virginia Land Use Assessment Law (amending 4VAC5-20-10, 4VAC5-20-30, 4VAC5-20-40).

Statutory Authority: §§ 10.1-104 and 58.1-3230 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: November 20, 2024.

Effective Date: December 5, 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, FAX (804) 786-6141, or email lisa.mcgee@dcr.virginia.gov.

Basis: Section 10.1-104 of the Code of Virginia authorizes the Department of Conservation and Recreation to prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred by law. The director of the department is required to prescribe uniform standards for "real estate devoted to open-space use" pursuant to the authority set out in § 58.3240 of the Code of Virginia.

Purpose: The proposed amendments correct references to the Code of Virginia and sections of the regulation, bringing the standard for minimum acreage into compliance with the changes made to statute. This regulatory action does not impact public health or safety; however, general public welfare is protected when regulations are promulgated in compliance with statutory requirements. Additionally, commissioners of the revenue, local assessing officers, and individual landowners will all benefit from standards that are clear and consistent.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial and, therefore, appropriate for the fast-track rulemaking process because it brings the chapter into conformance with current statutory language, amends incorrect references, and corrects outdated information.

Substance: Pursuant to a periodic review, the amendments change the minimum two-acre requirement to reflect current statutory language allowing for a minimum of one-quarter of an acre, update incorrect references, and correct outdated information.

Issues: The primary advantage to the public and the Commonwealth is that the regulation will be consistent with the current statutory language and provide accurate information and references. There are no disadvantages to the public or 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 a 2023 periodic review of this regulation,² the Department of Conservation and Recreation (DCR) proposes to update (i) references to the Code of Virginia and sections of the regulation and (ii) the minimum acreage required to be considered as open space.

Background. This regulation establishes standards to classify real estate as devoted to open space use under the Virginia Land Use Assessment Law. Following a periodic review of this regulation, DCR identified incorrect references to the Code of Virginia and sections of the regulation. DCR also identified that the standard for minimum acreage was outdated as it did not reflect amendments made by Chapter 475 of the 2002 Acts of the General Assembly; accordingly, the minimum acreage for open space would be reduced from two acres to one-quarter of an acre.³ The proposed action would correct the incorrect references and the outdated minimum acreage standard to comport with the law.

Estimated Benefits and Costs. The proposed changes to this regulation would correct erroneous and outdated text and as such is expected to eliminate potential confusion that may be created by the current text. No other economic effect is expected.

Businesses and Other Entities Affected. This regulation applies to property owners that wish to designate land as open use in localities that adopted an ordinance for the Land-Use Assessment Program with the Open-Space Category. DCR does not have data on the number of applications as this is addressed by each locality individually. No landowner appears

to be disproportionately affected. 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 As noted, the proposal would correct text and as such does not indicate an adverse impact on any entity.

Small Businesses⁶ Affected.⁷ The proposed repeal of the regulation would not adversely affect small businesses.

Localities⁸ Affected.⁹ This regulation does not apply to all localities. It only applies to localities that adopted an ordinance for a Land-Use Assessment Program with the Open-Space Category. Currently, there are 46 counties and 10 cities that adopted such an ordinance: the cities of Alexandria, Buena Vista, Chesapeake, Fredericksburg, Harrisonburg, Lynchburg, Petersburg, Portsmouth, Radford, Virginia Beach; and the counties of Albemarle, Alleghany, Amelia, Amherst, Augusta, Botetourt, Campbell, Caroline, Chesterfield, Clarke, Cumberland, Essex, Fauquier, Fluvanna, Franklin, Frederick, Giles, Greene, Hanover, Henrico, King George, King William, Loudoun, Louisa, Madison, Middlesex, New Kent, Northumberland, Nottoway, Page, Pittsylvania, Powhatan, Prince George, Prince William, Richmond, Roanoke, Rockbridge, Rockingham, Shenandoah, Smyth, Southampton, Spotsylvania, Tazewell, Warren, Washington, and Westmoreland. No adverse impact on these participating localities is indicated.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property nor on real estate development costs is expected.

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://townhall.virginia.gov/L/ViewPReview.cfm?PRid=2366>.

³ <https://lis.virginia.gov/cgi-bin/legp604.exe?021+ful+CHAP0475&021+ful+CHAP0475>.

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 Response to Economic Impact Analysis: The Virginia Department of Conservation and Recreation generally concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

Pursuant to a periodic review, the amendments bring the regulation into conformance with current statutory language, update incorrect references, and correct outdated information.

4VAC5-20-10. General standards.

To qualify as an open-space use, real estate must meet the requirements of both this section and the specific standards contained in ~~4VAC5-30-20 of this chapter~~ 4VAC5-20-20. The general standards are as follows:

A. Consistency with land use plan.

1. The open-space use of the property must be consistent with the land use plan of the county, city, or town ~~which~~ that has been made and adopted officially in accordance with ~~Article 4, Chapter 41, 22 (§ 15.2-2200 et seq.) of Title 15.1~~ 15.2 of the Code of Virginia.
2. A land use consistent with the land use plan means a use that is consistent with areas or land use zones depicted on a map that is part of the land use plan, or that directly supports or is generally consistent with stated land uses, natural resources conservation, or historic preservation objectives, goals, or standards of the land use plan.
3. A property that is subject to a recorded perpetual conservation, historic, or open-space easement held by any public body, or is part of an agricultural, a forestal, or an agricultural and forestal district approved by local government, shall be considered to be consistent with the land use plan.

Regulations

B. Minimum acreage.

1. Except as provided in subdivision ~~B~~ 2 of this ~~section~~ subsection, real estate devoted to open-space use shall consist of a minimum of five acres.

2. If the governing body of any county, city, or town has so prescribed by ordinance, real estate devoted to open space shall consist of a minimum of ~~two acres~~ one quarter of an acre when the real estate is:

a. Adjacent to a scenic river, a scenic highway, a Virginia byway, or public property listed in the approved State Comprehensive Outdoor Recreation Plan, also known as the Virginia Outdoors Plan (the Virginia Outdoors Plan can be obtained from the Department of Conservation and Recreation at ~~203 Governor Street, Suite 302~~ 600 East Main Street, 24th Floor, Richmond, VA 23219); or

b. Located in a county, city, or town having a density of population greater than 5,000 per square mile.

C. Other requirements. Real estate devoted to open-space use shall be:

1. Within an agricultural, a forestal, or an agricultural and forestal district entered into pursuant to Chapter ~~36~~ 43 (§ ~~15.2-4300~~ 15.2-4300 et seq.) of Title ~~15.1~~ 15.2 of the Code of Virginia;

2. Subject to a recorded perpetual easement that is held by a public body and that promotes the open-space use classification as defined in § 58.1-3230 of the Code of Virginia; or

3. Subject to a recorded commitment entered into by the landowner with the governing body in accordance with ~~4VAC5-30-30 of this chapter~~ 4VAC5-20-30.

D. Opinions. In determining whether a property meets the general and specific standards for open-space use, the local assessing officer may request an opinion from the Director of the Department of Conservation and Recreation under the provisions of ~~4VAC5-30-40 of this chapter~~ 4VAC5-20-40.

4VAC5-20-30. Standards for written commitments by landowners to preserve open-space land use.

The written commitment entered into by landowners for the local governing body to preserve open-space land use, pursuant to subdivision 3 of § 58.1-3233 of the Code of Virginia, shall conform substantially to the following form of agreement:

OPEN-SPACE USE AGREEMENT

This Agreement, made this.... day of.... ~~19~~ 20... between....., hereafter called the Owner, and the (County, City, or Town) of....., a political subdivision of the Commonwealth of Virginia, hereinafter called the (County, City, or Town), recites and provides as follows:

RECITALS

1. The Owner is the owner of certain real estate, described below, hereinafter called the Property; and

2. The (County, City, or Town) is the local governing body having real estate tax jurisdiction over the Property; and

3. The (County, City, or Town) has determined:

A. That it is in the public interest that the Property should be provided or preserved for (Insert one or more of the following uses: park or recreational purposes; conservation of land; conservation of (Insert description of other natural resource); an historic area; a scenic area; assisting in the shaping of the character, direction and timing of community development; or other use ~~which~~ that serves the public interest by the preservation of open-space land as provided in the land use plan-); and

B. That the Property meets the applicable criteria for real estate devoted to open-space use as prescribed in Article 4 (§ ~~58.1-3229~~ 58.1-3230 et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia; and the standards for classifying such real estate prescribed by the Director of the Virginia Department of Conservation and Recreation; and

C. That the provisions of this agreement meet the requirements and standards prescribed under § 58.1-3233 of the Code of Virginia for recorded commitments by landowners not to change an open-space use to a nonqualifying use; and

4. The Owner is willing to make a written recorded commitment to preserve and protect the open-space uses of the Property during the term of this agreement in order for the Property to be taxed on the basis of a use assessment and the Owner has submitted an application for such taxation to the assessing officer of the (County, City, or Town) pursuant to § 58.1-3234 of the Code of Virginia and (citation of local ordinance); and

5. The (County, City, or Town) is willing to extend the tax for the Property on the basis of a use assessment commencing with the next succeeding tax year and continuing for the term of this agreement, in consideration of the Owner's commitment to preserve and protect the open-space uses of the property, and on the condition that the Owner's application is satisfactory and that all other requirements of Article 4, Chapter 32, Title 58.1 of the Code of Virginia and (citation of local ordinance) are complied with.

NOW THEREFORE, in consideration of the recitals and the mutual benefits, covenants, and terms herein contained, the parties hereby covenant and agree as follows:

1. This agreement shall apply to all of the following described real estate: (Insert property description)

2. The Owner agrees that during the term of this agreement:

A. There shall be no change in the use ~~or uses~~ of the Property that exist as of the date of this agreement to any use that would not qualify as an open-space use.

B. There shall be no display of billboards, signs, or other advertisements on the property, except to (i) state solely the name of the Owner and the address of the Property; (ii) advertise the sale or lease of the Property; (iii) advertise the sale of goods or services produced pursuant to the permitted use of the Property; or (iv) provide warnings. No sign shall exceed four feet by four feet.

C. There shall be no construction, placement, or maintenance of any structure on the Property unless such structure is either:

- (1) ~~on~~ On the Property as of the date of this agreement; or
- (2) ~~related~~ Related to and compatible with the open-space uses of the Property which this agreement is intended to protect or provide for.

D. There shall be no accumulations of trash, garbage, ashes, waste, junk, abandoned property, or other unsightly or offensive material on the Property.

E. There shall be no filling, excavating, mining, drilling, removal of topsoil, sand, gravel, rock, minerals, or other materials ~~which that~~ alters the topography of the Property, except as required in the construction of permissible buildings, structures, and features under this agreement.

F. There shall be no construction or placement of fences, screens, hedges, walls, or other similar barriers ~~which that~~ materially obstruct the public's view of scenic areas of the Property.

G. There shall be no removal or destruction of trees, shrubs, plants, and other vegetation, except that the Owner may:

- (1) ~~engage~~ Engage in agricultural, horticultural, or silvicultural activities, provided that there shall be no cutting of trees, other than selective cutting and salvage of dead or dying trees, within 100 feet of a scenic river, a scenic highway, a Virginia Byway, or public property listed in the approved State Comprehensive Outdoor Recreation Plan (Virginia Outdoors Plan); and
- (2) ~~remove~~ Remove vegetation ~~which that~~ constitutes a safety, a health, or an ecological hazard.*

H. There shall be no alteration or manipulation of natural water courses, shores, marshes, swamps, wetlands, or other water bodies, nor any activities or uses ~~which that~~ adversely affect water quality, level, or flow.*

I. On areas of the Property that are being provided or preserved for conservation of land, floodways, or other natural resources; or that are to be left in a relatively natural or underdeveloped state, there shall be no operation of dune buggies, all-terrain vehicles, motorcycles, motorbikes, snowmobiles, or other motor

vehicles, except to the extent necessary to inspect, protect, or preserve the area.

J. There shall be no industrial or commercial activities conducted on the Property, except for the continuation of agricultural, horticultural, or silvicultural activities; or activities that are conducted in a residence or an associated outbuilding such as a garage, smokehouse, small shop, or similar structure ~~which that~~ is permitted on the property.

K. There shall be no separation or split-off of lots, pieces, or parcels from the Property. The Property may be sold or transferred during the term of this agreement only as the same entire parcel that is the subject of this agreement; provided, however, that the Owner may grant to a public body ~~or bodies~~ open-space, conservation, or historic preservation easements ~~which that~~ apply to all or part of the Property.

3. This agreement shall be effective upon acceptance by the (County, City, or Town); provided, however, that the real estate tax for the Property shall not be extended on the basis of its use value until the next succeeding tax year following timely application by the Owner for use assessment and taxation in accordance with (citation of applicable local ordinance). Thereafter, this agreement shall remain in effect for a term of (Insert a period of not less than 4 four nor more than 10) consecutive tax years.

4. Nothing contained herein shall be construed as giving to the public a right to enter upon or to use the Property or any portion thereof, except as the Owner may otherwise allow, consistent with the provisions of this agreement.

5. The (County, City, or Town) shall have the right at all reasonable times to enter the Property to determine whether the Owner is complying with the provisions of this agreement.

6. Nothing in this agreement shall be construed to create in the public or any member thereof a right to maintain a suit for any damages against the Owner for any violation of this agreement.

7. Nothing in this agreement shall be construed to permit the Owner to conduct any activity or to build or maintain any improvement ~~which that~~ is otherwise prohibited by law.

8. If any provision of this agreement is determined to be invalid by a court of competent jurisdiction, the remainder of the agreement shall not be affected thereby.

9. The provisions of this agreement shall run with the land and be binding upon the parties, ~~their~~ and any successors, assigns, personal representatives, and heirs of the parties.

10. Words of one gender used herein shall include the other gender, and words in the singular shall include words in the plural, whenever the sense requires.

Regulations

11. This agreement may be terminated in the manner provided in ~~§ 15.1-1513~~ § 15.2-4314 of the Code of Virginia for withdrawal of land from an agricultural, a forestal, or an agricultural and forestal district.

12. Upon termination of this agreement, the Property shall thereafter be assessed and taxed at its fair market value, regardless of its actual use, unless the (County, City, or Town) determines otherwise in accordance with applicable law.

13. Upon execution of this agreement, it shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of....., Virginia, at the Owner's expense.

14. NOTICE: WHEN THE OPEN-SPACE USE OR USES BY WHICH THE PROPERTY QUALIFIED FOR ASSESSMENT AND TAXATION ON THE BASIS OF USE CHANGES TO A NONQUALIFYING USE OR USES, OR WHEN THE ZONING FOR THE PROPERTY CHANGES TO A MORE INTENSIVE USE AT THE REQUEST OF THE OWNER, THE PROPERTY, OR SUCH PORTION OF THE PROPERTY ~~WHICH THAT~~ NO LONGER QUALIFIES, SHALL BE SUBJECT TO ROLL-BACK TAXES IN ACCORDANCE WITH § 58.1-3237 OF THE CODE OF VIRGINIA. THE OWNER SHALL BE SUBJECT TO ALL OF THE OBLIGATIONS AND LIABILITIES OF SAID CODE SECTION.

..... (SEAL)

Owner

(Name of City, County, or Town)

by.....

(Acknowledgments)

*Paragraphs H and I must be included in agreements for properties ~~which that~~ are to be provided or preserved for natural areas left in undeveloped states, including floodways. These paragraphs are unnecessary for agreements for other types of land uses, such as for a park or a farm use.

4VAC5-20-40. Opinions.

In cases of uncertainty, the local assessing officer may request an opinion from the Director of the Department of Conservation and Recreation as to whether a particular property meets the criteria for open-space classification. The procedure for obtaining such an opinion is as follows:

~~A. 1.~~ 1. The local assessing officer shall address a letter to the Director, Department of Conservation and Recreation, ~~203 Governor St., Suite 302~~ 600 East Main Street, 24th Floor, Richmond, VA 23219, describing the particular use and situation and requesting an opinion as to whether it qualifies as an open space for the purpose of use value taxation. Such letter should be accompanied by exhibits, such as land use

maps, subdivision plats, open-space deeds or easements, applicable agricultural, forestal, historic district or other ordinances, if any, topographic maps, and photographs; sufficient to explain the situation adequately. The director may request additional information if needed.

~~B. 2.~~ 2. The director may hold a hearing at which the applicant and others may present additional information.

~~C. 3.~~ 3. The director will issue an opinion as quickly as possible after all necessary information has been received and any hearing completed. An appeal from any opinion ~~which that~~ does not comport with the standards set forth herein may be taken as provided by § 58.1-3240 of the Code of Virginia.

VA.R. Doc. No. R24-7678; Filed September 25, 2024, 1:08 p.m.

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-20, 4VAC20-720-40, 4VAC20-720-60, 4VAC20-720-85).

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

Effective Date: October 1, 2024.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments establish (i) the 2024-2025 areas of public oyster harvest, (ii) public oyster harvest season dates and limits for areas and per gear type, and (iii) oyster resource conservation measures.

4VAC20-720-20. Definitions.

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

"Aid to navigation" means any public or private day beacon, lighted channel marker, channel buoy, lighted channel buoy, or lighthouse that may be at, or adjacent to, any latitude and longitude used in area descriptions.

"Beasley Bay Area" means that portion of Pocomoke and Tangier Sound Rotation Area 2 in the Pocomoke Sound east of a line that begins at a point located off the north end of Russell Island at Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence northerly to an end at Long Point at Latitude 37° 53.8568300' N., Longitude 75° 45.3632100' W.

"California Rock Area" means that portion of Pocomoke and Tangier Sound Rotation Area 2 in the Tangier Sound south of a line that begins at a point located approximately 1.6 miles east of East Point Marsh at Latitude 37° 50.4093779' N., Longitude 75° 56.5165564' W.; thence due east to an end at a point at Latitude 37° 50.4093779' N., Longitude 75° 53.6926361' W.

"Clean culled oyster" means any oyster taken from natural public beds, rocks, or shoals that is three inches or greater in shell length.

"Coan River Area" means the Public Grounds within the Coan River consisting of Public Grounds 77 and 78 of Northumberland County described as:

Public Ground 77 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 2,300 feet northeast of Honest Point and 1,300 feet southwest of Travis Point, said point being Corner 1, located at Latitude 37° 59.5257207' N., Longitude 76° 27.8810639' W.; thence southwesterly to Corner 2, Latitude 37° 59.3710259' N., Longitude 76° 27.9962148' W.; thence southwesterly to Corner 3, Latitude 37° 59.2953830' N., Longitude 76° 28.0468953' W.; thence northwesterly to Corner 4, Latitude 37° 59.3350863' N., Longitude 76° 28.0968837' W.; thence northeasterly to Corner 5, Latitude 37° 59.3965161' N., Longitude 76° 28.0287342' W.; thence northwesterly to Corner 6, Latitude 37° 59.4758507' N., Longitude 76° 28.1112280' W.; thence north-northwesterly to Corner 7, Latitude 37° 59.5079401' N., Longitude 76° 28.1230058' W.; thence northeasterly to Corner 8, Latitude 37° 59.5579153' N., Longitude 76° 27.9889429' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

Public Ground 78 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 3,420 feet southeast of Travis Point and 3,260 feet northwest of Great Point, said point being Corner 1, located at Latitude 37° 59.4822275' N., Longitude 76° 27.1878637' W.; thence southeasterly to Corner 2, Latitude 37° 59.3824046' N., Longitude 76° 27.1088650' W.; thence southwesterly to Corner 3, Latitude 37° 59.2283287' N., Longitude 76° 27.8632901' W.; thence northeasterly to Corner 4, Latitude 37° 59.4368502' N., Longitude 76° 27.6868001' W.; thence continuing northeasterly to Corner 5, Latitude 37° 59.5949216' N., Longitude 76° 27.5399436' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Corrotoman Hand Tong Area" means all public grounds in that area of the Corrotoman River and its tributaries north of a line beginning at Bar Point at Latitude 37° 41.65256000' N., Longitude 76° 28.66195000' W.; thence easterly to Black Stump Point at Latitude 37° 41.7360900' N., Longitude 76° 28.1212200' W.

"Deep Rock Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay near Gwynn Island, beginning at Cherry Point at the western-most point of the eastern headland of Kibble Pond located at Latitude 37° 30.9802148' N., Longitude 76° 17.6764393' W.; thence northeasterly to the Piankatank River, Flashing Green Channel Light "3", Latitude 37° 32.3671325' N., Longitude 76° 16.7038334' W.; thence east-southeasterly to the Rappahannock River Entrance Lighted Buoy G"1R", Latitude 37° 32.2712833' N., Longitude 76° 11.4813666' W.; thence southwesterly to the southern-most point of Sandy Point, the northern headland of "The Hole in the Wall", Latitude 37° 28.1475258' N., Longitude 76° 15.8185670' W.; thence northwesterly along the Chesapeake Bay mean low water line of the barrier islands of Milford Haven, connecting headland to headland at their eastern-most points, and of Gwynn Island to the western-most point of the eastern headland of Kibble Pond on Cherry Point, said point being the point of beginning.

"Deep Water Shoal State Replenishment Seed Area" or "DWS" means that area in the James River near Mulberry Island, beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1, located at Latitude 37° 08.9433287' N., Longitude 76° 38.3213007' W.; thence southeasterly to Corner 2, Latitude 37° 09.5734380' N., Longitude 76° 37.8300582' W.; thence southwesterly to Corner 3, Latitude 37° 08.9265524' N., Longitude 76° 37.0574269' W.; thence westerly to Corner 4, Latitude 37° 08.4466039' N., Longitude 76° 37.4523346' W.; thence northwesterly to Corner 5, Latitude 37° 08.4491489' N., Longitude 76° 38.0215553' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Great Wicomico River Hand Tong Area" means that area of the Great Wicomico River known as Haynie Point, Sandy Point, and Shell Bar.

Haynie Point consists of the area bounded by a line beginning at a point located at Latitude 37° 49.7907323' N., Longitude 76° 18.6294277' W.; thence northeasterly to a point located at Latitude 37° 49.8578592' N., Longitude 76° 18.5570328' W.; thence southeasterly to a point located at Latitude 37° 49.7892242' N., Longitude 76° 18.5140118' W.; thence southwesterly to a point located at Latitude 37° 49.7380000' N., Longitude 76° 18.5672041' W.; thence northwesterly to a point located at Latitude 37° 49.7907323' N., Longitude 76° 18.6294277' W., being the point of beginning, containing 4.64 acres.

Sandy Point consists of the area bounded by a line beginning at a point located at Latitude 37° 49.2576829' N., Longitude 76° 18.7547649' W.; thence northeasterly to a point located at Latitude 37° 49.2832242' N., Longitude 76° 18.6559957' W.; thence northeasterly to a point located at Latitude 37° 49.3541620' N., Longitude 76° 18.4765658' W.; thence southerly to a point located at Latitude 37° 49.2917724' N., Longitude 76° 18.4583880' W.; thence southwesterly to a

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point located at Latitude 37° 49.2335757' N., Longitude 76° 18.6003145' W.; thence southwesterly to a point located at Latitude 37° 49.2166701' N., Longitude 76° 18.7332435' W.; thence northwesterly to a point located at Latitude 37° 49.2576829' N., Longitude 76° 18.7547649' W., being the point of beginning, containing 11.71 acres.

Shell Bar consists of the area bounded by a line beginning at a point located at Latitude 37° 49.4334037' N., Longitude 76° 18.9831193' W.; thence northeasterly to a point located at Latitude 37° 49.5165040' N., Longitude 76° 18.9165237' W.; thence southeasterly to a point located at Latitude 37° 49.3666408' N., Longitude 76° 18.7164965' W.; thence southwesterly to a point located at Latitude 37° 49.3169571' N., Longitude 76° 18.8165540' W.; thence northwesterly to a point located at Latitude 37° 49.3499945' N., Longitude 76° 18.9166098' W.; thence northwesterly to a point located at Latitude 37° 49.4334037' N., Longitude 76° 18.9831193' W, being the point of beginning, containing 17.67 acres.

"Great Wicomico River Rotation Area 1" means all public grounds and unassigned grounds; in that area of the Great Wicomico River, Ingram Bay, and the Chesapeake Bay; beginning at a point on Sandy Point, Latitude 37° 49.3269652' N., Longitude 76° 18.3821766' W.; thence easterly to the southern-most point of Cockrell Point, Latitude 37° 49.2664838' N., Longitude 76° 17.3454434' W.; thence easterly following the mean low water line of Cockrell Point to a point on the boundary of Public Ground 115 at Cash Point, Latitude 37° 49.2695619' N., Longitude 76° 17.2804046' W.; thence southeasterly to the gazebo on the pier head at Fleeton Point, Latitude 37° 48.7855824' N., Longitude 76° 16.9609311' W.; thence southeasterly to the Great Wicomico River Light; Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W.; thence westerly to a point on the offshore end of the southern jetty at the entrance to Towles Creek, Latitude 37° 48.3743771' N., Longitude 76° 17.9600320' W.; thence northerly crossing the entrance to Towles Creek at the offshore ends of the jetties and continuing along the mean low water line to Bussel Point, Latitude 37° 48.6879208' N., Longitude 76° 18.4670860' W.; thence northwesterly to the northern headland of Cranes Creek, Latitude 37° 48.8329168' N., Longitude 76° 18.7308073' W.; thence following the mean low water line northerly to a point on Sandy Point, Latitude 37° 49.3269652' N., Longitude 76° 18.3821766' W., said point being the point of beginning.

"Great Wicomico River Rotation Area 2" means all public grounds and unassigned grounds; in that area of the Great Wicomico River, Ingram Bay, and the Chesapeake Bay; beginning at a point on Great Wicomico River Light, Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W.; thence due south to a point due east of the southern-most point of Dameron Marsh, Latitude 37° 46.6610003' N., Longitude 76° 16.0570007' W.; thence due west to the southern-most point of Dameron Marsh, Latitude 37° 46.6609070' N., Longitude 76° 17.2670707' W.; thence along the mean low water line of

Dameron Marsh, north and west to Garden Point, Latitude 37° 47.2519872' N., Longitude 76° 18.4028142' W.; thence northwesterly to Windmill Point, Latitude 37° 47.5194547' N., Longitude 76° 18.7132194' W.; thence northerly along the mean low water line to the western headland of Harveys Creek, Latitude 37° 47.7923573' N., Longitude 76° 18.6881450' W.; thence east-southeasterly to the eastern headland of Harveys Creek, Latitude 37° 47.7826936' N., Longitude 76° 18.5469879' W.; thence northerly along the mean low water line to a point on the offshore end of the southern jetty at the entrance to Towles Creek, Latitude 37° 48.3743771' N., Longitude 76° 17.9600320' W.; thence easterly to Great Wicomico River Light, Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W., said point being the point of beginning.

"Hand scrape" means any device or instrument with a catching bar having an inside measurement of no more than 22 inches, which is used or usable for the purpose of extracting or removing shellfish from a water bottom or the bed of a body of water.

"Hand tong" or "ordinary tong" means any pincers, nippers, tongs, or similar device used in catching oysters, which consists of two shafts or handles attached to opposable and complementary pincers, baskets, or containers operated entirely by hand, from the surface of the water and has no external or internal power source.

"Hurleys Rock Area" means that portion of Pocomoke and Tangier Sound Rotation Area I in the Tangier Sound north of a line beginning at a point on the Maryland-Virginia state line, located at Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W., thence due west to an end at a point at Latitude 37° 54.6136000' N., Longitude 76° 00.0687800' W.

"Indian Creek Area" means all public grounds and unassigned grounds in that area of Indian Creek and its tributaries in Northumberland and Lancaster Counties between a line beginning at a point on the shore on the south side of the creek located at Latitude 37° 041.4021100' N., Longitude 76° 20.7493600' W.; thence in a straight line to a point on shore on the north side of the creek located at Latitude 37° 041.4999200' N., Longitude 76° 20.5974400' W.; thence southeasterly to a line beginning on the south shore of the mouth of the creek located at Latitude 37° 041.2975900' N., Longitude 76° 19.5082500' W.; thence in a straight line to a point on shore on the north side of the mouth of the creek located at Latitude 37° 041.0934000' N., Longitude 76° 18.7589400' W.

"James River Area 1" means all public grounds and unassigned grounds; in that area of the James River; beginning at the Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence southeasterly to the Flashing Green Channel Light #3, located at Latitude 37° 01.7124500' N., Longitude 76° 31.8210667' W.; thence southeasterly to the Flashing Green Channel Light #1, located at Latitude 37° 00.7666667' N., Longitude 76°

29.9083333' W.; thence southeasterly to the northeast corner of the western draw span pier of the James River Bridge (U.S. Route 17), Latitude 37° 00.1524824' N., Longitude 76° 28.1581984' W.; thence southwesterly along the upstream side of the James River Bridge to the mean low water line; thence northwesterly along the mean low water line, crossing Kings Creek at the headlands and continuing along the mean low water line to a point on the shore at Rainbow Farm Point in line with VMRC Markers "STH" and "SMT," located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH," Latitude 37° 00.9815328' N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT," at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W., said point being the point of beginning.

"James River Area 2" means all public grounds and unassigned grounds; in that area of the James River, beginning at the Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence northeasterly to a VMRC Marker "NMT," Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, said point being in line with VMRC Markers "NMT" and "NTH" and located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.; thence southeasterly along the mean low water line to the upstream side of the James River Bridge (U.S. Route 17); thence westerly along the James River Bridge to the northeast corner of the western draw span pier, Latitude 37° 00.1524824' N., Longitude 76° 28.1581984' W.; thence northwesterly to the Flashing Green Channel Light #1, located at Latitude 37° 00.7666667' N., Longitude 76° 29.9083333' W.; thence northwesterly to the Flashing Green Channel Light #3, located at Latitude 37° 01.7124500' N., Longitude 76° 31.8210667' W.; thence northwesterly to the Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W., said point being the point of beginning.

"James River Area 3" means those public grounds of Isle of Wight County and Nansemond County (City of Suffolk) located in the James River and Nansemond River west of the Monitor Merrimac Memorial Bridge Tunnel (Route I-664), northeast of the Mills E. Godwin, Jr. Bridge (U.S. Route 17) on the Nansemond River, and south of the James River Bridge (U.S. Route 17).

"James River Seed Area" means all public grounds and unassigned grounds in that area of the James River and its tributaries with a southeastern boundary beginning at a point on the shore on the south side of the river at Rainbow Farm Point in Isle of Wight County located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH," Latitude 37° 00.9815328' N., Longitude 76° 33.5955842' W.; thence to a

VMRC Marker "SMT," at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence northeasterly to a VMRC Marker "NMT," Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, in the City of Newport News, located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.; the northern boundary, being a straight line, beginning at a point on the shore on the east side of the river in the City of Newport News, at Latitude 37° 08.4458787' N., Longitude 76° 37.2855533' W.; thence westerly to the southeast corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4466039' N., Longitude 76° 37.4523346' W.; thence westerly to the southwest corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4490472' N., Longitude 76° 38.0215554' W.; thence westerly to a point on the shore on the west side of the river at the mouth of Lawnes Creek in Isle of Wight County, Latitude 37° 08.4582990' N., Longitude 76° 40.2816023' W.

"Larsons Bay Area" means all public grounds in that area of Larsons Bay in the Rappahannock River, beginning at Cherry Point at Latitude 37° 37.6554400' N., Longitude 76° 24.1203200' W.; thence south east to the southern-most corner of the house on Mosquito Point at Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence following the ordinary mean low water line in a northwesterly direction to Cherry Point, said point being the point of beginning.

"Latitude and longitude" means values that are based upon a geodetic reference system of the North American Datum of 1983 (NAD83). When latitude and longitude are used in any area description, in conjunction with any physical landmark, to include aids to navigation, the latitude and longitude value is the legal point defining the boundary.

"Little Wicomico River" means that area of the Little Wicomico River inside of Public Ground 43 of Northumberland County, located in the Little Wicomico River near Bridge Creek, beginning at a point approximately 150 feet north of Peachtree Point, said point being Corner 1, located at Latitude 37° 53.2910650' N., Longitude 76° 16.7312926' W.; thence southwesterly to Corner 2, Latitude 37° 53.2601877' N., Longitude 76° 16.8662408' W.; thence northwesterly to Corner 3, Latitude 37° 53.2678470' N., Longitude 76° 16.8902408' W.; thence northeasterly to Corner 4, Latitude 37° 53.3113148' N., Longitude 76° 16.8211543' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Middle Ground" means all public grounds in the area of the Corrotoman River between a line beginning at Ball Point at Latitude 37° 40.65133000' N., Longitude 76° 28.4440000' W.; thence easterly to a point at the western side of the mouth of Taylor Creek at Latitude 37° 40.97331000' N., Longitude 76°

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27.59471000' W.; upstream to a line from Bar Point at Latitude 37° 41.65256000' N., Longitude 76° 28.66195000' W.; thence easterly to Black Stump Point at Latitude 37° 41.7360900' N., Longitude 76° 28.1212200' W.

"Milford Haven" means all public grounds and unassigned grounds in that area of Milford Haven and its tributaries bound on the west by a line from a point on the southernmost point of land of the north shore of Milford Haven being near the end of State Route 634, Latitude 37° 29.5971' N., Longitude 76° 18.1822' W.; thence south-southeasterly to a point on the northeast corner of the pier head of the long pier being on the south shore of Milford Haven immediately west of the Sea Farms Inc. facility, Latitude 37° 29.3546' N., Longitude 76° 18.1323' W.; thence following the east side of the pier to the shore and bound on the east by a line from a point on the shore at the western headland of the wash formerly Hills Creek, Latitude 37° 29.0278' N., Longitude 76° 16.3834' W.; thence easterly to a point on the north shore of Sandy Point near Latitude 37° 29.0017' N., Longitude 76° 16.1640' W.; thence following the shore of the east side of Sandy Point to a point on the shoreline at Latitude 37° 28.6233' N., Longitude 76° 15.8605' W.; thence in a line south-southeasterly to a point on the breakwater at Haven Beach, Latitude 37° 26.2006' N., Longitude 76° 15.1257' W.

"Mobjack Bay Area" means that area of Mobjack Bay consisting of Public Ground 2 of Mathews County (Pultz Bar) and Public Ground 25 of Gloucester County (Tow Stake) described as:

Public Ground 2 of Mathews County, known as Pultz Bar, is located in Mobjack Bay, beginning at a point approximately 5,420 feet south of Minter Point, said point being Corner 1, located at Latitude 37° 21.2500000' N., Longitude 76° 21.3700000' W.; thence easterly to Corner 2, Latitude 37° 21.2700000' N., Longitude 76° 20.9600000' W.; thence southerly to Corner 3, Latitude 37° 21.0200000' N., Longitude 76° 20.9400000' W.; thence westerly to Corner 4, Latitude 37° 21.0500000' N., Longitude 76° 21.3300000' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 25 of Gloucester County, known as Tow Stake, is located in Mobjack Bay, near the mouth of the Severn River, beginning at a point approximately 2,880 feet east-northeast of Tow Stake Point, said point being Corner 1, located at Latitude 37° 20.3883888' N., Longitude 76° 23.5883836' W.; thence northeasterly to Corner 2, Latitude 37° 30.5910482' N., Longitude 76° 23.2372184' W.; thence southeasterly to Corner 3, Latitude 37° 20.3786971' N., Longitude 76° 22.7241180' W.; thence southwesterly to Corner 4, Latitude 37° 19.8616759' N., Longitude 76° 23.5914937' W.; thence northwesterly to Corner 5, Latitude 37° 20.0284019' N., Longitude 76° 23.7717423' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Nomini Creek Area" means that area of Nomini Creek inside of Public Grounds 26 and 28 of Westmoreland County.

Public Ground 26 of Westmoreland County is located in Nomini Creek, north of Beales Wharf and east of Barnes Point, beginning at a point approximately 1,400 feet north of Barnes Point, said point being Corner 1, located at Latitude 38° 07.2690219' N., Longitude 76° 42.6784210' W.; thence southeasterly to Corner 2, Latitude 38° 07.0924060' N., Longitude 76° 42.4745767' W.; thence southwesterly to Corner 3, Latitude 38° 06.8394053' N., Longitude 76° 42.6704025' W.; thence northwesterly to Corner 4, Latitude 38° 06.8743004' N., Longitude 76° 42.7552151' W.; thence northeasterly to Corner 5, Latitude 38° 07.0569717' N., Longitude 76° 42.5603535' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 28 of Westmoreland County is located at the mouth of Nomini Creek, beginning at a point approximately 50 feet west of White Oak Point, said point being Corner 1, located at Latitude 38° 07.6429987' N., Longitude 76° 43.0337082' W.; thence south-southeasterly to Corner 2, Latitude 38° 07.2987193' N., Longitude 76° 43.1101420' W.; thence northwesterly to Corner 3, Latitude 38° 07.7029267' N., Longitude 76° 43.3337762' W.; thence west to the mean low water line, Latitude 38° 07.7031535' N., Longitude 76° 43.3378345' W.; thence northerly and westerly along the mean low water line of Nomini Creek to a point southwest of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence northeasterly to a point on the mean low water line at the southern-most point of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence following the mean low water line of the southern and eastern sides of Cedar Island to a point, Latitude 38° 08.0164430' N., Longitude 76° 43.4773169' W.; thence northeasterly to Corner 4, Latitude 38° 08.0712849' N., Longitude 76° 43.4416606' W.; thence northeasterly to a point on the northern headland of Nomini Creek at the mean low water line, said point being Corner 5, Latitude 38° 08.2729626' N., Longitude 76° 43.3105315' W.; thence following the mean low water line of White Point to a point northwest of Snake Island, Corner 6, Latitude 38° 08.4066960' N., Longitude 76° 42.9105565' W.; thence southeast, crossing the mouth of Buckner Creek, to a point on the mean low water line of Snake Island, Corner 7, Latitude 38° 08.3698254' N., Longitude 76° 42.8939656' W.; thence southeasterly following the mean low water line of Snake Island to Corner 8, Latitude 38° 08.2333798' N., Longitude 76° 42.7778877' W.; thence south-southwesterly, crossing the mouth of Buckner Creek, to Corner 9, Latitude 38° 08.2134371' N., Longitude 76° 42.7886409' W.; thence southeasterly to a point on the mean low water line of the southern headland of Buckner Creek, Corner 10, Latitude 38° 08.1956281' N., Longitude 76° 42.7679625' W.; thence southwesterly following the mean low water line of Nomini Creek, crossing the mouth of an unnamed cove at the

narrowest point between the headlands and continuing to follow the mean low water line to a point on White Oak Point, Latitude 38° 07.6428228' N., Longitude 76° 43.0233530' W.; thence west to Corner 1, said point being the point of beginning.

"Oyster" means any shellfish of the species *Crassostrea virginica*.

"Oyster dredge" means any device having a maximum weight of 150 pounds with attachments, maximum width of 50 inches, and maximum tooth length of four inches.

"Oyster patent tong" means any patent tong not exceeding 100 pounds in gross weight, including any attachment other than rope and with the teeth not to exceed four inches in length.

"Oyster resource user fee" means a fee that must be paid each calendar year by anyone who grows, harvests, shucks, packs, or ships oysters for commercial purposes.

"Piankatank River Area" means that area in the Piankatank River known as Burton Point bounded by a line beginning at a point located at Latitude 37° 30.8149992' N., Longitude 76° 19.8179990' W.; thence northeasterly to a point located at Latitude 37° 30.9333442' N., Longitude 76° 19.7333318' W.; thence southeasterly to a point located at Latitude 37° 30.8832475' N., Longitude 76° 19.5827984' W.; thence southeasterly to a point located at Latitude 37° 30.8335420' N., Longitude 76° 19.3835660' W.; thence southwesterly to a point located at Latitude 37° 30.6867440' N., Longitude 76° 19.5250181' W.; thence northwesterly to a point located at Latitude 37° 30.7700556' N., Longitude 76° 19.7721907' W.; thence northwesterly to a point located at Latitude 37° 30.8149992' N., Longitude 76° 19.8179990' W., being the point of beginning, containing 38.99 acres.

"Piankatank River Hand Tong Area" means that area in the Piankatank River known as Palace Bar bounded by a line beginning at a point located at Latitude 37° 31.6366756' N., Longitude 76° 22.2999953' W.; thence northernly to a point located at Latitude 37° 31.7574943' N., Longitude 76° 22.2966779' W.; thence northeasterly to a point located at Latitude 37° 31.8291757' N., Longitude 76° 22.2483355' W.; thence southeasterly to a point located at Latitude 37° 31.8166854' N., Longitude 76° 22.1433377' W.; thence southeasterly to a point located at Latitude 37° 31.7500276' N., Longitude 76° 22.0166809' W.; thence southeasterly to a point located at Latitude 37° 31.6000121' N., Longitude 76° 21.9166733' W.; thence westerly to a point located at Latitude 37° 31.6199872' N., Longitude 76° 22.1500353' W.; thence westerly to a point located at Latitude 37° 31.6366756' N., Longitude 76° 22.2999953' W., being the point of beginning, containing 38.53 acres.

"Pocomoke Sound Area" means that area of Pocomoke Sound inside of Public Ground 9 and Public Ground 10 11 of Accomack County.

Public Ground 11 of Accomack County consists of the area bounded by a line beginning at a point located at Latitude 37° 54.2242247' N., Longitude 75° 46.8458531' W.; thence northeasterly to a point located at Latitude 37° 54.7717652' N., Longitude 75° 46.2306934' W.; thence southeasterly to a point located at Latitude 37° 54.7655487' N., Longitude 75° 46.2246266' W.; thence northeasterly to a point located at Latitude 37° 55.1625018' N., Longitude 75° 45.7462838' W.; thence northwesterly to a point located at Latitude 37° 55.1713750' N., Longitude 75° 45.7562587' W.; thence northeasterly to a point located at Latitude 37° 55.4058815' N., Longitude 75° 45.4541658' W.; thence northeasterly to a point located at Latitude 37° 55.5742129' N., Longitude 75° 44.8291700' W.; thence northeasterly to a point located at Latitude 37° 55.5923356' N., Longitude 75° 44.7851143' W.; thence northeasterly to a point located at Latitude 37° 55.6009795' N., Longitude 75° 44.7641422' W.; thence southeasterly to a point located at Latitude 37° 55.5842236' N., Longitude 75° 44.7554991' W.; thence southeasterly to a point located at Latitude 37° 55.5265366' N., Longitude 75° 44.6897855' W.; thence northeasterly to a point located at Latitude 37° 55.6926202' N., Longitude 75° 44.3730212' W.; thence northwesterly to a point located at Latitude 37° 55.7414951' N., Longitude 75° 44.4228784' W.; thence northeasterly to a point located at Latitude 37° 55.8075338' N., Longitude 75° 44.2624885' W.; thence southernly to a point located at Latitude 37° 55.6345499' N., Longitude 75° 44.2772024' W.; thence southwesterly to a point located at Latitude 37° 55.5620352' N., Longitude 75° 44.4066645' W.; thence southeasterly to a point located at Latitude 37° 55.4972479' N., Longitude 75° 44.3397091' W.; thence northeasterly to a point located at Latitude 37° 55.5576916' N., Longitude 75° 44.2459142' W.; thence southeasterly to a point located at Latitude 37° 55.4242118' N., Longitude 75° 44.1791595' W.; thence southeasterly to a point located at Latitude 37° 55.3575442' N., Longitude 75° 43.9958019' W.; thence southwesterly to a point located at Latitude 37° 54.8742193' N., Longitude 75° 44.7625058' W.; thence southernly to a point located at Latitude 37° 54.4075648' N., Longitude 75° 44.5291567' W.; thence southeasterly to a point located at Latitude 37° 54.0909029' N., Longitude 75° 44.2291560' W.; thence southwesterly to a point located at Latitude 37° 54.0075735' N., Longitude 75° 44.4791578' W.; thence northwesterly to a point located at Latitude 37° 54.1075697' N., Longitude 75° 44.5958138' W.; thence westerly to a point located at Latitude 37° 54.0909049' N., Longitude 75° 45.1291836' W.; thence northwesterly to a point located at Latitude 37° 54.1909062' N., Longitude 75° 45.2291611' W.; thence northwesterly to a point located at Latitude 37° 54.3242309' N., Longitude 75° 45.6624951' W.; thence southwesterly to a point located at Latitude 37° 54.3075702' N., Longitude 75° 45.7458522' W.; thence southwesterly to a point located at Latitude 37° 53.8075670' N., Longitude 75° 46.7292265' W.; thence northernly to a point located at Latitude 37° 54.2242247' N., Longitude 75°

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46.8458531' W., being the point of beginning, containing 1650.39 acres.

"Pocomoke Sound Hand Tong Area" means that area of Pocomoke Sound inside of Public Ground 9 and Public Ground 10 of Accomack County.

Public Ground 9 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 1.06 nautical miles north-northeast of the northern-most point of North End Point, said point being Corner 1, located at Latitude 37° 57.2711566' N., Longitude 75° 42.2870790' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 57.2896577' N., Longitude 75° 41.9790727' W.; thence southerly to Corner 3, Latitude 37° 57.2574850' N., Longitude 75° 41.9790730' W.; thence southwesterly to Corner 4, Latitude 37° 57.2288700' N., Longitude 75° 42.0077287' W.; thence west-southwesterly to Corner 5, Latitude 37° 57.2034533' N., Longitude 75° 42.1511250' W.; thence south-southwesterly to Corner 6, Latitude 37° 57.0940590' N., Longitude 75° 42.1935214' W.; thence south-southeasterly to Corner 7, Latitude 37° 57.0551726' N., Longitude 75° 42.1814457' W.; thence southwesterly to Corner 8, Latitude 37° 56.9408327' N., Longitude 75° 42.2957912' W.; thence south-southwesterly to Corner 9, Latitude 37° 56.6574947' N., Longitude 75° 42.3790819' W.; thence southwesterly to Corner 10, Latitude 37° 56.5790952' N., Longitude 75° 42.5228752' W.; thence west-southwesterly to Corner 11, Latitude 37° 56.5712564' N., Longitude 75° 42.5915437' W.; thence south-southeasterly to Corner 12, Latitude 37° 56.5441067' N., Longitude 75° 42.5869894' W.; thence southwesterly to Corner 13, Latitude 37° 56.4575045' N., Longitude 75° 42.7458050' W.; thence west-southwesterly to Corner 14, Latitude 37° 56.2575123' N., Longitude 75° 43.3791097' W.; thence southwesterly to Corner 15, Latitude 37° 55.7408688' N., Longitude 75° 43.7957804' W.; thence westerly to Corner 16, Latitude 37° 55.7575327' N., Longitude 75° 43.9458298' W.; thence northwesterly to Corner 17, Latitude 37° 55.8908661' N., Longitude 75° 44.1291309' W.; thence north-northeasterly to Corner 18, Latitude 37° 55.9908639' N., Longitude 75° 44.0791266' W.; thence northeasterly to Corner 19, Latitude 37° 56.1241858' N., Longitude 75° 43.8791328' W.; thence north-northeasterly to Corner 20, Latitude 37° 56.4075136' N., Longitude 75° 43.7291361' W.; thence northeasterly to Corner 21, Latitude 37° 56.8241664' N., Longitude 75° 43.2624601' W.; thence north-northeasterly to Corner 22, Latitude 37° 57.0706006' N., Longitude 75° 43.1480402' W.; thence east-northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

Public Ground 10 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-

Virginia state line, located in the Pocomoke Sound approximately 2.3 nautical miles westerly of the northern-most point of North End Point, said point being Corner 1, located at Latitude 37° 56.4741881' N., Longitude 75° 45.7051676' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 56.9261140' N., Longitude 75° 43.7679786' W.; thence south-southwesterly to Corner 3, Latitude 37° 56.1241948' N., Longitude 75° 44.3624962' W.; thence west-southwesterly to Corner 4, Latitude 37° 56.0820561' N., Longitude 75° 44.5826292' W.; thence northerly to Corner 5, Latitude 37° 56.1377309' N., Longitude 75° 44.5817745' W.; thence west-southwesterly to Corner 6, Latitude 37° 56.1259751' N., Longitude 75° 44.6226859' W.; thence southwesterly to Corner 7, Latitude 37° 56.1039335' N., Longitude 75° 44.6692334' W.; thence southerly to Corner 8, Latitude 37° 56.0643616' N., Longitude 75° 44.6750106' W.; thence west-southwesterly to Corner 9, Latitude 37° 55.9742005' N., Longitude 75° 45.1458109' W.; thence west-northwesterly to Corner 10, Latitude 37° 56.0741973' N., Longitude 75° 45.8958329' W.; thence north-northwesterly to Corner 11, Latitude 37° 56.2565760' N., Longitude 75° 46.0000557' W.; thence northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

"Pocomoke and Tangier Sounds Management Area" or "PTSMA" means the area as defined in § 28.2-524 of the Code of Virginia.

"Pocomoke and Tangier Sounds Rotation Area 1" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at a point on the Maryland-Virginia state line, located at Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence south to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence westerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence south to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence easterly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence northerly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southeasterly to Pocomoke Sound Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence southeasterly to Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence southeast to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence southerly to a point on a line from Guilford Flats Junction Light to the northern-most point of Russell Island, where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence clockwise following the PTSMA

boundary to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Pocomoke and Tangier Sounds Rotation Area 2" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at the house on Great Fox Island, located at Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southerly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence westerly to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence northerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence easterly to the house on Great Fox Island, said house being the point of beginning. Also, Pocomoke and Tangier Sounds Rotation Area 2 shall include all public grounds and unassigned grounds in the PTSMA in Pocomoke Sound bounded by a line beginning at a point on the Maryland-Virginia state line, Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence following the PTSMA boundary clockwise to a point on the line from the northern-most point of Russell Island to Guilford Flats Junction Light Flashing 2+1 Red "GF", where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence northerly to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence northwesterly to Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence northwesterly to Pocomoke Sound Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence northwesterly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence northerly to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Public oyster ground" means all those grounds defined in § 28.2-551 of the Code of Virginia or by any other acts of the General Assembly pertaining to those grounds, all those grounds set aside by court order, and all those grounds set aside by order of the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Rappahannock River Area 7" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Rogue Point, located at Latitude 37° 40.0400000' N., Longitude 76° 32.2530000' W.; thence west-northwesterly to Flashing Red Buoy "8", Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwestly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.; and bounded upstream by a line from Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; thence southeasterly to Monaskon Point, Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.

"Rappahannock River Area 8" means all public grounds, in that area of the Rappahannock River, bounded downstream by

a line from Monaskon Point, located at Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.; thence northwesterly to Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; and bounded upstream by a line from Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; thence north-northwesterly to Sharps Point, Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.

"Rappahannock River Area 9" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Sharps Point, located at Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.; thence south-southeasterly to Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; and bounded upstream by the Thomas J. Downing Bridge (U.S. Route 360).

"Rappahannock River Rotation Area 1" means all public grounds, in that area of the Rappahannock River and Chesapeake Bay, bounded by a line offshore and across the mouth of the Rappahannock River from a point on the mean low water line of Windmill Point, located at Latitude 37° 36.8200000' N., Longitude 76° 16.9460000' W.; thence southeast to Windmill Point Light, Latitude 37° 35.7930000' N., Longitude 76° 14.1800000' W.; thence southwestly to Stingray Point Light, Latitude 37° 33.6730000' N., Longitude 76° 16.3620000' W.; thence westerly to a point on the mean low water line of Stingray Point, Latitude 37° 33.6920000' N., Longitude 76° 17.9860000' W.; and bounded upstream by a line from the mean low water line west of Broad Creek, Latitude 37° 33.9520000' N., Longitude 76° 19.3090000' W.; thence northeasterly to a VMRC Buoy on the Baylor line, Latitude 37° 34.5310000' N., Longitude 76° 19.1430000' W.; thence northeasterly to a VMRC Buoy, Latitude 37° 34.6830000' N., Longitude 76° 19.1000000' W.; thence northwesterly to a VMRC Buoy, Latitude 37° 35.0170000' N., Longitude 76° 19.4500000' W.; thence northwesterly to Sturgeon Bar Light "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence continuing northwesterly to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence northwesterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.

"Rappahannock River Rotation Area 2" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from the southern-most corner of the house on Mosquito Point, located at Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southeast to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence continuing southeasterly to Sturgeon Bar Beacon "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence west-southwesterly to a VMRC Buoy, Latitude 37° 34.9330000' N., Longitude 76° 21.0500000' W.; thence southwestly to a VMRC Buoy, Latitude 37° 34.8830000' N., Longitude 76°

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21.1000000' W.; thence southwesterly to a pier west of Hunting Creek at Grinels, Latitude 37° 34.4360000' N., Longitude 76° 26.2880000' W.; and bounded on the upstream by a line from Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 26.9500000' W.; thence northeasterly to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence northeasterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.

"Rappahannock River Rotation Area 3" means all public grounds, in that area of the Rappahannock River, beginning from the north channel fender at the Robert O. Norris, Jr. Bridge, located at Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence southeast to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southwest to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence southwesterly to Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 24.9500000' W.; thence northeasterly to Parrotts Creek Channel Marker "1", Latitude 37° 36.0330000' N., Longitude 76° 25.4170000' W.; thence northerly to VMRC Buoy, Latitude 37° 36.3330000' N., Longitude 76° 25.2000000' W.; thence northerly to the north channel fender of the Robert O. Norris, Jr. Bridge, said point being the point of beginning.

"Rappahannock River Rotation Area 4" means all public grounds, in that area of the Rappahannock River, Corrotoman River, and Carter Creek, beginning at the White Stone end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 38.1290000' N., Longitude 76° 24.7220000' W.; thence along said bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence westerly to the VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence northerly to Old House Point, Latitude 37° 39.1390000' N., Longitude 76° 29.6850000' W.; thence northeasterly to Ball Point, Latitude 37° 41.6600000' N., Longitude 76° 28.6320000' W.; thence southeasterly to VMRC reef marker "Ferry Bar – North", Latitude 37° 40.3000000' N., Longitude 76° 28.5000000' W.; thence southwesterly to VMRC reef marker "Ferry Bar – South", Latitude 37° 40.1670000' N., Longitude 76° 28.5830000' W.; thence southeasterly to a duck blind west of Corrotoman Point, Latitude 37° 39.8760000' N., Longitude 76° 28.4200000' W.; thence southerly to VMRC Buoy "543", Latitude 37° 39.2670000' N., Longitude 76° 27.8500000' W.; thence southerly to VMRC Buoy "Drumming-West", Latitude 37° 38.8830000' N., Longitude 76° 27.6830000' W.; thence southerly to VMRC Buoy "Drumming-East", Latitude 37° 38.8330000' N., Longitude 76° 27.5670000' W.; thence northeasterly to Orchard Point, Latitude 37° 38.9240000' N., Longitude 76° 27.1260000' W.

"Rappahannock River Rotation Area 5" means all public grounds, in that area of the Rappahannock River, beginning at

the Greys Point end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 36.8330000' N., Longitude 76° 25.9990000' W.; thence northeasterly along the bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence west-northwesterly to VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence westerly to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence south to the eastern headland of Whiting Creek, Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.

"Rappahannock River Rotation Area 6" means all public grounds, in that area of the Rappahannock River, beginning on the eastern headland of Whiting Creek, located at Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.; thence north to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence northwesterly to VMRC White House Sanctuary Buoy, Latitude 37° 38.1500000' N., Longitude 76° 30.5330000' W.; thence northwesterly to VMRC Towles Point Area Buoy, Latitude 37° 38.8330000' N., Longitude 76° 31.5360000' W.; thence northwesterly to Flashing Red Buoy "8" off Rogue Point, Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwesterly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.

"Seed oyster" means any oyster taken by any person from natural beds, rocks, or shoals that is more than 30 days from harvest for human consumption.

"Unassigned ground" means all grounds not assigned pursuant to §§ 28.2-600 through 28.2-633 of the Code of Virginia, established pursuant to § 28.2-551 of the Code of Virginia, or set aside by court order, or those grounds set aside by declarations or regulation by the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Upper Chesapeake Bay - Blackberry Hangs Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay, bounded by a line, beginning at a point approximately 300 feet east of the mean low water line of the Chesapeake Bay and approximately 1,230 feet southwest of the end of the southern-most stone jetty at the mouth of the Little Wicomico River, said point being Corner 1, Latitude 37° 53.1811193' N., Longitude 76° 14.1740146' W.; thence east-southeasterly to Corner 2, Latitude 37° 52.9050025' N., Longitude 76° 11.9357257' W.; thence easterly to Corner 3, Latitude 37° 52.9076552' N., Longitude 76° 11.6098145' W.; thence southwesterly to Corner 4, Latitude 37° 52.8684955' N., Longitude 76° 11.6402444' W.; thence east-southeasterly to Corner 5, Latitude 37° 52.7924853' N., Longitude 76° 11.0253352' W.; thence southwesterly to Corner 6, Latitude 37° 49.4327736' N., Longitude 76° 13.2409959' W.; thence northwesterly to Corner 7, Latitude 37° 50.0560555' N., Longitude 76° 15.0023234' W.; thence north-northeasterly to Corner 8, Latitude 37° 50.5581183' N., Longitude 76° 14.8772805' W.; thence north-northeasterly to Corner 9,

Latitude 37° 52.0260950' N., Longitude 76° 14.5768550' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Yeocomico River Area" means that area of the North West Yeocomico River, inside Public Ground 8 of Westmoreland County, and those areas of the South Yeocomico River inside Public Grounds 100, 102, 104, 107, and 112 of Northumberland County described as:

Public Ground 8 of Westmoreland County is located in the North West Yeocomico River, beginning at a point approximately 1,455 feet northeast of Crow Bar and 1,850 feet northwest of White Point, said point being Corner 1, located at Latitude 38° 02.7468214' N., Longitude 76° 33.0775726' W.; thence southeasterly to Corner 2, Latitude 38° 02.7397202' N., Longitude 76° 33.0186286' W.; thence southerly to Corner 3, Latitude 38° 02.6021644' N., Longitude 76° 33.0234175' W.; thence westerly to Corner 4, Latitude 38° 02.6006669' N., Longitude 76° 33.0824799' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 100 of Northumberland County is located in the South Yeocomico River, beginning at said point being Corner 1, located at Latitude 38° 00.2292779' N., Longitude 76° 32.2244222' W.; thence southwesterly to Corner 2, Latitude 38° 00.2183904' N., Longitude 76° 32.2488009' W.; thence westerly to Corner 3, Latitude 38° 00.2156893' N., Longitude 76° 32.3156220' W.; thence northwesterly to Corner 4, Latitude 38° 00.4024997' N., Longitude 76° 32.3338888' W.; thence continuing northeasterly to Corner 5, Latitude 38° 00.5806170' N., Longitude 76° 32.1957546' W.; thence continuing easterly to Corner 6, Latitude 38° 00.5798424' N., Longitude 76° 31.9506788' W., thence continuing southeasterly to Corner 7, Latitude 38° 00.5076459' N., Longitude 76° 31.9387425' W.; thence heading along the mean low water southwesterly to Corner 1, said corner being the point of beginning.

Public Ground 102 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 630 feet south of Mundy Point and 1,745 feet southwest of Tom Jones Point, said point being Corner 1, located at Latitude 38° 01.2138059' N., Longitude 76° 32.5577201' W.; thence east-northeasterly to Corner 2, Latitude 38° 01.2268644' N., Longitude 76° 32.4497849' W.; thence southwesterly to Corner 3, Latitude 38° 01.1091209' N., Longitude 76° 32.5591101' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 104 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 670 feet north of Walker Point and 1,900 feet northwest of Palmer Point, said point being Corner 1, located at Latitude 38° 00.8841841' N., Longitude 76° 32.6106215' W.; thence southeasterly to Corner 2, Latitude 38°

00.8609163' N., Longitude 76° 32.5296302' W.; thence southeasterly to Corner 3, Latitude 38° 00.6693092' N., Longitude 76° 32.4161866' W.; thence southwesterly to Corner 4, Latitude 38° 00.6418466' N., Longitude 76° 32.5394849' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 107 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 1,000 feet southwest of Barn Point and 1,300 feet northwest of Tom Jones Point, said point being Corner 1, located at Longitude 38° 01.1389367' N., Latitude 76° 32.3425617' W.; thence east-southeasterly to Corner 2, Latitude 38° 01.4106421' N., Longitude 76° 32.1077962' W.; thence southwesterly to Corner 3, Latitude 38° 01.2717197' N., Longitude 76° 32.2917989' W.; thence north-northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 112 of Northumberland County is located in the Yeocomico River, beginning at said point being Corner 1, located at Latitude 38° 01.8449428' N., Longitude 76° 32.2191877' W.; thence northeasterly to Corner 2, Latitude 38° 01.8783929' N., Longitude 76° 31.9970988' W.; thence southeasterly to Corner 3, Latitude 38° 01.7997003' N., Longitude 76° 31.9569302' W.; thence continuing southeasterly to Corner 4, Latitude 38° 01.6848729' N., Longitude 76° 31.5931801' W.; thence southerly to Corner 5, Latitude 38° 01.5760153' N., Longitude 76° 31.5931801' W.; thence westerly to Corner 6, Latitude 38° 01.6860521' N., Longitude 76° 32.2820100' W.; thence northerly to Corner 1, said corner being the point of beginning.

"York River Hand Tong Area" means that area of the York River consisting of a portion of Public Ground 31 of Gloucester County (Aberdeen Rock), Public Ground 901 of Gloucester, and King and Queen Counties and that portion of Public Ground 4 of King and Queen County that is in waters approved by the Virginia Department of Health for the harvest of Shellfish (Bell Rock) described as:

Public Ground 31 of Gloucester County, known as Aberdeen Rock, is that portion of Public Ground between a line from Upper York River Green Channel Marker 9, Latitude 37° 19.35986' N., Longitude 76° 35.99789' W.; thence northeasterly to Gum Point, Latitude 37° 19.74276' N., Longitude 76° 35.49063' W.; upstream to a line from the Flashing Yellow VIMS Data Buoy "CB," Latitude 37° 20.4670000' N., Longitude 76° 37.4830000' W.; thence northeasterly to the inshore end of the wharf at Clay Bank.

Public Ground 901 of Gloucester and King and Queen Counties is located in the York River at the mouth of the Propotank River, beginning at said point being Corner 1, located at Latitude 37° 26.0291178' N., Longitude 76° 42.4769473' W.; thence northwesterly to Corner 2, Latitude 37° 26.1502199' N., Longitude 76° 42.5504403' W.; thence continuing northwesterly to Corner 3, Latitude 37°

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26.2593188' N., Longitude 76° 42.5639668' W.; thence southeasterly to Corner 4, Latitude 37° 26.0537949' N., Longitude 76° 42.3217587' W.; thence southwesterly to Corner 5, Latitude 37° 26.0023548' N., Longitude 76° 42.4076221' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 4 of King and Queen County, known as Bell Rock, is located in the York River, beginning at said point being Corner 1, located at Latitude 37° 29.1377467' N., Longitude 76° 45.0390139' W.; thence southerly to Corner 2, Latitude 37° 29.0456979' N., Longitude 76° 45.0642131' W.; thence northwesterly to Corner 3, Latitude 37° 29.5582048' N., Longitude 76° 45.8484481' W.; thence continuing northwesterly to Corner 4, Latitude 37° 29.8480848' N., Longitude 76° 46.5362330' W.; thence northeasterly to Corner 5, Latitude 37° 30.0087805' N., Longitude 76° 46.3513889' W.; thence continue southeasterly to Corner 6, Latitude 37° 29.6554103' N., Longitude 76° 45.5620462' W., thence continuing southeasterly to Corner 7, Latitude 37° 29.1838193' N., Longitude 76° 44.8908342' W., thence continue southeasterly to Corner 8, Latitude 37° 29.1094227' N., Longitude 76° 44.7985114' W., thence continue southeasterly to Corner 9, Latitude 37° 28.9796379' N., Longitude 76° 44.6726329' W., thence continue southeasterly to Corner 10, Latitude 37° 28.7771294' N., Longitude 76° 44.5058580' W., thence continue southeasterly to Corner 11, Latitude 37° 28.6286905' N., Longitude 76° 44.4140389' W., thence continue southeasterly to Corner 12, Latitude 37° 28.4745509' N., Longitude 76° 44.3267558' W., thence continue southeasterly to Corner 13, Latitude 37° 28.4379124' N., Longitude 76° 44.2964890' W., thence continue southeasterly to Corner 14, Latitude 37° 28.3255929' N., Longitude 76° 44.2037875' W., thence continue southeasterly to Corner 15, Latitude 37° 28.2389865' N., Longitude 76° 44.1706101' W., thence continue southeasterly to Corner 16, Latitude 37° 28.2157560' N., Longitude 76° 44.1552324' W., thence westerly to Corner 17, Latitude 37° 28.1396622' N., Longitude 76° 44.3698473' W., thence northerly to Corner 18, Latitude 37° 28.7398061'

N., Longitude 76° 44.7807027' W., thence continue northerly to Corner 19, Latitude 37° 28.8838652' N., Longitude 76° 44.8818391' W., thence easterly to Corner 20, Latitude 37° 28.9140411' N., Longitude 76° 44.8163514' W. thence northwesterly to Corner 1, said corner being the point of beginning.

"York River Rotation Area 1" means all public grounds in the York River, within Gloucester County, between a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.; upstream to a line from the Upper York River Green Channel Marker 9, Latitude 37° 19.35986' N., Longitude 76° 35.99789' W.; thence northeasterly to Gum Point, Latitude 37° 19.7427600' N., Longitude 76° 35.4906300' W.

"York River Rotation Area 2" means all public grounds in the York River, within Gloucester County, from the George P. Coleman Memorial Bridge (U.S. Route 17), upstream to a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.

4VAC20-720-40. Open oyster harvest season, harvest areas, and harvest limits.

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds, except within the dates and areas and with the harvest gears set forth in this section.

B. It shall be unlawful to harvest clean cull oysters from the public oyster grounds and unassigned grounds, except within the seasons and areas and with the harvest gears as described in Table 1 in this subsection.

It shall be unlawful to exceed the daily individual bushel harvest limit or the daily vessel bushel limit of clean cull oysters in Table 1 in this subsection.

Table 1 Clean Cull Oyster Harvest Area, Harvest Dates, Harvest Gear, and Daily Bushel Limits				
Harvest Area	Harvest Dates	Harvest Gear	Daily Individual Bushel Limit	Daily Vessel Bushel Limit
Great Wicomico River Rotation Area 1	December 1, 2023 January 1, 2025, through January 31, 2024, and February 15, 2024, through February 29, 2024 2025	Hand Scrape	8	16

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<u>Great Wicomico River Rotation Area 2</u>	<u>December 1, 2024, through December 31, 2024</u>	<u>Hand Scrape</u>	<u>8</u>	<u>16</u>
James River Area 1 and 2, and 3	October 15, 2023 <u>16, 2024, through February 29, 2024, and March 16, 2024 through March 31, 2024</u> <u>2025</u>	Hand Scrape	8	16
<u>James River Area 3</u>	<u>November 1, 2023, through March 15, 2024</u>	<u>Hand Scrape</u>	<u>8</u>	<u>46</u>
Middle Ground	November 1, 2023, through November 15, 2023 <u>March 1, 2025, through March 14, 2025</u>	Hand Scrape	8	16
<u>Mobjack Bay Area</u>	<u>February 1, 2025, through February 28, 2025</u>	<u>Hand Scrape</u>	<u>8</u>	<u>16</u>
<u>Piankatank River Area</u>	<u>March 1, 2025, through March 14, 2025</u>	<u>Hand Scrape</u>	<u>8</u>	<u>16</u>
<u>Pocomoke Sound Area Public Ground 11</u>	<u>November 1, 2024, through November 15, 2024 and February 1, 2025, through February 14, 2025</u>	<u>Hand Scrape</u>	<u>8</u>	<u>16</u>
<u>Rappahannock River Rotation Area 1</u>	<u>March 1, 2024, through March 15, 2024</u>	<u>Hand Scrape</u>	<u>8</u>	<u>46</u>
Rappahannock River Area 8 <u>7</u>	January 1, 2024, through February 14, 2024 <u>December 1, 2024, through December 31, 2024</u>	Hand Scrape	8	16
Rappahannock River Area 7 <u>8</u>	December 1, 2023, through December 31, 2023 <u>January 1, 2025, through January 31, 2025</u>	Hand Scrape	8	16
Rappahannock River Rotation Area 2 <u>3</u>	February 15, 2024 <u>1, 2025, through February 29, 2024</u> <u>March 14, 2025</u>	Hand Scrape	8	16
Rappahannock River Rotation Area 6 <u>5</u>	November 1, 2023 <u>October 16, 2024, through November 30, 2023</u> <u>2024</u>	Hand Scrape	8	16
Upper Chesapeake Bay - Blackberry Hangs Area	February 1, 2024 <u>2025, through February 29, 2024</u> <u>March 14, 2025</u>	Hand Scrape	8	16
York River Rotation Area 1	November 1, 2023, through November 30, 2023, and February 15, 2024, through February 29, 2024 <u>January 1, 2025, through January 31, 2025</u>	Hand Scrape	8	16
<u>York River Rotation Area 2</u>	<u>February 1, 2025, through March 14, 2025</u>	<u>Hand Scrape</u>	<u>8</u>	<u>16</u>
Coan River Area	October 1, 2023 <u>2024, through December 31, 2023</u> <u>2024</u>	Hand Tong	14	28

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Corrotoman Hand Tong Area	October 1, 2023 2024, through March 31, 2024 2025	Hand Tong	14	28
Indian Creek	March October 1, 2024, through March 31, 2024 2025	Hand Tong	14	28
James River Area 1 and 2	March 1, 2024, through March 15, 2024, and April 1, 2024, through April 30, 2024	Hand Tong	14	28
James River Area 3	March 16, 2024, through April 30, 2024	Hand Tong	14	28
<u>Great Wicomico River Hand Tong Area</u>	<u>October 1, 2024, through December 31, 2024</u>	<u>Hand Tong</u>	<u>14</u>	<u>28</u>
James River Seed Area, including the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area	October 1, 2023 , through May 31, 2024 2024, through <u>May 30, 2025</u>	Hand Tong	14	28
Little Wicomico River	October 1, 2023 2024, through December 31, 2023 2024	Hand Tong	14	28
Milford Haven	November December 1, 2023 2024, through March 31, 2024 February 28, 2025	Hand Tong	14	28
Nomini Creek Area	October 1, 2023 2024, through December 31, 2023 2024	Hand Tong	14	28
<u>Piankatank River Hand Tong Area</u>	<u>March 1, 2025, through March 14, 2025</u>	<u>Hand Tong</u>	<u>14</u>	<u>28</u>
<u>Pocomoke Sound Area Public Ground 11</u>	<u>November 16, 2024, through January 31, 2025, and February 15, 2025, through March 31, 2025</u>	<u>Hand Tong</u>	<u>14</u>	<u>28</u>
Pocomoke Sound <u>Hand Tong Area Public Ground 9 and 10</u>	November 1, 2023 2024, through March 31, 2024 2025	Hand Tong	14	28
<u>Rappahannock River Area 7</u>	<u>October 1, 2024, through November 30, 2024, and January 1, 2025, through March 31, 2025</u>	<u>Hand Tong</u>	<u>14</u>	<u>28</u>
<u>Rappahannock River Area 8</u>	<u>October 1, 2024, through December 31, 2024, and February 1, 2025, through March 31, 2025</u>	<u>Hand Tong</u>	<u>14</u>	<u>28</u>
Rappahannock River Area 9	October 1, 2023 2024, through March 31, 2024 2025	Hand Tong	14	28
Yeocomico River Area	October 1, 2023 2024, through December 31, 2023 2024	Hand Tong	14	28

York River Hand Tong Area	November 1, 2023 <u>October 16, 2024, through March 31, 2024</u> <u>14, 2025</u>	Hand Tong	14	28
York River Rotation Area 1	October 1, 2023, through October 31, 2023, and December 1, 2023, through February 15, 2024, and March <u>November 1, 2024, through March</u> <u>December 31, 2024, and February 1, 2025, through March 31, 2025</u>	Hand Tong	14	28
<u>York River Rotation Area 2</u>	<u>November 1, 2024, through January 31, 2025</u>	<u>Hand Tong</u>	<u>14</u>	<u>28</u>
Beasley Bay Hurleys Rock Area	March 1, 2024 <u>2025, through March 15, 2024</u> <u>14, 2025</u>	Oyster Dredge	8	16
California Rock Area	November 15, 2023, through November 30, 2023	Oyster Dredge	8	16
Pocomoke Sound Rotation Area <u>1</u> <u>2</u>	December 1, 2023 <u>November 16, 2024, through February 29, 2024</u> <u>14, 2025</u>	Oyster Dredge	8	16
Tangier Sound Rotation Area <u>1</u> <u>2</u>	December 1, 2023 <u>2024, through March 15, 2024</u> <u>February 28, 2025</u>	Oyster Dredge	8	16
Larsons Bay Area	December 1, 2023, through February 29, 2024 <u>October 1, 2024, through December 31, 2024</u>	Patent Tong	8	16
Deep Rock Area	November 1, 2023 <u>2024, through March 31, 2024</u> <u>2025</u>	Patent Tong	8	16
Rappahannock River Rotation Area 1	October 15, 2023 <u>October 1, 2024, through February 29, 2024</u> <u>December 31, 2024</u>	Patent Tong	8	16
Seaside Eastern Shore	November 1, 2023 <u>2024, through March 31, 2024</u> <u>April 30, 2025</u>	By Hand or Hand Tong	14	28

C. It shall be unlawful to harvest seed oysters from the public oyster grounds or unassigned grounds, except within the dates and areas and with the harvest gears described in Table 2 in this subsection.

Table 2. Seed Oyster Harvest Area, Harvest Dates, and Harvest Gear		
Harvest Area	Harvest Dates	Harvest Gear
James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area	October 1, 2023 <u>2024, through May 31, 2024</u> <u>2025</u>	Hand Tong

D. In the Pocomoke and Tangier Sounds Rotation Areas, it shall be unlawful to possess on board any vessel more than 250 hard clams.

E. It shall be unlawful to possess any blue crabs on board any vessel with an oyster scrape or oyster dredge.

F. It shall be unlawful for any person or vessel to harvest clean cull oysters with more than one gear type in any single day from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia.

4VAC20-720-60. Day and time limit.

A. It shall be unlawful to take, catch, or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia for commercial purposes, except that this provision

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shall not apply to any person harvesting no more than one bushel per day by hand or ordinary tong for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest.

B. It shall be unlawful to do any of the following from the harvest areas described in Table 1 or Table 2 of 4VAC20-720-40:

1. Harvest or attempt to harvest oysters prior to sunrise or after sunset.
2. For any vessel to leave the dock until one hour before sunrise or return to the dock after sunset if the vessel has an oyster dredge or hand scrape aboard.
3. From October 1, ~~2023~~, through October 31, ~~2023~~, for any person to harvest or attempt to harvest clean cull oysters after 11 a.m. and from May 1 through May 30, to harvest or attempt to harvest clean cull oysters after 10 a.m.
4. Beginning November 1, ~~2023~~, for any person to harvest or attempt to harvest clean cull oysters after noon with patent tongs, hand scrapes, or oyster dredges.
5. ~~Beginning November 1, 2023, for~~ For any person to harvest or attempt to harvest oysters after 2 p.m. with hand tongs.

In addition, it shall be unlawful for any vessel to leave the dock until one hour before sunrise or return to the dock after sunset if the vessel has an oyster dredge or hand scrape aboard.

4VAC20-720-85. James River seed quota and monitoring.

A. An oyster seed harvest quota of 90,000 bushels of seed is established for the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area. Once it has been projected and announced that the quota of seed has been attained, it shall be unlawful for any person to harvest seed oysters from these areas.

B. Of the 90,000-bushel seed quota described in subsection A of this section, no more than 30,000 bushels of this quota may be harvested from October 1 through December 31. However, if it is projected and announced that 30,000 bushels of seed have been harvested before December 31, it shall be unlawful for any person to harvest seed oysters from that date forward until January 1.

C. Of the 90,000-bushel seed quota described in subsection A of this section, no more than 60,000 bushels of this quota may be harvested from January 1 through May 31.

~~D. Any person harvesting or landing oyster seed from the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, shall report monthly on forms provided by the Virginia Marine Resources Commission all harvest of seed oysters. Reporting requirements shall consist of that person's Commercial Fisherman Registration License number, daily number of bushels of seed oysters harvested,~~

~~harvest rock location, planting location (any lease numbers), and buyer name.~~

E. ~~D.~~ It shall be unlawful for any person harvesting seed oysters from the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, to fail to ~~contact the Virginia Marine Resources Commission Interactive Voice Response (IVR) System within 24 hours of harvest or landing and provide daily harvest records accurately quantifying and legibly describing that day's seed harvest from the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area.~~ All records shall be submitted within 24 hours of harvest or landing through the Online Mandatory Harvest Reporting Program Web Application and shall provide that person's name, Commercial Fisherman Registration License number, ~~time~~, date, daily number of bushels of seed oysters harvested, harvest rock location, planting location (any lease numbers), ~~and~~ buyer name, and any other harvest reporting information required by law.

VA.R. Doc. No. R25-7977; Filed September 19, 2024, 2:49 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-740. Pertaining to the Snagging or Towing of Fish (amending 4VAC20-740-15, 4VAC20-740-20).**

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

Effective Date: October 1, 2024.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments allow recreational anglers to snag Atlantic menhaden and mullet species in the Mugel genus, which includes white mullet, striped mullet, and flathead grey mullet.

4VAC20-740-15. Definition Definitions.

The following ~~word~~ words or ~~term~~ terms when used in this chapter shall have the following ~~meaning~~ meanings unless the context clearly indicates otherwise.

"Mugel genus" means white mullet, striped mullet, and flathead grey mullet.

"Snagging" means the act of intentionally hooking or attempting to hook a fish in any part of its body other than its mouth using a fishing line, hook, or other device.

"Towing of fish" means tethering a fish by any method behind the vessel while the engine is running and in gear.

4VAC20-740-20. Snagging prohibited.

It shall be unlawful for any person to take or to attempt to take any finfish by means of snagging other than Atlantic menhaden and species in the Mugel genus.

VA.R. Doc. No. R25-8004; Filed September 24, 2024, 2:29 p.m.

◆ ————— ◆

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

REGISTRAR'S NOTICE: The State Board of Education 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: **8VAC20-23. Licensure Regulations for School Personnel (amending 8VAC20-23-90).**

Statutory Authority: §§ 22.1-16 and 22.1-298 of the Code of Virginia.

Effective Date: November 20, 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:

Pursuant to Chapter 183 of the 2024 Acts of the Assembly, the amendments (i) clarify that the alternate route licensure program for a teaching endorsement in special education via a Provisional (Career Switcher) License is just that: an alternative and does not supplant, eliminate, or otherwise alter the Provisional (Special Education) License option and (ii) require each individual pursuing an endorsement in special education via the Provisional (Career Switcher) License to complete at least 60% of specific requirements as part of Level I preparation and complete the remaining requirements as part of Level II and Level III preparation.

8VAC20-23-90. Alternate routes to licensure.

A. Career switcher alternate route to licensure for career professionals - Provisional (Career Switcher) License. ~~An alternate route is available to career switchers who seek teaching endorsements preK through grade 12 with the exception of~~ For those applicants seeking a teaching endorsement in special education, this option does not supplant

subsection C of this section but provides an additional pathway to a provisional license.

1. An individual seeking a Provisional (Career Switcher) License through the career switcher program shall meet the following prerequisite requirements:

- a. An application process;
- b. An earned baccalaureate degree from a regionally accredited college or university;
- c. The completion of requirements for an endorsement in a teaching area or the equivalent through verifiable experience or academic study;
- d. At least three years of successful full-time work experience or its equivalent; and
- e. Virginia qualifying scores on the professional teacher's assessments as prescribed by the Virginia Board of Education.

2. The Provisional (Career Switcher) License is awarded at the end of Level I preparation for an initial validity period of one school year. All components of the career switcher alternate route for career professionals shall be completed by the candidate.

3. The Level I requirements shall be completed during the course of a single year and may be offered through a variety of delivery systems, including distance learning programs. If an employing agency recommends extending the Provisional (Career Switcher) License for a second year, the candidate will enter Level III of the program. Career switcher programs shall submit program documentation as set forth by the Virginia Department of Education for review and be certified every seven years by the Virginia Department of Education.

a. Level I preparation. Intensive Level I preparation includes a minimum of 180 clock hours of instruction, including field experience. This phase includes human development and learning; curriculum and instruction, including technology; language and literacy; specific course content relating to the Virginia Standards of Learning; foundations of education and the teaching profession; classroom and behavior management; and assessment of and for learning.

b. Level II preparation during first year of employment.

(1) Candidate seeks employment in Virginia with the one-year Provisional (Career Switcher) License.

(2) Continued Level II preparation during the first year of employment with a minimum of five seminars that expand the intensive preparation requirements listed in subdivision 3 a of this subsection. The five seminars will include a minimum of 20 cumulative instructional hours. A variety of instructional delivery techniques will be utilized to implement the seminars.

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(3) One year of successful, full-time teaching experience in a Virginia public or accredited nonpublic school under a one-year Provisional (Career Switcher) License. A trained mentor shall be assigned to assist the candidate during the first year of employment. Responsibilities of the mentor include the following:

(a) Collaborate with the beginning teacher in the development and implementation of an individualized professional development plan;

(b) Observe, assess, coach, and provide opportunities for constructive feedback, including strategies for self-reflection;

(c) Share resources and materials;

(d) Share best instructional, assessment, and organizational practices; classroom and behavior management strategies; and techniques for promoting varied and effective methods of communication with and among students; and

(e) Provide general support and direction regarding school policies and procedures.

(4) Upon successful completion of the Levels I and II preparation requirements of the career switcher alternate route to licensure program and submission of a recommendation from the employing Virginia educational agency, the candidate will be eligible to apply for a 10-year, renewable license. Renewal requirements for the regular license will be subject to current regulations of the Virginia Board of Education.

c. Level III preparation, if required.

(1) Post preparation, if required, will be conducted by the employing Virginia educational agency to address the areas where improvement is needed as identified in the candidate's professional improvement plan; and

(2) Upon successful completion of Levels I, II, and, if required, Level III of the career switcher alternate route to licensure program and submission of a recommendation from the employing Virginia educational agency, the candidate will be eligible to receive a 10-year renewable license.

4. Verification of program completion will be documented by the certified program provider and the division superintendent or designee.

5. Certified providers implementing a career switcher program may charge a fee for participation in the program.

6. Each individual pursuing a Provisional (Career Switcher) License who seeks an endorsement in special education (i) shall complete at least 60% of the requirements set forth in 8VAC20-543-500 as part of Level I preparation and (ii) shall complete the remaining requirements set forth in 8VAC20-543-500 as part of Level II and Level III preparation.

B. An alternate route is available to individuals employed by a Virginia educational agency who seek teaching endorsements preK through grade 12. The employing Virginia educational agency may request a nonrenewable Provisional License on behalf of the individual if the individual has completed an allowable portion of professional studies and endorsement requirements. An employed teacher may demonstrate meeting the teaching endorsement requirements by passing a rigorous academic subject test for endorsements in which a test is prescribed by the Virginia Board of Education. This testing option does not apply to individuals (i) who are seeking an early/primary education preK-3 or elementary education preK-6 endorsement, special education endorsements, or a reading specialist endorsement or (ii) who hold a Technical Professional License, Vocational Evaluator License, Pupil Personnel Services License, School Manager License, or Division Superintendent License. This route also is available to individuals who are employed by a Virginia public school, a Virginia accredited nonpublic school, or an accredited virtual school or program and who are seeking the Online Teacher License that is issued to teachers who teach only online courses. The Provisional License will be issued for a validity period not to exceed three years. The Provisional License is a nonrenewable teaching license valid for a period not to exceed three years. Individuals shall complete all licensure requirements to become eligible for the 10-year, renewable license.

1. An individual seeking a license through this alternate route shall have met the following requirements:

a. Entered the teaching field through the alternate route to licensure upon the recommendation of the employing Virginia educational agency. For the Online Teacher Provisional License, individuals shall be employed by a Virginia public school division, a Virginia accredited nonpublic school, or an accredited virtual school or program;

b. Earned a baccalaureate degree from a regionally accredited college or university with the exception of individuals seeking the Technical Professional License;

c. Have met requirements for the endorsement area; and

d. Need to complete an allowable portion of professional studies and licensure requirements.

2. The professional studies requirements for the appropriate level of endorsement sought shall be completed. A Virginia educational agency may submit to the Superintendent of Public Instruction for approval an alternate program to meet the professional studies requirements. The alternate program shall include training such as seminar, internship, or coursework in human development and learning; curriculum and instruction, including technology; assessment of and for learning; classroom and behavior management; foundations of education and the teaching profession, including legal status of teachers and students, federal and state laws, and

teacher evaluation as prescribed by the Virginia Board of Education's guidelines for performance standards and evaluation criteria established pursuant to § 22.1-253.13:5 B of the Code of Virginia and language and literacy.

3. One year of successful, full-time teaching experience in the appropriate teaching area in a Virginia public or an accredited nonpublic school shall be completed. For the Online Teacher License only, one year of successful online teaching experience in the endorsement area in a public school division, an accredited nonpublic school, or an accredited virtual school or program may be accepted in lieu of the supervised teaching experience. A fully licensed experienced teacher shall be available in the school building to assist the beginning teacher employed through the alternate route.

C. Alternate route in special education. The Provisional (Special Education) License is a nonrenewable teaching license issued for a validity period not to exceed three years to an individual employed as a special education teacher in a public school or a nonpublic school in Virginia who does not hold the appropriate special education endorsement. The Provisional (Special Education) License will be issued only with endorsements in special education. The Provisional License is a nonrenewable teaching license valid for a period not to exceed three years. This alternate route to special education endorsement is not applicable to individuals seeking the Online Teacher License. To be issued the Provisional (Special Education) License through this alternate route, an individual shall:

1. Be employed by a Virginia public or accredited nonpublic school as a special education teacher and have the recommendation of the employing educational agency;
2. Have earned a baccalaureate degree from a regionally accredited college or university;
3. Have an assigned mentor with an active Virginia teaching license with an endorsement in special education; and
4. Have a planned program of study in the assigned endorsement area, make progress toward meeting the endorsement requirements each of the three years of the license, and have completed at least three semester hours of coursework in the competencies of foundations for educating students with disabilities and have an understanding and application of the legal aspects and regulatory requirements associated with identification, education, and evaluation of students with disabilities. A survey course integrating these competencies would satisfy this requirement.

The Provisional (Special Education) License issued through this alternate route shall not be issued without the completion of these prerequisites.

D. Alternate programs at institutions of higher education or Virginia school divisions. Alternate programs developed by institutions of higher education (i) recognize the unique strengths of prospective teachers from nontraditional backgrounds and (ii) prepare these individuals to meet the same standards that are established for others who are granted a license through an alternate route.

E. Experiential learning. Individuals applying for an initial teaching license through the alternate route as prescribed by the Virginia Board of Education shall meet the following criteria to be eligible to request that experiential learning satisfy the coursework for the endorsement (teaching) content area:

1. Have earned a baccalaureate degree from a regionally accredited college or university;
2. Have at least three years of documented successful full-time work experience that may include specialized training related to the endorsement sought; and
3. Have met the Virginia qualifying score on the content knowledge assessment prescribed by the Virginia Board of Education.

Experiential learning does not apply to individuals seeking special education and preK-3 and preK-6 endorsements or endorsements in which there is no Virginia Board of Education-prescribed content or subject assessment.

VA.R. Doc. No. R25-8025; Filed September 17, 2024, 2:03 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Education 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: **8VAC20-790. Child Care Program (amending 8VAC20-790-40).**

Statutory Authority: §§ 22.1-16 and 22.1-289.046 of the Code of Virginia.

Effective Date: November 20, 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:

Pursuant to Chapter 286 of the 2024 Acts of the Assembly, the amendments codify a provision that any family who receives public assistance through Medicaid or the

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Special Supplemental Nutrition Program for Women, Infants, and Children shall be deemed to categorically satisfy income eligibility requirements to receive assistance through the Child Care Subsidy Program.

8VAC20-790-40. Case management.

A. Applicants for child care subsidy and services must be at least 18 years of age unless they are an emancipated minor.

B. Applicants are required to sign an application, ~~to~~ provide verification of identity, and ~~to~~ cooperate with an assessment by the local department of social services.

C. At initial eligibility determination, a family with a child experiencing homelessness that cannot provide the required documentation may be conditionally approved for services for a period not to exceed 90 days. The final eligibility determination shall be completed once the 90 days has expired or full documentation is provided. ~~Any~~ No payments made prior to the final eligibility determination shall ~~not~~ be considered an error or improper payment. Families with a child experiencing homelessness shall receive priority placement on the waiting list, if applicable.

D. Consumer education, including education on the selection and monitoring of quality child care and how to access information regarding ~~their~~ the selected vendor as to the (i) health and safety requirements met by the vendor; (ii) licensing or regulatory requirements met by the vendor; (iii) date the vendor was last inspected and any history of violations; and (iv) any voluntary quality standards met by the vendor, must be provided to parents to assist ~~them~~ the parents in gaining needed information about the availability of child care services and providers. Parents must also be provided information on how to obtain a developmental screening for ~~their~~ a child.

E. The department shall establish scales for determining financial eligibility for the income eligible child care subsidy program categories in subdivision 2 of 8VAC20-790-30.

1. Any family that receives public assistance through Medicaid or the Special Supplemental Nutrition Program for Women, Infants, and Children shall be deemed to categorically satisfy income eligibility requirements to receive assistance under this chapter.

2. Recipients in the TANF child care program category shall be considered income eligible based on ~~their~~ receipt of TANF; the local department shall not be required to verify their income.

~~2.~~ 3. At initial eligibility determination, income eligibility shall be determined by measuring the family's countable income and size against the percentage of the federal poverty guidelines for ~~their~~ the family's locality. The family's income cannot exceed 85% of the state median income.

~~3.~~ 4. At redetermination, if a recipient family's countable income exceeds the initial eligibility limit, ~~they~~ the family shall be considered income eligible until ~~their~~ its countable income meets or exceeds the exit eligibility limit established by the department. The family's income cannot exceed 85% of the state median income.

F. Families receiving child care subsidy and services shall be required to pay a copayment unless ~~their~~ the family's gross monthly income is at or below the federal poverty guidelines. The copayment amount will be based on a scale set out in the current Child Care and Development Fund Plan for Virginia. Copayments may be increased at redetermination and during graduated phase out if the family's countable income exceeds the initial eligibility limit but is below the exit eligibility limit. Local departments shall be required to act on changes reported by the family that would reduce the family's copayment during the 12-month eligibility period.

G. Income to be counted in determining income eligibility includes all earned and unearned income received by the family except the following:

1. Supplemental Security Income;
2. TANF benefits;
3. Transitional payments of \$50 per month to former VIEW participants;
4. Diversionary assistance payments;
5. General relief;
6. SNAP benefits;
7. Value of U.S. Department of Agriculture donated food;
8. Benefits received under Title VII, Nutrition Program for the Elderly of the Older Americans Act of 1965;
9. Value of supplemental food assistance under the Child Nutrition Act of 1996 and lunches provided under National School Lunch Act;
10. Earnings of a child younger than ~~the age of~~ 18 years of age;
11. Earned income tax credit;
12. Lump sum child support arrears payments;
13. Scholarships, loans, or grants for education, except any portion specified for child care;
14. Basic allowance for housing for military personnel living on base;
15. Clothing maintenance allowance for military personnel;
16. Payments received by AmeriCorps volunteers;
17. Tax refunds;
18. Lump sum insurance payments;

19. Monetary gifts for one-time occasions or normal annual occasions;
20. Payments made by non-financially responsible third parties for household obligations, unless payment is made in lieu of wages;
21. Loans or money borrowed;
22. Money received from sale of property;
23. Earnings less than \$25 a month;
24. Capital gains;
25. Withdrawals of bank deposits;
26. GI Bill benefits;
27. Reimbursements, such as for mileage;
28. Foreign government restitution payments to Holocaust survivors;
29. Payments from the Agent Orange Settlement Fund or any other fund established for settlement of Agent Orange product liability litigation; and
30. Monetary benefits provided to the children of Vietnam Veterans as described in 38 USC § 1823(c).

The amount of wages subject to garnishment and the amount of child support paid to another household shall be deducted from the family's income.

H. The eligibility period for TANF (nonVIEW), transitional child care, Fee Program, and Head Start begins with the effective date of the approval of the child care subsidy and services application. The eligibility period for VIEW and SNAPET participants begins with the date of referral from the VIEW or SNAPET program.

I. Recipients will be eligible for child care subsidy and services for a minimum of 12-months before eligibility is redetermined, unless:

1. ~~Their~~ The recipient's countable income exceeds 85% of state median income. Temporary increases in income will not affect eligibility or family copayments, including monthly income fluctuations, ~~which that~~ when taken in isolation, may incorrectly indicate that a recipient's income exceeds 85% of state median income.
2. There is a finding that the recipient committed an intentional program violation.
3. The recipient is no longer a resident of Virginia.
4. The recipient requests that ~~their the~~ the child care subsidy and services case be closed.
5. The recipient is a family of a child experiencing homelessness that was approved as conditionally eligible and failed to provide necessary documentation to the local

department within 90 days, or the recipient is determined ineligible after full documentation is provided.

J. Recipients will retain eligibility despite any change in residency within the state.

K. Recipients will retain eligibility despite any eligible child turning 13 years of age during the 12-month eligibility period.

L. The beginning date of service payment for TANF (nonVIEW), transitional child care, Fee Program, and Head Start participants may begin with the date the applicant is determined eligible and a vendor approved by the department is selected. The beginning date of service payment for VIEW or SNAPET participants may begin with the date of referral from the VIEW or SNAPET program if the applicant is determined eligible and a vendor approved by the department is selected.

1. Eligibility must be determined within 30 days of receipt of a signed application or referral from VIEW or SNAPET by the local department.

2. Payment cannot be made to any provider prior to the effective date of ~~their~~ the provider's approval by the department as a vendor.

M. Eligibility will be redetermined in the final month of the 12-month eligibility period described in subsection I of this section, at which time the recipient will be contacted in order to have all eligibility criteria ~~be~~ reevaluated. The local department's contact with the recipient should not unduly disrupt a parent's work schedule. Recipients shall not be required to appear in person for eligibility redetermination.

N. Child care case managers shall prepare a written service plan for each child care case with the applicant or recipient. The service plan shall state the activities and responsibilities of the local department and the parent in the provision of child care services. The VIEW Activity and Service Plan will serve as the service plan for parents active in VIEW. If the parents are SNAPET participants, the SNAPET Plan of Participation will serve as the service plan.

O. Recipients shall be required to:

1. Report to the local department the following changes within 10 calendar days of the change:

- a. Countable income that exceeds 85% of the state median income.
- b. Recipient is no longer a resident of Virginia or the county in which ~~they are~~ the recipient is receiving services.

2. Pay all fees owed to the vendor not paid for under the Child Care Subsidy Program or reimbursements owed to the local department; failure to do so may result in case closure at redetermination.

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3. Reimburse the local department for any overpayment made as a result of fraud, intentional program violation, or an inadvertent household error.

The local department shall inform recipients of child care subsidy and services of these responsibilities.

P. Adequate documentation supporting the reasons for termination must be filed in the case record.

Q. When sufficient funds are not available, local departments of social services must screen applicants for potential eligibility and place ~~them~~ the applicants on the department's waiting list unless the family declines placement.

R. Applicants and recipients will be afforded due process through timely written notices of any action determining or affecting ~~their~~ eligibility for services or copayment amount. Such written notice shall include the reason for the action and the notice of appeal rights and procedures, including the right to a fair hearing if the applicant or recipient is aggrieved by the local department's action or failure to act on an application. If a recipient requests an appeal prior to the effective date of any proposed action and if the continuation of services is requested by the parent, child care services will continue until a decision is rendered by a hearing officer. If the decision of the local department is upheld by the hearing officer, the recipient must repay the amount of services paid during the appeal process.

VA.R. Doc. No. R25-7969; Filed September 17, 2024, 2:08 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Proposed Regulation

Title of Regulation: 9VAC25-790. Sewage Collection and Treatment Regulations (adding 9VAC25-790-985).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.19 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 20, 2024.

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

Basis: The State Water Control Board adopted the Sewage Collection and Treatment Regulations under the authority provided by § 62.1-44.15 of the Code of Virginia, and § 62.1-44.19 of the Code of Virginia requires that before an owner may erect, construct, open, expand, or operate a sewerage system or sewage treatment works that will have a potential discharge or actual discharge to state waters, the owner must file with the

board an application for a certificate in scope and detail satisfactory to the board.

Purpose: This regulatory action is essential to protecting the water quality in the Commonwealth of Virginia, which is essential to the health, safety, and welfare of Virginia citizens and is needed in order to establish appropriate and necessary reporting requirements for all septic systems or other onsite sewage disposal systems located in the Chesapeake Bay Watershed that are taken offline and connected to sewage collection systems. Additionally, this action is essential in supporting the Commonwealth Chesapeake Bay Total Maximum Daily Load Phase III Watershed Implementation Plan. The addition of this reporting requirement will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer, which will assist with tracking the Commonwealth's progress toward water quality goals, including Chesapeake Bay watershed restoration goals.

Substance: This action amends the Sewage Collection and Treatment Regulations (9VAC25-790) to include a requirement for permitted sewage treatment works located within the Chesapeake Bay Watershed to report all septic systems or other onsite sewage disposal systems taken offline and connected to sewerage systems.

Issues: The primary advantage of the proposed regulatory action is the implementation of a reporting requirement for all septic systems or other onsite sewage disposal systems located within the Chesapeake Bay watershed taken offline and connected to sewerage collection systems. Including this requirement provides the Department of Environmental Quality with more accurate information to track water quality goals. The regulation includes language to limit the requirement to the best of the permittee's knowledge, thus the implementation of this requirement can largely be accomplished using existing resources and will impose a minimal financial burden. This will aid in protecting state waters, while limiting both the time and resources required to gather the required data, as well as preventing the regulation from creating compliance issues or being punitive to permittees. This is an advantage for the public, the regulated community, and the Commonwealth. Potential disadvantages would be limited to an increase on staff resources.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The State Water Control Board (board) proposes to amend the Sewage Collection and Treatment (SCAT) Regulations to add a requirement that would ensure a more accurate count of nutrient reductions. Adding this requirement would implement

one item in the Commonwealth's overall plan to restore the Chesapeake Bay.

Background. On Dec. 29, 2010, the U.S. Environmental Protection Agency (EPA) established the Chesapeake Bay Total Maximum Daily Load (TMDL), a comprehensive cleanup plan to guide federal, state and local actions as their communities clean up the Chesapeake Bay and the connected streams, creeks and rivers.² In Virginia, the TMDL calls for a 20.5% reduction in nitrogen, 25.2% reduction in phosphorus and 20.8% reduction in sediment delivered to the bay; this will be accomplished by having best management practices in place by 2025. The Department of Environmental Quality (DEQ) reports that Watershed Implementation Plans (WIPs) are roadmaps for attaining the Chesapeake Bay TMDL that were agreed to be developed and implemented in three phases. Thus, the Chesapeake Bay TMDL Phase III WIP, which was completed in 2019, represents the Commonwealth's final plan to achieve nutrient and sediment reductions needed to restore the Chesapeake Bay and its tidal tributaries.³ Initiative 53 of the Chesapeake Bay TMDL Phase III WIP states that, "the Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems."⁴ Accordingly, the board proposes to add a requirement that every permitted sewage treatment works within the Chesapeake Bay Watershed shall report, to the best of their knowledge, the number of onsite sewage systems that were taken off-line and connected to sewerage systems that convey sewage to their facility during each calendar year by February 1 of the following year. DEQ reports that the proposed language is intended to encourage tracking and reporting without being punitive, and that the phrase "to the best of their knowledge" provides some flexibility to the regulants. It should also be noted that onsite sewage systems are permitted by the Virginia Department of Health; therefore, DEQ does not directly have data on onsite sewage systems that are discontinued. Further, DEQ reports that sewage treatment works have been upgraded to improve nutrient removal capability and are subject to discharge limitations through the department's Virginia Pollutant Discharge Elimination System (VPDES) permit program. Thus, implementing this change would ensure a more accurate count of nutrient reductions that result from diverting sewage from septic tanks and other onsite sewage systems to central sewage treatment works. Lastly, DEQ reports that there is no overarching state-level policy to divert onsite sewage systems toward permanent connections to sewage treatment works and that property owners typically choose to do so when continuing to maintain and operate an onsite sewage system becomes too financially burdensome.

Estimated Benefits and Costs. DEQ reports that there are 316 sewage treatment works in the 96 localities that fall within the Chesapeake Bay watershed in Virginia. DEQ anticipates that the sewage treatment works, which have VPDES permits, will

report the required data (to the best of their knowledge) annually via email or letter. DEQ has not created any specific reporting tool, leaving it to the treatment works to determine how best to collect, maintain, and report the number of new connections they receive as a result of an onsite sewage system being taken offline. DEQ does not anticipate that collecting and reporting this information will have any significant cost for the permittees. Further, some treatment works may already be collecting this data and would only incur the relatively small additional cost of reporting the data to DEQ. The benefits of the proposed amendment would be to more accurately measure any reductions in nutrient loads in the Chesapeake Bay that result from the diversion of sewage from septic tanks and other on-site sewage systems to treatment works. This would further benefit Virginia to the extent that it contributes to the overall progress being made towards the Chesapeake Bay TMDLs, and the resulting beneficial outcomes in terms of water quality, watershed management, sustainable fisheries, habitat conservation, and climate resiliency.

Businesses and Other Entities Affected. As mentioned previously, the proposed amendment would primarily affect the 316 sewage treatment works that fall within the Chesapeake Bay watershed in Virginia. Of these, 107 sewage treatment works are privately owned; these licensees include residential communities, private schools, retreat and conference centers, hotels, camps, and campgrounds. The other 209 sewage treatment works are publicly owned; these licensees include localities, correctional facilities operated by the Department of Corrections or the Department of Juvenile Justice, rest stops operated by the Virginia Department of Transportation, and certain public schools and colleges. The proposed amendment would create a new reporting requirement for sewage treatment works in the Chesapeake Bay watershed, which would require some initial planning for administrators of those treatment works and ongoing annual reporting. However, given the flexibility in implementation and the relatively low frequency of the report, these costs are unlikely to be significant. 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 benefit for any entity, even if the benefits exceed the costs for all entities combined.⁶ Although the proposed amendment would create a new requirement for the regulated entities, with a small implementation cost, the proposal is mandated by Virginia's Phase III WIP. Thus, an adverse economic impact is not indicated.

Small Businesses⁷ Affected.⁸ **Types and Estimated Number of Small Businesses Affected:** Some of the 107 privately owned sewage treatment works affected by the proposed requirement may be small businesses; however, the number of small businesses that would be affected is unknown since the VPDES permit system does not collect this information. **Costs and Other Effects:** Affected sewage treatment works that are small businesses may face small costs associated with collecting,

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maintaining and reporting the required information to DEQ. Alternative Method that Minimizes Adverse Impact: There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities⁹ Affected.¹⁰ The proposed amendments would affect local governments that operate publicly owned sewage treatment works in the Chesapeake Bay watershed to the extent that they may be indirectly responsible for ensuring that the treatment works comply with the new reporting requirements. The Chesapeake Bay watershed covers 96 localities in Virginia: Accomack, Northampton, Augusta, Bath, Highland, Rockbridge, Rockingham, Buena Vista, Harrisonburg City, Lexington City, Staunton City, Waynesboro City, Amelia, Buckingham, Cumberland, Nottoway, Prince Edward, Dinwiddie, Prince George, Colonial Heights City, Hopewell City, Petersburg City, Caroline, King George, Spotsylvania, Stafford, Fredericksburg City, Isle Of Wight, James City, Surry, York, Chesapeake City, Hampton City, Newport News City, Norfolk City, Poquoson City, Portsmouth City, Suffolk City, Virginia Beach City, Williamsburg City, Essex, Gloucester, King And Queen, King William, Mathews, Middlesex, Giles, Montgomery, Lancaster, Northumberland, Richmond, Westmoreland, Clarke, Frederick, Page, Shenandoah, Warren, Winchester City, Arlington, Fairfax, Loudoun, Prince William, Alexandria, Fairfax City, Falls Church City, Manassas City, Manassas Park City, Culpeper, Fauquier, Madison, Orange, Rappahannock, Amherst, Appomattox, Bedford, Campbell, Lynchburg City, Charles City, Chesterfield, Goochland, Hanover, Henrico, New Kent, Powhatan, Richmond City, Alleghany, Botetourt, Craig, Roanoke, Covington City, Albemarle, Fluvanna, Greene, Louisa, Nelson, and Charlottesville City.

Projected Impact on Employment. The proposed amendments are not expected to affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments would not substantively affect the value of private property. Real estate development costs would not be affected.

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

² See <https://www.deq.virginia.gov/home/showpublisheddocument/5441/638154486040700000>.

³ See <https://www.deq.virginia.gov/our-programs/water/chesapeake-bay/phase-iii-wip>.

⁴ See page 80 in <https://www.deq.virginia.gov/home/showpublisheddocument/4481/638428104627430000>.

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 Department of Environmental Quality has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

As mandated by the Commonwealth Chesapeake Bay Total Maximum Daily Load Phase III Water Improvement Plan, the proposed amendment adds a requirement for permitted sewage treatment works located within the Chesapeake Bay Watershed to report all septic systems or other onsite sewage disposal systems taken offline and connected to sewerage systems to ensure a more accurate count of nutrient reductions that result from directing sewage from individual septic systems and other onsite sewage disposal systems to a centralized sewage treatment works.

9VAC25-790-985. Onsite sewage systems connected to sewerage systems.

On or before February 1, annually, every permitted sewage treatment works within the Chesapeake Bay Watershed shall report to the department, to the best of the permitted sewage treatment works' knowledge, the number of onsite sewage systems taken offline and connected to sewerage systems that convey sewage to the permitted sewage treatment works' facility during the previous calendar year.

VA.R. Doc. No. R24-7661; Filed September 20, 2024, 12:58 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

Title of Regulation: 12VAC5-635. Rainwater Harvesting System Regulations (adding 12VAC5-635-10 through 12VAC5-635-370).

Statutory Authority: §§ 32.1-12 and 32.1-248.2 of the Code of Virginia.

Effective Date: November 20, 2024.

Agency Contact: Julie Henderson, Director, Environmental Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23235, telephone (804) 864-7455, FAX (804) 864-7475, TDD (800) 828-1120, or email julie.henderson@vdh.virginia.gov.

Summary:

Pursuant to Chapter 817 of the 2018 Acts of Assembly, the action establishes the Rainwater Harvesting System Regulation (12VAC5-635), a new regulation to provide standards for the use of rainwater harvesting systems, including systems that collect rainwater for human consumption. The regulation establishes the relationship with the statutes and regulations applicable to other agencies to avoid duplication of regulatory oversight for both nonpotable and potable uses of harvested rainwater for users below the threshold of qualifying as a waterworks. The regulation also establishes administrative processes for permitting, inspecting, and issuing construction and operation permits for intended potable rainwater harvesting systems, along with appropriate exemptions from the regulation (e.g., rain barrels are exempt). Rainwater harvesting systems are divided into four tiers of end use. The highest tier includes potable water and requires the greatest level of treatment and oversight. The specified end use determines the minimum design, construction, and ongoing operation and maintenance standards for each system. The regulation requires permits to construct and operate a rainwater harvesting system for potable use. Nonpotable systems will be documented in a registry but will not be subject to permitting.

The regulation includes the following substantive provisions: (i) definitions as necessary for consistency with the Code of Virginia and other regulations related to rainwater harvesting and water reuse, stormwater, the Uniform Statewide Building Code (USBC), and current industry standards; (ii) criteria to acknowledge nationally recognized standards and certifications for approval of rainwater harvesting components and certification of persons involved in the design, installation, inspection, repair, and maintenance of rainwater harvesting systems; (iii) standards for rainwater harvesting performance

objectives; (iv) a requirement that rainwater system components meet national lead-free standards; (v) standards for rainwater harvesting collection parameters, drought response, rainwater harvesting conveyance systems, rainwater prefiltration, harvested rainwater storage, and cross-connection and backflow prevention; (vi) pump and filtration and disinfection and other treatment parameters; (vii) water quality parameters for systems used for human consumption; (viii) inspection, operation, and maintenance requirements for rainwater harvesting systems; (ix) system permit requirements; and (x) alternate compliance pathways for rainwater to be used both for human consumption and not for human consumption applications.

Changes to the proposed regulation (i) reduce testing requirements to inorganic primary Environmental Protection Agency drinking water standards for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, copper, cyanide, fluoride, lead, mercury, nitrate, nitrite, selenium, and thallium; (ii) remove the testing requirement for protozoan cysts and cryptosporidium; (iii) provide for the sizing of rainwater harvesting systems consistent with current knowledge of residential water use rates while maintaining continuity of water supply; and (iv) eliminate the requirement for owners to notify the Virginia Department of Health of a change of ownership for a Tier 1, 2, or 3 end use rainwater harvesting system.

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

Chapter 635

Rainwater Harvesting System Regulations

Part I

General Framework

12VAC5-635-10. Definitions.

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

"Agent" means a legally authorized representative of the owner.

"ANSI" means the American National Standards Institute.

"ASSE" means the American Society of Sanitary Engineering.

["~~Board~~" means the State Board of Health.

"Backflow" means (i) the flow of water, other liquids, mixtures, or substances into the distribution system of a pure water system from one or more sources other than its intended source or (ii) the reversal of the normal direction of flow.]

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"Cistern" means a water storage tank connected to a plumbing system or irrigation system.

"Commissioner" means the State Health Commissioner or the commissioner's designee.

"Contaminant" means an objectionable or hazardous physical, chemical, biological, or radiological substance or matter in water.

"Conveyance system" or "roof drainage system" means the portion of a rainwater harvesting system that directs collected rainwater to the point of untreated rainwater storage, including gutters, downspouts, roof drains, and connectors.

["Cross-connection" means any physical connection or arrangement between two otherwise separate piping systems whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems.]

"Debris excluder" means a screen or other device installed in the gutter or downspout system to prevent the accumulation of leaves, needles, or other debris in the rainwater harvesting system.

"Department" means the Virginia Department of Health.

"Designer" means a person who is employed or contracted by an owner to design a rainwater harvesting system and holds certification as a designer pursuant to 12VAC5-635-270 C. Owners may be certified to become designers.

"Disinfection" means a process that inactivates or destroys pathogenic organisms in water by use of a disinfectant. A disinfectant is any chemical and physical agent, including chlorine, chlorine dioxide, chloramines, ozone, and ultraviolet light, added to water in any part of the treatment or distribution process for the purpose of killing or inactivating pathogenic organisms.

"Distribution system" means piping and other components carrying water from a rainwater harvesting system to the point of use.

"End use" means the use of water from a rainwater harvesting system.

"End use tier" means a categorization applied to a rainwater harvesting system based on potable or nonpotable water quality; end use; and potential for human contact, including ingestion, inhalation, and skin contact.

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"First flush" means a method for the removal of sediment and debris from the collection surface by diverting initial rainfall from entry into the storage unit.

"Harvested rainwater" means water from precipitation, including snowmelt, that falls on an elevated roof not subject

to pedestrian access and is directed through gutters and downspouts to a storage tank prior to contact with the ground.

"Human consumption" means drinking, food preparation, dishwashing, bathing, showering, hand washing, teeth brushing, and maintaining oral hygiene.

"Installer" means the service provider responsible for installation of a rainwater harvesting system in accordance with the construction permit.

"Local health department" means the department established in each city and county in accordance with § 32.1-30 of the Code of Virginia.

"Log reduction" means the removal of organisms expressed on a logarithmic scale. For example, a 99.9% is a 3-log removal; whereas a 99.99% is a 4-log removal.

"Log reduction target" means a level of log removal assigned to an end use tier.

"Maintenance" means performing adjustments to equipment and controls and in-kind replacement of normal wear and tear parts such as light bulbs, fuses, filters, pumps, motors, conveyance subsystem components, or other like components. Maintenance includes pumping the tanks or cleaning the system components, including tanks, on a periodic basis. Maintenance shall not include replacement of water storage units or work requiring a construction permit and an installer.

"Nonpotable water" means water not classified as pure water.

"NSF" means NSF International, formerly known as the National Sanitation Foundation. NSF collaborates with ANSI and Canadian authorities on drinking water standards development. "NSF/ANSI/CAN" is the abbreviation for that collaboration.

"Operation and maintenance manual" means the set of materials and documentation maintained by an owner containing the instructions and information required by 12VAC5-635-350.

"Operator" means a person employed or contracted by an owner to operate and maintain a rainwater harvesting system and holding certification as a designer, installer, or inspector as described in 12VAC5-635-270 C. Owners may be certified to become operators.

"Owner" means any person, individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, or instrumentality thereof, who owns, leases, or proposes to own or lease a rainwater harvesting system.

"Point of use" means a point in a domestic water system nearest to a water-consuming plumbing fixture where water is used.

"Potable water" or "pure water" means water fit for human consumption that (i) is sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts; (ii) is adequate in quantity and quality for the minimum health requirements of the persons served; and (iii) conforms to potable water standards defined in the Virginia Uniform Statewide Building Code.

"Precipitation" means water that has precipitated from the atmosphere, including rain, snow, sleet, hail, mist, fog, and dew.

"Rainwater harvesting system" means a water system for collecting, storing, potentially treating, and distributing rainwater for an end use.

"Screen" means a filtration device constructed of corrosion-resistant wire or other approved mesh, having openings in determined sizes.

"Secondary water supply" means an alternate source of water that serves a rainwater harvesting system for the purpose of continuity of water supply.

"Service connection" means the point of delivery of water from a rainwater harvesting system to the distribution system of a user. In the case of a building having multiple independent tenants, each independent tenant is considered a service connection for the purpose of this chapter, regardless of distribution system configuration. In general, a service connection is a single residential unit or commercial space.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Treatment" means the use of physical, biological, or chemical means to make water suitable for the intended use.

"Treatment system" or "water treatment system" means the equipment and components used to achieve treatment of rainwater, most commonly filtration and disinfection.

"USBC" means the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia).

["Variance" means a conditional waiver of a specific regulation that is granted to a specific owner relating to a specific situation or facility and may be for a specified time period.]

"Water storage unit" means a cistern or tank used as the central storage component of the rainwater harvesting system prior to treatment.

"Waterworks" means a system that serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year.

"Written operational record" means the official record of the maintenance and operations of a rainwater harvesting system

that contains the items required [~~pursuant to~~ in] 12VAC5-635-330 C.

12VAC5-635-20. Applicability of regulation.

A. This chapter does not apply to rainwater harvesting systems installed, altered, or rehabilitated prior to [~~(insert the effective date of this chapter)~~ November 20, 2024,] unless the rainwater harvesting system is altered or rehabilitated after [~~(insert the effective date of this chapter)~~ November 20, 2024].

B. The following are excluded from the requirements of this chapter.

1. Rain barrels (individual containers of up to 100 gallon capacity used to collect and temporarily store rainwater solely for Tier 1 end use);

2. Rainwater harvesting systems that serve as a source for a waterworks as regulated by [~~12VAC5-590~~ the Waterworks Regulations (12VAC5-590)];

3. Rainwater harvesting systems for Tier 1, 2, or 3 end use conducted for an agricultural operation as defined by § 3.2-300 of the Code of Virginia; and

4. Stormwater reclamation and reuse systems authorized by the Department of Environmental Quality in accordance with regulations adopted pursuant to § 62.1-44.15:28 of the Code of Virginia, including stormwater reclamation and reuse systems that may reclaim combined stormwater and harvested rainwater.

12VAC5-635-30. Relationship to Virginia Sewage Handling and Disposal Regulations.

This chapter supersedes 12VAC5-610-1170 of the Virginia Sewage Handling and Disposal Regulations, which addresses cisterns, in cases where a cistern is used solely as a component of a rainwater harvesting system subject to the requirements of this chapter.

12VAC5-635-40. Relationship to the State Water Control Board.

This chapter addresses the standards for the collection and use of that portion of stormwater not regulated in accordance with 9VAC25-31, 9VAC25-32, 9VAC25-151, 9VAC25-840, 9VAC25-870, 9VAC25-880, and 9VAC25-890.

12VAC5-635-50. Relationship to the Uniform Statewide Building Code.

A. This chapter is independent of and in addition to the requirements of the USBC in accordance with § 36-98 of the Code of Virginia.

B. All persons required to obtain a rainwater harvesting system installation permit for a system for Tier 4 end use shall furnish a copy of the installation permit to the local building official when making application for a building permit.

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C. The applicant for a rainwater harvesting system for Tier 4 end use shall furnish the local building official with a copy of the operating permit demonstrating the potable water supply has been inspected, sampled, and approved by the local health department.

12VAC5-635-60. Right of entry and inspections.

In accordance with § 32.1-25 of the Code of Virginia, the commissioner or a designee shall have the right to enter any property to ensure compliance with this chapter.

Part II

Procedural Requirements

12VAC5-635-70. End use tiers for rainwater harvesting systems.

The end use tier categorization of harvested rainwater is based on water quality, intended end uses, and associated potential for human contact through ingestion, inhalation, and skin contact. The examples of common-use applications are not intended to represent all possible applications. Where end use applications are not listed, or are subject to interpretation, the application shall be categorized based on the highest numbered applicable end use tier description. The end use tiers are as follows:

1. Tier 1. Low exposure end use: Nonpotable water use where humans will rarely come into contact with the treated rainwater due to the nature of the installation that limits direct or indirect contact under normal operation. Examples include trap primers, restricted access spray irrigation, surface and subsurface irrigation, and ice rinks. In this context, restricted access spray irrigation means spray irrigation in fenced or remote locations where human visitation is controlled or prevented.
2. Tier 2. Medium exposure end use: Nonpotable water use where human contact with treated rainwater is indirect or limited. Examples include toilet and urinal flushing, clothes washing, [HVAC heating, ventilation, and air conditioning systems,] evaporative cooling, and rooftop thermal cooling.
3. Tier 3. High exposure end use: Nonpotable water use where human contact with treated rainwater is direct. Examples include hose bibs, pressure washing, firefighting or protection and fire suppression, decorative fountains, vehicle washing, and nonrestricted spray irrigation.
4. Tier 4. Potable water end use: Intended for human consumption.

12VAC5-635-80. Reserved.

12VAC5-635-90. Permits for rainwater harvesting systems; general.

A. No person may install, alter, or rehabilitate or allow the installation, alteration, or rehabilitation of a rainwater

harvesting system intended for Tier 4 end use without a written construction permit from the commissioner.

~~B. [The commissioner may impose conditions on the issuance of a permit and no rainwater harvesting system intended for Tier 4 end use may be installed or modified in violation of those conditions.~~

~~C.] Unless suspended or revoked pursuant to 12VAC5-635-190, [permits a construction permit] for a [Tier 4] rainwater harvesting system [intended for Tier 4 end use] shall be valid for a period of 36 months from the date of issuance.~~

~~[D: C.] An owner may install and operate a rainwater harvesting [systems system] intended for Tier 1, 2, or 3 end use without a permit. The owner of a Tier 1, 2, or 3 end use rainwater harvesting system shall file a registration form with the department within 30 [calendar] days of the following:~~

1. Installing a rainwater harvesting system; [or]
2. [~~Change The permanent discontinuation~~] of [~~ownership use~~] of a rainwater harvesting system [~~; or~~ such that harvested rainwater is not used for any purpose.]
- ~~[3. Permanently closing a rainwater harvesting system.]~~

12VAC5-635-100. Application procedures for a construction permit for a rainwater harvesting system for Tier 4 end use.

A. The owner of a proposed rainwater harvesting system shall sign and submit a written permit application to the local health department for the locality where the proposed rainwater harvesting system would be located [~~on an application form provided by the local health department.~~] that contains the following information:

1. The [~~property~~] owner's name, address, and telephone number;
2. The applicant's name, address, and telephone number (if different from the [~~property~~] owner's);
3. A statement signed by the [~~property~~] owner or agent granting the department access to the site to conduct a sanitary survey if underground water storage is proposed and to inspect the rainwater harvesting system after it is installed; and
4. Plans for the proposed rainwater harvesting system, including specifications, design criteria, manufacturer's literature, a proposed schematic, a general layout of any underground water storage, [~~formal~~ additional written] plans for multiple service connection systems, the operation and maintenance manual required pursuant to 12VAC5-635-350, and other supporting information or data the [~~local health~~] department [~~or commissioner~~] may request.

C. If underground storage of harvested rainwater is proposed, a general layout shall be provided [~~and shall include that includes~~] topography, elevations, contour lines, [and]

existing or proposed streets [~~and all~~ and identifies the following conditions located within 100 feet horizontally of the proposed water storage units:] potential sources of contamination, bodies of water, ditches, buildings, springs, [~~above ground~~ aboveground] cisterns, and wells.

D. If the proposed rainwater harvesting system will provide Tier-4 end use water to multiple service connections, the applicant shall include a [~~format~~] plan as follows:

1. The plan shall have a cover sheet with suitable title showing the name of the owner, date the plan was prepared, and the name of the licensed individual by or under whom the plans were prepared. The cover sheet and each subsequent page shall bear the same general title and each shall be numbered. Appropriate subtitles shall be included on individual sheets.

2. The plan shall be [~~clear and legible and~~] prepared to a scale that will permit necessary information to be [~~plainly~~] shown [~~clearly and legibly~~].

3. The plan shall consist of plan views, elevations, sections, and supplementary views that together with the specifications and general layouts provide the working information for the contract and construction of the proposed rainwater harvesting system, including dimensions and relative elevations of structures, the location and outline form of equipment, the location and size of piping, water levels, ground elevations, and erosion control abatement facilities.

4. The plan shall include the technical specifications for the construction of the rainwater harvesting system and all appurtenances. The specifications shall include all construction information not shown on the drawings, which is necessary to inform the [~~builder installer~~] in detail of the design requirements as to the quality of material workmanship and fabrication of the project; the type, size, strength, operating characteristics, and rating of equipment and materials used in the construction and operation of the rainwater harvesting system; allowable infiltration, machinery, valves, piping, and jointing of pipe, electrical apparatus, wiring, and meters; operating tools and construction materials; miscellaneous appurtenances; chemicals when used; and instructions for testing materials and equipment as necessary to meet design standards and operating test for the complete works and component units.

E. An application shall be deemed complete upon receipt by the local health department of a signed and dated application [~~on the approved application form~~].

12VAC5-635-110. Issuance of a construction permit.

The commissioner shall issue [a] construction permit to the owner no later than 60 [~~calendar~~] days after receipt of a complete application if:

1. [~~According to the information on the application form, the The~~] proposed rainwater harvesting system is compliant with this chapter and other applicable laws, ordinances, and regulations; and

2. The owner has obtained the easements pursuant to this chapter and [~~attached~~ provided] the documentation of the easement [~~to with~~] the application.

12VAC5-635-120. Denial of a construction permit.

If the commissioner determines that the proposed rainwater harvesting system [~~is inadequate~~] does not comply with this chapter [;] or that the installation and operation of the system would create an actual or potential health hazard or nuisance, the commissioner shall deny the construction permit application and notify the owner in writing no later than 60 [~~calendar~~] days after receipt of the complete application with the basis for the denial. The notification shall also state that the owner has the right to appeal the denial in accordance with 12VAC5-635-190.

12VAC5-635-130. Revision of approved plans.

A. The rainwater harvesting system designer with the consent of the owner may make certain design changes to a proposed rainwater harvesting system for which a valid construction permit has been issued without prior approval from the department if:

1. The design change does not change the design flow, the proposed filtration means and standard, the proposed disinfection means and standard, or the log reduction targets;

2. The changed design for the rainwater harvesting system complies with applicable statutes, codes, and regulations;

3. The designer provides the department with complete documentation, including a list of changes and revised specifications, calculations, and drawings as part of a revised design package; and

4. The designer and owner ensure that design changes are communicated to the installer of the rainwater harvesting system.

B. The commissioner may suspend or revoke a construction permit if a design change made to the proposed rainwater harvesting system does not comply with this chapter. If the commissioner revokes the construction permit, the owner must submit a new application before continuing with the installation of the rainwater harvesting system.

C. The commissioner shall review changes made to the rainwater harvesting system before issuing an operation permit pursuant to 12VAC5-635-170.

12VAC5-635-140. Installation inspection and correction.

A. Upon completion of the installation, alteration, or rehabilitation of a [Tier 4] rainwater harvesting system [~~intended for Tier 4 end use~~]:

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1. The owner or agent shall submit to the local health department a statement signed by the installer certifying that the rainwater harvesting system was installed, altered, or rehabilitated in accordance with the construction permit and that the rainwater harvesting system complies with applicable state and local regulations, ordinances, and laws;

2. The designer shall thoroughly inspect the system installation to determine whether the installation was completed ~~substantially~~ in accordance with the approved evaluation and design, including any revisions made pursuant to 12VAC5-635-130; and

3. The designer shall submit to the local health department a signed inspection report stating that the installation was completed ~~substantially~~ in accordance with the approved evaluation and design revised only in accordance with the provisions of 12VAC5-635-130.

B. If the designer observes deficiencies during the inspection, the designer shall note the deficiencies in the ~~designer's~~ inspection report and include ~~with the report~~ a plan of correction that includes the specific corrective actions that will be taken to bring the rainwater harvesting system into compliance with this chapter, the date on which the corrective actions ~~are to will~~ be completed, and the date ~~on which~~ the designer will perform a follow-up inspection of the corrected rainwater harvesting system.

C. After the follow-up inspection, the designer shall submit a signed inspection report to the local health department ~~stating affirming~~ whether the corrective actions have been taken and whether the rainwater harvesting system is ~~at that time~~ installed in compliance with the approved evaluation and design.

~~[D. If the owner does not ensure completion of the corrective actions or the rainwater harvesting system is otherwise not able to operate in compliance with this chapter, the commissioner shall not issue an operation permit and may suspend or revoke the construction permit pursuant to 12VAC5-635-190.]~~

12VAC5-635-150. Requirement for an easement.

A. If a rainwater harvesting system or a portion of the rainwater harvesting system is proposed to be installed on property other than the owner's, the owner must obtain an easement in perpetuity of sufficient area to permit access to install, maintain, and operate the rainwater harvesting system components from the appropriate property owner and record the easement with the clerk of the circuit court before issuance of a construction permit.

B. The owner shall submit legal documentation of recordation of the easement or a signed statement that the easement will be recorded within 45 ~~calendar~~ days to the appropriate local health department with the application for a construction permit.

C. If the owner does not obtain, properly record, and submit documentation of the easement, the owner may not install or operate the rainwater harvesting system on the property for which the easement was denied.

12VAC5-635-160. Land records.

A. Before the commissioner may issue an operation permit for a ~~Tier 4~~ rainwater harvesting system ~~for Tier 4 end use~~, the owner must:

1. Record an instrument describing applicable annual water quality testing and maintenance requirements for each component of the rainwater harvesting system in the land records of the circuit court having jurisdiction over the site of the rainwater harvesting system; and

2. Submit to the local health department legal documentation indicating that the instrument has been duly recorded in the land records.

B. The instrument recorded pursuant to this section shall be transferred with the title to the property upon the sale or other transfer of the property in which the rainwater harvesting system is located.

12VAC5-635-170. Issuance of operation permit.

A. No ~~Tier 4~~ rainwater harvesting system ~~intended for Tier 4 end use~~ may be operated, except for the purposes of testing the system, until the commissioner has issued an operation permit to the owner.

B. If the owner has complied with the requirements of 12VAC5-635-140, 12VAC5-635-160, and this section, the commissioner shall issue to the owner a ~~Tier 4 end use~~ permit to operate the rainwater harvesting system ~~intended for Tier 4 end use~~.

C. The issuance of an operation permit does not denote or imply a warranty or guarantee by the department that the rainwater harvesting system will function for any specified period of time. The owner shall maintain, repair, or replace a rainwater harvesting system that ceases to operate as defined in the operation permit and operation and maintenance manual.

12VAC5-635-180. Variances.

A. In accordance with § 32.1-12 of the Code of Virginia and this chapter, the commissioner may grant a variance to a requirement of this chapter. ~~[A variance is a conditional waiver of a specific requirement that is granted to a specific owner relating to a specific situation or facility and may be for a specified time period.]~~

B. The commissioner may grant a variance if an investigation reveals that, in the opinion of the commissioner, a hardship imposed by a requirement within this chapter, including ~~an~~ economic ~~hardship~~, outweighs the benefits that may be received by the public and that granting the ~~a~~ variance does

not subject the public to unreasonable health risks or environmental pollution.

C. The owner shall submit a signed, written application for a variance to the appropriate local health department. The application shall include:

1. A citation to the section to which a variance is requested;
2. The nature and duration of the variance requested;
3. Any relevant analytical results including results of relevant tests conducted pursuant to the requirements of this chapter;
4. The specific hardship created by the requirement to which a variance is requested;
5. Statements or evidence that establishes that the public health or welfare and the environment would not be adversely affected if the variance were granted;
6. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare;
7. Other information believed pertinent by the applicant; and
8. Other information the local health department or commissioner may require.

D. In the evaluation of a variance application, the commissioner shall consider:

1. The effect that the variance would have on the construction, location, or operation of the rainwater harvesting system;
2. The cost and other economic considerations imposed by the requirement to which the variance is sought;
3. The effect that such a variance would have on protection of the public health or welfare and the environment;
4. Relevant analytical results including results of relevant tests conducted pursuant to the requirements of this chapter; and
5. Information or materials on the application for a variance submitted per this section.

E. The commissioner shall not recognize as a hardship the cost to correct an error created by a design change initiated by the owner or designer for which approval by the department was required pursuant to 12VAC5-635-130 but was not obtained.

F. [The commissioner may deny any applicant for a variance by sending a written denial notice to the applicant that states the reasons for the rejection.] If the commissioner [proposes to deny a variance request submitted pursuant to this section, the commissioner shall notify the owner of the proposed denial within 60 calendar days of receipt of the variance request and provide denies the variance, the owner shall be provided with]

an opportunity for an informal fact-finding [~~conference proceeding~~] as provided in § 2.2-4019 of the Code of Virginia. [~~Following this opportunity for an informal fact-finding conference the commissioner may deny an application for a variance by sending a written denial notice to the owner that states the reasons for the denial.~~]

G. If the commissioner proposes to grant a variance request submitted pursuant to this section, the commissioner shall notify the owner in writing of the decision within 60 calendar days of receipt of the variance request. The notice shall identify the requirement to which the variance is granted, the rainwater harvesting system covered, the period of time for which the variance will be effective, and the conditions imposed pursuant to issuing the variance.

H. [~~The owner shall attach a physical copy of the variance to the permit.~~

I. [Unless otherwise stated in the terms or conditions of the variance, the variance shall be transferred with the permit if the owner of a rainwater harvesting system sells or otherwise transfers ownership of the rainwater harvesting system to a new owner.

J. [If a permit is revoked or suspended, variances attached to it shall also be revoked or suspended.

12VAC5-635-190. Enforcements, notices, informal conferences, appeals.

A. Rainwater harvesting systems shall be installed, operated, and maintained in compliance with the requirements as set forth in this chapter. The commissioner may enforce this chapter through the means lawfully available pursuant to Title 32.1 of the Code of Virginia, and nothing in this chapter shall be construed as preventing the commissioner from making efforts to obtain compliance through warning, conference, or other appropriate enforcement means.

B. The commissioner may deny a permit application or suspend or revoke a permit issued pursuant to this chapter if:

1. The permit holder fails to comply with this chapter, applicable law, or a condition imposed on the permit; or
2. The commissioner is made aware that:
 - a. The facts upon which the approval of a construction permit was based were knowingly and willfully misrepresented; or
 - b. The installation or operation of the proposed rainwater harvesting system could create a substantial or imminent public health or environmental hazard.

C. The commissioner shall notify the owner of a notice of suspension in writing via certified mail or via hand delivery. Immediately upon receipt of a notice of suspension, the owner shall cease operation of the rainwater harvesting system.

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D. The owner of a permitted rainwater harvesting system shall ensure the continuity of water supply to persons who use the rainwater harvesting system's treated water for human consumption. If the owner demonstrates to the satisfaction of the commissioner that ceasing the operation of a permitted rainwater harvesting system would endanger the health of the persons who use the rainwater harvesting system's finished water, the commissioner may issue a variance to the requirement to cease operation pursuant to 12VAC5-635-180.

E. Within 10 [working] days of receipt of a notice of denial of an application or suspension of a permit, the owner may request an informal conference in accordance with § 2.2-4019 of the Code of Virginia. The owner must file the request for an informal conference in writing with the local health department within the locality that the rainwater harvesting system is located. If a request for an informal conference is not filed within 10 working days, the denial or suspension is sustained.

F. Within 10 [working] days of receipt of a notice of denial, suspension, or intent to revoke, the owner shall submit to the appropriate local health department a plan of correction that includes:

1. The specific corrective actions that will be taken to address the reasons for denial, suspension, or revocation and bring the rainwater harvesting system into compliance with this chapter and other applicable requirements;
2. The date on which the corrective actions are expected to be completed; and
3. If the rainwater harvesting system is in operation, an application for a construction permit for alteration, repair, or rehabilitation of the rainwater harvesting system pursuant to 12VAC5-635-100.

G. Within 10 [working] days of the receipt of the plan of correction, the department shall:

1. Notify the owner in writing if any item is determined to be unacceptable; and
2. Act on an application for a construction permit to perform repairs pursuant to this section.

H. If the owner does not submit a plan of correction or request an informal conference within 10 working days, the department shall notify the owner in writing that the application for a permit is denied or that the permit is deemed suspended or revoked.

I. The department shall arrange for an informal conference to be held within seven working days of receipt of a request for an informal conference pursuant to this section.

J. The commissioner may end a suspension and reinstate a permit at any time if the conditions under which the permit was suspended have changed or no longer exist.

K. The owner must reapply for a permit in order to continue installing or operating a rainwater harvesting system for which the permit has been revoked.

[~~L. A plan of correction implemented pursuant to this section shall be attached to the operation permit for the rainwater harvesting system.]~~

Part III

Design and Installation

12VAC5-635-200. [~~Cross-connection~~ Cross-connection] abatement.

[~~A. "Cross-connection" means a physical connection or arrangement between two otherwise separate piping systems whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems.~~

~~B.] No rainwater harvesting system may be installed, operated, or allowed on any premises where [~~cross-connection~~ cross-connection] to a waterworks or a private well exists, unless the [~~cross-connections~~ cross-connections] are abated or controlled by means including [~~cross-connection~~ cross-connection] control and backflow prevention in accordance with the USBC. Where [~~cross-connection~~ cross-connection] to a waterworks exists, the [~~cross-connection~~ cross-connection] shall be abated or controlled to the satisfaction of the waterworks.~~

12VAC5-635-210. Backflow prevention.

A. [~~"Backflow" means (i) the flow of water, other liquids, mixtures, or substances into the distribution system of a pure water system from one or more sources other than its intended source; or (ii) the reversal of the normal direction of flow.~~

~~B.] A rainwater harvesting system shall be designed, installed, and maintained to prevent contamination of secondary water supplies by backflow. Backflow prevention shall be achieved by one or more of the following:~~

1. Backflow elimination methods, including air gap separation or physical disconnection;
2. Backflow prevention assemblies, including the reduced pressure principle, double check valve, and pressure vacuum breaker assemblies; or
3. If backflow prevention is not generally required to withstand continuous pressure over 12 hours or to control high hazards, a backflow prevention device, including atmospheric type vacuum breakers and dual check valve devices.

[~~C. B.] Backflow prevention assemblies and backflow prevention devices shall be suitable to the application and shall conform to the USBC.~~

12VAC5-635-220. Water storage unit location.

A. An underground water storage unit for a rainwater harvesting system shall be sited with appropriate consideration given to distance from potential contamination sources, vulnerability to known or suspected natural risks (e.g., flooding and sink holes), potential for interference with utilities, and safety.

B. If the rainwater harvesting system will include an underground installation of a water storage unit, the designer shall conduct a sanitary survey, including investigation of obvious sources of toxic or dangerous substances within 200 feet of the water storage unit. Sources of contamination may include items listed in Table 1. The minimum separation distance between an underground water storage unit and sources of contamination shall comply with the minimum distances shown in Table 1.

TABLE 1 Separation distance between underground water storage unit and potential source of contamination	
Potential Source of Contamination	Separation Distance (feet)
Active or permitted septic tank, holding tank, pump tank, aerobic unit, house sewer line, sewer line, sewer main, sewerage system	50
Active or permitted drainfield, including reserve drainfield	50
Permanently abandoned onsite sewage disposal system	35
Petroleum storage tank, drum, tote, or other container (underground)	100
Petroleum storage tank, drum, tote, or other container (aboveground)	50

C. An aboveground water storage unit shall be installed on a sturdy and level foundation or platform with adequate drainage capable of bearing the weight of the unit at capacity. If multiple storage units are connected, compliant fittings must be used and installed in a manner that provides adequate flexibility to allow for unit settlement or movement.

D. A water storage unit and associated pipes and pipe fittings and appurtenances to be installed in locations subject to direct sunlight shall be constructed of materials stable under ultraviolet light exposure anticipated over the life of the system.

E. A water storage unit shall be supported and restrained to prevent lateral movement. Support and restraint devices may

not be placed in a manner that will obstruct access for cleaning and maintenance.

F. A water storage unit subject to a shallow water table shall be ballasted or otherwise secured to prevent floatation or lateral movement. The unit shall be designed to withstand structural stresses of hydrostatic pressure and buoyancy. If partially buried, design shall include provision to withstand the weight of backfill.

G. A water storage unit subject to vehicular traffic shall be installed in accordance with manufacturer's installation instructions and the USBC.

H. A water storage unit shall have at least one access opening to allow inspection and cleaning of the unit interior. The access opening shall be located to facilitate pumping and servicing of inlets and outlets. The access opening shall be locked or otherwise secured to prevent unauthorized access and shall be located at a finished grade such that surface water ponding does not occur under annual precipitation extreme conditions.

I. A water storage unit shall be fitted with an overflow discharge system with the following requirements:

1. Overflow is not less than the capacity of the inlets;
2. Unit overflow pipes are protected from insects and vermin;
3. Piping associated with unit overflow discharge water away from the unit and in accordance with the USBC;
4. Discharge of unit overflow is directed to prevent hazardous conditions;
5. No shutoff valves are incorporated into discharge piping;
6. Cleanouts are provided on overflow piping in accordance with the USBC;
7. If connected to storm drainage systems, the storm drainage systems have a means to prevent backflow; and
8. Overflows are not directed to onsite sewage systems or sanitary sewers.

J. A water storage unit shall be fitted with a vent pipe having a minimum 38.1 mm diameter protected with 1.5 mm mesh to prevent the entry of vermin and particulates.

12VAC5-635-230. Materials and equipment.

A. Materials and equipment used in rainwater harvesting systems shall be labeled to demonstrate compliance with applicable NSF 61 and NSF P151 standards, as appropriate.

B. Collection surfaces shall comply with the following requirements:

1. Collection roofing are composed of non-toxic materials;
2. Paint used on surfaces used for collection of rainwater for potable purposes is labeled to be certified to

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NSF/ANSI/CAN Standard 61-2020 or P151 and applied per the manufacturer's installation instructions;

3. Lead-based, chromium-based, or zinc-based paints are not used;

4. Galvanized metal is not used;

5. Flat roof products are labeled as meeting NSF Protocol P151;

6. Equipment and appliances mounted on collection surfaces have a means of preventing the introduction of contaminants into the rainwater harvesting system;

7. Equipment and appliances containing toxic fluids or other potentially harmful substances are not installed on collection surfaces or in locations where a release of contained substances will flow by gravity to collection surfaces; and

8. Materials used for collection surfaces conform to end use tier criteria pursuant to Table 2.

<u>TABLE 2.</u> <u>Collection Surface Materials</u>	
<u>Roofing Material (including flashing)</u>	<u>Acceptable for End Use Tier</u>
<u>Asbestos cement</u>	<u>Not acceptable for any end use</u>
<u>Asphalt</u>	<u>1, 2, 3, 4</u>
<u>Asphalt felt and bituminous and tar membranes</u>	<u>1, 2, 3</u>
<u>Ceramic</u>	<u>1, 2, 3, 4</u>
<u>Clay</u>	<u>1, 2, 3, 4</u>
<u>Concrete</u>	<u>1, 2, 3, 4</u>
<u>Copper</u>	<u>1, 2, 3</u>
<u>Fiberglass</u>	<u>1, 2, 3, 4</u>
<u>Glass</u>	<u>1, 2, 3, 4</u>
<u>Polyethylene membrane</u>	<u>1, 2, 3, 4</u>
<u>Polymer and acrylic</u>	<u>1, 2, 3</u>
<u>Rubber/Butyl/EPDM membrane</u>	<u>1, 2, 3</u>
<u>Steel, coated</u>	<u>1, 2, 3, 4</u>
<u>Steel, stainless</u>	<u>1, 2, 3, 4</u>

<u>Tin</u>	<u>1, 2, 3, 4</u>
<u>Wood, untreated</u>	<u>1, 2, 3</u>
<u>Wood, treated</u>	<u>1, 2, 3</u>
<u>PVC</u>	<u>1, 2, 3, 4</u>
<u>TPO</u>	<u>1, 2, 3</u>
<u>Public pedestrian accessible roofs</u>	<u>1, 2, 3</u>
<u>Vegetated roofs</u>	<u>1, 2, 3</u>
<u>Pedestrian and parking surfaces (rooftop)</u>	<u>1, 2, 3</u>

C. The conveyance system shall be protected to prevent the entrance of vermin. Inlets, debris excluders, filters, first-flush diverters, cleanouts, and conveyance system components requiring service shall be accessible. To convey captured rainwater, rainwater harvesting systems shall use drainage piping suitable for use with plumbing drainage or pressure systems. Conveyance system materials shall be labeled to demonstrate compliance with NSF/ANSI/CAN Standard 61-2020.

D. A cistern or water storage unit, liners, coatings, pipes, pipe fittings, and appurtenances shall be labeled to demonstrate compliance with the applicable requirements of NSF 61/ANSI/CAN Standard 61-2020 and NSF 372. The water storage unit shall be manufactured from previously unused materials, and no cistern or storage unit previously used to store anything other than water may be incorporated into a rainwater harvesting system. The water storage unit may be installed either above or below grade and provided a means for emptying and cleaning. If gravity drainage is not possible, a provision for pumping water from the unit shall be provided.

E. Water contained in an aboveground water storage unit shall be protected from direct sunlight through the use of opaque, ultraviolet-resistant materials or a sun barrier.

F. An underground water storage unit shall be installed in compliance with U.S. Occupational Safety and Health Administration Standard 1926 Subpart P and shall be provided with manhole risers a minimum of six inches above surrounding grade.

G. Pump and pump components shall be capable of delivering a minimum of 15 pounds per square inch in gauge residual pressure at the highest and most remote outlet served. Maximum pressure should not exceed 80 pounds per square inch in gauge.

H. Water piping, fittings, and related system components shall be appropriate for use in accordance with the USBC. Where plastic piping is exposed to sunlight, it shall be

protected by a factory applied protective coating or painted with compatible latex paint.

12VAC5-635-240. Design and installation.

A. The rainwater harvesting system shall be designed, installed, operated, and maintained to prevent contamination of water supplies and distribution piping.

B. Rainwater harvesting system components shall be protected from external contamination and entry by insects and vermin.

C. The rainwater harvesting system shall be sited and designed to produce and store water under local site conditions that include:

1. Excessive heat;
2. Freezing;
3. Flooding; and
4. Sunlight exposure.

D. The owner shall control access to rainwater harvesting system components to minimize unauthorized access.

E. Gutters, downspouts, and conveyance systems leading to the water storage unit shall be fitted with a screen or debris excluder to prevent the accumulation of leaves, needles, or other debris into the water storage tank or cistern.

F. Vegetation above roofs and gutters shall be removed to reduce organic matter falling on and decomposing in rainwater collection surfaces and conveyances, and to reduce or remove locations for animals to introduce contaminants.

G. Rainwater shall pass through a prefiltration system prior to entering the water storage unit or cistern. Appropriate prefiltration devices include a gutter screen, inline filters, and vortex filters to reduce organic matter, debris, and particulates from entering and accumulating in the bottom of the unit or cistern. Prefiltration devices without a self-cleaning design shall incorporate a corrosion resistant debris screen having openings no larger than 0.15 cm.

H. A first flush device shall be used to remove accumulated debris from the collection surface before rainwater is introduced to the water storage unit. First flush diverters shall:

1. Be placed after prefiltration;
2. Operate automatically and not rely on mechanically operated valves or devices;
3. Discharge diverted rainwater in a manner consistent with local stormwater runoff requirements so as not to cause damage to a property or erosion; and
4. Be readily accessible for maintenance.

I. Inlets and outlets on the water storage unit shall be installed and supported in accordance with the manufacturer's

instructions. Water storage units, including units used in series, shall each be fitted as follows:

1. Rainwater inlets to a water storage unit shall be arranged to minimize turbulent flow by means of a calming device such as a return bend elbow pointed upward at least 10 cm above the bottom of the tank.

2. Outlets shall be positioned, and floating collared offtakes shall be used below the top water level in the unit to draw water from the cleanest strata of the unit.

3. Overflow outlets or flap valves shall be protected with a screen having openings no greater than 1.5 mm to prevent entrance of insects or vermin into the unit.

4. The vent shall be minimum 38.1 mm diameter and be protected with mesh having openings no greater than 1.5 mm to prevent entrance of vermin and particulates.

5. Rainwater outlets and pump suction shall be located at least 100 mm above the bottom of the unit. If a floating pump is used, it shall draw water from below the water surface.

6. Pipe penetrations through unit walls shall be watertight and shall comply with the USBC. Pipe penetrations shall not prevent access to the unit for inspection or cleaning.

J. A rainwater harvesting system shall be equipped with filtration systems conforming to the standards specified in 12VAC5-635-250 and 12VAC5-635-340 and shall:

1. Be installed in accordance with the USBC;
2. Be accessible for inspection and maintenance;
3. Provide indication when servicing or replacement is due; and
4. Incorporate shutoff valves immediately upstream and downstream to allow for isolation during maintenance.

K. A rainwater harvesting system shall be equipped with disinfection systems that:

1. Conform with the standards specified in 12VAC5-635-260 and 12VAC5-635-340; and
2. Are designed and installed in accordance with the manufacturer's instructions and the USBC.

L. A rainwater harvesting system for Tier 3 and Tier 4 end use shall be equipped with a fail-safe system for disinfection systems, with alerts and alarms as follows:

1. Alerts shall be provided for critical control points identified in the operation and maintenance manual to indicate when the rainwater harvesting system is operating outside design parameters but not causing a hazard to health or safety or damage to system components.

2. Alerts shall have a visible output and may have an audible output.

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3. Alarms shall be provided for critical control points identified in the operation and maintenance manual to indicate when the rainwater harvesting system is operating outside the design parameters and potentially causing a hazard to health or safety or damage to system components.

4. Alarms shall have visible and audible outputs.

5. A remote alarm of an alert system using electronic communication shall be used to notify the operator that the system has failed or that failure is imminent.

M. Separation shall be maintained between potable and nonpotable distribution systems by means of color coded and labeled piping and [~~cross-connection~~ cross-connection] control in accordance with the USBC.

N. Controls for rainwater harvesting systems supplying water for fire sprinkler systems or standpipes shall comply with the Virginia Statewide Fire Prevention Code Act (§ 27-94 et seq. of the Code of Virginia).

O. If a rainwater harvesting system is [~~applied to~~ installed in] any building, facility, or residence, it shall be so indicated as follows:

1. Fixtures not specifically treated for potable water use shall be labeled for nonpotable use in accordance with the USBC.

2. Fixtures not subject to the USBC and not specifically treated for potable water use shall be prominently labeled "CAUTION: NONPOTABLE WATER – DO NOT DRINK" and "ATENCIÓN: AGUA NO-POTABLE – NO BEBER." Labels shall be indelibly printed on a tag or sign constructed of a corrosion resistant, waterproof material permanently mounted in a visible location. The letters of the labels and markings shall be at least 0.5 inches in height and shall be of a color that contrasts with the background on which they are printed. In addition to the required words, a pictograph consistent with the following shall appear in the tag or sign:



12VAC5-635-250. Filtration.

A. The owner shall ensure that harvested rainwater for Tier 2, Tier 3, and Tier 4 end uses is filtered.

B. Filtration is not required for Tier 2 end use water used outdoors.

C. If ultraviolet disinfection is used, particulate filtration systems shall be located downstream of the water storage tank and upstream of the ultraviolet system.

D. If ozone or chemical based disinfection is used, particulate filtration systems shall be installed downstream of the disinfection equipment. Filtration shall be installed as required for the disinfection system and in accordance with manufacturer's installation requirements.

E. Filters shall be sized to extend service time and shall be labeled to demonstrate compliance with NSF 42 for the reduction of taste or odor or shall be labeled to demonstrate compliance with NSF 53 for organic and cyst removal based on the end use tier.

12VAC5-635-260. Disinfection.

A. The owner shall ensure that harvested rainwater intended for Tier 2, 3, or 4 end use is disinfected and that water meeting the quality standards in 12VAC5-635-310 is delivered to the point of use.

B. The owner shall ensure that disinfection systems are designed and installed in accordance with the manufacturer's instructions and the USBC.

C. If a rainwater harvesting system requires a disinfection system pursuant to this section, the owner shall use one of the following acceptable methods:

1. An ultraviolet (UV) disinfection system that (i) treats water for distribution downstream of the water storage unit and upstream of the point of use; (ii) is sized based on the required dose, taking into consideration the design flow and minimum UV transmittance required to achieve the end use tier standard; and (iii) for Tier 4 end use, is labeled to be certified to Class A of NSF 55;

2. An ozone disinfection system that maintains adequate contact time based on end use tier and off-gasses to a safe environment; or

3. A chemical system that:

a. Has means to measure and control the disinfection and oxidation levels to achieve the performance requirements in 12VAC5-635-310;

b. Uses chemical feed pumps that are controlled to prevent operation unless there is flow through the system;

c. Is labeled to be certified to provide the required log reductions for protozoa and bacteria pursuant to NSF 53 or is labeled to be certified to provide the required log

reductions for protozoa and bacteria pursuant NSF/ANSI 419-2018;

d. Uses chemicals that are labeled to demonstrate compliance with NSF/ANSI/CAN Standard 60-2020 if water is provided for Tier 4 end use; and

e. Maintains a chlorine residual of at least 0.5 mg/L and control disinfection byproducts if untreated harvested rainwater is stored at temperatures higher than 77°F and chlorine disinfection is used.

D. A rainwater harvesting system for end use in a single-family home shall only use ultraviolet or ozone disinfection methods.

E. The department may approve other disinfection methods on a case-by-case basis.

12VAC5-635-270. General certification.

A. Premanufactured treatment systems and equipment and materials used to assemble treatment systems that are not premanufactured shall be labeled to demonstrate that the systems, equipment, and materials comply with NSF standards, as follows:

1. NSF/ANSI 53-2020 for point-of-entry or point-of-use filtration systems;
2. NSF/ANSI 55-2020 for ultraviolet disinfection systems;
3. NSF/ANSI/CAN 60-2020 for water treatment chemicals;
4. NSF/ANSI/CAN 61-2020 for protective barrier materials, joining and sealing materials, mechanical devices, plumbing devices, pipes, hoses, pipe fittings, process media, and nonmetallic potable water materials; and
5. NSF/ANSI 350-2020 and NSF/ANSI/CAN 350.1-2017 for material, design, construction, and performance requirements for reuse water.

B. Harvested rainwater is not reuse water. However, NSF/ANSI 350-2020 and NSF/ANSI/CAN 350.1-2017 establish baseline standards suitable for equipment and materials used in the design, installation, and operation of rainwater harvesting systems.

C. A person providing design, installation, or inspection of rainwater harvesting systems shall be certified by the American Society of Sanitary Engineering (ASSE) as follows:

1. Rainwater Harvesting System Designers shall maintain ASSE 21120 Rainwater Catchment Systems Designer certification.
2. Rainwater Harvesting System Installers shall maintain ASSE 21110 Rainwater Catchment Systems Installer certification.
3. Rainwater Harvesting System Inspectors shall maintain ASSE 21130 Rainwater and Stormwater Catchment Systems Inspector certification.

12VAC5-635-280. Temporary removal from service.

If a rainwater harvesting system is seasonally or temporarily removed from service, the owner or operator shall:

1. Lock out or disable piping connected to a waterworks;
2. Secure water storage units from unauthorized access;
3. Divert inlet piping as necessary; and
4. Disconnect electrical power.

Part VI

Performance Requirements

12VAC5-635-290. Performance requirements; general.

A. The owner shall ensure that a rainwater harvesting system operates in compliance with the following performance requirements:

1. For a rainwater harvesting system designed to supply water for Tier 2, 3, or 4 end use, the owner or operator shall conduct treatment using a combination of filtration and disinfection technologies to the minimum standards described in 12VAC5-635-310.
2. If a rainwater harvesting system provides water for multiple end uses and treatment is not separated by end use, the highest treatment standard shall apply for all uses.
3. If a rainwater harvesting system provides water for multiple end uses and treatment is separated by end use, connection to distribution for each end use shall comply with the USBC.

[4. B.] The designer of [~~water treatment systems~~ a rainwater harvesting system] shall consider the [following factors:

1. The] anticipated harvested rainwater characteristics and flow, including consideration of extremes of precipitation patterns. Excess precipitation not captured for storage shall be discharged as runoff. Insufficient precipitation that does not allow a rainwater harvesting system permitted for Tier 2, 3, or 4 end use to maintain sufficient storage shall be managed as described in 12VAC5-635-300.

[~~5. The designer of a rainwater harvesting system shall allow for the~~ 2. The] prevention of potentially harmful precipitation, such as that which could incorporate particulates from fires, from being captured and contained in the system.

[~~6. The designer of a rainwater harvesting system shall incorporate~~ 3. The selection and sizing of] components of sufficient structural integrity to minimize the potential of physical harm to humans and animals.

[~~B. The designer shall size~~ 4. The sizing of] the system in recognition of both the available collection area and number of users of the harvested rainwater. [~~A~~ The designer of a Tier 4] rainwater harvesting system [~~designed to supply~~

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~~water for Tier 3 end use for a residence] shall [be capable of providing 150 gallons per bedroom per day. If Tier 4 end use will not include residential use, the designer shall provide calculations supporting the anticipated demand. size the system pursuant to the following criteria:~~

- a. A demand of 100 gallons per bedroom per day for residential systems using either a private well or public water for continuity of water supply pursuant to 12VAC5-635-300 C.
- b. A demand of 150 gallons per bedroom per day for residential systems using hauled water for continuity of water supply pursuant to 12VAC5-635-300 C.
- c. For nonresidential systems, the designer shall provide calculations supporting the anticipated demand.]

12VAC5-635-300. Continuity of water supply.

A. "Continuity of water supply" means that a continuous supply of water can be provided to a distribution system supplied by a rainwater harvesting system in the event of insufficient precipitation or other circumstances affecting the supply of harvested rainwater.

B. If a rainwater harvesting system serves as a secondary supply for a distribution system and the primary supply is a waterworks, the rainwater harvesting system shall be an auxiliary water system pursuant to the requirements of the USBC and 12VAC5-590.

C. If a rainwater harvesting system serves as a primary supply for a distribution system for a Tier 2, 3, or 4 end use, the owner shall provide a secondary water supply by a waterworks, a Class III private well, or commercially hauled water meeting pure water standards.

D. The owner shall supply a secondary water supply from a waterworks or private well by a means to refill the water storage unit or a bypass that provides water directly to the distribution system.

E. The owner may only use commercially hauled water to refill a water storage unit prior to filtration and treatment.

F. When water from a secondary water supply is added to a water storage unit, the owner shall ensure that the water is introduced through a reverse pressure principle backflow device or an air gap pursuant to the USBC.

12VAC5-635-310. Water quality standards.

A. The owner shall perform initial water quality testing before the use of water from the rainwater harvesting system and subsequent water quality sampling and testing consistent with the schedule in 12VAC5-635-320 and in accordance with the operation and maintenance manual requirements of this chapter.

B. The owner shall:

1. Flush the system at least once with treated harvested rainwater before water quality testing and discharge the flush water as wastewater;
2. Collect samples for water quality testing from a point-of-use outlet intended for regular use, such as a kitchen sink;
3. Collect first draw samples of one liter for lead testing;
4. Ensure that water quality samples are analyzed by a laboratory certified by the Division of Consolidated Laboratory Services for drinking water samples; and
5. Ensure that the water is tested in accordance with the minimum performance criteria in Tables 3 and 4 and, at minimum, for total coliform or E. coli present, total nitrate and nitrite content, [~~protozoan cysts, cryptosporidium,~~] pH, and lead content.

TABLE 3 Minimum Performance Requirements							
Application				Log Reduction Target			
End Use Tier	Category	Potential for Human Contact	Example Use	Viruses	Bacteria	Protozoa	pH
1	Nonpotable	Low	Trap primers Spray irrigation (restricted access) Surface and subsurface irrigation Ice rinks	0*	0	0	[na N/A]
2	Nonpotable	Medium	Toilet and urinal flushing Clothes washing HVAC evaporative cooling Rooftop thermal cooling	0*	2 log	2 log	[na N/A]

<u>3</u>	<u>Nonpotable</u>	<u>High</u>	<u>Hose bibs</u> <u>Pressure washing</u> <u>Decorative fountains</u> <u>Vehicle washing</u> <u>Spray irrigation (nonrestricted access)</u> <u>Firefighting or protection and fire suppression</u>	<u>0*</u>	<u>3 log</u>	<u>3 log</u>	<u>[na N/A]</u>
<u>4</u>	<u>Potable</u>	<u>High</u>	<u>Human consumption</u>	<u>0*</u>	<u>6 log</u>	<u>6 log</u>	<u>7-10.5</u>
<p>* It is unlikely that human infectious viruses are present in harvested rainwater. However, if underground water storage tanks are used where there is a potential for sewage contamination or surface water infiltration, a 4-log reduction for viruses shall be required.</p>							

<u>TABLE 4</u> <u>Requirements for Tier 4 Potable Water</u>	
<u>Design Standards</u>	
<u>Filtration</u>	<u>5 µm</u>
<u>Disinfection</u>	<u>40 mi/cm² and labeled certified to Class A of NSF/ANSI 55</u>
<u>Water Quality Parameters</u>	
<u>Turbidity</u>	<u><0.3 NTU</u>
<u>Lead</u>	<u><15 µg/L</u>
<u>Nitrates</u>	<u><10 µg/L</u>

C. Before the commissioner issues an operation permit for a rainwater harvesting system intended for Tier 4 use, the owner must document that the treated harvested rainwater has been tested and meets primary [~~and secondary~~] U.S. Environmental Protection Agency drinking water standards [(inorganic), the tests listed in subdivision B 5 of this section, and the tests listed in Table 4]. If a primary drinking water standard [or design standard] is exceeded, the owner may provide additional treatment to address the exceedance and shall resample the treated harvest rainwater to ensure compliance with [~~the primary drinking water standard~~ this subsection. Testing for inorganic primary drinking water standards shall not be required for subsequent monitoring unless specified in the operation and maintenance manual prepared pursuant to 12VAC5-635-350.]

D. The owner shall conduct water quality sampling and monitoring in accordance with the procedures approved under 40 CFR Part 136 or alternative methods approved by the department, unless other procedures have been specified in this chapter.

E. The designer shall identify the rainwater harvesting system's water quality sampling points, which shall be downstream of the treatment steps and upstream of the point of use. If total residual chlorine is used to measure compliance in a system using chlorine disinfection, the sampling point must be downstream of the chlorine contact tank. If ultraviolet (UV) disinfection is used, the owner may not use water samples collected upstream of UV disinfection units for dosage adjustment for the purposes of water quality testing pursuant to this section.

Part V

Operation and Maintenance Requirements

12VAC5-635-320. Operator requirements; frequency of inspection.

A. The owner of a rainwater harvesting system shall ensure that the rainwater harvesting system is inspected by an operator in accordance with Table 5.

TABLE 5 Minimum operator visit frequency for rainwater harvesting systems		
End Use Tier	Initial Inspection	Regular Inspection Schedule
1	Prior to the system entering service	As needed
2, 3	Prior to the system entering service	Every 12 months while structure is occupied. If system only provides water for outdoor use, then as needed
4 (single service connection)	Condition of issuance of operation permit	Every 180 [calendar] days while structure is occupied*
4 (multiple service connections)	Condition of issuance of operation permit	Every 90 [calendar] days while any connection serves an occupied structure*

*If a structure is vacant longer than the regular inspection cycle in Table 5, an operator shall inspect the rainwater harvesting system prior to the structure becoming reoccupied.

B. The operator shall collect water quality samples from a rainwater harvesting system pursuant to 12VAC5-635-300 during the initial and regular inspections by the operator.

12VAC5-635-330. Operation and maintenance; operator's responsibility.

A. The operator of the rainwater harvesting system shall be certified as a designer, installer, or inspector pursuant to 12VAC5-635-270 C. Nothing in this chapter shall preclude the owner from being an operator if they are appropriately certified.

B. When the operator performs an inspection of the rainwater harvesting system, the operator shall perform the assessments required by this chapter through visual or other observations and through laboratory or other tests as required and may use additional observation methods or tests that the operator deems appropriate.

C. The operator shall maintain a written operational record for each rainwater harvesting system for which the operator is responsible that contains, at minimum, the following items:

1. Results of testing and sampling;
2. Information regarding reportable incidents, including the corrective action required and taken;
3. Maintenance, corrective actions, and repair activities that are performed for purposes other than a reportable incident; and
4. Recommendations for repair and replacement of system components.

D. If the owner of a rainwater harvesting system is not the operator, the operator shall provide an updated copy of the written operational record to the owner each time it is updated

and shall document the dates the copies are given to the owner in the written operational record. The operator shall also make an accurate, up-to-date copy of the written operational record available to the department upon request.

E. When performing activities pursuant to an inspection required by this chapter, the operator is responsible for the entire rainwater harvesting system, including treatment components, collection area components, and associated piping.

F. The operator shall follow the procedures and instructions provided in the approved operation and maintenance manual for the rainwater harvesting system.

12VAC5-635-340. Operation and maintenance; owner's responsibilities.

The owner shall:

1. Ensure the rainwater harvesting system is operated and maintained by a qualified operator;
2. Ensure that the operator performs the required duties;
3. Maintain a copy of the written operational record provided by the operator on the property where the rainwater harvesting system is located, make the written operational record available to the department upon request, and make a reasonable effort to transfer the written operational record to the subsequent owner;
4. Follow the approved operation and maintenance manual and keep a copy of the operation and maintenance manual for the rainwater harvesting system on the property where the system is located, make the operation and maintenance manual available to the department upon request, and make a reasonable effort to transfer the operation and maintenance manual to the subsequent owner;

5. Comply with applicable rainwater harvesting system requirements contained in this chapter; and

6. If applicable, inform users of the system of reportable incidents.

12VAC5-635-350. Operation and maintenance manual.

A. The owner and operator shall maintain and operate a rainwater harvesting system in accordance with the approved operation and maintenance manual.

B. The manual shall be easily understandable to the owner and operator and include, at minimum, the following items:

1. Basic identifying information for the rainwater harvesting system, including the location and intended end use;

2. Basic information regarding the rainwater harvesting system design, including treatment unit capacity, a list of components in the system, a schematic of the system, sampling locations, and contact information for replacement parts for each unit;

3. A list of control functions and how to use them;

4. Operation, maintenance, sampling, inspection, and reporting schedules for the rainwater harvesting system;

5. The design limits of the rainwater harvesting system design and how to operate the system within those design limits;

6. Technical information, including:

a. Catchment area dimensions;

b. Roofing materials and sealants;

c. Vertical conveyance materials;

d. Water storage unit information including volume, size dimensions, whether the unit is covered or uncovered, whether the unit is above or below ground, construction materials, and location;

e. Prefiltration information, including type of prefiltration used, quantity, filtration particle size, and location;

f. Pump system information including the brand, make, model, capacity and heads, and horsepower;

g. Disinfection system information, including the brand, make, model, parts numbers, date of manufacture, and date of installation for each component;

h. Additional manufacturer's instructions, such as schematics and diagrams provided with components of the rainwater harvesting system; and

i. Water quality verification procedures, frequency, parameters, sampling locations, records policies and procedures, and a sample written operational record entry form;

7. Inspection and maintenance procedures, to include (i) the procedures for inspecting and cleaning water storage tanks

and piping and (ii) periodic [~~cross-connection~~ cross-connection] inspection; and

8. Other information deemed necessary or appropriate by the designer.

C. The operation and maintenance manual for a [Tier 4] rainwater harvesting system [~~intended for Tier 4 end use~~] shall also contain the following:

1. A list of water quality monitoring requirements, including sample locations, tests to be performed, testing methods, and the applicable water quality standard;

2. Provisions for the determination of temporary or emergency alternate water supply, the conditions under which an alternate water supply is required, the procedures for ensuring continuity of water supply, when bottled water should be used, and the conditions that require boil water practices for cooking and drinking;

3. Criteria for ensuring the continuity of water supply, to include (i) a low capacity alarm for water storage; (ii) bypass protocol, including backflow and [~~cross-connection~~ cross-connection] prevention; and (iii) applicable reporting criteria;

4. Provisions for documenting the easement and land records requirements of this chapter; and

5. Identification of what incidents qualify as a reportable incident and the appropriate response, including:

a. An alarm event lasting more than 24 hours;

b. An alarm event that reoccurs following corrective action;

c. Failure to achieve one or more performance requirements;

d. Failure to achieve one or more quality standards;

e. Replacement of a major component of the system, including electric and electronic components; and

f. Actual or suspected contamination.

D. If the operation and maintenance manual includes requirements for operation, maintenance, sampling, or inspection schedules that exceed the minimum requirements of this chapter, the designer shall determine the additional requirements based on the proposed end use of the harvested rainwater, design flow and unit treatment processes of the rainwater harvesting system, and other factors.

E. The operation and maintenance manual shall include regional, local, and site-specific water concerns.

12VAC5-635-360. Inspection requirements.

A. During an inspection, the operator shall review and evaluate the operation of the rainwater harvesting system, perform routine maintenance, make adjustments, and replace worn or dysfunctional components with functionally

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equivalent parts such that the system can reasonably be expected to return to normal operation.

B. If a [Tier 4] rainwater harvesting system [~~permitted for Tier 4 end use~~] is not functioning as designed or in accordance with the performance requirements of this chapter and, in the operator's professional judgment, cannot be reasonably expected to return to normal operation through routine operation and maintenance, the operator shall report immediately to the owner the remediation efforts necessary to return the rainwater harvesting system to normal operation, including recommendation for temporary or emergency alternate water supply, if the system does not provide water acceptable for human consumption.

12VAC5-635-370. Inspection reports.

A. For an inspection conducted for a rainwater harvesting system intended for Tier 2 or 3 end use, the operator shall document the observations and findings of the inspection and provide documentation to the department if requested by the department.

B. For an inspection conducted for a [Tier 4] rainwater harvesting system [~~permitted for Tier 4 end use~~], the operator shall file an inspection report [~~on a form approved by the department.~~] with the local health department in the locality where the rainwater harvesting system is located. The report shall be filed no later than 45 calendar days following the date on which the inspection occurred and shall include the following minimum elements:

1. The name and certification number of the operator;
2. The date and time of the inspection;
3. The purpose of the inspection, such as required inspection, follow-up, or reportable incident;
4. A summary stating:
 - a. Whether the rainwater harvesting system is functioning as designed and in accordance with the performance requirements of this chapter;
 - b. Whether the operator believes the rainwater harvesting system will return to normal operation after providing maintenance; or
 - c. If the rainwater harvesting system is not functioning as designed or in accordance with the performance requirements of this chapter, (i) the actions required to return the rainwater harvesting system to normal operation, including provisions for a temporary alternate water supply, if applicable; and (ii) that the owner has been advised that failure to take action to return the system to normal operation represents a risk to public health and may subject the owner to enforcement action from the department;
5. Maintenance performed or adjustments made, including parts replaced;

6. The results of field measurements, water quality sampling, and observations;

7. The name of the laboratory that analyzed samples; and

8. A statement certifying the date the operator provided a written copy of the report to the owner.

C. If actions are required by the owner to return [~~the~~ a Tier 4] rainwater harvesting system to normal operation or provide a temporary alternate water supply or the operator has identified that failure to repair the rainwater harvesting system may result in a hazard to public health or the environment, the operator shall file the report summary with the local health department within 24 hours of the inspection.

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 (12VAC5-635)

[Commonwealth of Virginia Application for Tier 4 End Use Rainwater Harvesting System \(eff. 4/2022\)](#)

[[Commonwealth of Virginia Inspection Report: Tier 4 End Use Rainwater Harvesting System \(eff. 4/2022\)](#)]

[Registration for Rainwater Harvesting System: Tier 1, 2, or 3 End Use \(eff. 4/2022\)](#)

VA.R. Doc. No. R21-6687; Filed September 23, 2024, 4:14 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Fast-Track Regulation

Title of Regulation: 12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-20; adding 12VAC35-105-1830 through 12VAC35-105-1870).

Statutory Authority: §§ 37.2-302 and 37.2-400 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: November 20, 2024.

Effective Date: December 5, 2024.

Agency Contact: Susan H. Puglisi, Regulatory Research Specialist, Office of Regulatory Affairs, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Fourth Floor South, Richmond, VA 23219, telephone

(804) 371-8043, FAX (804) 371-4609, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the board to adopt regulations necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the commissioner and the department and authorizes the department to ensure the development of long-range programs and plans for mental health, developmental, and substance abuse services provided by the department, community services boards, and behavioral health authorities.

Purpose: The amendments are intended to make maintenance or detoxification treatments more widely available while ensuring that safeguards are in place to reduce the likelihood of diversion.

Rationale for Using Fast-Track Rulemaking Process: This action is deemed noncontroversial because the action integrates existing federal regulations into the regulation due to provider interest in supplying these mobile medication-assisted treatment (mobile MAT) services. The integration of the federal rules within the regulation will increase transparency and set administrative expectations for this service. The action was requested by the provider community.

Substance: The amendments detail under what circumstances mobile components of medication-assisted treatment programs would be able to transport and dispense controlled substances away from registered locations within the same state as the medication-assisted treatment programs. The amendments set forth requirements for security, recordkeeping, reporting, and inventory for those mobile components.

Issues: The primary advantage to the public is the enhanced ability for medication-assisted treatment programs to provide an expanded resource to those seeking and in need of substance use disorder treatment. There are no known disadvantages to the public. The primary advantages to the agency and the Commonwealth are more substance use services and resources at a time when opioid involved deaths are increasing across the country. There are no known disadvantages of this action to the agency or 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 Board of Behavioral Health and Developmental Services (board) proposes to amend this regulation to incorporate a 2021 federal rule pertaining to narcotic treatment programs with mobile components. The proposed amendments would allow currently licensed narcotic treatment programs, which are also called medication-assisted treatment (MAT) programs, to

voluntarily deploy mobile units with oversight from the Department of Behavioral Health and Developmental Services (DBHDS).

Background. In June 2021, the federal Drug Enforcement Administration (DEA) published a final rule permitting DEA registrants who are authorized to dispense methadone for opioid use disorder to voluntarily add a "mobile component" to their existing registrants.² Although the federal regulation is already in effect, and licensed MAT providers are already registered with the DEA, adding a "mobile component" requires a significant investment to retrofit a vehicle to meet the requirements in the federal rule. DBHDS reports that MAT providers in Virginia requested the board to incorporate mobile units as a voluntary option within the regulation so that they were explicitly authorized by both state and federal law, thus ensuring that their investment in the mobile unit was protected and that they were not operating in a legal grey area. Consequently, the agency seeks to amend the state regulation to align with the federal requirements. The proposed changes are designed to "make maintenance or detoxification treatments more widely available, while ensuring that safeguards are in place to reduce the likelihood of diversion."³ The most substantive requirements regarding security, recordkeeping, reporting, and inventory are identical to the requirements in the federal regulation. Section 20 (Definitions) would be amended to add a definition for "mobile medication-assisted treatment program" or "mobile MAT program." 12VAC35-105-1830 would be newly added to state that each mobile MAT program shall operate as a component of a licensed MAT location and be listed on the provider license addendum. This requirement would operationalize the federal requirement that providers operating mobile MATs must have an existing brick-and-mortar location with a DEA registration number. 12VAC35-105-1840 would be newly added to list the physical security control requirements for mobile MAT programs and storage areas.⁴ These requirements include installing a safe and limiting access to the controlled substance storage areas within the vehicle. 12VAC35-105-1850 would also be newly added to list the other security controls for mobile MATs.⁵ These requirements pertain to proper dosage, where individuals seeking treatment should wait, and restrictions on provider personnel. 12VAC35-105-1860 would be newly added to establish the record-keeping requirements for mobile MATs.⁶ Lastly, 12VAC35-105-1870 would be newly added to exempt mobile MATs from meeting the physical plant requirements in this regulation since those requirements are intended for licensed entities with physical locations and would simply not apply to mobile units.

Estimated Benefits and Costs. The proposed amendments would benefit MAT providers and the individuals receiving services. The amendments are intended to encourage MAT providers to invest in mobile units by providing legal recognition and ensuring that they would not be operating in a legal grey area. The deployment of mobile units would make MAT more accessible to individuals with opioid misuse

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disorder, thereby reducing drug overdoses and addressing the opioid crisis in Virginia.⁷

Businesses and Other Entities Affected. The proposed amendments would primarily benefit currently licensed MAT providers as well as providers seeking MAT licensure by providing the legal authority to deploy mobile MAT units at the state level. DBHDS reports that there are currently 41 licensed MAT providers and that one of them is already building a mobile unit. 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.⁸ Because the proposed amendments create a voluntary option, and thus do not require any investments or actions by MAT providers, any increase in net cost or reduction in net benefit would be made by the provider at the provider's discretion. Given that the changes would not directly require any action be taken by providers unless they choose to deploy a mobile unit, an adverse impact is not indicated.

Small Businesses⁹ Affected.¹⁰ The proposed amendments would not adversely affect small businesses. MAT providers that are small businesses would benefit from being able to operate a mobile unit.

Localities¹¹ Affected.¹² The proposed amendments would particularly benefit localities that receive additional opioid treatment via mobile MAT programs once this regulation becomes effective. The proposed amendments would not create new costs for any local governments.

Projected Impact on Employment. The proposed amendments would slightly increase the employment of providers who would staff the mobile MAT units.

Effects on the Use and Value of Private Property. The value of licensed MATs that are private companies would increase if they invest in a mobile MAT unit that generates additional revenue. Real estate development costs would not be affected.

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

² See Registration Requirements for Narcotic Treatment Programs with Mobile Components: <https://www.govinfo.gov/content/pkg/FR-2021-06-28/pdf/2021-13519.pdf>.

³ ABD, page 2.

⁴ The federal physical security control requirements are within 21 CFR Section 1301.72 (a)(1) and (e): <https://www.ecfr.gov/current/title-21/chapter-II/part-1301/subject-group-ECFRa7ff8142033a7a2/section-1301.72>.

⁵ The federal security control requirements are within 21 CFR 1301.74(j)(k)(l)(m) and (n): <https://www.ecfr.gov/current/title-21/chapter-II/part-1301/subject-group-ECFRa7ff8142033a7a2/section-1301.74>.

⁶ The federal record requirements are within 21 CFR 1304.24: <https://www.ecfr.gov/current/title-21/chapter-II/part-1304/subject-group-ECFRd220d26113f6a5/section-1304.24>.

⁷ See <https://curbthecriisis.com/> and <https://www.vdh.virginia.gov/drug-overdose-data/>.

⁸ 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.

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 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.

¹¹ "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.

¹² Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The federal Drug Enforcement Administration (DEA) published a final rule permitting DEA registrants who are authorized to dispense methadone for opioid use disorder to add a mobile component to existing registrants. The amendments integrate these federal regulations into the regulation due to provider interest in supplying these mobile medication-assisted treatment services.

12VAC35-105-20. Definitions.

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

"Abuse" means, as defined by § 37.2-100 of the Code of Virginia, any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving care or treatment for mental

illness, developmental disabilities, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates, or humiliates the individual;
4. Misuse or misappropriation of the individual's assets, goods, or property;
5. Use of excessive force when placing an individual in physical or mechanical restraint;
6. Use of physical or mechanical restraints on an individual that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or the individual's individualized services plan; or
7. Use of more restrictive or intensive services or denial of services to punish an individual or that is not consistent with the individual's individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and includes bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Addiction" means a primary, chronic disease of brain reward, motivation, memory, and related circuitry. Addiction is defined as the inability to consistently abstain, impairment in behavioral control, persistence of cravings, diminished recognition of significant problems with one's behaviors and interpersonal relationships, and a dysfunctional emotional response. Like other chronic diseases, addiction often involves cycles of relapse and remission. Without treatment or engagement in recovery activities, addiction is progressive and can result in disability or premature death.

"Admission" means the process of acceptance into a service as defined by the provider's policies.

"Allied health professional" means a professional who is involved with the delivery of health or related services pertaining to the identification, evaluation, and prevention of diseases and disorders, such as a certified substance abuse counselor, certified substance abuse counseling assistant, peer recovery support specialist, certified nurse aide, or occupational therapist.

"ASAM" means the American Society of Addiction Medicine.

"Assertive community treatment service" or "ACT" means a self-contained interdisciplinary community-based team of medical, behavioral health, and rehabilitation professionals who use a team approach to meet the needs of an individual with severe and persistent mental illness. ACT teams:

1. Provide person-centered services addressing the breadth of an individual's needs, helping the individual achieve his personal goals;
2. Serve as the primary provider of all the services that an individual receiving ACT services needs;
3. Maintain a high frequency and intensity of community-based contacts;
4. Maintain a very low individual-to-staff ratio;
5. Offer varying levels of care for all individuals receiving ACT services and appropriately adjust service levels according to each individual's needs over time;
6. Assist individuals in advancing toward personal goals with a focus on enhancing community integration and regaining valued roles, such as worker, family member, resident, spouse, tenant, or friend;
7. Carry out planned assertive engagement techniques, including rapport-building strategies, facilitating meeting basic needs, and motivational interviewing techniques;
8. Monitor the individual's mental status and provide needed supports in a manner consistent with the individual's level of need and functioning;
9. Deliver all services according to a recovery-based philosophy of care; and
10. Promote self-determination, respect for the individual receiving ACT as an individual in such individual's own right, and engage peers in promoting recovery and regaining meaningful roles and relationships in the community.

"Authorized representative" means a person permitted by law or 12VAC35-115 to authorize the disclosure of information or consent to treatment and services or participation in human research.

"Behavior intervention" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior intervention principles and methods shall be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting individuals to achieve the following:

1. Improved behavioral functioning and effectiveness;
2. Alleviation of symptoms of psychopathology; or
3. Reduction of challenging behaviors.

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"Board" or "state board" means, as defined by § 37.2-100 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

"Brain injury" means any injury to the brain that occurs after birth that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders or injuries induced by birth trauma.

"Care," "treatment," or "support" means the individually planned therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" or "support coordination service" means services that can include assistance to individuals and their family members in accessing needed services that are responsive to the individual's needs. Case management services include identifying potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. "Case management service" does not include assistance in which the only function is maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clinical experience" means providing direct services to individuals with mental illness or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

"Clinically managed high-intensity residential care" or "Level of care 3.5" means a substance use treatment program that offers 24-hour supportive treatment of individuals with significant psychological and social problems by credentialed addiction treatment professionals in an interdisciplinary treatment approach. A clinically managed high-intensity residential care program provides treatment to individuals who present with significant challenges, such as physical, sexual, or emotional trauma; past criminal or antisocial behaviors, with a risk of continued criminal behavior; an extensive history of treatment; inadequate anger management skills; extreme impulsivity; and antisocial value system.

"Clinically managed low-intensity residential care" or "Level of care 3.1" means providing an ongoing therapeutic environment for individuals requiring some structured support in which treatment is directed toward applying recovery skills; preventing relapse; improving emotional functioning; promoting personal responsibility; reintegrating the individual into work, education, and family environments; and strengthening and developing adaptive skills that may not have been achieved or have been diminished during the individual's active addiction. A clinically managed low-intensity residential care program also provides treatment for individuals suffering from chronic, long-term alcoholism or drug addiction and affords an extended period of time to establish sound recovery and a solid support system.

"Clinically managed population specific high-intensity residential services" or "Level of care 3.3" means a substance use treatment program that provides a structured recovery environment in combination with high-intensity clinical services provided in a manner to meet the functional limitations of individuals. The functional limitations of individuals who are placed within this level of care are primarily cognitive and can be either temporary or permanent.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community-based crisis stabilization" means services that are short term and designed to support an individual and the individual's natural support system following contact with an initial crisis response service or as a diversion to a higher level of care. Providers deliver community-based crisis stabilization services in an individual's natural environment and provide referrals and linkage to other community-based services at the appropriate level of care. Interventions may include mobile crisis response, brief therapeutic and skill-building interventions, engagement of natural supports, interventions to integrate natural supports in the de-escalation and stabilization of the crisis, and coordination of follow-up services. Coordination of specialized services to address the needs of co-occurring developmental disabilities and substance use disorders are also available through this service. Services include advocacy and networking to provide linkages and referrals to appropriate community-based services and assist the individual and the individual's family or caregiver in accessing other benefits or assistance programs for which the individual may be eligible. Community-based crisis stabilization is a non-center, community-based service. The goal of community-based crisis stabilization services is to stabilize the individual within the community and support the individual or the individual's support system (i) as part of an initial mobile crisis response; (ii) during the period between an initial mobile crisis response and entry into an established follow-up service at the appropriate level of care; (iii) as a transitional step-down from a higher level of care if the next level of care service is identified but not immediately available for access; or (iv) as a diversion to a higher level of care.

"Community gero-psychiatric residential services" means 24-hour care provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually 65 years of age or older in a geriatric setting that is less intensive than a psychiatric hospital but more intensive than a nursing home or group home. Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavior interventions, nursing, and other health-related services.

"Complaint" means an allegation of a violation of this chapter or a provider's policies and procedures related to this chapter.

"Conveyance" means a motor vehicle that serves as the mobile component of a mobile MAT program.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental illness, a developmental disability, substance abuse (substance use disorders), or brain injury.

"Co-occurring services" means individually planned therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the regulatory authority.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Credentialed addiction treatment professional" means a person who possesses one of the following credentials issued by the appropriate health regulatory board: (i) an addiction-credentialed physician or physician with experience or training in addiction medicine; (ii) a licensed nurse practitioner or a licensed physician assistant with experience or training in addiction medicine; (iii) a licensed psychiatrist; (iv) a licensed clinical psychologist; (v) a licensed clinical social worker; (vi) a licensed professional counselor; (vii) a licensed nurse practitioner with experience or training in psychiatry or mental health; (viii) a licensed marriage and family therapist; (ix) a licensed substance abuse treatment practitioner; (x) a resident who is under the supervision of a licensed professional counselor (18VAC115-20-10), licensed marriage and family therapist (18VAC115-50-10), or licensed substance abuse treatment practitioner (18VAC115-60-10) and is registered with the Virginia Board of Counseling; (xi) a resident in psychology who is under supervision of a licensed clinical psychologist and is registered with the Virginia Board of Psychology (18VAC125-20-10); or (xii) a supervisee in social work who is under the supervision of a licensed clinical social

worker and is registered with the Virginia Board of Social Work (18VAC140-20-10).

"Crisis" means a deteriorating or unstable situation often developing suddenly or rapidly that produces acute, heightened, emotional, mental, physical, medical, or behavioral distress.

"Crisis education and prevention plan" or "CEPP" means a department-approved, individualized, client-specific document that provides a concise, clear, and realistic set of supportive interventions to prevent or de-escalate a crisis and assist an individual who may be experiencing a behavioral loss of control. The goal of the CEPP is to identify problems that have arisen in the past or are emergent in order to map out strategies that offer tools for the natural support system to assist the individual in addressing and de-escalating problems in a healthy way and provide teaching skills that the individual can apply independently.

"Crisis planning team" means the team who is consulted to plan the individual's safety plan or crisis ISP. The crisis planning team consists, at a minimum, of the individual receiving services, the individual's legal guardian or authorized representative, and a member of the provider's crisis staff. The crisis planning team may include the individual's support coordinator, case manager, the individual's family, or other identified persons, as desired by the individual, such as the individual's family of choice.

"Crisis receiving center," "CRC," or "23-hour crisis stabilization" means a community-based, nonhospital facility providing short-term assessment, observation, and crisis stabilization services for up to 23 hours. This service is accessible 24 hours per day, seven days per week, 365 days per year, and is indicated when an individual requires a safe environment for initial assessment and intervention. This service includes a thorough assessment of an individual's behavioral health crisis, psychosocial needs, and supports in order to determine the least restrictive environment most appropriate for stabilization. Key service functions include rapid assessment, crisis intervention, de-escalation, short-term stabilization, and appropriate referrals for ongoing care. This distinct service may be co-located with other services such as crisis stabilization units.

"Crisis stabilization" means direct, intensive nonresidential or residential care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Crisis stabilization unit," "CSU," or "residential crisis stabilization unit" is a community-based, short-term residential

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treatment unit. CSUs serve as primary alternatives to inpatient hospitalization for individuals who are in need of a safe, secure environment for assessment and crisis treatment. CSUs also serve as a step-down option from psychiatric inpatient hospitalization and function to stabilize and reintegrate individuals who meet medical necessity criteria back into their communities.

"Day support service" means structured programs of training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills for adults with a developmental disability provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.

"Department" means the Virginia Department of Behavioral Health and Developmental Services.

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment or a combination of mental and physical impairments other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to nine years of age, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual without services and supports has a high probability of meeting those criteria later in life.

"Developmental services" means planned, individualized, and person-centered services and supports provided to individuals with developmental disabilities for the purpose of enabling these individuals to increase their self-determination and independence, obtain employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

"Diagnostic and Statistical Manual of Mental Disorders" or "DSM" means the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, DSM-5, of the American Psychiatric Association.

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Discharge" means the process by which the individual's active involvement with a service is terminated by the provider, individual, or individual's authorized representative.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery (§ 54.1-3400 et seq. of the Code of Virginia).

"Emergency service" means unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, available 24 hours a day and seven days per week. Emergency services also may include walk-ins, home visits, jail interventions, and preadmission screening activities associated with the judicial process.

"Group home or community residential service" means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting.

"HCBS Waiver" means a Medicaid Home and Community Based Services Waiver.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes noncenter-based day support, supportive in-home, and intensive in-home services.

"Individual" or "individual receiving services" means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client". When the term is used in this chapter, the requirement applies to every individual receiving licensed services from the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that

describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care, which are all considered individualized service plans.

"Informed choice" means a decision made after considering options based on adequate and accurate information and knowledge. These options are developed through collaboration with the individual and the individual's authorized representative, as applicable, and the provider with the intent of empowering the individual and the individual's authorized representative to make decisions that will lead to positive service outcomes.

"Informed consent" means the voluntary written agreement of an individual or that individual's authorized representative to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance use disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of a hospital.

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

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

"Intensity of service" means the number, type, and frequency of staff interventions and other services provided during treatment at a particular level of care.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at risk of serious emotional disturbance, including individuals who also have a diagnosis of developmental disability. Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Intermediate care facility/individuals with intellectual disability" or "ICF/IID" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an intermediate care facility for individuals with intellectual disability and persons with related conditions and that addresses the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, providing active treatment as defined in 42 CFR 435.1010 and 42 CFR 483.440.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding an alleged violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report, or other information that comes to the attention of the department.

"Licensed mental health professional" or "LMHP" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, certified psychiatric clinical nurse specialist, licensed behavior analyst, or licensed psychiatric/mental health nurse practitioner.

"Location" means a place where services are or could be provided.

"Mandatory outpatient treatment order" means an order issued by a court pursuant to § 37.2-817 of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility under the supervision of medical personnel using medication to systematically eliminate or reduce the presence of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a

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physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medically managed intensive inpatient service" or "Level of care 4.0" means an organized service delivered in an inpatient setting, including an acute care general hospital, psychiatric unit in a general hospital, or a freestanding psychiatric hospital. This service is appropriate for individuals whose acute biomedical and emotional, behavioral, and cognitive problems are so severe that they require primary medical and nursing care. Services at this level of care are managed by a physician who is responsible for diagnosis, treatment, and treatment plan decisions in collaboration with the individual.

"Medically monitored intensive inpatient treatment" or "Level of care 3.7" means a substance use treatment program that provides 24-hour care in a facility under the supervision of medical personnel. The care provided includes directed evaluation, observation, medical monitoring, and addiction treatment in an inpatient setting. The care provided may include the use of medication to address the effects of substance use. This service is appropriate for an individual whose subacute biomedical, emotional, behavioral, or cognitive problems are so severe that they require inpatient treatment but who does not need the full resources of an acute care general hospital or a medically managed intensive inpatient treatment program.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the legally permitted direct application of medications, as enumerated by § 54.1-3408 of the Code of Virginia, by injection, inhalation, ingestion, or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

~~"Medication-assisted~~ Medication-assisted opioid treatment" or "opioid treatment service" means an intervention of administering or dispensing of medications, such as methadone, buprenorphine, or naltrexone approved by the federal Food and Drug Administration for the purpose of treating opioid use disorder.

~~"Medication-assisted~~ Medication-assisted treatment" or "MAT" means the use of U.S. Food and Drug Administration approved medications in combination with counseling and behavioral therapies to provide treatment of substance use disorders. ~~Medication-assisted~~ Medication-assisted treatment includes medications for opioid use disorder as well as medications for treatment of alcohol use disorder.

"Medication error" means an error in administering a medication to an individual and includes when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication,

(iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the wrong method is used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service" or "MCHSS" means the provision of recovery-oriented services to individuals with long-term, severe mental illness. MCHSS includes skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in the individualized services plan and development of environmental supports necessary to sustain active community living as independently as possible. MCHSS may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental health intensive outpatient service" means a structured program of skilled treatment services focused on maintaining and improving functional abilities through a time-limited, interdisciplinary approach to treatment. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide and may include individual, family, or group counseling or psychotherapy; skill development and psychoeducational activities; certified peer support services; medication management; and psychological assessment or testing.

"Mental health outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Mental health outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory, and other ancillary services, medical services, and medication services. Mental health outpatient service specifically includes:

1. Mental health services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;
2. Mental health services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or
3. Mental health services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Mental health partial hospitalization service" means time-limited active treatment interventions that are more intensive

than outpatient services, designed to stabilize and ameliorate acute symptoms and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is provided through a minimum of 20 hours per week of skilled treatment services focused on individuals who require intensive, highly coordinated, structured, and interdisciplinary ambulatory treatment within a stable environment that is of greater intensity than intensive outpatient, but of lesser intensity than inpatient.

"Mental illness" means, as defined by § 37.2-100 of the Code of Virginia, a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Missing" means a circumstance in which an individual is not physically present when and where he should be and his absence cannot be accounted for or explained by his supervision needs or pattern of behavior.

"Mobile crisis response" means a type of community-based crisis stabilization service that is available 24 hours per day, seven days per week, 365 days per year to provide rapid response, assessment, and early intervention to individuals experiencing a behavioral health crisis. Services are deployed in real time to the location of the individual experiencing a behavioral health crisis. The purpose of this service is to (i) de-escalate the behavioral health crisis and prevent harm to the individual or others; (ii) assist in the prevention of the individual's acute exacerbation of symptoms; (iii) develop an immediate plan to maintain safety; and (iv) coordinate care and linking to appropriate treatment services to meet the needs of the individual.

"Mobile medication-assisted treatment program" or "mobile MAT program" means a MAT operating from a motor vehicle or conveyance that serves as a mobile component to a licensed MAT location registered with the U.S. Drug Enforcement Administration as required by 21 CFR 1301.11 et seq.

"Motivational enhancement" means a person-centered approach that is collaborative, employs strategies to strengthen motivation for change, increases engagement in substance use services, resolves ambivalence about changing substance use behaviors, and supports individuals to set goals to change their substance use.

"Neglect" means, as defined by § 37.2-100 of the Code of Virginia, the failure by a person or a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

"Office of Human Rights" means the Department of Behavioral Health and Developmental Services Office of Human Rights.

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

"Provider" means, as defined by § 37.2-403 of the Code of Virginia, any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders) or (ii) residential services for individuals with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601, and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation service" means a program of two or more consecutive hours per day provided to groups of adults in a nonresidential setting. Individuals must demonstrate a clinical need for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. This service provides education to teach the individual about mental illness, substance abuse, and appropriate medication to avoid complication and relapse and opportunities to learn and use independent skills and to enhance social and interpersonal skills within a consistent program structure and environment. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified developmental disability professional" or "QDDP" means a person who possesses at least one year of documented experience working directly with individuals who have a developmental disability and who possesses one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, (iii) a licensed occupational therapist, or (iv) completion of at least a bachelor's degree in a human services field, including sociology, social work, special education, rehabilitation counseling, or psychology.

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"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults or children. A QMHP does not engage in independent or autonomous practice. A QMHP provides services as an employee or independent contractor of the department or a provider licensed by the department.

"Qualified mental health professional-adult" or "QMHP-A" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults. A QMHP-A provides services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-A may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-child" or "QMHP-C" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for children. A QMHP-C provides services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-C may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-trainee" or "QMHP-T" means a person receiving supervised training in order to qualify as a QMHP in accordance with 18VAC115-80 and who is registered with the Board of Counseling.

"Qualified paraprofessional in mental health" or "QPPMH" means a person who meets at least one of the following criteria: (i) is registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; (iii) is licensed as an occupational therapy assistant, and supervised by a licensed occupational therapist, with at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iv) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-A providing services to individuals with mental illness and at least one year of experience, including the 12 weeks of supervised experience.

"Quality improvement plan" means a detailed work plan developed by a provider that defines steps the provider will take to review the quality of services it provides and to manage initiatives to improve quality. A quality improvement plan

consists of systematic and continuous actions that lead to measurable improvement in the services, supports, and health status of the individuals receiving services.

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance abuse (substance use disorders), recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with a developmental disability, the concept of recovery does not apply in the sense that individuals with a developmental disability will need supports throughout their entire lives although these may change over time. With supports, individuals with a developmental disability are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others they know.

"REACH crisis therapeutic home" or "REACH CTH" means a residential home with crisis stabilization REACH service for individuals with a developmental disability and who are experiencing a mental health or behavior crisis.

"REACH mobile crisis response" means a REACH service that provides mobile crisis response for individuals with a developmental disability and who are experiencing a mental health or behavior crisis.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Regional education assessment crisis services habilitation" or "REACH" means the statewide crisis system of care that is designed to meet the crisis support needs of individuals who have a developmental disability and are experiencing mental health or behavior crisis events that put the individuals at risk for homelessness, incarceration, hospitalization, or danger to self or others.

"Residential" or "residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent and requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group homes, supervised living, community gero-psychiatric residential, ICF/IID, sponsored residential homes, medical and social detoxification, and neurobehavioral services.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to nonhospitalized individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for

crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Residential treatment service" means providing an intensive and highly structured clinically based mental health, substance abuse, or neurobehavioral service for co-occurring disorders in a residential setting other than an inpatient service.

"Respite care service" means providing for a short-term, time-limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular caregiver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or a sponsored residential home.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the individual's freedom of movement or functioning of a limb or portion of an individual's body when that behavior places him or others at imminent risk.
2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.
3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntarily restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove

the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Risk management" means an integrated system-wide program to ensure the safety of individuals, employees, visitors, and others through identification, mitigation, early detection, monitoring, evaluation, and control of risks.

"Root cause analysis" means a method of problem solving designed to identify the underlying causes of a problem. The focus of a root cause analysis is on systems, processes, and outcomes that require change to reduce the risk of harm.

"Screening" means the process or procedure for determining whether the individual meets the minimum criteria for initial assessment.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical means so that the individual cannot leave the area.

"Serious incident" means any event or circumstance that causes or could cause harm to the health, safety, or well-being of an individual. The term "serious incident" includes death and serious injury.

"Level I serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider and does not meet the definition of a Level II or Level III serious incident. Level I serious incidents do not result in significant harm to individuals but may include events that result in minor injuries that do not require medical attention or events that have the potential to cause serious injury, even when no injury occurs.

"Level II serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider that results in a significant harm or threat to the health and safety of an individual that does not meet the definition of a Level III serious incident. "Level II serious incident" includes a significant harm or threat to the health or safety of others caused by an individual. Level II serious incidents include:

1. A serious injury;
2. An individual who is or was missing;
3. An emergency room visit;
4. An unplanned psychiatric or unplanned medical hospital admission of an individual receiving services other than licensed emergency services, except that a psychiatric admission in accordance with an individual's wellness plan

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shall not constitute an unplanned admission for the purposes of this chapter;

5. Choking incidents that require direct physical intervention by another person;
6. Ingestion of any hazardous material; or
7. A diagnosis of:
 - a. A decubitus ulcer or an increase in severity of level of previously diagnosed decubitus ulcer;
 - b. A bowel obstruction; or
 - c. Aspiration pneumonia.

"Level III serious incident" means a serious incident, whether or not the incident occurs while in the provision of a service or on the provider's premises, that results in:

1. Any death of an individual;
2. A sexual assault of an individual; or
3. A suicide attempt by an individual admitted for services, other than licensed emergency services, that results in a hospital admission.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner.

"Service" means, as defined by § 37.2-403 of the Code of Virginia, (i) planned individualized interventions intended to reduce or ameliorate mental illness, developmental disabilities, or substance abuse (substance use disorders) through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders). Services include outpatient services, intensive in-home services, ~~medication-assisted~~ medication-assisted opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, in-home services, crisis stabilization, and other residential services; and (ii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Signed" or "signature" means a handwritten signature, an electronic signature, or a digital signature, as long as the signer showed clear intent to sign.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Sponsored residential home" means a service where providers arrange for, supervise, and provide programmatic, financial, and service support to families or persons (sponsors) providing care or treatment in their own homes for individuals receiving services.

"State methadone authority" means the Virginia Department of Behavioral Health and Developmental Services, which is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse (substance use disorders)" means, as defined by § 37.2-100 of the Code of Virginia, the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse intensive outpatient service" or "Level of care 2.1" means structured treatment provided to individuals who require more intensive services than is normally provided in an outpatient service but do not require inpatient services. Treatment consists primarily of counseling and education about addiction-related and mental health challenges delivered a minimum of nine to 19 hours of services per week for adults or six to 19 hours of services per week for children and adolescents. Within this level of care an individual's needs for psychiatric and medical services are generally addressed through consultation and referrals.

"Substance abuse outpatient service" or "Level of care 1.0" means a center-based substance abuse treatment delivered to individuals for fewer than nine hours of service per week for adults or fewer than six hours per week for adolescents on an individual, group, or family basis. Substance abuse outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. Substance abuse outpatient service includes substance abuse services or an office practice that provides professionally directed aftercare, individual, and other addiction services to individuals according to a predetermined regular schedule of

fewer than nine contact hours a week. Substance abuse outpatient service also includes:

1. Substance abuse services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;
2. Substance abuse services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or
3. Substance abuse services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Substance abuse partial hospitalization services" or "Level of care 2.5" means a short-term, nonresidential substance use treatment program provided for a minimum of 20 hours a week that uses multidisciplinary staff and is provided for individuals who require a more intensive treatment experience than intensive outpatient treatment but who do not require residential treatment. This level of care is designed to offer highly structured intensive treatment to those individuals whose condition is sufficiently stable so as not to require 24-hour-per-day monitoring and care, but whose illness has progressed so as to require consistent near-daily treatment intervention.

"Suicide attempt" means a nonfatal, self-directed, potentially injurious behavior with an intent to die as a result of the behavior regardless of whether it results in injury.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, treatment, counseling, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals, to strengthen individual skills, and that provide environmental supports necessary to attain and sustain independent community residential living. Services include drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care, and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the

provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Systemic deficiency" means violations of regulations documented by the department that demonstrate multiple or repeat defects in the operation of one or more services.

"Telehealth" shall have the same meaning as "telehealth services" in § 32.1-122.03:1 of the Code of Virginia.

"Telemedicine" shall have the same meaning as "telemedicine services" in § 38.2-3418.16 of the Code of Virginia.

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through 17 years of age and under certain circumstances up to 21 years of age with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through seven years of age who are at risk of serious emotional disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

"Written," "writing," and "in writing" include any representation of words, letters, symbols, numbers, or figures, whether (i) printed or inscribed on a tangible medium or (ii) stored in an electronic or other medium and retrievable in a perceivable form and whether an electronic signature authorized by Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 of the Code of Virginia is or is not affixed.

Article 9

Mobile Medication-Assisted Treatment Services

12VAC35-105-1830. Application for operation of a mobile medication-assisted treatment program.

Each mobile medication-assisted treatment program shall operate as a component of a licensed MAT location and shall be listed on the provider's license addendum.

12VAC35-105-1840. Physical security controls; mobile MAT programs; storage areas.

A. For any conveyance operated as a mobile MAT program, a safe must be installed and used to store narcotic drugs in

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Schedules II through V for the purpose of maintenance or detoxification treatment, when not located at the provider's U.S. Drug Enforcement Administration (DEA) registered location. The safe shall:

1. Have the following specifications or the equivalent: 30 man-minutes against surreptitious entry, 10 man-minutes against forced entry, 20 man-hours against lock manipulation, and 20 man-hours against radiological techniques;

2. If it weighs less than 750 pounds, be bolted or cemented to the floor or wall in such a way that it cannot be readily removed; and

3. Be equipped with an alarm system that, upon attempted unauthorized entry, shall transmit a signal directly to a central protection company or a local or state police agency that has a legal duty to respond or a 24-hour control station operated by the DEA registrant.

B. The controlled substance storage areas shall be accessible only to an absolute minimum number of specifically authorized employees. When it is necessary for employee maintenance personnel, nonemployee maintenance personnel, business guests, or visitors to be present in or pass through controlled substance storage areas, the registrant shall provide for adequate observation of the area by an employee specifically authorized in writing.

C. The storage area for controlled substances in a mobile MAT program shall not be accessible from outside of the vehicle.

D. Personnel transporting the controlled substances on behalf of the mobile MAT program are required to retain control over all controlled substances when transferring the controlled substances between the DEA registered location and the conveyance, while en route to and from the dispensing locations, and when dispensing at the dispensing location. At all other times during transportation, all controlled substances shall be properly secured in the safe.

E. Upon completion of the operation of the mobile MAT program on a given day, the conveyance shall be immediately returned to the DEA registered location, and all controlled substances shall be removed from the conveyance and secured within the DEA registered location. After the conveyance has returned to the DEA registered location and the controlled substances have been removed, the conveyance may be parked until its next use at the DEA registered location or in any secure, fenced-in area once the local DEA office has been notified of the location of the secure, fenced-in area.

F. All mobile MAT programs shall establish a standard written operating procedure to ensure, if the mobile MAT program becomes inoperable, that all controlled substances on the inoperable conveyance are accounted for, removed from

the inoperable conveyance, and secured at the DEA registered location.

G. With regard to the requirement within subsection E of this section, a mobile MAT program may apply to the DEA for an exception to this requirement. The application for such an exception must be submitted to the DEA in accordance with 21 CFR 1307.03. If the DEA grants an exception, the provider shall be permitted to operate in accordance with that exception. The provider shall maintain a record of the exception at the DEA registered location and in the mobile MAT program conveyance.

12VAC35-105-1850. Other security controls for mobile MATs.

A. Individuals enrolled in a mobile MAT program shall wait in an area that is physically separated from the narcotic storage and dispensing area by a physical entrance, such as a door or other entryway. Individuals served must wait outside of a mobile MAT program component if that conveyance does not have seating or a reception area that is separated from the narcotic storage and dispensing area. This requirement shall be enforced by the provider and all provider employees.

B. All mobile MAT programs shall comply with standards established by the U.S. Secretary of Health and Human Services respecting the quantities of narcotic drugs that may be provided to persons enrolled in a mobile MAT program for unsupervised use.

C. Provider personnel who are authorized to dispense controlled substances for narcotic treatment shall ensure proper security measures and patient dosage. The mobile MAT program shall comply with U.S. Drug Enforcement Administration (DEA) security requirements.

D. Any controlled substances being transported for disposal from the dispensing location of a mobile MAT program shall be secured and disposed of in compliance with 21 CFR Part 1317 and all other applicable federal, state, tribal, and local laws and regulations.

E. A conveyance used as part of a mobile MAT program may only be supplied with narcotic drugs by the DEA registered MAT that operates the conveyance. No persons permitted to dispense controlled substances to a mobile MAT shall:

1. Receive controlled substances from other mobile MAT programs or any other entity;

2. Deliver controlled substances to other mobile MAT programs or any other entity; or

3. Conduct reverse distribution of controlled substances on a mobile MAT program.

12VAC35-105-1860. Records for mobile MATs.

A. A provider of a mobile MAT program shall maintain records with the following information for each narcotic controlled substance:

1. Name of substance;
2. Strength of substance;
3. Dosage form;
4. Date dispensed;
5. Adequate identification of individuals served;
6. Amount consumed;
7. Amount and dosage form taken home by individuals served; and
8. Dispenser's initials.

B. The records required by subsection A of this section shall be maintained in a dispensing log at the U.S. Drug Enforcement Administration (DEA) registered site of the mobile MAT program and shall be maintained in compliance with 21 CFR 1304.22 without reference to 21 CFR 1304.03.

C. As an alternative to maintaining a paper dispensing log, a mobile MAT program may also use an automated or computerized data processing system for the storage and retrieval of program dispensing records if the following conditions are met:

1. The automated system maintains the information required in subsection A of this section;
2. The automated system has the capability of producing a hard copy printout of the program's dispensing records;
3. The mobile MAT program prints a hard copy of each day's dispensing log, which is then initialed appropriately by each person who dispensed medication to individuals served;
4. The automated system is approved by DEA;
5. The mobile MAT program maintains an offsite back-up of all computer-generated program information; and
6. The automated system is capable of producing accurate summary reports for both the DEA registered site of the mobile MAT program and any mobile MAT program for any timeframe selected by department personnel during an investigation. If these summary reports are maintained in hard copy form, they must be kept in a systematically organized file located at the DEA registered site of the mobile MAT program.

D. The provider shall retain all records for a minimum of six years following the last patient encounter in accordance with § 54.1-2910.4 of the Code of Virginia.

12VAC35-105-1870. Physical plant exemption for mobile MATs.

Mobile MAT program locations are exempt from physical plant requirements located within 12VAC35-105-260 through 12VAC35-105-380.

VA.R. Doc. No. R23-7415; Filed September 26, 2024, 3:06 p.m.

Fast-Track Regulation

Titles of Regulations: 12VAC35-190. Regulations for Voluntary Admissions to State Training Centers (repealing 12VAC35-190-10 through 12VAC35-190-51).

12VAC35-200. Regulations for Emergency and Respite Care Admission to State Training Centers (amending 12VAC35-200-10, 12VAC35-200-20; adding 12VAC35-200-35, 12VAC35-200-45, 12VAC35-200-50, 12VAC35-200-55; repealing 12VAC35-200-30).

Statutory Authority: §§ 37.2-203 and 37.2-807 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: November 20, 2024.

Effective Date: December 5, 2024.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building 1220 Bank Street, Fourth Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the State Board of Behavioral Health and Developmental Services to promulgate regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the Department of Behavioral Health and Developmental Services (DBHDS) or its commissioner.

Purpose: Even with a dramatic reduction in training center admissions, as long as the Commonwealth continues to provide training center services, a regulation is needed to address admission procedures. The purpose of this regulatory action is to bring all regulatory language pertaining to admissions to DBHDS training centers into one regulatory chapter to provide clarity and ease of use. Also, amendments are made to reflect current admissions practices. The streamlining of the regulatory language for clarity and the update for current practices help to ensure the health, safety, and welfare of individuals needing services by facilitating staff understanding of the processes for efficient delivery of services.

Rationale for Using Fast-Track Rulemaking Process: This action is noncontroversial because it is merely combining existing language in two chapters into one for ease of use regarding training center admissions. No part of the code-

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mandated process or regulatory process is removed. There is only one substantive change in the hours for consideration of an emergency admission, and that is a reflection of current practice for the past several years.

Substance: This action merges two chapters into one through amendments to Chapter 200 and the repeal of Chapter 190 in order to provide clarity and ease of use. Specifically, the definition of respite care is removed as any respite admissions only occur for situations that are emergencies, and thus are captured under the definition of an emergency admission. Current practices are reflected to demonstrate that (i) during the application process, the community service board (CSB) consults with DBHDS and makes a referral to the regional support team (RST) requesting an emergency meeting, and the CSB is expected to pursue all recommendations made by the RST, consulting with the department and requesting an emergency admission to the training center only after it is determined that emergency admission is still necessary; (ii) the response time for the department to let the CSB know if the admission is accepted is changed from 24 hours to 72 hours, which provides time for part-time psychiatric staff consultation with the interdisciplinary team to review all documentation and thoroughly evaluate the request; and (iii) the CSB shall work with the DBHDS community integration managers and training center staff to develop a discharge plan after emergency admission as provided in §§ 37.2-505 and 37.2-837 of the Code of Virginia.

Issues: The primary advantage of this action to the public is that it brings all regulatory language pertaining to admissions to DBHDS training centers into one regulatory chapter to provide clarity and ease of use by individuals needing or receiving training center services and the authorized representatives of those individuals. As the action does not add additional burden or remove protections for individuals, there are no disadvantages to the public. The primary advantage to the Commonwealth is that the regulatory language is reflective of current practice and all admissions language is in one chapter. There are no disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia 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 the result of a periodic review² and Executive Directive 1 (2022)³ the State Board of Behavioral Health and Developmental Services (board) has adopted a fast-track rulemaking action to merge 12VAC35-190 into 12VAC35-200, and repeal 12VAC35-190, in order to streamline and clarify the regulation; other changes would update the regulation to reflect current practice.

Background. State training centers are a type of residential facility operated by the Department of Behavioral Health and Developmental Services (DBHDS) that provides highly structured habilitation services, including life in a residential neighborhood, care support or training, and learning opportunities in areas such as employment, communication, language, self-care, independent living, socialization, recreation, leisure, music, academic skills, and motor development for individuals with intellectual and developmental disabilities. This regulatory action combines two existing regulatory chapters that address admissions to state training centers by repealing Regulations for Voluntary Admissions to State Training Centers (12VAC35-190) and amending Regulations for Emergency and Respite Care Admission to State Training Centers (12VAC35-200) to incorporate most of the language from 12VAC35-190 in order to streamline the regulation; other changes would update regulatory language to reflect current practice. DBHDS reports that as a result of the U.S. Department of Justice Settlement Agreement with Virginia,⁴ the expansion of intellectual and developmental disability waiver slots, and increased rates of service for private providers, respite service for nonemergent care has not been utilized at training centers for several years.⁵ DBHDS also reports that training center admission is rarely a part of "emergency need" discussions due to increased community capacity and other improvements within the service system that make it easier to meet emergency residential needs. As a result, there was one respite or emergency admission to a state training facility in 2017 and four in 2018 (four of these five admissions in 2017-2018 were for the same individual); no respite or emergency admissions have occurred since that time.⁶ Further, while there used to be five state training centers, since April 2020 there has been only one training center, the Southeastern Virginia Training Center located in Chesapeake.⁷ To reflect these changes, the title of the combined 12VAC35-200 would be changed to "Regulations for Voluntary and Emergency Admission to State Training Centers." References to respite care (short-term relief for primary caregivers) would be removed from the title and the regulatory text because, in practice, such admissions only occur in emergency situations.⁸ 12VAC35-200-20 and 12VAC35-200-30, which address applications for respite care admissions and emergency admissions, respectively, would be substantively combined under the new 12VAC35-200-45 A. 12VAC35-200-20 would be retitled "Requests for Admission" and amended to state that all (emergency and voluntary) requests for admission to a training center shall be processed through the community services board (CSB) and that the CSB must consult with DBHDS, make a referral to the regional support team (RST), and follow up on all recommendations made by the RST. The current text does not involve DBHDS and directs CSBs to consult with the RST; this change reflects current practice, which has evolved to direct placements toward the least restrictive settings that could sufficiently meet the individual needs. This change is reiterated for emergency admissions in the new 12VAC35-200-45 A and for voluntary

admissions under 12VAC35-200-45 B. The new 12VAC35-200-45 A also differs from the requirements currently in 12VAC35-200-30 by increasing the response time for DBHDS to notify the CSB if an emergency admission is accepted from "within 24 hours" to "as quickly as possible but no later than 72 hours." DBHDS reports that this change would address the use of part-time psychiatric staff by providing them time to consult with the interdisciplinary team, review all documentation, and thoroughly evaluate the request. For instance, this change would give the training center staff adequate time to receive all the documentation for a request made on a Friday, and then make a decision by the following Monday. In addition, DBHDS reports that designated staff work closely with the CSBs to provide guidance and support with identifying resources needed to ensure the provision of appropriate care and services for individuals, including those who may be in need of emergency placement. That staff would be a part of those discussions and able to communicate with all stakeholders if someone was at imminent risk of harm and the 72-hour timeframe would jeopardize health and safety. Other changes to 12VAC35-200 include adding a definition for the term "community integration manager" or "CIM" to reference the DBHDS central office position physically located at the one remaining training center. This position provides support and direction for all aspects of the individual's transition to the community including addressing identified barriers to discharge. 12VAC35-200-45 A would include a requirement that, "If for any reason a person admitted to a training center for emergency services is not discharged at the agreed upon time, the CSB shall work with the CIM and training center staff to develop a discharge plan as provided in §§ 37.2-505 and 37.2-837 of the Code of Virginia." In merging 12VAC35-190 into 12VAC35-200, a definition of "licensed professional" currently in 12VAC35-190 would also be added to the definitions in 12VAC35-200, and the requirements for application for voluntary admission in 12VAC35-200-21 would be added to 12VAC35-200-45 B.⁹ 12VAC35-200-45 B would contain one new requirement that the preadmission screening report for voluntary admission include, "A statement from the CSB that the appropriate arrangements are being made to work with the individual and the family member or authorized representative to continue exploring opportunities to discharge the individual to a less restrictive setting." Lastly, 12VAC35-190-30 (Criteria for admission), 12VAC35-190-41 (Requests for reconsideration of the director's determination), and 12VAC35-190-51 (Judicial certification) would be added as 12VAC35-200-35, 12VAC35-200-50, and 12VAC35-200-55, respectively.

Estimated Benefits and Costs. The proposed amendments would benefit families and caregivers, and their representatives, by streamlining the regulation, removing redundant language, and reflecting changes to current practice, which were implemented to enable placements in the least restrictive community settings. On the other hand, individuals or families seeking emergency placement at a training center

may experience a longer wait time for a determination from the training center, from 24 hours to 72 hours, which could result in costs to them as they may have to provide more intensive or expensive care at home. However, such costs would be mitigated by CSB ability to place individuals in settings other than the training center, possibly sooner. This growth in the capacity for community placement, even for emergency and respite care, is evidenced by the lack of such placements at a training center since 2019. CSB staff could face a modest increase in their workload from (i) coordinating with DBHDS and the RST in response to a request for emergency or voluntary admission, (ii) working with the CIM to develop a discharge plan for emergency admissions who are not discharged at the agreed upon time, and (iii) working on discharging voluntary admissions to a less restrictive setting, as required by the additional statement to be included in the preadmission screening report. However, to the extent that the proposed changes reflect current practice, these costs are likely already being incurred.

Businesses and Other Entities Affected. As described, the proposed changes would primarily affect individuals and their caregivers seeking emergency or voluntary admission to a training center. 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 benefit for any entity, even if the benefits exceed the costs for all entities combined.¹¹ Because the proposed amendments could potentially result in a longer wait time for emergency admission to a training center, which could result in costs for affected families, an adverse impact is indicated. However, as noted, such costs would be mitigated by the investments in community placement options that have already been made.

Small Businesses¹² Affected.¹³ The proposed amendments would not adversely affect small businesses.

Localities¹⁴ Affected.¹⁵ No locality would be disproportionately affected. Local governments would not incur new costs.

Projected Impact on Employment. The proposed regulation does not appear to affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments do not appear to affect the value of private property. Real estate development costs would not be affected.

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

² See the periodic review associated with 12VAC35-190 here: <https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=2076>. See also the

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periodic review associated with 12VAC35-200: <https://townhall.virginia.gov/L/viewpreview.cfm?PRID=2077>.

³ ED 1, which was issued on January 15, 2022, directs executive branch agencies "to initiate regulatory processes to reduce by at least 25% the number of regulations not mandated by federal or state statute. See <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/ed/ED-1-Regulatory-Reduction.pdf>. ED 1 was subsequently amended and reenacted by Executive Order 19 (2022) to "require a 25% reduction in regulatory requirements instead of a reduction in regulations." See <https://townhall.virginia.gov/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf>.

⁴ See <https://dbhds.virginia.gov/doj-settlement-agreement/> for background information.

⁵ See page 1 of the Economic Review Form: https://townhall.virginia.gov/L/GetFile.cfm?File=65\6286\10076\ORM_EconomicImpact_DBHDS_10076_v3.pdf.

⁶ DBHDS further reports that only two emergency requests have been received since 2020 and they were both denied in favor of alternative placements because the leadership team determined that the training center was not an appropriate residential option to meet their care and support needs.

⁷ See <https://dbhds.virginia.gov/about-dbhds/facilities/>.

⁸ See page 3 of the Agency Background Document (ABD): https://townhall.virginia.gov/L/GetFile.cfm?File=65\6286\10076\AgencyStatement_DBHDS_10076_v2.pdf.

⁹ This language here would be similarly updated as for 12VAC35-200-45 A. to require CSBs to consult with DBHDS and make a referral to the RST, specifying that, "The CSB shall pursue all recommendations made by the RST. If it is determined that a voluntary admission is still necessary, the CSB shall consult with the department and request an admission to the training center."

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 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.

¹² 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."

¹³ 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.

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 Department of Behavioral Health and Developmental Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

As a result of periodic review, the amendments (i) repeal Regulations for Voluntary Admissions to State Training Centers (12VAC35-190) and move some provisions from 12VAC35-190 into 12VAC35-200; (ii) change the application process so that the community service board (CSB) consults with the Department of Behavioral Health And Developmental Services (department) and makes a referral to the regional support team (RST) requesting an emergency meeting, and the CSB is expected to pursue all recommendations made by the RST, consulting with the department and requesting an emergency admission to the training center only after it is determined that emergency admission is still necessary; (iii) increase to 72 hours the amount of time the department has to let the CSB know if the admission is accepted, which provides time for part-time psychiatric staff, in consultation with the interdisciplinary team, to review all documentation and thoroughly evaluate the request; and (iv) require that the CSB work with the department's community integration managers and training center staff to develop a discharge plan after emergency admission.

Chapter 200

Regulations for Voluntary and Emergency and Respite Care Admission to State Training Centers

12VAC35-200-10. Definitions.

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

"Admission" means acceptance of an individual in a training center.

"Authorized representative" or "AR" means a person permitted by law or ~~regulations~~ regulation to authorize the disclosure of information or to consent to treatment and services or participation in human research.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community integration manager" or "CIM" means the DBHDS Central Office position physically located at the training center that is responsible for coordinating the implementation of policies, procedures, regulations, and other initiatives related to ensuring that each individual residing in a training center is served in the most integrated setting appropriate to meet the individual's needs and desires. This position provides support and direction for all aspects of the

individual's transition to the community, including addressing identified barriers to discharge.

"Community services board" or "CSB" means a public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, developmental, and substance abuse services to individuals within each city and county that established it. For the purpose of this chapter, CSB also includes a behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia.

"Department" or "DBHDS" means the Department of Behavioral Health and Developmental Services.

"Discharge plan" means a written plan prepared by the CSB providing case management, in consultation with the training center pursuant to §§ 37.2-505 and 37.2-837 of the Code of Virginia. This plan is prepared when the individual is admitted to the training center and documents the services to be provided upon discharge.

"Emergency admission" means the temporary acceptance of an individual with an intellectual disability into a training center when immediate care is necessary and no other community alternatives are available.

"Guardian" means:

1. For minors—, an adult who is either appointed by the court as a legal guardian of a minor or exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent upon provisional adoption or otherwise by operation of law.
2. For adults—, a person appointed by the court who is responsible for the personal affairs of an incapacitated adult under the order of appointment. The responsibilities may include making decisions regarding the individual's support, care, health, safety, habilitation, education, and therapeutic treatment. Refer to definition of "incapacitated person" at § 64.2-2000 of the Code of Virginia.

"Individual" means a person with an intellectual disability for whom services are sought. This term includes the terms "consumer," "patient," "resident," and "client."

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

"Less restrictive setting" means the service location that is no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit and

protection from harm (to self and others) based on an individual's needs.

"Licensed professional" means a licensed psychologist, licensed professional counselor, or other individual who holds a valid professional license and has appropriate training in intellectual testing.

"Regional support team" or "RST" means a group of professionals with expertise in serving individuals with developmental disabilities in the community appointed by the commissioner or the commissioner's designee who provide recommendations to support placement in the most integrated setting appropriate to an individual's needs and consistent with the individual's informed choice.

~~"Respite care" means care provided to an individual with an intellectual disability on a short term basis because of the emergency absence of or need to provide routine or periodic relief of the primary caregiver for the individual. Services are specifically designed to provide temporary, substitute care for that which is normally provided by the primary caregiver.~~

"Training center" means a facility operated by the department that provides training, habilitation, or other individually focused supports to persons with intellectual disabilities.

12VAC35-200-20. ~~Respite care admission~~ Requests for admission.

~~A. Applications for respite care in~~ Requests for admission to a training center shall be processed through the CSB ~~providing case management.~~ A parent, guardian, or authorized representative seeking ~~respite care admission to a training center~~ for an individual with an intellectual disability shall apply first to the CSB that serves the area where the individual; or, if ~~the individual is~~ a minor, where the minor's parent or guardian is currently residing. The CSB shall consult with ~~the RST prior to preparing an application for respite care. If the CSB, in consultation with the RST, determines that respite care for the individual is not available in the community, the CSB shall forward an application to a training center serving individuals with intellectual disabilities~~ DBHDS, make a referral to the RST, and follow up on all recommendations made by the RST.

~~The application shall include:~~

- ~~1. An application for services;~~
- ~~2. A medical history indicating the presence of any current medical problems as well as the presence of any known communicable disease. In all cases, the application shall include any currently prescribed medications as well as any known medication allergies;~~
- ~~3. A social history and current housing or living arrangements;~~
- ~~4. A psychological evaluation that reflects the individual's current functioning;~~

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~~5. A current individualized education plan for school aged individuals unless the training center director or designee determines that sufficient information as to the individual's abilities and needs is included in other reports received;~~

~~6. A vocational assessment for adults unless the training center director or designee determines that sufficient information as to the individual's abilities and needs is included in other reports received;~~

~~7. A statement from the CSB that respite care is not available in the community for the individual;~~

~~8. A statement from the CSB that the appropriate arrangements are being made to return the individual to the CSB within the timeframe required under this chapter; and~~

~~9. A statement from the individual, a family member, or authorized representative specifically requesting services in the training center.~~

~~B. Determination of eligibility for respite care services shall be based upon the following criteria:~~

~~1. The individual has a diagnosis of intellectual disability and meets the training center's regular admission criteria;~~

~~2. The individual's needs are such that, in the event of a need for temporary care, respite care would not be available in a less restrictive setting; and~~

~~3. The training center has appropriate resources to meet the needs of the individual.~~

~~By the end of the next working day following receipt of a complete application package, the training center director or the director's designee, in consultation with the assistant commissioner responsible for the training center or the director's designee, shall provide written notice of the director's decision to the CSB. This notice shall state the reasons for the decision.~~

~~If it is determined that the individual is not eligible for respite care, the person seeking respite care may ask for reconsideration of the decision by submitting a written request for such reconsideration to the commissioner. Upon receipt of such request, the commissioner or designee shall notify the training center director, and the training center director shall forward the application packet and related information to the commissioner or designee within 48 hours. The commissioner or designee shall provide an opportunity for the person seeking respite care to submit for consideration any additional information or reasons as to why the admission should be approved. The commissioner shall render a written decision on the request for reconsideration within 10 days of the receipt of such request and notify all involved parties. The commissioner's decision shall be binding.~~

~~C. Respite care shall be provided in training centers under the following conditions:~~

~~1. The length of the respite care stay at the training center shall not exceed the limits established in § 37.2-807 of the Code of Virginia;~~

~~2. Space and adequate staff coverage are available on a residential living area with an appropriate peer group for the individual and suitable resources to meet his needs; and~~

~~3. The training center has resources to meet the individual's health care needs during the scheduled respite stay as determined by a physical examination performed by the training center's health service personnel at the time of the respite admission.~~

~~If for any reason a person admitted for respite care is not discharged at the agreed upon time, the CSB shall develop an updated discharge plan as provided in §§ 37.2-505 and 37.2-837 of the Code of Virginia.~~

~~Respite shall not be used as a mechanism to circumvent the voluntary admissions procedures as provided in § 37.2-806 of the Code of Virginia.~~

12VAC35-200-30. Emergency admission. (Repealed.)

~~A. In the event of a change in an individual's circumstances necessitating immediate, short term care for an individual with an intellectual disability, a parent, guardian, or authorized representative may request emergency admission by calling the CSB serving the area where the individual, or in the case of a minor, the minor's parent or guardian resides. Under these circumstances if the CSB, in consultation with the RST, determines that services for the individual are not available in the community, the CSB may request an emergency admission to a training center serving individuals with intellectual disabilities.~~

~~The CSB shall make every effort to obtain the same case information required for respite admissions, as described in 12VAC35-200-20 A, before the training center assumes responsibility for the care of the individual in need of emergency services. However, if the information is not available, this requirement may temporarily be waived if, and only if, arrangements have been made for receipt of the required information within 48 hours of the emergency admission.~~

~~B. Acceptance for emergency admission shall be based upon the following criteria:~~

~~1. A change in the individual's circumstances has occurred requiring immediate alternate arrangements to protect the individual's health and safety;~~

~~2. The individual has a diagnosis of an intellectual disability and meets the training center's regular admissions criteria;~~

~~3. All other alternate care resources in the community have been explored and found to be unavailable;~~

~~4. Space is available on a residential living area with appropriate resources to meet the individual's needs;~~

~~5. The training center's health services personnel have determined that the individual's health care needs can be met by the training center's resources; and~~

~~6. The length of the emergency stay at the training center shall not exceed the limits established in § 37.2-807 of the Code of Virginia.~~

~~C. Within 24 hours of receiving a request for emergency admission, the training center director or the director's designee, in consultation with the assistant commissioner responsible for the training center or his designee, shall inform the CSB whether the individual is eligible for emergency admission and whether the training center is able to provide emergency services.~~

~~If the training center is able to provide emergency services, arrangements shall be made to effect the admission as soon as possible.~~

~~If the training center is unable to provide emergency services to an eligible individual, the training center director or designee shall provide written notice of this determination to the CSB and may offer in consultation with department staff to try to obtain emergency services from another appropriate facility.~~

~~If for any reason a person admitted to a training center for emergency services is not discharged at the agreed upon time, the CSB shall develop a discharge plan as provided in §§ 37.2-505 and 37.2-837 of the Code of Virginia.~~

12VAC35-200-35. Criteria for admission.

A. Acceptance for admission shall be based upon the following criteria:

1. Receipt of a completed preadmission screening report;
2. The individual has a diagnosis of an intellectual disability made by a licensed professional;
3. All other alternate care resources in the community have been explored and found to be unavailable;
4. Space is available in a residential living area with appropriate resources to meet the individual's needs; and
5. The training center's health services personnel have determined that the individual's health care needs can be met by the training center's resources.

B. If the request is for an emergency admission:

1. There must be documentation of a change in the individual's circumstances requiring immediate alternate arrangements to protect the individual; and

2. The length of the emergency stay at the training center shall not exceed the limits established in § 37.2-807 of the Code of Virginia.

12VAC35-200-45. Application for admission.

A. Application for emergency admission.

1. In the event of a change in circumstances necessitating immediate, short-term care for an individual with an intellectual disability, a parent, guardian, or authorized representative may request emergency admission by contacting the CSB serving the area where the individual or, in the case of a minor, the minor's parent or guardian resides. The CSB shall consult with DBHDS, make a referral to the regional support team (RST), and request an emergency meeting. The CSB shall pursue all recommendations made by the RST. If it is determined that emergency admission is still necessary, the CSB shall consult with the department and request an emergency admission to the training center.

2. The CSB shall make every effort to obtain the information required as described in subdivision 3 of this subsection before the training center assumes responsibility for the care of the individual in need of emergency services.

3. The preadmission screening report requesting emergency admission shall include:

a. An application for services;

b. A medical history indicating the presence of any current medical problems as well as the presence of any known communicable disease. In all cases, the application shall include any currently prescribed medications as well as any known medication allergies;

c. A social history and current housing or living arrangements;

d. A psychological evaluation that reflects the individual's current functioning;

e. A current individualized education plan for school-age individuals, unless the training center director or designee determines that sufficient information as to the individual's abilities and needs is included in other reports received;

f. A vocational assessment for adults, unless the training center director or designee determines that sufficient information as to the individual's abilities and needs is included in other reports received;

g. A statement from the CSB that the appropriate arrangements are being made to discharge the individual to a less restrictive setting within the timeframe required under this chapter; and

h. A statement from the individual, a family member, or authorized representative specifically requesting services in the training center.

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4. If the information in subdivision 3 of this subsection is not available, this requirement may be temporarily waived if arrangements have been made for receipt of the required information within 48 hours of the emergency admission.

5. As quickly as possible but no later than 72 hours after receiving a request for emergency admission, the training center director or the director's designee shall inform the CSB whether the individual is eligible for emergency admission and whether the training center is able to provide emergency services.

6. If an emergency admission is appropriate, and the training center is able to provide emergency services, arrangements shall be made to effect the admission as soon as possible.

7. If for any reason a person admitted to a training center for emergency services is not discharged at the agreed upon time, the CSB shall work with the CIM and training center staff to develop a discharge plan as provided in §§ 37.2-505 and 37.2-837 of the Code of Virginia.

8. If an emergency admission is appropriate, and the training center is unable to provide emergency services to an eligible individual, the training center director or the training center director's designee shall provide written notice of this determination to the CSB and may offer, in consultation with department staff, to try to obtain emergency services from another appropriate facility.

B. Application for voluntary admission.

1. Prior to making a request for voluntary admission, the CSB shall consult with DBHDS and make a referral to the RST. The CSB shall pursue all recommendations made by the RST. If it is determined that a voluntary admission is still necessary, the CSB shall consult with the department and request an admission to the training center.

2. If the CSB, after following up on all recommendations made by the RST, determines that the services the individual needs are not available in the community or the individual chooses to obtain services in the state training center, the CSB shall consult with DBHDS and forward an application and a preadmission screening report, pursuant to § 37.2-806 B of the Code of Virginia, to the training center.

3. The preadmission screening report requesting voluntary admission shall include:

a. An application for services;

b. A medical history indicating the presence of any current medical problems as well as the presence of any known communicable disease. In all cases, the application shall include any currently prescribed medications as well as any known medication allergies;

c. A social history and current housing or living arrangements;

d. A psychological evaluation that reflects the individual's current functioning;

e. A current individualized education plan for school-age individuals, unless the training center director or designee determines that sufficient information as to the individual's abilities and needs is included in other reports received;

f. A vocational assessment for adults, unless the training center director or designee determines that sufficient information as to the individual's abilities and needs is included in other reports received;

g. A statement from the CSB that the appropriate arrangements are being made to work with the individual and the family member or authorized representative to continue exploring opportunities to discharge the individual to a less restrictive setting; and

h. A statement from the individual, a family member, or authorized representative specifically requesting services in the training center.

4. Upon the receipt of a completed preadmission screening report, the training center director or the director's designee shall determine eligibility for voluntary admission based upon the admissions criteria.

5. Within 10 business days from the receipt of the completed preadmission screening report, the training center director or designee shall provide to the CSB the written decision on the request for voluntary admission. If the training center director, in consultation with the assistant commissioner responsible for the training center or the assistant commissioner's designee, finds that admission is not appropriate, the training center director shall state the reasons in a written decision and may recommend an alternative location for needed services.

12VAC35-200-50. Requests for reconsideration of the director's determination.

In the event that (i) the CSB making the request for admission or (ii) the parent, guardian, or authorized representative applying on behalf of an individual disagrees with the determination of the director, either party may request a reconsideration of the determination by submitting a request in writing to the commissioner within 10 business days of receiving such determination. Upon receipt of a request for reconsideration, the commissioner shall notify the training center director, and the training center director shall forward the preadmission screening report package and related information to the commissioner within 48 hours. The commissioner shall also provide an opportunity for the individual requesting reconsideration to submit for review any additional information or reasons why the admission should be approved. The commissioner shall render a written decision on the request for reconsideration within 30 calendar days of the

receipt of the request and notify all involved parties. The commissioner's decision shall be binding.

12VAC35-200-55. Judicial certification.

Upon receipt of written notification from the training center director that an individual is eligible for voluntary admission, or if the individual will not be discharged within the required timeframe following an emergency admission, the CSB shall inform the individual and the individual's parent, guardian, or authorized representative of this decision and assist the parent, guardian, or authorized representative in initiating a judicial proceeding pursuant to § 37.2-806 of the Code of Virginia. When the judge has certified that the individual is eligible for admission to a training center in accordance with § 37.2-806 F of the Code of Virginia, a date for admission to the training center shall be established.

VA.R. Doc. No. R25-7470; Filed September 17, 2024, 2:12 p.m.



TITLE 13. HOUSING

VIRGINIA MANUFACTURED HOUSING BOARD

Fast-Track Regulation

Title of Regulation: **13VAC6-11. Public Participation Guidelines (amending 13VAC6-11-50).**

Statutory Authority: §§ 2.2-4007.02 and 36-85.18 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: November 20, 2024.

Effective Date: December 5, 2024.

Agency Contact: Jeff Brown, Director, State Building Codes Office, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-7161, FAX (804) 371-7092, or email jeff.brown@dhdcd.virginia.gov.

Basis: The Virginia Manufactured Housing Board (board) has authority to promulgate regulations through § 36-85.36 of the Code of Virginia and amends 13VAC6-11 pursuant to § 2.2-4007.02 of the Code of Virginia, which requires an agency, pursuant to its public participation guidelines, to afford interested persons an opportunity to be accompanied by and represented by counsel or other representatives when submitting data, views, or arguments on a regulatory action promulgated by the board.

Purpose: This regulatory change is essential to protect the health, safety, and welfare of citizens by requiring the board to provide an opportunity for the public to be represented by counsel or other representatives when submitting data, views, or arguments on a regulatory action promulgated by the board.

Rationale for Using Fast-Track Rulemaking Process: This action conforms 13VAC6-11, Public Participation Guidelines, to Chapter 795 of the 2012 Acts of Assembly, which amended § 2.2-4007.02 B of the Code of Virginia on public participation guidelines. This action is not expected to be controversial because it is mandated by statute.

Substance: The amendment provides that interested persons may be accompanied by and represented by counsel or other representatives when submitting data, views, or arguments on a regulatory action promulgated by the board.

Issues: The primary advantage of this regulatory action for the public and the agency is that it provides the public with the opportunity to be represented by counsel or other representatives when submitting data, views, or arguments on a regulatory action promulgated by the board. 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 Chapter 795 of the 2012 Acts of the Assembly,² the Manufactured Housing Board (board) proposes to specify in this regulation that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative when submitting data, views, and arguments, either orally or in writing, to the agency.

Background. Chapter 795 of the 2012 Acts of the Assembly added § 2.2-4007.02 of the Code of Virginia, Public participation guidelines, which states that interested persons also be afforded an opportunity to be accompanied by and represented by counsel or other representative. The current Public Participation Guidelines state that: "In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency." Due to the legislation, the Board proposes to append "and (ii) be accompanied by and represented by counsel or other representative."

Estimated Benefits and Costs. Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, the board's proposal to add this language to the regulation will not change the law in effect, but would be beneficial in that it would inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

Businesses and Other Entities Affected. The proposed amendment could affect persons who read the regulation, but

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not the statute, in that they would be better informed on legal rights concerning representation. 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 benefit for any entity, even if the benefits exceed the costs for all entities combined.⁴ The proposal neither increases costs nor reduces benefit for any entity. Thus, no adverse impact is indicated.

Small Businesses⁵ Affected.⁶ The proposed amendment does not adversely affect small businesses.

Localities⁷ Affected.⁸ The proposed amendment neither disproportionately affects any particular localities, nor introduces costs for local governments.

Projected Impact on Employment. The proposed amendment does not substantively affect employment.

Effects on the Use and Value of Private Property. The proposed amendment does not affect the use and value of private property or real estate development costs.

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

² See <http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795+hil>.

³ 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 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.

⁵ Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁶ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁷ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁸ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

Pursuant to § 2.2-4007.02 of the Code of Virginia, the amendment provides that interested persons submitting data, views, and arguments on a regulatory action may be accompanied by and represented by counsel or another representative.

13VAC6-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.
2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.
7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, ~~he~~ the Governor may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

VA.R. Doc. No. R25-7680; Filed September 24, 2024, 1:33 p.m.

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TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES 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 Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program (amending 16VAC25-60-240).**

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: November 20, 2024.

Agency Contact: 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.

Summary:

The federal Occupational Safety and Health Administration promulgated the Worker Walkaround Representative Designation Procedures that were published at 29 CFR Part 1903. The amendments (i) remove the requirement that the representative authorized by the employees to attend an inspection must be an employee of the employer and the listing of industrial hygienist and safety engineer as the two examples of potential third-party accompaniments and (ii) provide a

description of the qualifications necessary for a compliance safety and health officer to allow the third party to accompany the inspection. Amendments to the Worker Walkaround Representative Designation Procedures were published on May 31, 2024. This action incorporates these changes into the Virginia general industry standards.

16VAC25-60-240. Walkthrough.

Walkthrough by the commissioner for the inspection of any workplace includes the following privileges.

1. The commissioner shall be in charge of the inspection and, as part of an inspection, may question privately any employer, owner, operator, agent, or employee. The commissioner shall conduct the interviews of persons during the inspection or at other convenient times. The commissioner may take and preserve testimony, examine witnesses, and administer oaths as provided for in 16VAC25-60-245.

2. As part of an inspection, the commissioner may take or obtain photographs, video recordings, audio recordings, and samples of materials, and employ other reasonable investigative techniques as deemed appropriate. As used here, the term "employ other reasonable investigative techniques" includes, ~~but is not limited to,~~ the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other devices to employees in order to monitor their exposures.

3. ~~Any employee~~ The representative selected to authorized by employees may be an employee of the employer or a third party. When the representative authorized by the employees is not an employee of the employer, the representative may accompany the commissioner during the inspection of the workplace ~~shall be an employee of the employer if, in the judgment of the commissioner, good cause has been shown why accompaniment by a third party is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, including because of relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces or language or communication skills.~~ Additional employer representatives and employee representatives may be permitted by the commissioner to accompany the inspection team where the commissioner determines such additional persons will aid in the inspection. A different employer representative or employee representative may accompany the commissioner during each phase of the inspection if, in the determination of the commissioner, this will aid in the conduct of the inspection.

4. The commissioner may limit the number of representatives when the inspection group would be of such size as to interfere with the inspection or create possible

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safety hazards, or when the representative does not represent an employer or employee present in the particular area under inspection.

5. In such cases as stated in subdivision 4 of this section, the commissioner must give each walkthrough representative the opportunity to advise of possible safety or health hazards and then proceed with the inspection without walkthrough representatives. Whenever the commissioner has limited the number of employee walkthrough representatives, a reasonable number of employees shall be consulted during the inspection concerning possible safety or health hazards.

6. Technical personnel such as safety engineers and industrial hygienists or other consultants to the commissioner or the employer may accompany the commissioner if the commissioner determines that their presence would aid in the conduct of the inspection and agreement is obtained from the employer or the commissioner obtains an order under § 40.1-6(8)(b) of the Code of Virginia. All such consultants shall be bound by the confidentiality requirements of § 40.1-51.4:1 of the Code of Virginia.

7. The commissioner is authorized to dismiss from the inspection party at any time any person ~~or persons~~ whose conduct interferes with the inspection.

VA.R. Doc. No. R25-8097; Filed October 1, 2024, 11:27 a.m.

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 Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.6, 16VAC25-90-1910.1200, Appendices A, B, C, D to 16VAC25-90-1910.1200).

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: November 20, 2024.

Agency Contact: 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.

Summary:

In a final rule, the federal Occupational Safety and Health Administration (OSHA) is revising the standard for the Hazard Communication Standard to conform to the United

Nations' Globally Harmonized System of Classification and Labeling of Chemicals to provide better alignment with other U.S. agencies and international trading partners. The Globally Harmonized System is a universal and international standard developed by the United Nations to unify and standardize chemical hazard classification, labeling, and communication worldwide. In this regulatory action, the Safety and Health Codes Board is adopting this final rule.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (General Industry Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

Statement of Final Agency Action: On September 23, 2024, the Safety and Health Codes Board adopted federal OSHA's Final Rule for Hazard Communication Standard, as published in 89 FR 44354 through 89 FR 44461 on May 20, 2024, with an effective date of November 20, 2024.

Federal Terms and State Equivalents: When the regulations as set forth in the final rule for Hazard Communication Standard is applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
July 19, 2024	November 20, 2024

VA.R. Doc. No. R25-8095; Filed October 1, 2024, 11:28 a.m.

VIRGINIA WORKERS' COMPENSATION COMMISSION

Fast-Track Regulation

Title of Regulation: 16VAC30-60. Procedural Regulations Governing the Administration of Medical Costs Peer Review by the Regional Peer Review Committees under the Virginia Workers' Compensation Act (repealing 16VAC30-60-110 through 16VAC30-60-140).

Statutory Authority: § 65.2-1305 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: November 20, 2024.

Effective Date: December 5, 2024.

Agency Contact: Reba O'Connor, Information Security Compliance Policy Analyst, Virginia Workers' Compensation Commission, 333 East Franklin Street, Richmond, VA 23219, telephone (804) 774-4183, or email reba.oconnor@workcomp.virginia.gov.

Basis: Sections 65.2-1300 through 65.2-1310 of the Code of Virginia established basic parameters for peer review regulations and gave the Workers' Compensation Commission the authority to enact such regulations. Sections 65.2-1300 through 65.2-1310 were repealed by Chapter 279 of the 2016 Acts of Assembly. The commission has no jurisdiction to continue the peer review program.

Purpose: A repeal of these regulations would benefit the welfare of the citizens of Virginia because this regulation no longer has statutory authority.

Rationale for Using Fast-Track Rulemaking Process: The commission has no jurisdiction to continue the peer review program, so this repeal should be noncontroversial.

Substance: The amendments completely repeal the chapter.

Issues: The primary advantage of this regulatory action to the public, the commission, and the Commonwealth is that the end result will be to bring the Virginia Administrative Code into agreement with the Code of Virginia. There are no disadvantages of this action to the public, the commission, or the Commonwealth in implementing this regulatory action.

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 Virginia Workers' Compensation Commission (commission) seeks to repeal the remaining four sections of 16VAC30-60, Procedural Regulations Governing the Administration of Medical Costs Peer Review by the Regional Peer Review Committees under the Virginia Workers' Compensation Act (Chapter 60), since this chapter was made obsolete by Chapters 279 and 290 (identical) of the 2016 Acts of Assembly.

Background. Chapter 60 was originally authorized by §§ 65.2-1300 through 65.2-1310 of the Code of Virginia, which were repealed by Chapters 279 and 290 of the 2016 Acts of Assembly.² With the repeal, the commission no longer has jurisdiction to continue the medical costs peer review program. Hence, the peer review program was disbanded in 2016. Accordingly, the commission seeks to repeal sections 16VAC30-60-110, 16VAC30-60-120, 16VAC30-60-130, and 16VAC30-60-140; all other sections were repealed in 2022.³ In place of the medical costs peer review program, the legislation mandated that the commission adopt regulations

establishing fee schedules setting the maximum pecuniary liability of the employer for medical services provided to an injured person pursuant to the Virginia Workers' Compensation Act in the absence of a contract under which the provider has agreed to accept a specified amount for the medical service. Such regulation (16VAC30-110) was adopted via an exempt action in 2018.⁴

Estimated Benefits and Costs. This regulation is obsolete in that it pertains to a program that no longer has statutory authority and no longer exists. Repealing the regulation would be beneficial in that people who read regulations would not be misled into believing the program still exists.

Businesses and Other Entities Affected. The proposal affects readers of Virginia Workers' Compensation Commission regulations. 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 benefit for any entity, even if the benefits exceed the costs for all entities combined.⁶ Since the repeal of the regulations would not increase net costs or affect revenues, no adverse impact is indicated.

Small Businesses⁷ Affected.⁸ The proposed repeal of the regulation would not adversely affect small businesses.

Localities⁹ Affected.¹⁰ The proposed repeal of the regulation would not disproportionately affect any particular localities and would not introduce costs for local governments.

Projected Impact on Employment. The proposed repeal of the regulation would not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of the regulations would not affect the use and value of private property or real estate development costs.

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

² See third enactment clause of <https://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0279> and <https://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0290>.

³ Other sections of Chapter 60 were repealed in a previous action, effective December 29, 2022. See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=6015>.

⁴ See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=4963>.

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.

Regulations

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 Virginia Workers' Compensation Commission is in agreement with the economic impact analysis prepared by the Virginia Department of Planning and Budget.

Summary:

The amendments repeal the remaining sections of Procedural Regulations Governing the Administration of Medical Costs Peer Review by the Regional Peer Review Committees under the Virginia Workers' Compensation Act (16VAC30-60), the statutory authority for which was repealed by Chapters 279 and 290 of the 2016 Acts of the Assembly.

VA.R. Doc. No. R25-8005; Filed September 19, 2024, 10:13 a.m.

18VAC25-21-160, 18VAC25-21-200, 18VAC25-21-210, 18VAC25-21-220).

Statutory Authority: §§ 54.1-113, 54.1-201, and 54.1-602 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 20, 2024.

Agency Contact: Kathleen R. Nosbisch, 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 54.1-602 of the Code of Virginia states that the Auctioneers Board (board) shall have the following authority and responsibilities: (i) to establish regulations to obtain and retain licensure of auctioneers; (ii) to make all case decisions regarding eligibility for initial licensure and renewal; (iii) to fine, suspend, deny renewal or revoke for cause, as defined in regulation, any license; and (iv) to examine auctioneers for licensure. In addition, § 54.1-201 of the Code of Virginia provides that the powers and duties of regulatory boards shall be to establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation, and to promulgate regulations necessary to ensure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the regulatory board.

Purpose: The General Assembly has charged the board with the responsibility for 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. The offering and conducting of auctions by those who lack sufficient expertise, competence, integrity, and financial responsibility poses a risk to the public health, safety, and welfare. Risks include (i) financial harm to consumers as the result of an auction that is not properly conducted and (ii) harm to consumers as a result of those who lack the character and integrity of to perform the duties of an auctioneer.

Substance: The proposed amendments include:

1. Revising 18VAC25-21-20 to (i) remove regulatory provisions, which are already established in § 54.1-603 of the Code of Virginia, that an applicant must complete a course of study at a board-approved auctioneering school and pass a license examination; (ii) amend entry requirements pertaining to prior criminal history, including providing that an applicant disclose (a) non-marijuana misdemeanors involving moral turpitude, sexual offenses, drug distribution, or physical injury within three years of the date of application and (b) all felony convictions within 10 years of the date of application, which reduces the look-back period for prior criminal convictions that may be potentially disqualifying to an applicant; and (iii) amend entry requirements pertaining to prior disciplinary

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

AUCTIONEERS BOARD

Proposed Regulation

Title of Regulation: **18VAC25-21. Regulations of the Virginia Auctioneers Board (amending 18VAC25-21-10 through 18VAC25-21-50, 18VAC25-21-70, 18VAC25-21-80, 18VAC25-21-90, 18VAC25-21-110, 18VAC25-21-120, 18VAC25-21-140, 18VAC25-21-150, 18VAC25-21-170, 18VAC25-21-180, 18VAC25-21-185, 18VAC25-21-190, 18VAC25-21-230 through 18VAC25-21-270; repealing 18VAC25-21-60, 18VAC25-21-100, 18VAC25-21-130,**

history. The revised provisions require that an applicant be not found by any regulatory board or agency to have violated any applicable law or regulation and allow for the board to consider prior regulatory discipline other than discipline related to the practice of auctioneering.

2. Revising 18VAC25-21-40 to (i) remove a provision that nonresident applicants file the irrevocable consent that service of process upon the Department of Professional and Occupational Regulation Director is valid and binding as the service of process upon the applicant, which is provided for in § 54.1-603 of the Code of Virginia and (ii) streamline provisions regarding qualifications for licensure by reciprocity.

3. Revising application procedures in 18VAC25-21-50 to reflect current agency practice. The provisions in the section regarding prior criminal history and prior disciplinary action are revised to be consistent with proposed changes to 18VAC25-21-20.

4. Repealing 18VAC25-21-60, which provides for the content for the license examination. This change is intended to reflect current agency practice, as the board refers the auctioneer examination to a company that supplies the examination and does not determine the requirements of the examination.

5. Revising 18VAC25-21-80 to remove unnecessary provisions regarding mailing of a renewal notice.

6. Revising 18VAC25-21-90 to remove unnecessary provisions regarding the expiration of licenses.

7. Repealing 18VAC25-21-100, which provides for advertising standards. The requirements in this section are either already provided for in § 54.1-607 of the Code of Virginia or are not necessary to protect the public health, safety, and welfare.

8. Revising 18VAC25-21-110 to (i) require that an auction contract include (a) the email address and website of the auctioneer entering into the contract; and (b) the email address of the property owner; (ii) clarify the current standard regarding contract provisions for accounting of items sold; and (iii) remove an unnecessary requirement that a contract include a statement that an owner has read and accepted the terms of the contract.

9. Repealing 18VAC25-21-130, which establishes requirements for display of license, as these requirements are not necessary to protect the health, safety, and welfare of the public.

10. Revising 18VAC25-21-140 to (i) replace the term "clerk sheets" with "itemized accounting of all items auctioned" when detailing documents that must be provided to an owner upon completion of the licensee's services and (ii) incorporate recordkeeping requirements currently located in 18VAC25-21-160. These requirements are revised, including to reduce the record retention period from four years to three years.

11. Revising 18VAC25-21-150 to (i) reduce the restrictiveness of the timeframe for placing proceeds of a personal property

auction in escrow; (ii) remove the provision that contingency accounts established to guarantee checks accepted on the owner's behalf will not be considered commingling of funds; (iii) remove the provision that there must be periodic withdrawals from an escrow account containing funds that ultimately belong to a licensee; and (iv) remove requirements for written disclosures in a contract when funds are placed in an interest-bearing account.

12. Repealing 18VAC25-21-160, which provides for recordkeeping requirements. The requirements in this section are relocated to 18VAC25-21-140 and revised.

13. Revising 18VAC25-21-180 to remove the prohibited act for not demonstrating reasonable care, judgment, or application of the licensee's knowledge and ability in the performance of auctioneering duties.

14. Revising 18VAC25-21-190 to (i) incorporate the requirements currently in 18VAC25-21-200, 18VAC25-21-210, and 18VAC25-21-220 and (ii) amend the qualifications for school instructors to reduce the stringency of the current requirements in the regulation. As revised, a school must provide the names of Virginia licensed auctioneer instructors and confirmation of participation in the various aspects of a minimum of 50 auctions.

15. Repealing 18VAC25-21-200, 18VAC25-21-210, and 18VAC25-21-220.

Issues: The primary advantages to the public and the regulated community are that this action will provide necessary updates and clarification; reduce regulatory burden while still protecting the public health, safety, and welfare; and remove requirements in the regulation that are not necessary to protect the public welfare. There are no identifiable disadvantages to the public. It is not anticipated that the regulatory change will create any substantial disadvantages to the regulated community. There are no identifiable disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia 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 (i) limit the look-back period for criminal convictions that must be disclosed by the license applicants, (ii) allow consideration of prior regulatory discipline other than discipline related to the practice of auctioneering for licensure, (iii) remove the five-year experience requirement for auctioneer school instructors as well as the requirement that a school have five licensed instructors, and (iv) eliminate or revise several administrative requirements to reduce regulatory burdens.

Regulations

Background. The initial impetus for this action was Executive Directive Number One (2022), which directs Executive Branch entities under the authority of the Governor to initiate regulatory processes to reduce by at least 25% the number of regulations not mandated by federal or state statute in consultation with the Office of the Attorney General and in a manner consistent with the laws of the Commonwealth. This regulation establishes rules for 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. During the review of the regulation conducted pursuant to the directive, the board identified certain requirements as overly burdensome to regulants and unnecessary for the protection of the health, safety, and welfare of the public as discussed below.

Estimated Benefits and Costs. The board proposes to reduce the look-back period for criminal convictions that must be disclosed to three years for any non-marijuana misdemeanors involving moral turpitude, sexual offenses, drug distribution, or physical injury and 10 years for felonies. The revised criminal history provisions would potentially expand the pool of qualified applicants by allowing additional individuals with a prior criminal history to qualify for licensure without requiring the board to review and approve the application. However, the board does not track such cases and does not have an estimate on how many applicants may qualify for licensure under the proposed revision. Additionally, according to the board, after an application is received by the board for an applicant with a prior criminal history it can take about six to eight months to have the application reviewed and considered before it may be approved. As a result, this change is expected to produce time savings for such individuals. On the other hand, amendments to the disciplinary action provisions require that an applicant be not found by any regulatory board or agency to have violated any applicable law or regulation. The expanded provisions would thereby allow the board to consider prior regulatory discipline other than discipline related to the practice of auctioneering. This change is more restrictive than the current requirement and may result in some applicants being disqualified from licensure. Similarly, however, data are lacking to provide an estimate on the number of such potential cases.

Another proposed change would reduce the stringency of the qualifications for auctioneering school instructors. Currently, the regulation establishes that a school have at least five instructors who have been licensed for five years and who specialize in different fields of the auction business. The proposal would remove the five-year experience requirement as well as the requirement that a school have five licensed auctioneer instructors. This change potentially would expand the pool of qualified instructors, reduce staffing costs for the schools, and allow additional auction courses to be approved by the Board as the requirements for course instructors are reduced.

The proposal also contains numerous administrative changes, including a proposed reduction in the record retention period

from four years to three years; removal of requirements for individuals and firms to display licenses in a conspicuous location at the address of record; removal of a requirement that an auctioneer carry a copy of the auctioneer's license on their person and produce the document upon request; removal of a requirement for an auctioneer to include the auctioneer or auction firm name and license number in all advertisements; reducing the restrictiveness of the timeframe for placing proceeds of a personal property auction in escrow; and removal of the provisions regarding mailing of the renewal notice by the board to the licensee. Generally, these changes are expected to provide small administrative cost savings to the licensees as well as the board.

Businesses and Other Entities Affected. According to the board, there were 984 licensed auctioneers and 230 auctioneer firms as of July 1, 2023. There are also 14 board-approved auctioneering schools across the country, only one of which is in Virginia. No entity appears to be disproportionately affected. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.² 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.³ The board expects an expansion of the pool of qualified applicants for the auctioneering license and training instructors by unknown amounts and some cost savings from reduced staffing requirements as well as the administrative burdens. Thus, no adverse impact is indicated.

Small Businesses⁴ Affected.⁵ According to the board, many licensed business entities are likely to be business entities that meet the definition of "small business" in § 2.2-4007.1 of the Code of Virginia. In addition, many individual licensees are likely to be owners or employees of business entities that fall within the meaning of small business. However, the proposed amendments do not appear to adversely affect any entity, including small businesses.

Localities⁶ Affected.⁷ The proposed amendments do not introduce costs for local governments.

Projected Impact on Employment. The expansion of the pool of qualified auctioneering or training applicants may increase the supply of these entities and the reduced staffing of minimum five auctioneers at training schools may reduce the demand for instructors. However, whether such changes would have a material impact on total employment cannot be determined.

Effects on the Use and Value of Private Property. The anticipated reduction in staffing and administrative costs may have a small positive impact on asset values of training schools and the licensed businesses. No other impact on the use and value of private property nor on real estate development costs is expected.

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 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.

³ 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.

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 Auctioneers Board concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

Pursuant to Executive Directive One (2022), the proposed amendments reduce regulatory burdens while still protecting the public health, safety, and welfare and include (i) reducing the look-back period for prior criminal convictions and tightening other reporting requirements for disqualification for entry into the profession; (ii) removing unnecessary administrative requirements; (iii) reducing the record retention period to three years; (iv) expanding the timeframe for placing proceeds of a personal property auction into escrow; and (v) generally loosening requirements on management of financial accounts and education provider requirements.

Chapter 21

Regulations of the Virginia Auctioneers Board

18VAC25-21-10. Definitions.

The following word or term when used in this chapter shall have the following meanings ~~meanings~~ meaning unless the context clearly indicates otherwise:

"Owner" means the bona fide owner or any lawfully designated agent of the real or personal property being offered for sale; in the case of a corporation, partnership, or other entity, except a sole proprietorship, an authorized officer, director, or partner may be deemed to be "owner" of the real or personal property being offered for sale, provided such entity is licensed to do business in the Commonwealth of Virginia.

18VAC25-21-20. Licensure by examination.

All persons or firms as defined in § 54.1-600 of the Code of Virginia who conduct auctions or offer their services to sell at auction in the Commonwealth are required to file a licensure application and pay the specified fee to the board. ~~Applicants~~ In addition to the requirements established in § 54.1-603 of the Code of Virginia, applicants for individual licensure ~~shall~~ must meet the following requirements:

1. Be at least 18 years of age.
2. ~~Shall not have been previously found by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneer duties or been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a non-marijuana misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline. Applicants for licensure who do not meet requirements set forth in this section may be approved for licensure following consideration by the board in~~ In accordance with § 54.1-204 of the Code of Virginia, disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:
 - a. Non-marijuana misdemeanors involving moral turpitude, sexual offenses, drug distribution, or physical injury within three years of the date of the application; and
 - b. All felony convictions within 10 years of the date of application.

Any plea of nolo contendere will be considered a conviction for purposes of this subsection. The record of a conviction received from a court will be accepted as prima facie evidence of a conviction or finding of guilt. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

3. ~~Successfully complete a course of study at a school of auctioneering that has obtained course approval from the board, or an equivalent course, and has passed the Virginia Licensed Auctioneer's Examination administered by the Auctioneers Board or its designee. Not be found by any regulatory board or agency to have violated any applicable~~

Regulations

regulation or law. A certified copy of a final order, decree, or case decision by a court or regulatory board or agency with the lawful authority to issue such order will be admissible as prima facie evidence of such conviction or discipline.

18VAC25-21-30. Bond required.

All applicants ~~shall~~ must submit evidence that a surety bond, executed by a surety company authorized to do business in the Commonwealth and in at least the amount of \$10,000, has been obtained. Proof of current bond must be submitted in order to obtain or renew the license. The bond must commence no later than the effective date of the license and ~~shall~~ must expire no sooner than the date of expiration of the license.

18VAC25-21-40. License by reciprocity.

The board may issue a license to any individual applicant holding a license in any state, territory, or possession of the United States; with whom the board has established an act of reciprocity, provided the requirements and standards under which the license was issued are substantially equivalent to those established by the board in 18VAC25-21-20. At the time of application for licensure, the applicant must be currently licensed in the state in which reciprocity is established with the Commonwealth of Virginia. ~~The board may deny an application if the licensed auctioneer has been found guilty (i) by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneering duties or (ii) by a court of any non-marijuana misdemeanor, other criminal offense, or material misrepresentation in the course of performing auctioneer duties. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline.~~

~~Nonresident applicants shall also file with the board an irrevocable consent that service of process upon the director is valid and binding as the service of process upon the applicant.~~

18VAC25-21-50. Application.

A. All applicants seeking licensure ~~shall~~ must submit a fully executed complete application with the appropriate fee or fees attached. Applicants will be notified if ~~their~~ the application is incomplete.

~~Applications for licensure by examination must comply with the requirements of the board's designee as to the deadline for submission of the application to the board's designee.~~

B. 1. ~~If a~~ For any corporation, limited liability company, or other entity, the application ~~shall~~ must include copies of the certificate of incorporation or certificate of organization issued by the Virginia State Corporation Commission, articles and bylaws.

2. ~~If a~~ For any foreign corporation, foreign limited liability company, or other entity, the application ~~shall~~ must include copies of the certificate of authority to conduct business issued by the Virginia State Corporation Commission, which ~~shall~~ will be required in lieu of the certificates as required by subdivision 1 of this subsection.

3. ~~Any firm applicant shall not have been previously found by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneer duties or been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a non-marijuana misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline. Applicants for licensure who do not meet requirements set forth in this section may be approved for licensure following consideration by the board in~~ In accordance with § 54.1-204 of the Code of Virginia, any entity must disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

a. Non-marijuana misdemeanors involving moral turpitude, sexual offenses, drug distribution, or physical injury within three years of the date of the application; and

b. All felony convictions within 10 years of the date of application.

Any plea of nolo contendere will be considered a conviction for purposes of this subsection. The record of a conviction received from a court will be accepted as prima facie evidence of a conviction or finding of guilt. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

4. The applicant must not have been found by any regulatory board or agency to have violated any applicable regulation or law.

~~C. All applications will be reviewed by the Auctioneers Board staff, or the board's designee, to determine eligibility for examination and licensure within 30 days of receipt at the offices of the Department of Professional and Occupational Regulation or the board's designee. However, failure to review an application within 30 days of receipt shall not imply or result in the automatic approval of the application. No applicant will be approved for licensure unless all requirements of this part of this chapter are met.~~

18VAC25-21-60. Examination. (Repealed.)

~~The examination shall test the applicant's knowledge of the following:~~

~~1. The auction business including fundamentals of auctioneering, elementary principles of real estate, preparation of contracts, advertising, final settlement statements, arithmetic and percentages, and ethics.~~

~~2. The Virginia statutes entitled Auctioneers' Licensure Act, Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia; bulk transfers, §§ 8.6A-101 through 8.6A-110 and 8.2-328 of the Code of Virginia; sales tax laws, Title 58.1 of the Code of Virginia; and the regulations of the board.~~

18VAC25-21-70. Fees.

Fees are nonrefundable and shall will not be prorated. The following fees shall apply:

1. Individual auctioneer license	\$25
2. Auctioneer firm license	\$55
3. Renewal for individual auctioneer's license	\$55
4. Renewal for firm or corporation license	\$65
5. Late renewal for an individual auctioneer's license	\$80
6. Late renewal for an auction firm or corporate license	\$90
7. Reinstatement of the individual auctioneer's license	\$105
8. Reinstatement of the firm or corporate license	\$115

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.

18VAC25-21-80. Notice of renewal.

~~The board will mail a renewal notice to the licensee outlining the amount due and procedures for renewal to the last known mailing address of record. Failure to receive this notice shall not relieve the individual or firm licensee of the obligation to renew.~~

Licenses issued under this chapter shall will be issued for a two-year period. Each license holder, corporation, or firm shall will be required to renew the license by submitting the proper fee made payable to the Treasurer of Virginia, with verification of current surety bond coverage as detailed in 18VAC25-21-30. By renewing the license, the licensee is certifying continued compliance with the Standards of Practice in Part IV (18VAC25-21-100 et seq.) and Standards of Conduct in Part V (18VAC25-21-180 et seq.), as well as Continuing Education

Requirements in Part VII (18VAC25-21-230 et seq.) of this chapter.

18VAC25-21-90. Failure to renew.

A. Any licensee who fails to renew a license within 30 days after the license expires, shall will be required to pay a late renewal fee.

B. Any licensee, including individuals initially licensed pursuant to § 54.1-603 A of the Code of Virginia, who fails to renew ~~his a~~ license within six calendar months after the expiration date of the license shall will be required to apply for reinstatement of the license. The applicant shall must submit to the board a reinstatement application and fee and ~~comply with the following paragraph.~~ shall apply:

1. If the license has been expired for six months or more, but less than two years, the applicant shall will be required to submit a reinstatement application, which shall will be evaluated by the board to determine if the applicant meets the renewal requirements. In addition, individual license holders applying for reinstatement are required to provide evidence of compliance with the continuing education requirements as contained in this chapter. A license that is reinstated shall will be deemed as having been continuous without interruption. Nothing in ~~these regulations shall this~~ chapter will divest the board of its authority to discipline a license holder for a violation of the law or regulation during the period of time for which the licensee was licensed.

~~C.~~ 2. If the license has been expired for two years or more, the applicant shall will be required to submit a new application and meet current entry requirements that are in effect as of the date the application is received by the board office. The applicant shall will be required to submit the examination fee and sit for and pass the Virginia Licensed Auctioneer's Examination or comply with the provisions contained in 18VAC25-21-40. Any auctioneering activity conducted between the time the previous license expired and the effective date of the new license shall may be considered unlicensed activity.

D. The date that the complete renewal application, including fees and all required documentation, is received by the board or its agent will determine whether a license will be renewed without penalty or will be subject to reinstatement requirements.

~~E. Licenses issued under this regulation shall expire 24 months from the last day of the month in which the license was issued. The expiration date of the license will be included on the license.~~

18VAC25-21-100. Advertising. (Repealed.)

~~A. All advertising must be truthful. Advertising shall contain no false, misleading or deceptive statements, with respect to types or conditions of merchandise offered at auction, why merchandise is being sold, who has ownership, where the~~

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~~merchandise was obtained, or the terms and conditions of the auction and sale.~~

~~B. In all advertisements relating to an auction, the auctioneer's name and Virginia license number or the auction firm's name and Virginia license number shall be clearly displayed.~~

18VAC25-21-110. Contracts.

A. When a licensee agrees to conduct an auction, a contract ~~shall~~ must be drawn setting forth the particulars of the terms and conditions under which the auctioneer or auction firm received the real or personal property for auction and particulars for the disbursement of the proceeds. Each contract for auction shall include the following:

1. a. A detailed list of the real or personal property received for sale with adequate descriptions of the property so that the personal property of material value can be readily identified. If a list cannot be made at the time of signing of the contract, and the owner of the items agrees to waive this requirement in writing in an addendum to the contract, then a list must be made a part of the contract (and attached) prior to auction of the real or personal property for that day; or

b. If the auctioneer or auction firm enters into a contract to sell items on a consignment basis where the total value of all the items to be sold at any one ~~action~~ auction does not exceed \$500, then the requirement contained in subdivision 1 a of this subsection is not applicable.

2. The name, address, telephone number, email address, website, and license number of the licensee entering into the contract.

3. The name, address ~~and~~, telephone number, and email address of the property owner.

4. The date, time, and place of the auction ~~or auctions~~ at which the real or personal property is scheduled to be auctioned. ~~The~~ and date by which the property is to be returned or otherwise disposed of in accordance with the terms of the contract if it is not sold.

5. The fee or percentage of gross sales the auctioneer or auction firm will charge the owner and what services are included in the fee, such as preparation, travel, labor, advertising, and any other auction related expenses.

6. By what date the owner is to be paid and who is responsible for disbursing the funds.

7. A statement ~~that the clerk sheets, or other evidence to properly account for all items sold, shall be given or made available for inspection by the owner on a daily basis indicating that the auctioneer will maintain an itemized accounting of all items sold on a daily basis to be made available upon request by the owner.~~

8. ~~The following statement above the owner's signature line: "I have read and accepted the terms of this contract."~~

B. A legible executed copy of the contract and any addendums ~~shall~~ must be ~~given~~ provided to the owner at the time of execution.

18VAC25-21-120. Conduct at auctions.

No licensee ~~shall~~ will attempt to escalate bidding through false bids, or through collusion with another (skills). The licensee ~~shall~~ must not bid on the owner's behalf nor knowingly accept a bid made by the owner or made on the owner's behalf unless notice has been given that liberty for such bidding has been reserved. The licensee ~~shall~~ must neither bid on ~~his~~ the licensee's own behalf nor knowingly accept a bid made on ~~his~~ the licensee's behalf unless notice has been given that such bidding will be permitted.

18VAC25-21-130. Display of license. (Repealed.)

~~Auctioneers shall carry their pocket cards on their person and shall produce them upon request. Auction firms shall display their license in a conspicuous location at the address of record. The address of record shall not be a post office box as detailed in 18VAC25-21-170 C.~~

18VAC25-21-140. Documentation.

A. Upon completion of the licensee's service, each owner ~~shall~~ must be given legible copies of bills of sale, ~~clerk sheets~~ itemized accounting of all items auctioned, consignment sheets, settlement papers, balance sheets ~~or~~, and other evidence to properly account for all items sold at auction.

B. The licensee is required to maintain, for a period of three years from date of settlement, all items in subsection A of this section, the contract, and buyer records. These business records must be available for inspection by the board or its designees upon request.

18VAC25-21-150. Escrow funds.

A. Proceeds of a personal property auction not disbursed to the owner on auction day ~~shall~~ must be deposited in an auction escrow account by the licensee no later than the next banking day following the date of auction or sale of the goods; ~~whichever occurs first.~~

B. Notwithstanding the provisions of subsection A of this section, proceeds that are paid via credit card, debit card, check card, or any other electronic funds transfer (EFT) method ~~shall~~ must be deposited into an auction escrow account upon receipt from the originating source.

C. The auction escrow account ~~shall~~ must be used solely for the preservation and guarantee of auction proceeds until disbursed at settlement. Funds for any other purpose ~~shall~~ must not be commingled with the auction escrow account. ~~Contingency accounts established to guarantee checks accepted on the owner's behalf shall not be considered commingling of funds. Moneys due to the licensee shall~~ must not be withdrawn from the auction escrow account until final settlement is made with the owner.

D. Funds to be deposited in the escrow account may include moneys that ~~shall will~~ ultimately belong to the licensee for incidental expenses per the terms of the contract. Such moneys ~~shall must~~ be separately identified in the escrow account records and ~~shall must~~ be paid to the licensee by a check drawn on the escrow account when the funds become due to the licensee. The fact that an escrow account contains money that may ultimately belong to the licensee does not constitute "commingling of funds," provided ~~that there are periodic withdrawals of said funds at intervals of not more than six months and~~ that the licensee can at all times accurately identify the total funds in that account that belong to the licensee.

~~E. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.~~

~~F. E.~~ Auctioneers and auction firms ~~shall must~~ use federally insured depositories in the Commonwealth of Virginia. All accounts, checks, and bank statements ~~shall must~~ be labeled "escrow" and the accounts ~~shall must~~ be designated as "escrow" accounts with the financial institution where such accounts are established.

~~G. E.~~ Proceeds due from the sale of goods other than real property ~~shall must~~ be disbursed to the owner no later than 30 days after the date of each auction.

~~H. G.~~ Funds from a real estate auction ~~shall must~~ be held in escrow until settlement in accordance with the agreement of sale.

~~I. H.~~ If the owner's goods are not sold in a single auction, proceeds due ~~shall must~~ be disbursed to the owner within 30 days after each auction for goods other than real property, or in accordance with the agreement of sale for the sale of real property. Notice must be given to the owner of tentative date of auction, or date of return to the owner, of the remaining goods.

~~J. I.~~ The balance in the escrow accounts ~~shall must~~ be sufficient at all times to account for all funds that are designated to be held by the licensee. A licensee ~~shall must~~ not disburse or cause to be disbursed moneys from an escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

18VAC25-21-160. Records. (Repealed.)

~~The licensee is required to maintain, for a period of four years from the date of settlement, written records of the following: the contract drawn with each owner; auction records, including but not limited to lists of buyers and their addresses; and clerk sheets showing the items sold including the buyers' numbers or names and the selling prices and the final settlement papers. These business records shall be available for inspection by the board or its designees as deemed appropriate and necessary.~~

18VAC25-21-170. Change of address.

A. Licenses ~~shall are~~ not be transferable and ~~shall must~~ bear the same name and physical address as the business. Upon dissolution or change in the form of the business entity of an auction firm, the auction firm license ~~shall will~~ become void.

B. A licensee ~~shall must~~ report all changes of address to the board in writing, within 30 calendar days of the change, whereupon the board ~~shall will~~ issue an amended license without fee for the unexpired portion of the biennial period.

C. A post office box is acceptable only when a physical address is also provided. If the licensee holds more than one license, certificate, or registration, the licensee ~~shall must~~ inform the board of all licenses, certificates, and registrations affected by the address change.

18VAC25-21-180. Discipline.

The board has the power to fine any individual or firm licensee; or to suspend or revoke any license issued under the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) if it finds that:

1. The license was obtained, renewed, or reinstated through fraud or misrepresentation;
2. The licensee has been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a non-marijuana misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of prior criminal convictions ~~shall will~~ be subject to the requirements of § 54.1-204 of the Code of Virginia. A certified copy of a final order, decree, or case decision by a court with the lawful authority to issue such order ~~shall will~~ be admissible as prima facie evidence of such conviction or discipline;
3. The licensee has been found by any regulatory board, agency, or jurisdiction where licensed to have had a license or registration suspended, revoked, or surrendered in connection with a disciplinary action, ~~who has to have~~ been the subject of discipline in another jurisdiction, or to have violated any applicable regulations or laws in the course of performing auctioneer duties. A certified copy of a final order, decree, or case decision by a court or regulatory agency with the lawful authority to issue such order ~~shall will~~ be admissible as prima facie evidence of such conviction or discipline;
- ~~4. The licensee has not demonstrated reasonable care, judgment, or application of his knowledge and ability in the performance of auctioneering duties;~~
- ~~5.~~ 4. The licensee violated or assisted another to violate any provisions of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200

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et seq.), 3 (§ 54.1-300 et seq.), or 6 of Title 54.1 of the Code of Virginia, this chapter, or combined or conspired with or acted as agent, partner, or associate for another; or

~~6.~~ 5. The licensee fails to comply, or misrepresents any information pertaining to ~~his~~ the licensee's compliance, with any of the continuing education requirements as contained in this chapter.

18VAC25-21-185. Cooperation with board.

A. The licensee ~~shall~~ must, upon request or demand, produce to the board; or any of its agents; within 10 days any plan, document, book, record, or copy thereof in ~~his~~ the licensee's possession concerning a transaction covered by this chapter; and ~~shall~~ must cooperate in the investigation of a complaint filed with the board.

B. A licensee who has direct knowledge that any individual, including ~~himself~~ the licensee, or firm may be violating any of these provisions, or the provisions of Chapters 1 (§ 54.1-100 et seq.) through 3 (§ 54.1-300 et seq.) or Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia, ~~shall~~ must immediately inform the secretary of the board in writing and ~~shall~~ must cooperate in furnishing any further information or assistance that may be required.

18VAC25-21-190. Application for course approval.

A. Schools seeking approval of ~~their~~ courses ~~shall~~ must file a request with the board. The request ~~shall~~ must include the following information:

1. Name and address of the school;
2. Locations where classes will be held;
3. Length of the course and total number of hours of instruction; including a minimum of 80 hours of classroom studies and active participation in the auction business.
4. Subjects covered together with number of instruction hours assigned; Course study must include:
 - a. Auctioneering;
 - b. Elementary principals of real estate, including brokerage;
 - c. Contracts;
 - d. Advertising;
 - e. Sale preparation;
 - f. Bid calling;
 - g. Settlement statements;
 - h. Ethics; and
 - i. Current rules and regulations of the Auctioneers Board.
5. Names ~~and qualifications of instructors (area of expertise and experience)~~ Virginia licensed auctioneer instructors and confirmation of participation in the various aspects of a minimum of 50 auctions.

B. Any change in the information provided by the school to the board must be reported to the board in writing within 30 days of such an occurrence.

C. Approval is subject to periodic requalification review as determined by the board.

18VAC25-21-200. Requirements for course approval. (Repealed.)

~~To receive course approval the institution must offer to Virginia candidates a minimum of 80 hours of classroom and field instruction in the conduct of auction business to include fundamentals of auctioneering, elementary principles of real estate, brokerage, contract drawing, advertising, sale preparation, bid calling, settlement statements, ethics and exposure to the current rules and regulations of the Virginia Auctioneers Board. There must be at least five instructors who have been licensed auctioneers for at least five years and who specialize in different fields of the auction business.~~

18VAC25-21-210. Amendments and changes. (Repealed.)

~~Any change in the information provided by the school to the board as required by 18VAC25-21-190, 18VAC25-21-200 or 18VAC25-21-220 shall be reported to the board in writing within 30 days of such an occurrence.~~

18VAC25-21-220. Periodic requalification for continued course approval. (Repealed.)

~~The board may require that schools that have previously obtained course approval provide the board with evidence, in a form set forth by the board, that they continue to comply with the requirements of 18VAC25-21-190 and 18VAC25-21-200. Failure to continue to comply with the board's requirements or respond to such a request may result in the board withdrawing its approval.~~

18VAC25-21-230. Application and criteria for course approval.

A. Course providers seeking approval of ~~their~~ continuing education course ~~shall~~ must file an application with the board office. All continuing education course providers ~~shall~~ must obtain approval from the board office prior to offering to provide; or providing; a course that is advertised or represented as being eligible to comply with the continuing education provisions of this chapter. Retroactive approval of continuing education courses ~~shall~~ will not be permitted.

Continuing education courses ~~shall~~ will be approved provided the following criteria are met:

1. Course subjects must be related to the current practice of auctioneering and have defined learning objectives.
2. At the end of the course, each attendee must be assessed to verify that ~~they have~~ the attendee has achieved the defined learning objectives.

3. The course curriculum must be consistent with the defined learning objectives.

4. The method of instruction must be consistent with the defined learning objectives of the course.

5. Course instructors must be competent in the subject being taught, either by education or experience, and in instructional techniques.

6. Fifty contact minutes shall equal one continuing education credit hour. No credit ~~shall~~ will be awarded for partial continuing education credit hours or partial completion of the course. In addition, attendees who fail to demonstrate successful completion of the defined learning objectives of the course ~~shall~~ will not be awarded credit for the course. For courses in which individual segments are less than 50 minutes, the sum of the segments ~~shall~~ will be totaled for computation of continuing education credit hours.

7. The course provider certifies that the laws, regulations, and industry practices that will be taught or utilized in the course are up to date and that any subsequent changes in laws, regulations, or industry practices will be incorporated into the course curriculum as they occur.

8. The course provider certifies that ~~they~~ it will comply with provisions of this chapter in administering and providing the approved course.

B. Pursuant to § 54.1-603.1 A of the Code of Virginia, continuing education courses completed by an auctioneer pursuant to a requirement of the Certified Auctioneer's Institute or participation in the educational programs sponsored by the National Auctioneer's Association or Virginia Auctioneer's Association are approved.

18VAC25-21-240. Administration of courses.

A. Approved course providers ~~shall~~ must comply with the requirements of this chapter when providing approved courses. Failure of a course provider to comply with the board's requirements contained in 18VAC25-21-230 or any other provision of this chapter at any time after receiving approval from the board may result in the board withdrawing its approval for a course or a specific offering ~~or offerings~~ of the course.

B. Course approval is not transferable from the course provider to whom it was originally issued.

C. The approved course providers ~~shall~~ must award a certificate of completion to those attendees who successfully complete the course that includes the sponsor identification number of the course provider issued by the board office, name of the course, number of continuing education credit hours awarded, and the date of the course. Course providers ~~shall~~ must only award continuing education credit hours in the amount as approved.

D. Attendance must be verified and documented at the beginning and end of the course and monitored during the course. No credit may be awarded to attendees who arrived late, left early, or missed a portion of the course or failed to accomplish the learning objectives of the course. Further, such individuals ~~shall~~ may not be awarded a certificate of completion by the course provider.

E. At the end of each course, the course provider ~~shall~~ must solicit feedback from the attendees to assess the effectiveness of the course, course content, course curriculum, instructor, and method of instruction. The course provider ~~shall~~ must monitor the feedback from the attendees and make adjustments as warranted.

F. All records related to an approved course must be maintained for four years from the date of the course and such records ~~shall~~ must be provided to the board or its duly authorized agents upon request. Records that must be maintained include, ~~but are not limited to,~~ time, date, and location of the course; course materials; course curriculum; instructor; instructor qualifications; learning objectives; assessment of attendees for verification of achievement of the learning objectives; end of course feedback from attendees; attendance rosters; and records of those attendees who successfully completed the course and those who did not and reasons why attendees noted as not successfully completing the course did not successfully complete the course.

18VAC25-21-250. Continuing education requirements for renewal or reinstatement.

A. Licensees whose licenses expire or who apply to reinstate ~~shall be~~ are required to comply with the continuing education provisions of this chapter, excluding any auctioneer licensed by the board for 25 years or more and who is 70 years of age or older at the time of license expiration pursuant to § 54.1-603.1 A of the Code of Virginia.

B. Licensees subject to the provisions of this section are required to complete at least six continuing education credit hours of board-approved continuing education courses for any license renewal or reinstatement.

A Virginia licensee that is also licensed in another state with which the board shares a reciprocal agreement may use board-approved continuing education in that state to meet the required six hours of continuing education for Virginia, provided that the reciprocal jurisdiction affords the same privilege to Virginia licensees.

C. 1. Each licensee applying for renewal shall certify that ~~he~~ the licensee has met the continuing education requirements of this chapter. Only continuing education courses completed during the license period immediately prior to the expiration date of the license ~~shall~~ will be acceptable in order to renew the license.

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2. Licensees ~~shall~~ must maintain records of completion of continuing education credit hours for two years from the date of expiration of the license for which the continuing education credit hours are being used to renew the license. Individuals ~~shall~~ must provide such records to the board or its duly authorized agents upon request.

3. Continuing education credit hours utilized to satisfy the continuing education requirements to renew a license ~~shall~~ will be valid only for that renewal and ~~shall~~ will not be accepted for any subsequent renewal cycles or reinstatement.

D. 1. Each individual applying for reinstatement ~~shall~~ must provide, as part of ~~his~~ the individual's reinstatement application, evidence of compliance with the continuing education requirements of this chapter. The completion date of continuing education courses submitted in support of a reinstatement application ~~shall~~ must not be more than two years old as of the date a complete reinstatement application is received by the board.

2. Continuing education credit hours utilized to satisfy the continuing education requirements in order to reinstate a license ~~shall~~ will be valid only for that reinstatement and ~~shall~~ will not be accepted for any subsequent renewal cycles or reinstatement.

E. Notwithstanding the provisions of subsection C of this section, continuing education hours earned during a licensing renewal cycle to satisfy the continuing education requirements of the preceding licensing renewal cycle ~~shall~~ will be valid only for that preceding license renewal cycle and ~~shall~~ will not be accepted for any subsequent renewal cycles or reinstatement.

18VAC25-21-260. Exemptions and waivers.

A. Pursuant to § 54.1-603.1 A of the Code of Virginia, the board ~~shall~~ will exempt any auctioneer licensed by the board for 25 years or more and who is 70 years of age or older from the requirement to comply with the continuing education provisions of this chapter.

B. Pursuant to § 54.1-603.1 B of the Code of Virginia, the board may grant exemptions or waive or reduce the number of continuing education hours required in cases of certified illness or undue hardship. However, such exemptions, waivers, or reductions ~~shall~~ will not relieve the individual of ~~his~~ the obligation to comply with any other requirements of this chapter, including ~~but not limited to~~ the provisions of 18VAC25-21-80 or 18VAC25-21-90.

18VAC25-21-270. Amendments and changes.

Any change in the information provided by a course provider to the board as required by 18VAC25-21-230 A; or 18VAC25-21-280 or change in ability to comply with the requirements of 18VAC25-21-240 ~~shall~~ must be reported to the board in writing within 10 days of such an occurrence. In instances of

noncompliance with the provisions of this chapter, the approval of the course is automatically suspended until such time as the course provider corrects the deficiency and notifies the board in writing that such deficiency has been corrected.

V.A.R. Doc. No. R23-7468; Filed October 1, 2024, 4:04 p.m.

BOARD FOR CONTRACTORS

Proposed Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-10, 18VAC50-22-20, 18VAC50-22-30, 18VAC50-22-90 through 18VAC50-22-240, 18VAC50-22-260, 18VAC50-22-300, 18VAC50-22-310, 18VAC50-22-320, 18VAC50-22-350; repealing 18VAC50-22-250, 18VAC50-22-330).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information:

October 24, 2024 - 2 p.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Second Floor Conference Center, Richmond, Virginia 23233.

Public Comment Deadline: December 20, 2024.

Agency Contact: Cameron Parris, Regulatory Operations Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-9183, FAX (866) 350-5354, or email cameron.parris@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia requires the Board for Contractors to establish the qualifications of applicants for certification or licensure and promulgate regulations. Section 54.1-1102 of the Code of Virginia enumerates the legal authority for the board to administer the licensure of contractors and for the relicensure of contractors after license or certificate suspension or revocation.

Purpose: The offering and performing of contracting work by those who lack sufficient expertise, competence, integrity, and financial responsibility poses a risk to the public health, safety, and welfare. Risks include (i) damage to property, personal injury, or loss of life as the result of work that is improperly performed; (ii) financial harm to consumers as the result of construction that is not properly managed or performed; and (iii) harm to consumers as the result of those who lack the character and integrity to offer and engage in contracting work. As mandated by the General Assembly, the board protects the public health, safety, and welfare, in part, by establishing through regulation the minimum qualifications for entry into the profession.

Substance: The amendments:

1. Revise 18VAC50-22-10 to (i) incorporate statutory terms from § 54.1-1100 of the Code of Virginia that are used in the regulation and (ii) provide clarification of several defined terms and remove terms that are not used in the regulation;

2. Revise 18VAC50-22-20 to add "fire sprinkler contractors" and revise the definitions for "commercial building contractors," "electrical contractors," and "highway/heavy contractors";
3. Revise 18VAC50-22-30 to remove the definition of "fire sprinkler contracting." Several specialty services are revised to provide flexibility for contractors holding a "highway/heavy contractors" license classification to perform work covered by the specialty designation. Similar changes are made to other specialty service definitions for holders of other license classifications or specialty service designations;
4. Revise 18VAC50-22-100 to remove examination fees and to incorporate fees associated with applications for reporting a change of designated employee, reporting a change of qualified individual, and addition of a license classification or specialty service, currently under 18VAC50-22-250. Clarification is also added regarding the imposition of Recovery Fund assessments;
5. Revise 18VAC50-22-130 to provide clarification regarding the status of a license during the 30-day grace period associated with license renewals;
6. Revise 18VAC50-22-160 to make provisions regarding reinstatement of licenses clearer. The revised section provides for when a licensee must reinstate a license, the requirements for reinstatement, and the period of time that a license is eligible for reinstatement;
7. Revise 18VAC50-22-220 to extend, from 45 days to 60 days, the period of time in which a regulant must report a change of qualified individual to the board. The requirement for a contractor to report a change of responsible management is streamlined;
8. Repeal 18VAC50-22-250 as its provisions have been incorporated under 18VAC50-22-100;
9. Revise the minimum requirements for residential contracting contracts in 18VAC50-22-260 to expand the requirement for a contractor to obtain a signed acknowledgment by the consumer that the consumer has been provided with and read the Department of Professional and Occupational Regulation statement of protection available through the board. The requirement would no longer apply only to contracts resulting from a door-to-door solicitations;
10. Revise 18VAC50-22-300 to reduce from eight hours to six hours the required length for a prelicense education course;
11. Revise 18VAC50-22-310 to remove a requirement that student records for prelicense education courses include a student's social security number; and
12. Repeal 18VAC50-22-330 to remove the requirement that prelicense education course certificates of approval be available where a course is taught.

Issues: The primary advantages to the public and regulated community include providing clarification to provisions of the regulation, ensuring the regulation complements Virginia law and reflects current agency procedures, and reducing

regulatory burdens by removing requirements that are not necessary to protect the health, safety, and welfare of the public. There are no identifiable disadvantages to the public or the Commonwealth. It is not anticipated that the regulatory change will create any substantial disadvantages to 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. The Board of Contractors (board) proposes to (i) expand the scope of certain license classes or specialty designations; (ii) allow contractors for the framing specialty service to act as a prime contractor; (iii) expand the requirement for a contractor to obtain a signed acknowledgment from a residential consumer that he has been provided with and read the statement of protection available through the board to all contracts; (iv) reduce the required length for a prelicense education course from eight hours to six hours; and (v) make several administrative changes, including no longer requiring training providers to post certificates for approved pre-license courses at their location, extending the period of time in which a regulant must report a change of qualified individual to the board from 45 days to 60 days, and removing a requirement that student records for prelicense education courses include a student's social security number.

Background. The initial impetus for this action is Executive Directive Number One (2022), which directs executive branch entities under the authority of the Governor "to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth."² This regulation applies to those who engage or offer to engage in contracting work by requiring that such persons obtain a contractor license from the board. According to the board, offering and performing of contracting work by those who lack sufficient expertise, competence, integrity, and financial responsibility poses a risk to the public health, safety, and welfare. Risks include damage to property, personal injury, or loss of life as the result of work that is improperly performed; financial harm to consumers as the result of construction that is not properly managed or performed; and harm to consumers as the result of those who lack the character and integrity to offer and engage in contracting work. This regulation protects the public health, safety, and welfare, in part, by establishing the minimum qualifications for entry into contracting.

Estimated Benefits and Costs. One of the proposed changes would expand the scope of certain license classes or specialty

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designations. The regulation specifies the specialty service each license classification or specialty designation is allowed to perform. The board proposes to expand the stipulated scope of work for five contracting classifications and specialty designations (the count of licenses for each classification or specialty is noted in parentheses), as follows: (i) allow highway/heavy contractors (4,514) to also perform environmental monitoring well contracting (96), environmental specialties contracting (253), masonry contracting (1,262), recreational facility contracting (325), steel erection contracting (97), and swimming pool construction contracting (297); (ii) allow residential building contractors (22,706) to also perform farm improvement contracting (517); (iii) allow water well/pump contractors to also perform environmental monitoring well contracting (213); (iv) allow commercial improvement contractors (6,840) to also perform landscape service contracting (2,201); and (v) allow home improvement contractors (12,457) to also perform landscape service contracting (2,201). One of the main benefits of this change would be to permit certain contractors to perform other specialty services without having to pay the fees associated with adding a specialty service. Normally, the one-time cost for a qualified contractor to add a specialty service designation not stipulated by the regulation is \$195, consisting of an application fee of \$110 and an \$85 fee for the qualified individual specialty examination. If all of the 4,514 highway/heavy contractors were to add all six specialty designations that would now be available to them, the total required fees would amount to \$5.3 million (i.e., 4,514 contractors multiplied by six designations multiplied by \$195 application and exam fee). While it is unlikely that all 4,514 highway/heavy contractors would have applied to add all six specialty service designations to their license even if there were no fees, it is likely that at least some of these contractors may have been discouraged by the current fees. Thus, the estimated \$5.3 million in fee savings should be considered as the maximum amount of fee savings this proposed change may generate for all 4,514 highway/heavy contractors. In contrast, if only 10% of the highway/heavy contractors were to add a single specialty designation, the fee savings would be \$88,023 (i.e., 451 multiplied by \$195). Thus, the range for potential fee savings are quite large (i.e., \$88,023 minus \$5.3 million). Similarly, the proposed change may generate potential fee savings of up to \$4.4 million (i.e., 22,706 multiplied by \$195) for residential building contractors; up to \$41,535 (i.e., 213 multiplied by \$195) for water well/pump contractors; up to \$1.3 million (i.e., 6,840 multiplied by \$195) for commercial improvement contractors; and up to \$2.4 million (i.e., 12,457 multiplied by \$195) for home improvement contractors. Additionally, to the extent this change reduces a barrier to entry into the specialty services market and increases competition, it would have a potentially adverse effect on incumbent specialty service providers. Conversely, an increase in competition would lead to a reduction in prices that may be expected to benefit consumers. Another proposed change would amend the scope of practice for the framing subcontractor specialty

service to allow such contractors to perform work in the specialty without having to be a subcontractor to a prime contractor. This change would allow 58 such contractors to be the prime contractor if they are able and interested in performing work in that capacity. An additional change would expand the requirement for residential service contractors to obtain a signed acknowledgment from the consumer that the consumer has been provided with and read the statement of protection available through the board. The requirement would no longer apply only to contracts resulting from a door-to-door solicitations but to all contracts for residential work. Requiring that each contract include a consumer's signed acknowledgment regarding receiving and reading a statement of protection may impose additional administrative costs on contracting firms. The board reports that both electronic and paper versions of contracts are used throughout the industry. Thus, there may be a small cost to contractor businesses and entities associated with paper and printing should a contract be delivered by such method. Notably, the statement of protection is made available by the board and is not a document that a contractor firm must develop. On the other hand, consumers who contract for residential contracting services that are provided with the statement of protection would have additional information and may be less likely to have a negative experience when contracting with a licensed contractor. Consumers that are knowledgeable about contractual transactions and requirements of licensed contractors may have an overall better experience when working with a licensed contractor, which may result in fewer complaints filed against licensed contractors. Another proposed change would reduce the required length for a prelicense education course from eight hours to six hours. The board believes it is unlikely that this proposal would reduce the fee for such courses, but it would provide two hours of time savings to the trainees as well as the trainers. The agency reports that information necessary to monetize the value of this benefit is not available. The regulatory action also proposes other changes that would remove an unnecessary requirement that certificates for approved prelicense courses be posted at the location where an approved course is taught; extend the period of time in which a regulant must report a change of qualified individual to the board from 45 days to 60 days; and remove a requirement that student records for prelicense education courses include a student's social security number. These proposed amendments would provide small administrative benefits to the regulants. The remaining changes are mainly editorial to reflect current practices, align the text with statute, and improve clarity in general. Notable among these proposed changes is the repeal of the fees associated with the qualified individual exam (\$20), Class B exam (\$40), and Class A exam (\$60). According to the board, these exams have not been administered since the 1990s and consequently the removal of these fees is not expected to create an economic impact other than clarifying that these fees no longer apply.

Businesses and Other Entities Affected. The proposed amendments apply to contractors. As of June 1, 2024, the Board for Contractors licensed 33,282 Class A Contractors, 9,260 Class B Contractors, and 12,199 Class C Contractors. Additionally, there are 60 Residential Building Energy Analyst firms currently licensed with the board. All licensed entities would be affected by the proposed regulatory changes. 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 benefit for any entity, even if the benefits exceed the costs for all entities combined.⁴ As noted, this action would introduce small administrative costs on contractors associated with obtaining a signed acknowledgement from consumers. However, not only are these costs expected to be small, but they would also likely be more than offset by other changes providing administrative cost savings. The only adverse impact appears to be indicated for the incumbent specialty service contractors who would face additional competition as described.

Small Businesses⁵ Affected.⁶ Types and Estimated Number of Small Businesses Affected: According to the board, contractor licenses are issued to entities, which undoubtedly includes numerous small businesses. It is reasonable to assume that all entities holding Class C and Class B licenses meet the definition of "small business" as defined in § 2.2-4007.1 of the Code of Virginia. This is likely the case for Residential Building Energy Analyst firms. It is also possible that many entities holding a Class A license fall into the same category.

Costs and Other Effects: The proposed amendments include numerous changes some increasing administrative costs and some offsetting such costs. The only adverse impact appears to be on incumbent specialty service contractors who would face additional competition as described. Thus, the adverse impact on such contractors meeting the definition of a small business would be expected.

Alternative Method that Minimizes Adverse Impact: There does not appear to be a clear alternative method that both reduces adverse impact and meets the intended policy goals.

Localities⁷ Affected.⁸ There are no anticipated costs to localities because of the regulatory changes.

Projected Impact on Employment. The proposed amendments may increase the demand for labor in provision of specialty services whose scope is being expanded to other contractors. However, whether this increased demand would lead to an effect on total employment is not known.

Effects on the Use and Value of Private Property. Asset values of contractors may be positively affected from small, expected net savings in administrative costs and from being able to perform additional specialty services. On the other hand, the asset values of incumbent specialty service contractors that may face additional competition may be negatively affected. 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 <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/ed/ED-1-Regulatory-Reduction.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 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.

⁵ Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁶ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁷ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁸ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

Pursuant to Executive Directive One (2022), the proposed amendments reduce regulatory burdens while still protecting the public health, safety, and welfare and include (i) revising definitions; (ii) removing and consolidating fees; (iii) clarifying and streamlining licensing provisions; (iv) extending to 60 days the period of time a regulant has to report a change of qualified individual; (v) expanding the requirement for a contractor to obtain the signed acknowledgment of receipt of

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department statement of protection; and (vi) reducing to six hours the length of the required prelicense education course and removing requirements that the student supply a social security number for that education course and that the course provider have certificates of approval available on site.

Part I

Definitions General

18VAC50-22-10. General definitions.

A. Section 54.1-1100 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Board"

"Class A contractors"

"Class B contractors"

"Class C contractors"

"Contractor"

"Department"

"Designated employee"

"Director"

"Fire sprinkler contractor"

"Owner-developer"

"Person"

"Value"

B. The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Address of record" means the mailing address designated by the licensee to receive notices and correspondence from the board.

~~"Affidavit" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.~~

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Change order" means any modification to the original contract, including, ~~but not limited to,~~ the time to complete the work, change in materials, change in cost, and change in the scope of work.

"Controlling financial interest" means the direct or indirect ownership or control of more than 50% ownership of a firm.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Formal vocational training" means courses in the trade administered at an accredited educational facility or formal training, approved by the ~~department board~~, conducted by trade associations, businesses, military, correspondence schools, or other similar training organizations.

"Full-time employee" means an employee who spends a minimum of 30 hours a week carrying out the work of the licensed contracting business and who receives an IRS Form W-2 annually.

~~"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in 18VAC50-30-10 regulant.~~

"Licensee" means a firm holding a license issued by the ~~Board for Contractors board~~ to act as a contractor, ~~as defined in § 54.1-1100 of the Code of Virginia.~~

"Net worth" means assets minus liabilities. ~~For purposes of this chapter, assets shall~~ Assets do not include any property owned as tenants by the entirety or property not titled in the name of the business entity.

~~"Prime contractor" means a licensed contractor that performs, supervises, or manages the construction, removal, repair, or improvement of real property pursuant to the terms of a primary contract with the property owner/lessee. The prime contractor may use its own employees to perform the work or use the services of other properly licensed contractors.~~

"Principal place of business" means the location where the licensee principally conducts business with the public.

"Reciprocity" means an arrangement by which the licensees of two states are allowed to practice within each other's boundaries by mutual agreement.

~~"Reinstatement" means having a license restored to effectiveness after the expiration date has passed the process and requirements through which an expired license can be made valid without the licensee having to apply as a new applicant.~~

~~"Renewal" means continuing the effectiveness of a license for another period of time the process and requirements for periodically approving the continuance of a license.~~

"Residential building energy analyst firm" means any business entity wherein a residential building energy analysis, as defined in § 54.1-1144 of the Code of Virginia, is offered or practiced.

"Responsible management" means the principals of the following individuals:

- ~~1. The sole proprietor of a sole Sole proprietorship;~~
- ~~2. The partners of a general General partnership;~~

3. ~~The managing partners of a limited~~ Limited partnership;
4. ~~The officers of a corporation~~ Corporation;
5. ~~The managers of a limited~~ Limited liability company;
6. ~~The officers or directors of an association or both~~ Association; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

~~"Sole proprietor" means any individual, not a corporation, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.~~

"Supervision" means providing guidance or direction of a delegated task or procedure by a tradesman licensed in accordance with Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, being accessible to the helper or laborer, and periodically observing and evaluating the performance of the task or procedure.

~~"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code and provides supervision to helpers and laborers as defined in this chapter.~~

"Temporary license" means a license issued by the board pursuant to § 54.1-201.1 of the Code of Virginia that authorizes a person to engage in the practice of contracting until such time as the license is issued or 45 days from the date of issuance of the temporary license, whichever occurs first.

"Tenants by the entirety" means a tenancy ~~which that~~ is created between ~~a husband and wife~~ spouses and by which together ~~they the spouses~~ hold title to the whole with right of survivorship so that, upon death of either, the other takes whole to exclusion of the deceased's remaining heirs.

"Virginia Uniform Statewide Building Code" or "USBC" means building regulations comprised of those promulgated by the Virginia Board of Housing and Community Development in accordance with § 36-98 of the Code of Virginia, including any model codes and standards that are incorporated by reference and that regulate construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures, and building and installation of equipment therein.

18VAC50-22-20. Definitions of license classifications.

The following words and terms when used in this chapter ~~unless a different meaning is provided or is plainly required by the context shall~~ have the following meanings unless a different meaning is provided or is plainly required by the context:

"Commercial building contractors" (Abbr: CBC) means those ~~individuals~~ contractors whose contracts include construction,

remodeling, repair, improvement, removal, or demolition on real property owned, controlled, or leased by another person of commercial, industrial, institutional, governmental, and accessory use buildings or structures. The CBC classification does not provide for electrical, plumbing, HVAC, or gas fitting services and does not allow construction, repair, or improvement, of dwellings and townhouses as defined in the USBC.

If the CBC contractor performs specialty services other than those listed in this definition, all required specialty designations ~~shall~~ must be obtained. ~~The CBC may act as a prime contractor and contract with subcontractors to perform work not permitted by the CBC license.~~ The commercial building classification includes ~~but is not limited to~~ the functions carried out by the following specialties for contracts of commercial, institutional, governmental, and accessory use buildings or structures, including multi-family housing:

- Billboard/sign contracting
- Commercial improvement contracting
- Concrete contracting
- Farm improvement contracting
- Industrialized building contracting
- Landscape service contracting
- Marine facility contracting
- Masonry contracting
- Painting and wallcovering contracting
- Recreational facility contracting
- Roofing contracting
- Swimming pool contracting

"Electrical contractors" (Abbr: ELE) means those ~~individuals~~ contractors whose contracts include the construction, installation, repair, maintenance, alteration, or removal of electrical systems. This classification provides for all work covered by the electrical provisions of the USBC, including electronic/communication service contracting (ESC) and fire alarm systems contracting (FAS) specialties. A firm holding an ELE license is responsible for meeting all applicable individual license and certification regulations.

"Fire sprinkler contracting" (Abbr: SPR) means the classification that provides for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. This classification does not provide for the installation, repair, or maintenance of other types of fire suppression systems. The PLB classification allows for the installation of systems permitted to be designed in accordance with the plumbing provisions of the USBC. This classification may engage in the

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installation of backflow prevention devices in the fire sprinkler supply main and incidental to the sprinkler system installation when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Highway/heavy contractors" (Abbr: H/H) means those ~~individuals~~ contractors whose contracts include construction, repair, improvement, or demolition of the following:

- Bridges
- Dams
- Drainage systems
- Foundations
- Parking lots
- Public transit systems
- Railroads
- Roads
- Runways
- Streets
- Structural signs and lights
- Tanks

The functions carried out by these contractors include ~~but are not limited to~~ the following:

- Building demolition
- Clearing
- Concrete work
- Excavating
- Grading
- Nonwater well drilling
- Paving
- Pile driving
- Road marking
- Steel erection

These contractors also install, maintain, or dismantle the following:

1. Power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter;
2. Pumping stations and treatment plants;
3. Telephone, telegraph, or signal systems for public utilities; and

4. Water, gas, and sewer connections to residential, commercial, and industrial sites, subject to local ordinances.

This classification may also install backflow prevention devices incidental to work in this classification when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices. When performing site work, this classification may properly abandon a Class IIIC bored/drilled well in accordance with Virginia Department of Health regulations.

"HVAC contractors" (Abbr: HVA) means those ~~individuals~~ contractors whose ~~work includes~~ contracts include the installation, alteration, repair, or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heaters, heating systems, boilers, process piping, and mechanical refrigeration systems, including tanks incidental to the system. This classification does not provide for fire suppression installations, sprinkler system installations, or gas piping. A firm holding a an HVAC license is responsible for meeting all applicable individual license and certification regulations. This classification may install backflow prevention devices incidental to work in this classification.

"Plumbing contractors" (Abbr: PLB) means those ~~individuals~~ contractors whose contracts include the installation, maintenance, extension, ~~or~~ alteration, or removal of all piping, fixtures, appliances, and appurtenances in connection with any of the following:

- Backflow prevention devices
- Boilers
- Hot water baseboard heating systems
- Hot water heaters
- Hydronic systems
- Process piping
- Public/private water supply systems within or adjacent to any building, structure, or conveyance
- Sanitary or storm drainage facilities
- Steam heating systems
- Storage tanks incidental to the installation of related systems
- Venting systems related to plumbing

These contractors also install, maintain, extend, or alter the following:

- Liquid waste systems
- Sewerage systems
- Storm water systems
- Water supply systems

This classification does not provide for (i) gas piping or (ii) the function of fire sprinkler contracting except for sprinklers that are tied into the domestic water supply. A firm holding a PLB license is responsible for meeting all applicable individual license and certification regulations. The classification may install fire sprinkler systems permitted to be designed in accordance with the plumbing provisions of the USBC when the installer has received formal vocational training approved by the board that included instruction of installation of fire sprinkler systems.

"Residential building contractors" (Abbr: RBC) means those ~~individuals~~ contractors whose contracts include construction, remodeling, repair, improvement, removal, or demolition on real property owned, controlled, or leased by another person of dwellings and townhouses, as defined in the USBC, including accessory buildings or structures on such property. The RBC classification does not provide for electrical, plumbing, HVAC, or gas fitting services and does not allow construction, removal, repair, or improvement to commercial, industrial, institutional, or governmental use structures outside of dwellings and townhouses, as defined by the USBC.

The residential building classification includes ~~but is not limited to~~ the functions carried out by the following specialties for contracts of dwellings and townhouses, as defined by the USBC, and related accessory use buildings or structures:

- Concrete contracting
- Home improvement contracting
- Industrialized building contracting
- Landscape service contracting
- Masonry contracting
- Painting and wallcovering contracting
- Roofing contracting
- Swimming pool contracting

"Specialty contractors" means those ~~individuals~~ contractors whose contracts are for specialty services that do not generally fall within the scope of any other classification within this chapter.

18VAC50-22-30. Definitions of specialty services.

The following words and terms when used in this chapter ~~unless a different meaning is provided or is plainly required by the context shall~~ have the following meanings unless a different meaning is provided or is plainly required by the context:

"Accessibility services contracting" (Abbr: ASC) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private

residence elevators in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work. This specialty does not include work on limited use-limited application (LULA) elevators.

"Accessibility services contracting - LULA" (Abbr: ASL) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, private residence elevators, and limited use-limited application (LULA) elevators in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work.

"Alternative energy system contracting" (Abbr: AES) means the service that provides for the installation, repair, or improvement, from the customer's meter, of alternative energy generation systems, supplemental energy systems and associated equipment annexed to real property. This service does not include the installation of emergency generators powered by fossil fuels. No other classification or specialty service provides this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Alternative sewage disposal system contracting" (Abbr: ADS) means the service that provides for the installation, repair, improvement, or removal of a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge. No other classification or specialty service provides this function.

"Asbestos contracting" (Abbr: ASB) means the service that provides for the installation, removal, or encapsulation of asbestos containing materials annexed to real property. No other classification or specialty service provides for this function.

"Asphalt paving and sealcoating contracting" (Abbr: PAV) means the service that provides for the installation, repair, improvement, or removal of asphalt paving or sealcoating, or both, on subdivision streets and adjacent intersections, driveways, parking lots, tennis courts, running tracks, and play areas, using materials and accessories common to the industry. This includes height adjustment of existing sewer manholes, storm drains, water valves, sewer cleanouts and drain grates, and all necessary excavation and grading. The H/H classification also provides for this function.

"Billboard/sign contracting" (Abbr: BSC) means the service that provides for the installation, repair, improvement, or dismantling of any billboard or structural sign permanently annexed to real property. H/H and CBC are the classifications that can perform this work except that a contractor in this specialty may connect or disconnect signs to existing electrical circuits. No trade related plumbing, electrical, or HVAC work is included in this function.

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"Blast/explosive contracting" (Abbr: BEC) means the service that provides for the use of explosive charges for the repair, improvement, alteration, or demolition of any real property or any structure annexed to real property. No other classification or specialty service provides this function.

"Commercial improvement contracting" (Abbr: CIC) means the service that provides for repair or improvement to structures not defined as dwellings and townhouses in the USBC. The CBC classification also provides for this function. The CIC specialty does not provide for the construction of new buildings, accessory buildings, electrical, plumbing, HVAC, or gas work.

"Concrete contracting" (Abbr: CEM) means the service that provides for all work in connection with the processing, proportioning, batching, mixing, conveying, and placing of concrete composed of materials common to the concrete industry. This includes finishing, coloring, curing, repairing, testing, sawing, grinding, grouting, placing of film barriers, sealing, and waterproofing. Construction and assembling of forms, molds, slipforms, and pans, centering, and the use of rebar are also included. The CBC, RBC, and H/H classifications also provide for this function.

"Conventional sewage disposal system contracting" (Abbr: CDS) means the service that provides for the installation, repair, improvement, or removal of a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield. The ADS specialty may also perform this work.

"Drug lab remediation contracting" (Abbr: DLR) means the service that provides for the cleanup, treatment, containment, or removal of hazardous substances at or in a property formerly used to manufacture methamphetamine or other drugs and may include demolition or disposal of structures or other property. No other classification or specialty provides for this function.

"Drywall contracting" (Abbr: DRY) means the service that provides for the installation, taping, and finishing of drywall, panels and assemblies of gypsum wallboard, sheathing, and cementitious board, and the installation of studs made of sheet metal for the framing of ceilings and nonstructural partitioning. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Electronic/communication service contracting" (Abbr: ESC) means the service that provides for the installation, repair, improvement, or removal of electronic or communications systems annexed to real property including telephone wiring, computer cabling, sound systems, data links, data and network installation, television and cable TV wiring, antenna wiring, and fiber optics installation, all of which or other systems that operate at 50 volts or less. A firm holding an ESC license is responsible for meeting all applicable tradesman licensure standards. The ELE classification also provides for this function.

"Elevator/escalator contracting" (Abbr: EEC) means the service that provides for the installation, repair, improvement, or removal of elevators or escalators permanently annexed to real property. A firm holding an EEC license is responsible for meeting all applicable individual license and certification regulations. No other classification or specialty service provides for this function.

"Environmental monitoring well contracting" (Abbr: EMW) means the service that provides for the construction of a well to monitor hazardous substances in the ground. The H/H classification and WWP specialty also provides for this function.

"Environmental specialties contracting" (Abbr: ENV) means the service that provides for installation, repair, removal, or improvement of pollution control and remediation devices. No other specialty provides for this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions. The H/H classification also provides for this function.

"Equipment/machinery contracting" (Abbr: EMC) means the service that provides for the installation or removal of equipment or machinery, including conveyors or heavy machinery. Boilers exempted by the Virginia Uniform Statewide Building Code (13VAC5-63) but regulated by the Department of Labor and Industry are also included in this specialty. This specialty does not provide for any electrical, plumbing, process piping, or HVAC functions.

"Farm improvement contracting" (Abbr: FIC) means the service that provides for the installation, repair, or improvement of a nonresidential farm building or structure, or nonresidential farm accessory-use structure, or additions thereto. The CBC and RBC classification also provides for this function. The FIC specialty does not provide for any electrical, plumbing, HVAC, or gas fitting functions.

"Finish carpentry contracting" (Abbr: FIN) means the service that provides for the installation, repair, and finishing of cabinets, sash casing, door casing, wooden flooring, baseboards, countertops, and other millwork. Finish carpentry does not include the installation of ceramic tile, marble, and artificial or cultured stone. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Fire alarm systems contracting" (Abbr: FAS) means the service that provides for the installation, repair, or improvement of fire alarm systems that operate at 50 volts or less. The ELE classification also provides for this function. A firm with an FAS license is responsible for meeting all applicable tradesman licensure standards.

~~"Fire sprinkler contracting" (Abbr: SPR) means the service that provides for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. This specialty does not provide~~

~~for the installation, repair, or maintenance of other types of fire suppression systems. The PLB classification allows for the installation of systems permitted to be designed in accordance with the plumbing provisions of the USBC. This specialty may engage in the installation of backflow prevention devices in the fire sprinkler supply main and incidental to the sprinkler system installation when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.~~

"Fire suppression contracting" (Abbr: FSP) means the service that provides for the installation, repair, improvement, or removal of fire suppression systems including halon and other gas systems, dry chemical systems, and carbon dioxide systems annexed to real property. No other classification provides for this function. The FSP specialty does not provide for the installation, repair, or maintenance of water sprinkler systems.

"Flooring and floor covering contracting" (Abbr: FLR) means the service that provides for the installation, repair, improvement, or removal of materials that are common in the flooring industry. This includes wood and wood composite flooring, tack strips or other products used to secure carpet, vinyl and linoleum, ceramic, marble, stone, and all other types of tile, and includes the installation or replacement of subflooring, leveling products, or other materials necessary to facilitate the installation of the flooring or floor covering. This does not include the installation, repair, or removal of floor joists or other structural components of the flooring system. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

~~"Framing subcontractor contractor" (Abbr: FRM) means the service which, while serving in the role of a subcontractor to a licensed prime contractor, that provides for the construction, removal, repair, or improvement to any framing or rough carpentry necessary for the construction of framed structures, including the installation and repair of individual components of framing systems. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.~~

"Gas fitting contracting" (Abbr: GFC) means the service that provides for the installation, repair, improvement, or removal of gas piping and appliances annexed to real property. A firm holding a GFC license is responsible for meeting all applicable individual (tradesman) licensure regulations.

"Glass and glazing contracting" (Abbr: GLZ) means the service that provides for the installation, assembly, repair, improvement, or removal of all makes and kinds of glass, glass work, mirrored glass, and glass substitute for glazing; executes the fabrication and glazing of frames, panels, sashes and doors; or installs these items in any structure. This specialty includes the installation of standard methods of weatherproofing, caulking, glazing, sealants, and adhesives. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Home improvement contracting" (Abbr: HIC) means the service that provides for repairs or improvements to dwellings and townhouses as defined in the USBC or structures annexed to those dwellings or townhouses as defined in the USBC. The RBC classification also provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include new construction functions beyond the existing building structure other than decks, patios, driveways, and utility out buildings that do not require a permit per the USBC.

"Industrialized building contracting" (Abbr: IBC) means the service that provides for the installation or removal of an industrialized building as defined in the Virginia Industrialized Building Safety Regulations (13VAC5-91). This classification covers foundation work in accordance with the provisions of the Virginia Uniform Statewide Building Code (13VAC5-63) and allows the licensee to complete internal tie-ins of plumbing, gas, electrical, and HVAC systems. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The CBC and RBC classifications also provide for this function.

"Insulation and weather stripping contracting" (Abbr: INS) means the service that provides for the installation, repair, improvement, or removal of materials classified as insulating media used for the sole purpose of temperature control or sound control of residential and commercial buildings. It does not include the insulation of mechanical equipment and ancillary lines and piping. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Landscape irrigation contracting" (Abbr: ISC) means the service that provides for the installation, repair, improvement, or removal of irrigation sprinkler systems or outdoor sprinkler systems. The PLB and H/H classifications also provide for this function. This specialty may install backflow prevention devices incidental to work in this specialty when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Landscape service contracting" (Abbr: LSC) means the service that provides for the alteration or improvement of a land area not related to any other classification or service activity by means of excavation, clearing, grading, construction of retaining walls for landscaping purposes, or placement of landscaping timbers. This specialty may remove stumps and roots below grade. The CBC, RBC, and H/H classifications and the CIC and HIC specialties also provide for this function.

"Lead abatement contracting" (Abbr: LAC) means the service that provides for the removal or encapsulation of lead-containing materials annexed to real property. No other classification or specialty service provides for this function,

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except that the PLB and HVA classifications may provide this service incidental to work in those classifications.

"Liquefied petroleum gas contracting" (Abbr: LPG) means the service that includes the installation, maintenance, extension, alteration, or removal of all piping, fixtures, appliances, and appurtenances used in transporting, storing, or utilizing liquefied petroleum gas. This excludes hot water heaters, boilers, and central heating systems that require an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an LPG license is responsible for meeting all applicable individual license and certification regulations.

"Manufactured home contracting" (Abbr: MHC) means the service that provides for the installation or removal of a manufactured home as defined in the Virginia Manufactured Home Safety Regulations (13VAC5-95). This classification does not cover foundation work; however, it does allow installation of piers covered under HUD regulations. It does allow a licensee to do internal tie-ins of plumbing, gas, electrical, or HVAC equipment. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter or ~~installing the outside compressor for any components of the HVAC system.~~ No other specialty provides for this function.

"Marine facility contracting" (Abbr: MCC) means the service that provides for the construction, repair, improvement, or removal of any structure the purpose of which is to provide access to, impede, or alter a body of surface water. The CBC and H/H classifications also provide for this function. The MCC specialty does not provide for the construction of accessory structures or electrical, HVAC, or plumbing functions.

"Masonry contracting" (Abbr: BRK) means the service that includes the installation of brick, concrete block, stone, marble, slate, or other units and products common to the masonry industry, including mortarless type masonry products. This includes installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging, and cleaning and welding of reinforcement steel related to masonry construction. The CBC ~~and~~, RBC, and H/H classifications and the HIC and CIC specialties also provide for this function.

"Miscellaneous contracting" (Abbr: MSC) means the service that may fall under another classification or specialty service but is more limited than the functions provided by the other classification or specialty. This specialty is limited to a single activity and will be restricted to that specialty only. This specialty may not be used for work that would fall under the ELE, HVA, PLB, GFC, LPG, NGF, EEC, WWP, ASC, LAC, or ASB classification or specialty. ~~Contractors applying for the MSC specialty will have their applications reviewed by the Board for Contractors.~~

"Natural gas fitting provider contracting" (Abbr: NGF) means the service that provides for the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property. This does not include new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an NGF license is responsible for meeting all applicable individual license and certification regulations.

"Painting and wallcovering contracting" (Abbr: PTC) means the service that provides for the application of materials common to the painting and decorating industry for protective or decorative purposes, the installation of surface coverings such as vinyls, wall papers, and cloth fabrics. This includes surface preparation, caulking, sanding, and cleaning preparatory to painting or coverings and includes both interior and exterior surfaces. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Radon mitigation contracting" (Abbr: RMC) means the service that provides for additions, repairs, or improvements to buildings or structures, for the purpose of mitigating or preventing the effects of radon gas. No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty.

"Recreational facility contracting" (Abbr: RFC) means the service that provides for the construction, repair, or improvement of any recreational facility, excluding paving and the construction of buildings, plumbing, electrical, and HVAC functions. The CBC ~~classification~~ and H/H classifications also provides for this function.

"Refrigeration contracting" (Abbr: REF) means the service that provides for installation, repair, or removal of any refrigeration equipment (excluding HVAC equipment). No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty. This specialty is intended for those contractors who repair or install coolers, refrigerated casework, ice-making machines, drinking fountains, cold room equipment, and similar hermetic refrigeration equipment. The HVA classification also provides for this function.

"Roofing contracting" (Abbr: ROC) means the service that provides for the installation, repair, removal, or improvement of materials common to the industry that form a watertight, weather resistant surface for roofs and decks. This includes roofing system components when installed in conjunction with a roofing project, application of dampproofing or waterproofing, and installation of roof insulation panels and other roof insulation systems above roof deck. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Steel erection contracting" (Abbr: STL) means the service that provides for the fabrication and erection of structural steel shapes and plates, regardless of shape or size, to be used as structural members, or tanks, including any related riveting,

welding, and rigging. This specialty includes the fabrication, placement and tying of steel reinforcing bars (rods), and post-tensioning to reinforce concrete buildings and structures. The CBC ~~and~~, RBC, and H/H classifications and HIC and CIC specialties also provide for this function.

"Swimming pool construction contracting" (Abbr: POL) means the service that provides for the construction, repair, improvement, or removal of in-ground swimming pools. The CBC ~~and~~, RBC, and H/H classifications and the RFC specialty also provide for this function. No trade related plumbing, electrical, backflow, or HVAC work is included in this specialty.

"Tile, marble, ceramic, and terrazzo contracting" (Abbr: TMC) means the service that provides for the preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, terrazzo, encaustic, faience, quarry, semi-vitreous, cementitious board, and other tile, excluding hollow or structural partition tile. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Underground utility and excavating contracting" (Abbr: UUC) means the service that provides for the construction, repair, improvement, or removal of ~~main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line, or residential or single occupancy commercial properties, or on multi-occupancy properties at manhole or wye lateral extend to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures water, gas, and sewer connections to residential, commercial, and industrial sites, subject to local ordinances.~~ This specialty may install empty underground conduits in rights-of way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings if each conduit system does not include installation of any conductor wiring or connection to an energized electrical system. The H/H classification also provides for this function.

"Vessel construction contracting" (Abbr: VCC) means the service that provides for the construction, repair, improvement, or removal of nonresidential vessels, tanks, or piping that hold or convey fluids other than sanitary, storm, waste, or potable water supplies. The H/H classification also provides for this function.

"Water well/pump contracting" (Abbr: WWP) means the service that provides for the installation of a water well system, including geothermal wells, which includes construction of a water well to reach groundwater, as defined in § 62.1-255 of the Code of Virginia, and the installation of the well pump and tank, including pipe and wire, up to and including the point of

connection to the plumbing and electrical systems. No other classification or specialty service provides for construction of water wells. This regulation shall not exclude the PLB, ELE, or HVA classification from installation of pumps and tanks.

~~Note: Specialty contractors engaging in construction that involves the following activities or items or similar activities or items may fall under the CIC, HIC, and FIC specialty services, or they may fall under the CBC or RBC classification.~~

Appliances	Fences	Railings
Awnings	Fiberglass	Rigging
Blinds	Fireplaces	Rubber linings
Bulkheads	Fireproofing	Sandblasting
Carpeting	Fixtures	Scaffolding
Ceilings	Grouting	Screens
Chimneys	Guttering	Shutters
Chutes	Interior decorating	Siding
Curtains	Lubrication	Skylights
Curtain walls	Metal work	Storage bins and lockers
Decks	Millwrighting	Stucco
Doors	Mirrors	Vaults
Drapes	Miscellaneous iron	Wall panels
Epoxy	Ornamental iron	Waterproofing
Exterior decoration	Partitions	Windows
Facings	Protective coatings	

18VAC50-22-90. Past due recovery fund assessments.

No license ~~shall~~ will be issued to an applicant whose previous license or registration was suspended for nonpayment of a Virginia Contractor Transaction Recovery Fund assessment until all past-due assessments have been paid.

18VAC50-22-100. Fees.

Each check or money order ~~shall~~ must 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~~ will be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

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Fee Type	When Due	Amount Due
Class C Initial License	with license application	\$210
Class B Initial License	with license application	\$345
Class A Initial License	with license application	\$360
Temporary License	with license application and applicable initial license fee	\$50
Residential Building Energy Analyst Firm License	with license application	\$210
Qualified Individual Exam Fee	with exam application	\$20
Class B Exam Fee	with exam application (\$20 per section)	\$40
Class A Exam Fee	with exam application (\$20 per section)	\$60
Change of Designated Employee	with change application	\$110
Change of Qualified Individual	with change application	\$110
Addition of Classification or Specialty	with addition application	\$110

~~Note: A In accordance with § 54.1-1119 of the Code of Virginia, a \$25 Recovery Fund assessment is also required with each initial license application, except for the residential building energy analyst firm license. If the applicant does not meet all requirements and does not become licensed, this assessment will be refunded. The examination fees approved by the board but administered by another governmental agency or organization shall be determined by that agency or organization. No Recovery Fund assessment is required for residential building energy analyst firm license, change of designated employee, change of qualified individual, or addition of classification or specialty.~~

18VAC50-22-110. Renewal required.

Licenses issued under this chapter ~~shall will~~ expire two years from the last day of the month in which they were issued, as indicated on the license.

18VAC50-22-120. Procedures for renewal.

The Department of Professional and Occupational Regulation will mail a notice of renewal to the licensee at the last known address of record. Failure to receive this notice ~~shall does~~ not relieve the licensee of the obligation to renew. If the licensee does not receive the notice of renewal, a copy of the license may be substituted with the required fee.

18VAC50-22-130. Qualifications for renewal.

A. The license holder's completed renewal form and appropriate fees must be received within 30 days of the license expiration date in order to renew the license. Licenses are not valid during the 30-day grace period. Applications and fees received after the 30-day period will be processed in accordance with Part IV (18VAC50-22-160 et seq.) of this chapter.

B. Applicants for renewal of a Class C license ~~shall must~~ continue to meet all of the qualifications for licensure set forth in 18VAC50-22-40. Applicants for renewal of a Class B license ~~shall must~~ continue to meet all of the qualifications for licensure set forth in 18VAC50-22-50. Applicants for renewal of a Class A license ~~shall must~~ continue to meet all of the qualifications for licensure set forth in 18VAC50-22-60.

C. Applicants for renewal of a residential building energy analyst firm license ~~shall must~~ continue to meet all of the qualifications for licensure set forth in 18VAC50-22-62 and shall submit proof of insurance as required in 18VAC50-22-62 C.

18VAC50-22-140. Renewal fees.

Each check or money order ~~should must~~ 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 will~~ be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C renewal	with renewal application	\$195
Class B renewal	with renewal application	\$225
Class A renewal	with renewal application	\$240
Residential Building Energy Analyst Firm renewal	with renewal application	\$195

The date on which the renewal fee is received by the Department of Professional and Occupational Regulation or its agent ~~shall~~ will determine whether the licensee is eligible for renewal or must apply for reinstatement.

For renewal fees received on or before August 31, 2025, the fees ~~shall~~ will be \$150 for a Class C renewal, \$175 for a Class B renewal, \$200 for a Class A renewal, and \$150 for a Residential Building Energy Analyst Firm renewal.

18VAC50-22-150. Board discretion to deny renewal.

A. The board may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee has a right to appeal any such action by the board under the Administrative Process Act (~~§ 9-6.14:1~~ (§ 2.2-4000 et seq. of the Code of Virginia).

B. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order may result in delaying or withholding services provided by the department, ~~such as, but not limited to,~~ renewal, reinstatement, processing a new application, or exam administration.

18VAC50-22-160. Reinstatement required.

~~Should the Department of Professional and Occupational Regulation fail to receive A. If all requirements for renewal of a license holder's renewal form and appropriate fees as specified in 18VAC50-22-130 are not completed within 30 days of the license expiration date, the licensee shall will be required to reinstate the license. Applicants for reinstatement of a Class C license shall meet the requirements of 18VAC50-22-130 by meeting all renewal requirements and by paying the reinstatement fee specified in 18VAC50-22-170. Applicants for reinstatement of a Class B license shall continue to meet the qualifications for licensure set forth in 18VAC50-22-50. Applicants for reinstatement of a Class A license shall continue to meet all the qualifications for licensure set forth in 18VAC50-22-60. Applicants for reinstatement of a residential building energy analyst firm license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-62 and shall submit proof of insurance as required in 18VAC50-22-62 C.~~

B. A license may be reinstated for up to 24 months following the expiration date. After 24 months, the license may not be reinstated and the firm must meet all current entry requirements and apply as a new applicant.

C. Any regulated activity conducted subsequent to the license expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) and Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

18VAC50-22-170. Reinstatement fees.

Each check or money order ~~should~~ must 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~~ will be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C reinstatement	with reinstatement application	\$405*
Class B reinstatement	with reinstatement application	\$460*
Class A reinstatement	with reinstatement application	\$490*
Residential Building Energy Analyst Firm reinstatement	with reinstatement application	\$405*
*Includes renewal fee listed in 18VAC50-22-140.		

The date on which the reinstatement fee is received by the Department of Professional and Occupational Regulation or its agent ~~shall~~ will determine whether the licensee is eligible for reinstatement or must apply for a new license and meet the entry requirements in place at the time of that application. In order to ensure that licensees are qualified to practice as contractors, no reinstatement will be permitted once two years from the expiration date of the license have passed.

For reinstatement fees received on or before August 31, 2025, the fees ~~shall~~ will be \$360 for Class C reinstatement, \$410 for Class B reinstatement, \$450 for Class A reinstatement, and \$360 for a Residential Building Energy Analyst Firm. These fees include the renewal fee listed in 18VAC50-22-140.

18VAC50-22-180. Status of licensee during the period prior to reinstatement.

A. When a license is reinstated, the licensee ~~shall~~ will continue to have the same license number and ~~shall~~ be assigned an expiration date two years from the previous expiration date of the license.

B. A contractor who reinstates ~~his~~ a license shall be regarded as having been continuously licensed without interruption. Therefore:

1. The contractor ~~shall~~ will remain under the disciplinary authority of the board during this entire period and may be held accountable for ~~his~~ activities during this period.
2. A consumer who contracts with a contractor during the period between the expiration of the license and the

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reinstatement of the license ~~shall~~ will not be prohibited from making a claim on the Virginia Contractor Transaction Recovery Fund.

A contractor who fails to reinstate his license ~~shall~~ will be regarded as unlicensed from the expiration date of the license forward.

Nothing in this chapter ~~shall~~ will divest the board of its authority to discipline a contractor for a violation of the law or regulations during the period of time for which the contractor was licensed.

C. A residential building energy analyst firm that reinstates its license ~~shall~~ will be regarded as having been continuously licensed without interruption and ~~shall~~ remain under the disciplinary authority of the board during this entire period and may be held accountable for its activities during this period.

18VAC50-22-190. Board discretion to deny reinstatement.

A. The board may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee has a right to appeal any such action by the board under the Administrative Process Act (~~§ 9-6.14:1~~ (§ 2.2-4000 et seq. of the Code of Virginia).

B. Failure to timely pay any monetary penalty, reimbursement of cost or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, ~~but not limited to~~, renewal, reinstatement, processing of a new application, or exam administration.

18VAC50-22-200. Remedial education, revocation or suspension; fines.

The board may ~~require~~ impose remedial education, ~~and a monetary penalty in accordance with § 54.1-202 A of the Code of Virginia or~~ revoke or suspend ~~a any license or fine a licensee~~ when a licensee has been found to have violated or cooperated with others in violating any provision of the regulations of the board or 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 any regulation of the board.

18VAC50-22-210. Change of business entity requires a new license.

Licenses are issued to firms ~~as defined in this chapter~~ and are not transferable. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm ~~shall~~ must apply for a new license, on a form provided by the board, within 30 days of the change in the business entity. Such changes include ~~but are not limited to~~:

1. Death of a sole proprietor;
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. ~~Conversion, formation,~~ Formation or dissolution of a corporation, a limited liability company, or an association or any other business entity recognized under the laws of the Commonwealth of Virginia.

18VAC50-22-220. Change of responsible management, designated employee, or qualified individual.

A. Any change in the ~~officers~~ principals of a corporation, ~~managers of a limited liability company, or officers or directors of an association~~ shall must be reported to the board in writing within 120 days of the change.

B. Any change of designated employee ~~shall~~ must be reported on a form provided by the board within 120 days of the change. The new designated employee for a Class B licensee ~~shall~~ must meet the requirements of 18VAC50-22-50 B. The new designated employee for a Class A licensee ~~shall~~ must meet the requirements of 18VAC50-22-60 B. More than one individual associated with a single firm may complete the examination requirements necessary for eligibility as the designated employee.

C. Any change of qualified individual ~~shall~~ must be reported on a form provided by the board within ~~45~~ 60 days of the change. The new qualified individual for a Class C licensee ~~shall~~ must meet the requirements of 18VAC50-22-40 B. The new qualified individual for a Class B licensee ~~shall~~ must meet the requirements of 18VAC50-22-50 C. The new qualified individual for a Class A licensee ~~shall~~ must meet the requirements of 18VAC50-22-60 C.

18VAC50-22-230. Change of name or address.

A. A licensee must operate under the name in which the license is issued. Any name change ~~shall~~ must be reported in writing to the board within 30 days of the change. The board ~~shall~~ will not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name.

B. Any change of the address of record or principal place of business ~~shall~~ must be reported in writing to the board within 30 days of the change. The board ~~shall~~ will not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of address.

18VAC50-22-240. Deletion or addition of a classification or specialty.

A. A licensee wishing to delete a classification or specialty from its license ~~shall~~ must notify the board in writing. If a licensee has only one classification or specialty, deletion of that classification or specialty will result in termination of the license.

B. A licensee wishing to add a classification or specialty to its license ~~shall~~ must complete a form provided by the board. A Class C licensee seeking an additional classification or specialty ~~shall~~ must meet the requirements of 18VAC50-22-40

B for the new classification or specialty. A Class B licensee seeking an additional classification or specialty ~~shall~~ must meet the requirements of 18VAC50-22-50 C for the new classification or specialty. A Class A licensee seeking an additional classification or specialty ~~shall~~ must meet the requirements of 18VAC50-22-60 C for the new classification or specialty.

18VAC50-22-250. Fees. (Repealed.)

~~Each check or money order should 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 set by the department.~~

Fee Type	When Due	Amount Due
Change of Designated Employee	with change form	\$110
Change of Qualified Individual	with change form	\$110
Addition of Classification or Specialty	with addition application	\$110

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.

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 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 regarding total cost of the project with regards to the type of contract 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 that 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;
- 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;
- f. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
- g. Disclosure of the cancellation rights of the parties;
- h. ~~For contracts resulting from a door-to-door solicitation,~~ A signed acknowledgment by the consumer that the

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consumer has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to consumers through the Board for Contractors;

i. Contractor's name, address, license number, class of license, and classifications or specialty services;

j. A statement providing that any modification to the contract that changes the cost, materials, work to be performed, or estimated completion date must be in writing and signed by all parties; and

k. ~~Effective with all new contracts entered into after July 1, 2015,~~ a 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 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 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.

18VAC50-22-300. Prelicensure education courses.

All courses offered by prelicense education providers must be approved by the board prior to the initial offering of the course, and ~~shall~~ cover business principles related to the standards of conduct found in 18VAC50-22-260 B and other applicable requirements of continued licensure set forth in this chapter. Courses must be ~~eight~~ six hours in length. Correspondence and other distance learning courses must include appropriate testing procedures to verify completion of the course.

18VAC50-22-310. Requirements for prelicense education providers.

A. Each provider of a prelicense education course ~~shall~~ must submit an application for course approval on a form provided by the board. The application ~~shall~~ must include ~~but is not limited to:~~

1. The name of the provider;
2. Provider contact person, address, and telephone number;
3. Course contact hours;
4. Schedule of courses, if established, including dates, time, and locations;
5. Instructor information, including name, license ~~number(s)~~ number, if applicable, and a list of other appropriate trade designations;
6. Course and material fees; and
7. Course syllabus.

B. All providers must establish and maintain a record for each student. The record shall include: the student's name and address; ~~social security number or Virginia DMV control number, if applicable;~~ the course name and clock hours

attended; the course syllabus or outline; the name ~~or names~~ of the instructor; the date of successful completion; and the board's course code. Records shall be available for inspection during normal business hours by authorized representatives of the board. Providers must maintain class records for a minimum of five years.

18VAC50-22-320. Reporting of course completion.

All prelicense education providers ~~shall~~ must electronically transmit course completion data to the board in an approved format within seven days of the completion of each individual course. The transmittal will include each student's name, ~~social security number or Virginia DMV control number, if applicable,~~ the date of successful completion of the course, and the board's course code.

18VAC50-22-330. Posting prelicense education course certificates of approval. (Repealed.)

~~Copies of prelicense education course certificates of approval must be available at the location a course is taught.~~

18VAC50-22-350. Denial or withdrawal of approval.

The board may deny or withdraw approval of any prelicense education provider for the following reasons:

1. The courses being offered no longer meet the standards established by the board.
2. The provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive way.
3. The provider, instructor, or designee of the provider falsifies any information relating to the application for approval, course information, or student records or fails to produce records required by the Board for Contractors ~~Tradesman Regulations.~~

VA.R. Doc. No. R23-7412; Filed September 18, 2024, 10:07 a.m.

Proposed Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-40, 18VAC50-22-50, 18VAC50-22-60, 18VAC50-22-62, 18VAC50-22-65, 18VAC50-22-66; adding 18VAC50-22-35, 18VAC50-22-61).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information:

October 24, 2024 - 2 p.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Second Floor Conference Center, Richmond, Virginia 23233.

Public Comment Deadline: December 20, 2024.

Agency Contact: Cameron Parris, Regulatory Operations Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA

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23233, telephone (804) 367-9183, FAX (866) 350-5354, or email cameron.parris@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia requires the Board for Contractors to establish the qualifications of applicants for certification or licensure and promulgate regulations. Section 54.1-1102 of the Code of Virginia enumerates the legal authority for the board to administer the licensure of contractors and for the relicensure of contractors after license or certificate suspension or revocation.

Purpose: The offering and performing of contracting work by those who lack sufficient expertise, competence, integrity, and financial responsibility poses a risk to the public health, safety, and welfare. Risks include (i) damage to property, personal injury, or loss of life as the result of work that is improperly performed; (ii) financial harm to consumers as the result of construction that is not properly managed or performed; and (iii) harm to consumers as the result of those who lack the character and integrity to offer and engage in contracting work. As mandated by the General Assembly, the board protects the public health, safety, and welfare, in part, by establishing through regulation the minimum qualifications for entry into the profession.

Substance: The amendments:

1. Add 18VAC50-22-35 to provide for application procedures that reflect current agency practice and are consistent with application procedures for other Department of Professional and Occupational Regulation (DPOR) programs;
2. Revise 18VAC50-22-40 to (i) reduce the minimum experience required for a qualified individual for a Class C contractor license from two years to one year and (ii) require that applicants for a Class C contractor license disclose adverse financial information (e.g. outstanding past-due debts or judgments; prior bankruptcies) for the past three years prior to application, as opposed to the five years prior to application;
3. Revise 18VAC50-22-50 to (i) require that applicants for a Class B contractor license disclose adverse financial information (e.g. outstanding past-due debts or judgments; prior bankruptcies) for the past four years prior to application, as opposed to the five years prior to application; (ii) provide that an applicant for a Class B contractor license must verify a net worth or equity of \$15,000 or more by submitting a completed financial statement with supporting documentation, a certified public accountant (CPA) reviewed financial statement, or a CPA audit; and (iii) provide that an applicant may obtain a \$50,000 surety bond on a board-approved form in lieu of providing required information regarding the firm's financial position;
4. Revise 18VAC50-22-60 to (i) provide that an applicant for a Class A contractor license must verify a net worth or equity of \$45,000 or more by submitting a completed financial statement with supporting documentation, a CPA-reviewed financial statement, or a CPA audit and (ii) provide that an applicant may obtain a \$50,000 surety bond on a board-

approved form in lieu of providing required information regarding the firm's financial position;

5. Add 18VAC50-22-61 to (i) consolidate provisions located in 18VAC50-22-40, 18VAC50-22-50, and 18VAC50-22-60 that outline the license classifications or specialty services for which a proposed qualified individual must meet a prerequisite (e.g. master tradesman license or other credential) or pass a board-approved examination in the classification or specialty service; and (ii) provide an additional pathway for a contractor to qualify for the alternative energy system contracting (AES) specialty service;

6. Amend 18VAC50-22-40, 18VAC50-22-50, and 18VAC50-22-60 to add language clarifying that an applicant for the miscellaneous (MSC) specialty service must provide evidence acceptable to the board of the qualified individual's experience in the scope of practice for which the specialty service is being sought. Such applications will be considered by the board in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia); and

7. Amend provisions in 8VAC50-22-40, 18VAC50-22-50, 18VAC50-22-60, and 18VAC50-22-62 pertaining to the disclosure of criminal convictions to make the regulation more consistent with the provisions of § 54.1-204 of the Code of Virginia pertaining to criminal history.

Issues: The primary advantages to the public and the regulated community are that the amendments to the regulation will (i) reduce entry requirements for Class B and Class C contractor licenses, allowing more firms to potentially qualify for Class B and Class C contractor licenses while ensuring minimum competency and protection of the health, safety, and welfare of the public; (ii) provide needed updating and organization to the regulation; (iii) ensure the regulation reflects current agency practice; and (iv) ensure the regulation complements current Virginia law and is clearly written and understandable. No disadvantages to the public or regulated community have been identified. There are no identifiable disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia 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. In response to Executive Order 19 (2022) and Executive Directive 1 (2022), the Board for Contractors (board) seeks to amend the Board for Contractors Regulations to reduce certain entry requirements for firms seeking a Class C or Class B contractor license. The proposed changes would also clarify the text, conform the regulation to current Virginia law, and reflect current practice.

Background. Executive Directive Number One (2022) directs executive branch entities under the authority of the Governor "to initiate regulatory processes to reduce by at least 25% the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth."² Accordingly, the board proposes to make one change for Class C contractors that would reduce the entry requirements, and one change each in the requirements for Class B and Class C contractor licenses that would decrease the requirement for disclosing adverse financial history. The board also seeks to make a number of changes that would clarify and update the text and conform the regulation to statute. The most substantive changes are summarized. Applicants for a Class C contractor license are currently required to demonstrate two years of work experience in every classification or specialty in which they seek licensure (18VAC50-22-40); the board proposes to reduce this to one year of work experience. Virginia statute limits the dollar value of contracts to amounts ranging from \$1,000 to \$10,000 for Class C, with an annual revenue cap of \$150,000.³ These statutory thresholds were most recently amended in 2010, and the Department of Professional and Occupational Regulation (DPOR) reports that an increase in the costs of materials and labor due to inflation has resulted in limiting Class C contractors to very small projects, often categorized as "handyman" tasks, for which a two-year experience requirement is seen as overly restrictive. By reducing the work experience requirement for a Class C contractor license, the board seeks to incentivize unlicensed contractors who are currently performing handyman work or individuals who are currently employed by contracting firms and who seek to start their own contracting firms to obtain a license. (Contractor licenses are only issued to firms.) Applicants for all classes of licensure are currently required to submit information on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies for five years prior to application. This requirement would be reduced to three years for Class C applicants and four years for Class B applicants; it would remain at five years for Class A applicants. Applicants for Class A and Class B licenses are required to submit information on their financial position to demonstrate financial responsibility. Class A applicants are required to verify a net worth or equity of \$45,000 (18VAC50-22-60); the corresponding requirement for Class B applicants is \$15,000 (18VAC50-22-50). Sections 54.1-1106 and 54.1-1108 of the Code of Virginia further specify (i) the acceptable documentation to demonstrate minimum net worth and (ii) an option to demonstrate financial responsibility by electing to obtain and maintain a bond in the amount of \$50,000. Thus, the board seeks to amend sections 50 and 60 to incorporate these statutory provisions. Requirements pertaining to specific classifications or specialties in which applicants seek to be licensed, which are currently listed separately for each license class in 18VAC50-22-40, 18VAC50-22-50, and 18VAC50-22-60, would be removed and consolidated in a new

18VAC50-22-61, which would enhance clarity, and updated to reflect current requirements.⁴ Language pertaining to pleas of nolo contendere, which currently appear to contradict § 54.1-204 of the Code of Virginia, would be struck. Lastly, the board seeks to add a new 18VAC50-22-35 to specify the requirements of the application process.

Estimated Benefits and Costs. Reduction in experience requirements for Class C contractors: This proposed change would benefit prospective applicants for a Class C contractor license by reducing the experience requirement. DPOR estimates that this reduction could result in a 15% to 20% increase in the number of Class C applicants. The board received 1,599 applications for Class C licenses in 2022 and 1,522 applications in 2023. As mentioned previously, DPOR expects that this increase will be driven by unlicensed contractors who are currently providing "handyman" services and want to be contracted for projects within the statutory threshold for a Class C license (ranging from \$1,000 to \$10,000 per project, with an annual revenue cap of \$150,000), as well as employees of contracting firms who seek to start their own firms. DPOR also reports that contractors often start at the Class C level and move up to Class B or Class A licenses as their business grows and they accrue experience and capital. Thus, reducing the entry requirements for Class C applicants could also gradually expand the profession overall. This amendment would also benefit households and commercial entities seeking Class C contractors. DPOR reports that the demand for contractor services increased during the COVID-19 pandemic and continues to remain high. Thus, an influx of newly licensed contractors could make it easier and cheaper for consumers looking to hire contractors for small projects, thereby also reducing wait times for such projects to get contracted and completed. Lowering the barriers to entry into a profession typically increases competition faced by incumbents (those who are already licensed), making them worse off. However, to the extent that currently licensed Class C contractors are already fully booked, or facing more demand than they can fulfill, they are unlikely to be made worse off by an increase in the number of contractors. Lastly, the board would benefit through increased fee revenue from new Class C contractor license applicants (\$235 per application) and from license renewal fees (\$195 per biennium) in subsequent years. The board would also incur some additional costs; they would have to process additional license applications and may also have to review more complaints against Class C contractors if the reduction in the experience requirement results in improper project management or estimation. However, the increase in revenues is expected to exceed the increase in costs.

Reduction in years of financial disclosure: These changes would benefit Class B and Class C applicants who have adverse financial histories either five years prior to application or four to five years prior to application, respectively. This could include outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or past bankruptcies. DPOR anticipates a savings as a result of

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conducting fewer licensing informal fact-finding conferences due to reduced adverse financial history reporting requirement.

Other changes: All current prospective contractor licensees and readers of the regulation would benefit from the remaining changes, which serve to update and streamline the regulatory text. DPOR staff may benefit to the extent that they receive fewer questions about contractor license requirements.

Businesses and Other Entities Affected. The proposed changes reduce requirements and clarify the application process, thereby benefiting new contractor license applicants, especially Class C applicants, and some Class B applicants with adverse financial history. 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 benefit for any entity, even if the benefits exceed the costs for all entities combined.⁶ The proposed amendments would not create any new requirements or costs; thus, an adverse economic impact is not indicated.

Small Businesses⁷ Affected.⁸ The proposed amendments reduce requirements for obtaining a contractor license, thereby benefiting applicants for a Class B or Class C license. These firms are likely to all be small businesses as Virginia statute restricts the total value of contractor projects to \$150,000 per year for Class C contractors and \$750,000 per year for Class B contractors.

Localities⁹ Affected.¹⁰ Localities that have a shortage of current contractors may particularly benefit from the likely increase in contractor licensees. The proposed amendments would not affect costs for local governments.

Projected Impact on Employment. The proposed amendments are not expected to affect total employment. Some contractor firms may see increased turnover if their employees decide to leave and establish their own firms as a result of this regulatory action.

Effects on the Use and Value of Private Property. By reducing the barriers to entry, the proposed amendments would marginally increase the value of new private Class C contractor firms. Real estate development costs would not be affected.

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://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/ed/ED-1-Regulatory-Reduction.pdf>.

³ See <https://law.lis.virginia.gov/vacode/title54.1/chapter1/section54.1-1100/>.

⁴ The current requirements are available on DPOR's website: <https://www.dpor.virginia.gov/sites/default/files/Boards/Contractors/A501-27EXINFO.pdf>.

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 for Contractors concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments reduce certain entry requirements for firms seeking a Class B or Class C contractor license. Under the proposed amendments, a qualified individual for a Class C contractor license applicant will need one year of experience in the classification or specialty service for which licensure is sought, instead of the current requirement of two years of experience. For Class B and Class C contractor license applicants, the proposed amendments will also reduce the requirements for disclosure of adverse financial information (e.g., outstanding past-due debts or judgments or prior bankruptcies). Other proposed amendments clarify and conform the regulation to statute and agency practice.

18VAC50-22-35. Application procedures.

A. All applicants seeking licensure must submit an application with the appropriate fee specified in 18VAC50-22-100. Applications must be made on forms provided by the

board or the board's agent and signed by all parties outlined in 18VAC50-22-40, 18VAC50-22-50, or 18VAC50-22-60.

1. By submitting the application to the department, the applicant certifies that the applicant has read and understands the applicable statutes and the board's regulations.

2. The receipt of an application and the deposit of the fees by the board do not indicate approval of the application by the board.

B. The board may make further inquiries and investigations with respect to the applicant's qualifications and information disclosed on the application to confirm or amplify information supplied. All applications must be completed in accordance with the instructions contained in this section and on the application. Applications will not be considered complete until all required documents are received by the board.

C. The applicant will be notified of receipt of initial application if the application is incomplete. Applicants who fail to complete the application process within 12 months of receipt of the application in the board's office must submit a new application.

D. The applicant must immediately report all changes in information supplied with the application, if applicable, prior to the issuance of the license or expiration of the application.

18VAC50-22-40. Requirements for a Class C license.

A. A firm applying for a Class C license must meet the requirements of this section.

B. For every classification or specialty in which the firm seeks to be licensed, the firm ~~shall~~ must name a qualified individual who meets the following requirements:

1. Is at least 18 years ~~old~~ of age;
2. Has a minimum of ~~two years~~ one year of experience in the classification or specialty for which ~~he~~ the individual is the qualifier;
3. Is a full-time employee of the firm ~~as defined in this chapter~~ or is a member of the responsible management of the firm; and
4. ~~a. Has obtained the appropriate certification for the following specialties:~~
 - ~~(1) Blast/explosive contracting (Department of Fire Programs explosive-use certification);~~
 - ~~(2) Fire sprinkler (NICET Sprinkler III certification); and~~
 - ~~(3) Radon mitigation (EPA or DEQ accepted radon certification).~~~~b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.~~

~~e. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.~~

~~d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Master Water Well Systems Provider for Water Well/Pump Contracting.~~

~~e. Has obtained, pursuant to the Onsite Sewage System Professionals Licensing Regulations (18VAC160-40), a master conventional onsite sewage system installer license for Conventional Sewage Disposal System Contracting and a master alternative onsite sewage system installer license for Alternative Sewage Disposal System Contracting.~~

~~f. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).~~

~~g. Has completed a board approved examination for all other classifications and specialties that do not require other certification or licensure.~~

Has met the appropriate prerequisite and board-approved examination, where applicable, for any classification or specialty service specified in 18VAC50-22-61 or has completed a board-approved examination for all other classifications and specialty services that do not require other certification or licensure. For the miscellaneous contracting (MSC) specialty service, the applicant must provide documentation acceptable to the board of the qualified individual's experience in the scope of practice for which the specialty service is being sought. All such applications will be considered by the board in accordance with the provisions of §§ 2.2-4019 and 2.2-4020 of the Code of Virginia.

C. The firm ~~shall~~ must provide information for the past ~~five~~ three years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm and all members of the responsible management of the firm ~~shall~~ must submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

D. The firm and all members of the responsible management of the firm ~~shall~~ must disclose at the time of application any current or previous contractor licenses held in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. In accordance with § 54.1-204 of the Code of Virginia, all applicants ~~shall~~ must disclose the following information about

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the firm, all members of the responsible management, and the qualified individual for the firm:

1. All non-marijuana misdemeanor convictions within three years of the date of application; and
2. All felony convictions ~~during their lifetimes.~~

~~Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.~~

F. A member of responsible management ~~shall have successfully completed~~ must complete a board-approved basic business course.

18VAC50-22-50. Requirements for a Class B license.

A. A firm applying for a Class B license must meet the requirements of this section.

B. A ~~The~~ firm ~~shall~~ must name a designated employee who meets the following requirements:

1. Is at least 18 years ~~old~~ of age;
2. Is a full-time employee of the firm ~~as defined in this chapter~~, or is a member of responsible management ~~as defined in this chapter~~;
3. Has passed a board-approved examination as required by § 54.1-1108 of the Code of Virginia or has been exempted from the ~~exam~~ examination requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and
4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules ~~shall~~ include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the ~~exam~~ examination.

C. For every classification or specialty in which the firm seeks to be licensed, the firm ~~shall~~ must name a qualified individual who meets the following requirements:

1. Is at least 18 years ~~old~~ of age;
2. Has a minimum of three years of experience in the classification or specialty for which ~~he~~ the individual is the qualifier;
3. Is a full-time employee of the firm ~~as defined in this chapter~~ or is a member of the responsible management of the firm; and
4. ~~a. Has obtained the appropriate certification for the following specialties:~~

~~(1) Blast/explosive contracting (Department of Fire Programs explosive use certification);~~

~~(2) Fire sprinkler (NICET Sprinkler III certification); and
(3) Radon mitigation (EPA or DEQ accepted radon certification).~~

~~b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.~~

~~c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.~~

~~d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Master Water Well Systems Provider for Water Well/Pump Contracting.~~

~~e. Has obtained, pursuant to the Onsite Sewage System Professionals Licensing Regulations (18VAC160-40), a master conventional onsite sewage system installer license for Conventional Sewage Disposal System Contracting and a master alternative onsite sewage system installer license for Alternative Sewage Disposal System Contracting.~~

~~f. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).~~

~~g. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.~~

Has met the appropriate prerequisite and board-approved examination, where applicable, for any classification or specialty service specified in 18VAC50-22-61 or has completed a board-approved examination for all other classifications and specialty services that do not require other certification or licensure. For the miscellaneous contracting (MSC) specialty service, the applicant must provide documentation acceptable to the board of the qualified individual's experience in the scope of practice for which the specialty service is being sought. All such applications will be considered by the board in accordance with the provisions of §§ 2.2-4019 and 2.2-402 of the Code of Virginia.

D. Each firm ~~shall~~ must submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm ~~shall state~~ must verify a net worth or equity of \$15,000 or more by submitting a completed financial statement with supporting documentation, a financial statement reviewed by a certified public accountant (CPA), or a CPA audit. In lieu of this requirement, the firm may obtain a \$50,000 surety bond on the board's bond form.

E. Each firm ~~shall~~ must provide information for the ~~five~~ four years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated

employee, and all members of the responsible management of the firm ~~shall~~ must submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, and all members of the responsible management of the firm ~~shall~~ must disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed in this subsection have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated, or surrendered in connection with a disciplinary action in Virginia or any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, all applicants ~~shall~~ must disclose the following information about the firm, designated employee, all members of the responsible management, and the qualified individual for the firm:

1. All non-marijuana misdemeanor convictions within three years of the date of application; and
2. All felony convictions ~~during their lifetimes.~~

~~Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.~~

H. The designated employee or a member of responsible management ~~shall have successfully completed~~ must successfully complete a board-approved basic business course.

18VAC50-22-60. Requirements for a Class A license.

A. A firm applying for a Class A license ~~shall~~ must meet all of the requirements of this section.

B. ~~A~~ The firm shall must name a designated B employee who meets the following requirements:

1. Is at least 18 years ~~old~~ of age;
2. Is a full-time employee of the firm ~~as defined in this chapter~~ or is a member of the responsible management of the firm ~~as defined in this chapter~~;
3. Has passed a board-approved examination as required by § 54.1-1106 of the Code of Virginia or has been exempted from the ~~exam~~ examination requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and

4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules ~~shall~~ include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the day of the ~~exam~~ examination.

C. For every classification or specialty in which the firm seeks to be licensed, the firm ~~shall~~ must name a qualified individual who meets the following requirements:

1. Is at least 18 years ~~old~~ of age;
2. Has a minimum of five years of experience in the classification or specialty for which ~~he~~ the individual is the qualifier;
3. Is a full-time employee of the firm ~~as defined in this chapter or is a member of the firm as defined in this chapter~~ or is a member of the responsible management of the firm; and
4. ~~a. Has obtained the appropriate certification for the following specialties:~~
 - ~~(1) Blast/explosive contracting (DHCD explosive use certification);~~
 - ~~(2) Fire sprinkler (NICET Sprinkler III certification); and~~
 - ~~(3) Radon mitigation (EPA or DEQ accepted radon certification).~~
 - ~~b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.~~
 - ~~e. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.~~
 - ~~d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Master Water Well Systems Provider for Water Well/Pump Contracting.~~
 - ~~e. Has obtained, pursuant to the Onsite Sewage System Professionals Licensing Regulations (18VAC160-40), a master conventional onsite sewage system installer license for Conventional Sewage Disposal System Contracting and a master alternative onsite sewage system installer license for Alternative Sewage Disposal System Contracting.~~
 - ~~f. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).~~
 - ~~g. Has completed a board approved examination for all other classifications and specialties that do not require other certification or licensure.~~

Has met the appropriate prerequisite and board-approved examination, where applicable, for any classification or

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specialty service specified in 18VAC50-22-61 or has completed a board-approved examination for all other classifications and specialty services that do not require other certification or licensure. For the miscellaneous contracting (MSC) specialty service, the applicant must provide documentation acceptable to the board of the qualified individual's experience in the scope of practice for which the specialty service is being sought. All such applications will be considered by the board in accordance with the provisions of §§ 2.2-4019 and 2.2-402 of the Code of Virginia.

D. Each firm shall ~~must~~ submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall ~~state~~ must verify a net worth or equity of \$45,000 by submitting a completed financial statement with supporting documentation, a financial statement reviewed by a certified public accountant (CPA), or a CPA audit. In lieu of this requirement, the firm may obtain a \$50,000 surety bond on the board's bond form.

E. The firm shall ~~must~~ provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, and all members of the responsible management of the firm shall ~~must~~ submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, and all members of the responsible management of the firm shall ~~must~~ disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions

taken on these licenses. This includes any monetary penalties, fines, suspensions, revocations, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed in this subsection have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated, or surrendered in connection with a disciplinary action in Virginia or in any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall ~~must~~ disclose the following information about the firm, all members of the responsible management, the designated employee, and the qualified individual for the firm:

1. All non-marijuana misdemeanor convictions within three years of the date of application; and
2. All felony convictions ~~during their lifetimes.~~

~~Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.~~

H. The designated employee or a member of responsible management shall ~~have~~ must successfully ~~completed~~ complete a board-approved basic business course.

18VAC50-22-61. Qualifications for classifications and specialties.

For the following classifications or specialty services, the qualified individual must meet the qualifications specified in this section:

<u>Classification or Specialty Service</u>	<u>Prerequisites</u>	<u>Board-Approved Examination</u>
<u>Accessibility services contracting (ASC)</u>	<u>Accessibility mechanic certification issued by the Board for Contractors</u>	<u>No</u>
<u>Accessibility services contracting - LULA (ASL)</u>	<u>Accessibility mechanic certification with the LULA endorsement issued by the Board for Contractors</u>	<u>No</u>
	<u>Years of experience based on class of license; or</u>	<u>Yes</u>

<u>Alternative energy system contracting (AES)</u>	<u>Qualify and obtain the roofing contracting (ROC) specialty service by examination and complete the North American Board of Certified Energy Practitioners (NABCEP) certification or a board-approved certification</u>	
<u>Alternative sewage disposal system contracting (ADS)</u>	<u>Master alternative onsite sewage system installer license issued by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals</u>	<u>No</u>
<u>Asbestos contracting (ASB)</u>	<u>Asbestos supervisor's license issued by the Virginia Board for Asbestos, Lead, and Home Inspectors</u>	<u>No</u>
<u>Blast/explosive contracting (BEC)</u>	<u>Blaster certification issued by the Department of Fire Programs</u>	<u>No</u>
<u>Conventional sewage disposal system contracting (CDS)</u>	<u>Master conventional onsite sewage system installer license issued by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals</u>	<u>No</u>
<u>Drug lab remediation contracting (DLR)</u>	<u>Remediation course approved by the Board for Contractors</u>	<u>No</u>
<u>Electrical contractors (ELE)</u>	<u>Master electrician tradesman license issued by the Board for Contractors</u>	<u>No</u>
<u>Elevator/Escalator contracting (EEC)</u>	<u>Elevator mechanic certification issued by the Board for Contractors</u>	<u>No</u>
<u>Fire sprinkler contracting (SPR)</u>	<u>National Institute for Certification in Engineering Technologies (NICET) - Sprinkler level III or higher certification; or</u>	<u>No</u>
	<u>Professional engineer license issued by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects</u>	
<u>Gas fitting contracting (GFC)</u>	<u>Master gas fitter license issued by the Board for Contractors</u>	<u>No</u>
<u>HVAC contractors (HVA)</u>	<u>Master HVAC tradesman license issued by the Board for Contractors</u>	<u>No</u>
<u>Lead abatement contracting (LAC)</u>	<u>Lead abatement supervisor license issued by the Virginia Board for Asbestos, Lead, and Home Inspectors</u>	<u>No</u>
<u>Liquefied petroleum gas contracting (LPG)</u>	<u>Master liquefied petroleum gas fitter license issued by the Board for Contractors</u>	<u>No</u>
<u>Manufactured home contracting (MHC)</u>	<u>Manufactured Housing Installer Certification issued by the Department of Housing and Community Development</u>	<u>No</u>

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Natural gas fitting provider contracting (NGF)	Master natural gas fitter provider license issued by the Board for Contractors	No
Plumbing contractors (PLB)	Master plumber tradesman license issued by the Board for Contractors	No
Radon mitigation contracting (RMC)*	Certificate issued by National Radon Proficiency Program (NRPP) or the National Radon Safety Board (NRSB) *Must also qualify and obtain one of the following by examination: commercial building contractors (CBC) classification, commercial improvement contracting (CIC) specialty service, farm improvement contracting (FIC) specialty service, home improvement contracting (HIC) specialty service, or residential building contractors (RBC) classification.	No
Waterwell/pump contracting (WWP)	Master water well systems provider license issued by the Board for Contractors	No

18VAC50-22-62. Requirements for residential building energy analyst firm.

A. An applicant for a residential building energy analyst firm license must meet the requirements of this section.

B. The firm ~~shall~~ must name a qualified individual who meets all of the following requirements:

1. Is at least 18 years ~~old~~ of age;
2. Holds a current individual residential building energy analyst license issued by the board; and
3. Is a full-time employee of the firm ~~as defined in this chapter~~ or is a member of the responsible management of the firm.

C. The applicant ~~shall~~ must provide documentation, acceptable to the board, that the firm currently carries a minimum of \$500,000 of general liability insurance from a company authorized to provide such insurance in the Commonwealth of Virginia.

D. The firm, the qualified individual, and all members of the responsible management of the firm ~~shall~~ must disclose at the time of application (i) any current or previous energy analyst or home inspection licenses held in Virginia or in other jurisdictions and (ii) any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. The firm ~~shall~~ must provide information for the past five years prior to application on any outstanding past-due debts, outstanding judgments, outstanding tax obligations, defaults on bonds, or pending or past bankruptcies. The firm, its qualified individual, and all members of the responsible

management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of residential building energy analysis as defined in § 54.1-1144 of the Code of Virginia.

F. In accordance with § 54.1-204 of the Code of Virginia, all applicants ~~shall~~ must disclose the following information about the firm, all members of the responsible management, and the qualified individual for the firm:

1. All non-marijuana misdemeanor convictions within three years of the date of application; and
2. All felony convictions ~~during their lifetimes~~.

~~Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.~~

18VAC50-22-65. Temporary licenses.

A. A firm applying for a temporary license must meet all of the requirements of § 54.1-201.1 of the Code of Virginia, including the simultaneous submission of a completed application for licensure, and the provisions of this section.

B. A firm must hold a comparable license or certificate in another state and provide verification of current licensure or certification from the other state in a format acceptable to the board. The license or certificate, as applicable, must be in good standing and have comparable qualifications to the Virginia license applied for by the firm.

C. The following provisions apply to a temporary license issued by the board:

1. A temporary license ~~shall~~ will not be renewed.

2. A firm ~~shall~~ will not be issued more than one temporary license.
3. The issuance of the license ~~shall~~ will void the temporary license.
4. If the board denies approval of the application for a license, the temporary license ~~shall~~ will be automatically suspended.

D. Any firm continuing to practice as a contractor after a temporary license has expired or been suspended and who has not obtained a comparable license or certificate may be prosecuted and fined by the Commonwealth under § 54.1-111 A 1 of the Code of Virginia.

18VAC50-22-66. Board's disciplinary authority over temporary license holders.

A. A temporary licensee ~~shall be~~ is subject to all laws and regulations of the board and ~~shall will~~ remain under and be subject to the disciplinary authority of the board during the period of temporary licensure.

B. The ~~license shall~~ licensee will be subject to disciplinary action for any violations of Virginia statutes or regulations during the period of temporary licensure.

VA.R. Doc. No. R23-7429; Filed September 18, 2024, 10:00 a.m.

BOARD OF PHARMACY

Final Regulation

Title of Regulation: 18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (amending 18VAC110-21-46).

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

Effective Date: November 20, 2024.

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

Summary:

Pursuant to Chapters 790 and 791 of the 2022 Acts of Assembly, the amendments expand the conditions for which a pharmacist can initiate treatment. The amendments (i) require the pharmacist to have a bona fide pharmacist-patient relationship with the patient with whom the pharmacist initiates treatment; (ii) add nicotine replacement therapy and other tobacco-cessation therapies as drugs and therapies with which a pharmacist can initiate treatment for an adult 18 years of age or older; (iii) allow a pharmacist to initiate treatment for patients three years of age and older by administering vaccines included on the Immunization Schedule published by the Centers for Disease Control and Prevention, vaccines for COVID-19, and tests for COVID-19 and other coronaviruses; (iv) require practitioners to

provide notification of initiation of treatment with a patient even if no method exists to send the notification electronically in a manner compliant with the Health Insurance Portability and Accountability Act (42 USC § 1320d et seq.); and (v) require the treating pharmacist to obtain a patient history and, in the case of administration of vaccines to a minor, provide the minor's parent or guardian written notice that the minor should visit a pediatrician annually.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC110-21-46. Initiation of treatment by a pharmacist.

A. Pursuant to § 54.1-3303.1 of the Code of Virginia, a pharmacist may initiate treatment with, dispense, or administer the following drugs and devices to persons 18 years of age or older with whom the pharmacist has a bona fide pharmacist-patient relationship:

1. Naloxone or other opioid antagonist, including such controlled paraphernalia as defined in § 54.1-3466 of the Code of Virginia as may be necessary to administer such naloxone or other opioid antagonist;
2. Epinephrine;
3. Injectable or self-administered hormonal contraceptives, provided the patient completes an assessment consistent with the United States Medical Eligibility Criteria for Contraceptive Use;
4. Prenatal vitamins for which a prescription is required;
5. Dietary fluoride supplements, in accordance with recommendations of the American Dental Association for prescribing of such supplements for persons whose drinking water has a fluoride content below the concentration recommended by the U.S. Department of Health and Human Services;
6. Drugs and devices as defined in § 54.1-3401 of the Code of Virginia, controlled paraphernalia as defined in § 54.1-3466 of the Code of Virginia, and other supplies and equipment available over the counter covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost to purchase an over-the-counter equivalent of the same drug, device, controlled paraphernalia, or other supplies or equipment;
7. Vaccines included on the Immunization Schedule published by the Centers for Disease Control and Prevention ~~or that have a current emergency use authorization from the U.S. Food and Drug Administration~~ and vaccines for COVID-19;
8. Tuberculin purified protein derivative for tuberculosis testing; [~~and~~]
9. Controlled substances for the prevention of human immunodeficiency virus, including controlled substances prescribed for pre-exposure and post-exposure prophylaxis

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pursuant to guidelines and recommendations of the Centers for Disease Control and Prevention;

10. Nicotine replacement and other tobacco-cessation therapies, including controlled substances as defined in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), together with appropriate patient counseling; and

11. Tests for COVID-19 and other coronaviruses.

B. Notwithstanding the provisions of § 54.1-3303 of the Code of Virginia, a pharmacist may initiate treatment with, dispense, or administer the following drugs and devices to persons three years of age or older:

1. Vaccines included on the Immunization Schedule published by the Centers for Disease Control and Prevention and vaccines for COVID-19; and

2. Tests for COVID-19 and other coronaviruses.

The provisions of this subsection will become effective upon expiration of the provisions of the federal Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 related to the vaccination and COVID-19 testing of minors.

C. Pharmacists who initiate treatment with, dispense, or administer a drug or device, controlled paraphernalia, or other supplies or equipment pursuant to subsections A and B of this section shall:

1. Follow the statewide protocol adopted by the board for each drug, device, controlled paraphernalia, or other supplies or equipment.

2. Notify the patient's primary health care provider that treatment has been initiated with such drug, device, controlled paraphernalia, or other supplies or equipment or that such drug, device, controlled paraphernalia, or other supplies or equipment have been dispensed or administered to the patient, provided that the patient consents to such notification. No pharmacist shall limit the ability of notification to be sent to the patient's primary care provider by requiring use of email that is secure or compliant with the federal Health Insurance Portability and Accountability Act (42 USC § 1320d et seq.) (HIPAA). If the patient does not have a primary health care provider, the pharmacist shall counsel the patient regarding the benefits of establishing a relationship with a primary health care provider and, upon request, provide information regarding primary health care providers, including federally qualified health centers, free clinics, or local health departments serving the area in which the patient is located. If the pharmacist is initiating treatment with, dispensing, or administering injectable or self-administered hormonal contraceptives, the pharmacist shall counsel the patient regarding seeking preventative care, including (i) routine well-woman visits, (ii) testing for sexually transmitted infections, and (iii) pap smears. If the pharmacist is administering a vaccine pursuant to this section, the pharmacist shall report such administration to the Virginia Immunization

Information System in accordance with the requirements of § 32.1-46.01 of the Code of Virginia.

3. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

a. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or the patient's personal representative; or

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

4. Perform the activities in a manner that protects patient confidentiality and complies with the Health Insurance Portability and Accountability Act, 42 USC § 1320d et seq. HIPAA.

5. Obtain a history from the patient, including questioning the patient for any known allergies, adverse reactions, contraindications, or health diagnoses or conditions that would be adverse to the initiation of treatment, dispensing, or administration.

6. If administering a vaccination to a minor pursuant to subdivision B 1 of this section, provide written notice to the minor's parent or guardian that the minor should visit a pediatrician annually.

D. A pharmacist may initiate treatment with, dispense, or administer drugs, devices, controlled paraphernalia, and other supplies and equipment pursuant to this section through telemedicine services, as defined in § 38.2-3418.16 of the Code of Virginia, in compliance with [~~all~~] requirements of § 54.1-3303 of the Code of Virginia and consistent with the applicable standard of care.

VA.R. Doc. No. R23-7339; Filed September 17, 2024, 4:40 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: **20VAC5-330. Limitations on Disconnection of Electric and Water Service (amending 20VAC5-330-10 through 20VAC5-330-50).**

Statutory Authority: § 12.1-12 of the Code of Virginia.

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

Public Comment Deadline: December 2, 2024.

Agency Contact: Mike Cizenski, Deputy Director Public Utility Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9441, or email mike.cizenski@scc.virginia.gov.

Summary:

Pursuant to Chapter 637 of the 2024 Acts of Assembly, the proposed amendments (i) make the regulation applicable to natural gas and wastewater utilities, (ii) authorize nurse practitioners to certify serious medical conditions, and (iii) update the Serious Medical Condition Certification Form.

AT RICHMOND, SEPTEMBER 19, 2024

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2024-00138

Ex Parte: in the matter concerning
limiting service terminations for utility customers
with serious medical conditions

ORDER ESTABLISHING PROCEEDING

Chapter 637 (House Bill 275) of the 2024 Virginia Acts of Assembly ("2024 Act") directed the State Corporation Commission ("Commission") in an uncodified enactment to conduct a proceeding for the purpose of establishing limitations on the authority of public utilities to terminate service for residential electric, gas, water, and wastewater utility customers with serious medical conditions, stating as follows:

1. § 1. That the State Corporation Commission (the Commission), in order to promote public health and safety, shall conduct a proceeding for the purpose of establishing limitations on the authority of public utilities and cooperatives that provide electric, gas, water, or wastewater services to terminate service to the residence of any customer who provides the certification of a licensed physician or a nurse practitioner that the customer has a serious medical condition or the customer resides with a family member with a serious medical condition. The limitations shall be consistent with the public interest. In the proceeding establishing such limitations, the Commission shall consult with the Commissioner of Health, the Commissioner of Social Services, the Virginia Poverty Law Center, the Virginia League of Social Services Executives, public utilities and cooperatives that provide electric, gas, water, or wastewater services, and any other persons that the Commission deems appropriate. As a part of the proceeding, the Commission shall adopt regulations to implement such limitations. The regulations shall include a form by which a residential utility customer with a serious

medical condition may apply for a delay in termination of service as provided by this act. The Commission shall make all reasonable efforts to ensure that this form is as accessible as possible for residential electric, gas, water, and wastewater utility customers. The regulations shall (i) be adopted in accordance with the Commission's Rules of Practice and Procedure; (ii) be effective not later than July 1, 2025; (iii) establish a cost recovery mechanism under which utilities and cooperatives that provide electric, gas, water, or wastewater services shall be authorized to recover, from approved rates collected from other customers or other sources of revenue, any losses on customer accounts the balance of which is written off or otherwise determined to be uncollectible as the result of the implementation of the regulations; and (iv) define "serious medical condition." No later than November 1, 2026, and every three years thereafter, the Commission shall submit a report to the General Assembly on the effectiveness of the serious medical condition policy after implementation and shall include any suggested changes to improve accessibility to such policy for residential utility customers.

As set forth, the 2024 Act requires the Commission to adopt regulations placing limitations on utility service terminations related to customers with serious medical conditions or when a customer resides with a family member with a serious medical condition. In that regard, the 2024 Act's provisions are virtually identical to Chapters 500, 662 and 673 of the 2011 Virginia Acts of Assembly ("2011 Acts") which cumulatively required the Commission to adopt regulations (i) placing limits on the authority of investor owned electric utilities, electric cooperatives, and public utilities providing water service to terminate utility services to customers with serious medical conditions, or to customers with family members residing with them with such medical conditions, and (ii) establishing a mechanism by which such limitations could be implemented.¹ The Commission adopted regulations implementing the 2011 Acts and the regulations were made effective October 31, 2011.²

The 2024 Act broadens the scope of the 2011 Acts to include natural gas³ and wastewater services as utility services to which such limitations on utility disconnections apply. Additionally, the 2024 Act newly authorizes nurse practitioners to certify that utility customers, or family members residing with utility customers, have serious medical conditions.⁴ The 2024 Act requires regulations implementing its provisions to be adopted by July 1, 2025.

The 2024 Act also requires that in this proceeding, the Commission shall consult with the Commissioner of Health, the Commissioner of Social Services, the Virginia Poverty Law Center, the Virginia League of Social Services Executives, public utilities and cooperatives that provide electric, natural gas, water, or wastewater services, and any other persons that the Commission deems appropriate (collectively, "Designated Entities").

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NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that a proceeding should be established to implement the 2024 Act's provisions. In light of the procedural history described above, the Commission further finds that implementing the 2024 Act may be accomplished in substantial part by conforming the current Chapter 330 Rules to the 2024 Act's provisions, i.e., by incorporating appropriate references to natural gas and wastewater utilities, and nurse practitioners as described above.

At the Commission's direction, Staff has prepared proposed amendments to the Chapter 330 Rules ("Proposed Amendments") making these rules applicable to natural gas and wastewater utilities, and newly authorizing nurse practitioners to certify serious medical conditions. The Proposed Amendments are appended to this Order. The Commission finds that notice of this proceeding should be given to the public, and that interested persons should be provided an opportunity to file written comments concerning the provisions of the 2024 Act and the Proposed Amendments. Additionally, the Staff of the Commission ("Staff") shall transmit this Order, together with the Proposed Amendments, to the Designated Entities and solicit their input.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUR-2024-00138.

(2) All comments and other documents and pleadings filed in this matter shall be submitted electronically to the extent authorized by Rule 5VAC5-20-150, Copies and format, of the Commission's Rules of Practice and Procedure.⁵ Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and shall comply with Rule 5VAC5-20-170, Confidential information, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

(3) Pursuant to 5VAC5-20-140, Filing and service, of the Rules of Practice, the Commission directs that service on parties and the Staff in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, parties and the Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no party or the Staff is impeded from preparing its case.

(4) The Commission's Division of Information Resources shall forward a copy of this Order Establishing Proceeding to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(5) Within ten (10) business days hereof, Staff shall transmit electronically or by first-class mail copies of this Order and

Proposed Amendments to the Designated Entities and solicit their input. Staff shall file with the Clerk of the Commission a certificate of transmission and include a list of names and addresses of the persons and entities to whom the Order was transmitted.

(6) An electronic copy of the Proposed Amendments may be obtained by submitting a request to Mike Cizenski, Deputy Director in the Commission's Division of Public Utility Regulation at the following email address: mike.cizenski@scc.virginia.gov. An electronic copy of the Proposed Amendments can also be found at the Division of Public Utility Regulation's website: scc.virginia.gov/pages/Rulemaking. Interested persons may also download unofficial copies of the Order and the Proposed Amendments from the Commission's website: scc.virginia.gov/pages/Case-Information.

(7) On or before December 2, 2024, any interested person may comment on, or request a hearing concerning, the 2024 Act or the Proposed Amendments, following the instructions on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Those unable, as a practical matter, to submit such documents electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All such documents shall refer to Case No. PUR-2024-00138. Individuals should be specific in their comments, proposals, or supplements to the Proposed Amendments and should address only those issues pertaining to the 2024 Act. Issues outside the scope of the 2024 Act or the Proposed Amendments will not be open for consideration. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the comments, documents or other pleadings filed in this proceeding.

(8) On or before January 17, 2025, the Staff shall file with the Clerk of the Commission a report on or a response to any comments or requests for hearing submitted to the Commission pursuant to this Order.

(9) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

¹ Chapters 662 and 673 applied to investor-owned electric utilities and electric cooperatives and Chapter 500 applied to public utilities providing water service.

² See 20VAC5-330-10 et seq., Limitations on Disconnection of Electric and Water Service ("Chapter 330 Rules"). These regulations were adopted by the Commission in Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In re: Establishing rules providing limitations on disconnection of electric and water service for persons with serious medical

conditions, Case No. PUE-2011-00060, 2011 S.C.C. Ann. Rept. 511, Order Adopting Regulations (Oct. 18, 2011).

³ For purposes of this proceeding, the Commission construes the 2024 Act's reference to "gas" to encompass and mean "natural gas" utility service.

⁴ The 2011 legislation required that serious medical conditions be certified by licensed physicians; the Chapter 330 Rules adopted in 2011 define licensed physicians as persons "licensed to practice medicine or osteopathic medicine (M.D. or D.O.)." See 20 VAC 5-330-20.

⁵ 5VAC5-20-10 et seq. ("Rules of Practice").

Chapter 330

Limitations on Disconnection of Electric and Water, Wastewater, and Natural Gas Service

20VAC5-330-10. Applicability and scope.

This chapter is promulgated pursuant to Chapters 500, 662, and 673 of the 2011 Acts of Assembly and Chapter 637 of the 2024 Acts of Assembly. The provisions in this chapter apply to investor-owned electric utilities, electric cooperatives, natural gas utilities, and public utilities providing water or wastewater service. In order to promote public health and safety, this chapter is designed to establish reasonable limitations, consistent with the public interest, on the ability of investor-owned electric utilities, electric cooperatives, natural gas utilities, and public utilities providing water or wastewater service to terminate service consistent with §§ 44-146.29:4, 56-245.1:3, and 56-245.1:4 of the Code of Virginia, as applicable, to residential customers who have a serious medical condition or to residential customers who reside with a family member with a serious medical condition and to provide such residential customers adequate time prior to the termination of electric or water service to either enter into a payment plan with the utility or make other arrangements for housing or medical care. Nothing in this chapter shall be interpreted to require an investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service to terminate service after the expiration of the timelines established ~~herein~~ in this chapter.

Furthermore, nothing in this chapter shall be interpreted to prohibit an investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service from terminating service in the event of an emergency or in the event an investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service reasonably believes that theft of service or meter tampering has occurred in connection with the service.

20VAC5-330-20. Definitions.

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

"Licensed nurse practitioner" means a person licensed as a nurse practitioner in any of the 50 states or the District of Columbia.

"Licensed physician" means a person licensed to practice medicine or osteopathic medicine (M.D. or D.O.) in any of the 50 states or the District of Columbia.

"Serious medical condition" means a physical or psychiatric condition that requires medical intervention to prevent further disability, loss of function, or death. Such conditions are characterized by a need for ongoing medical supervision or the consultation of a physician or licensed nurse practitioner. A serious medical condition carries with it a risk to health beyond that experienced by the majority of children and adults in their day-to-day minor illnesses and injuries. Individuals with a serious medical condition may require administration of specialized treatments and may be dependent on medical technology such as ventilators, dialysis machines, enteral or parenteral nutrition support, or continuous oxygen. Medical interventions may include medications with special storage requirements, use of powered equipment, or access to water.

"Serious Medical Condition Certification Form" means a written document, approved by the State Corporation Commission, signed by (i) a licensed physician or licensed nurse practitioner, (ii) the customer, and (iii) the patient or the patient's legal guardian or power of attorney. The Serious Medical Condition Certification Form shall ~~(i)~~ (a) identify the medical condition of the customer or family member who resides with the customer, ~~(ii)~~ (b) include a certification by a licensed physician or licensed nurse practitioner that the medical condition meets the definition of a serious medical condition, ~~(iii)~~ (c) identify the anticipated length of time that the serious medical condition will persist, and ~~(iv)~~ (d) identify any equipment prescribed or treatment required for the medical condition.

20VAC5-330-30. General provisions.

A. A request for a waiver of any of the provisions of this chapter shall be considered by the State Corporation Commission on a case-by-case basis; and may be granted upon such terms and conditions as the State Corporation Commission may impose.

B. An investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service shall use the Serious Medical Condition Certification Form (Form SMCC) provided in English and Spanish on the State Corporation Commission's website at ~~http://www.scc.virginia.gov/pue/rules.aspx~~ <http://www.scc.virginia.gov/pages/rules>, unless the State Corporation Commission approves the use of an alternative form.

C. An investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service may require a customer to provide ~~it~~ a new Serious Medical Condition Certification Form either annually or upon the expiration of the anticipated length of time that the serious medical condition will persist if such time is less than 12 months.

Regulations

D. An investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service may take reasonable actions to verify the validity of the Serious Medical Condition Certification Form. Such actions include, ~~but are not limited to~~, contacting (i) the licensed physician or licensed nurse practitioner to confirm the medical condition of the patient and the treatment ~~or treatments~~ associated ~~therewith~~ with the medical condition; (ii) the Virginia Department of Health Professions, or the applicable state's licensing board, to verify that the physician or nurse practitioner is a licensed physician or licensed nurse practitioner; or (iii) the customer to verify that the patient currently resides at the residence.

E. In the event that the investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service is of the opinion that the information provided on the Serious Medical Condition Certification Form is invalid, or otherwise is of the opinion that there has been fraud or abuse of the process provided in this chapter, it may petition the State Corporation Commission for redress pursuant to 5VAC5-20-100 B, State Corporation Commission's Rules of Practice and Procedure.

20VAC5-330-40. Limitations on service termination to residential customers.

A. Following the issuance of a notice of intent to terminate service pursuant to § 56-245.1:4 or 56-247.1 A 4 or A 6 of the Code of Virginia, and subject to the provisions of §§ 44-146.29:4 and 56-245.1:3 of the Code of Virginia, an investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service shall, upon request from a residential customer who has a Serious Medical Condition Certification Form filed with the utility, delay termination of service for a minimum of an additional 30 calendar days beyond the expiration of the notice.

B. Following the issuance of a notice of intent to terminate service pursuant to § 56-245.1:4 or 56-247.1 A 4 or A 6 of the Code of Virginia, and subject to the provisions of §§ 44-146.29:4 and 56-245.1:3 of the Code of Virginia, an investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service shall, upon request from a residential customer who does not have a Serious Medical Condition Certification Form filed with the utility, delay termination of service for 10 calendar days upon oral or written notification from a residential customer that such customer or a family member residing with the customer has a serious medical condition. The 10-calendar day delay in service termination shall commence on the date the investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service receives notification. At the time of such notification, the investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service shall:

1. Advise the residential customer that service termination will be delayed for 10 calendar days pending receipt of the Serious Medical Condition Certification Form;
2. Provide the customer access to the Serious Medical Condition Certification Form via its website or advise the consumer that access can be obtained via the State Corporation Commission's website;
3. Not later than two business days after receiving notification, mail, email, or deliver via facsimile transmission a copy of the Serious Medical Condition Certification Form upon a request from the customer; and
4. Not later than two business days after receiving notification, mail the customer a letter advising the customer:
 - a. The date notification was received;
 - b. The date that the 10-calendar day delay expires; and
 - c. That upon receipt of a Serious Medical Condition Certification Form within the 10-calendar day time period provided for in this subsection, it will delay the termination of service 30 calendar days from the date of termination initially noticed.

Upon receipt of a Serious Medical Condition Certification Form within the 10-calendar day time period provided for in this subsection, an investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service shall provide the 30-calendar day delay in termination of service required in subsection A of this section. An investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service shall not be required to provide a 10-calendar day delay in service termination pursuant to this subsection more than once in a 12-month period.

C. In the event an investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service has terminated service to a residential customer within the preceding 14 calendar days, the investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service shall promptly restore service upon (i) receipt of a Serious Medical Condition Certification Form; or confirmation of such a form on file; and (ii) a request from the customer to reconnect service. The investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service shall not be permitted to require any payment as a condition to reconnect; however, it may charge the customer, on the next monthly bill, any applicable reconnection fees that are on file in its State Corporation Commission approved tariffs and terms and conditions of service. Following the reconnection of service, the investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service shall

delay termination of service for a minimum of 30 calendar days from the date it reconnects the customer.

D. An investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service shall permit a residential customer to delay termination of service under this chapter two times within a 12-month period. The 30-calendar day delays may be consecutive. Nothing in this chapter shall prohibit an investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service from providing to a customer additional delay from the termination of service beyond the delay required.

E. During the delay in service termination pursuant to subsections A and C of this section, the investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service shall:

1. In the event the investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service is able to establish payment arrangements with the customer, mail to the customer a letter detailing the agreement not later than three business days after the agreement on payment arrangements is made; or

2. In the event the investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service is unable to establish payment arrangements with the customer, mail the customer a letter, not later than 10 calendar days prior to the expiration of the 30-calendar day delay required by this chapter, advising the customer of (i) the date that service may be terminated and (ii) any payment arrangements available to the customer. The letter shall also advise the customer of his right to delay service termination pursuant to this chapter twice within a 12-month period.

F. The investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service shall (i) maintain a copy of any letters required under this section for a minimum of 12 months and (ii) provide such copies to the State Corporation Commission's Division of Energy Regulation upon request.

20VAC5-330-50. Cost recovery mechanism.

A. An investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service shall be permitted to recover losses on customer accounts resulting from the implementation of this chapter in the same manner as other uncollectable costs are recovered through rates.

B. An investor-owned electric utility, electric cooperative, natural gas utility, or public utility providing water or wastewater service shall maintain write-offs and recoveries of uncollectable accounts in such a manner that would allow those

amounts written off as a result of the implementation of this chapter to be separately identified.

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 (20VAC5-330)

~~Serious Medical Condition Certification Form, Form SMCC (rev. 1/2017)~~

[Serious Medical Condition Certification Form, Form SMCC \(rev. 8/2024\)](#)

VA.R. Doc. No. R25-8028; Filed September 20, 2024, 9:08 a.m.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION 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: 24VAC30-151. Land Use Permit Regulations.

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.

FORMS (24VAC30-151)

[Land Use Permit LUP-HRIPE, Land Use Permit Application for Photo Enforcement of High-Risk Intersection Segments \(eff. 8/2024\)](#)

[Land Use Permit LUP-SZSL, Land Use Permit Application for School Zone Speed Limit \(eff. 8/2024\)](#)

[Land Use Permit LUP-SZPE, Land Use Permit Application for School Zone Photo Enforcement \(eff. 8/2024\)](#)

Regulations

[Land Use Permit LUP-STC, Land Use Permit Application for Small Transit Shelter \(eff. 8/2024\)](#)

[Land Use Permit LUP-LRSL, Land Use Permit Application for Locality Reduced Speed Limits as per § 46.2-1300 \(eff. 8/2024\)](#)

[Land Use Permit LUP-A, Land Use Permit Application \(rev. 9/2014\)](#)

[Land Use Permit LUP-AUA, Agricultural Use Agreement \(rev. 8/2014\)](#)

[Land Use Permit LUP-BMA, Land Use Permit Application - Building Movement \(rev. 8/2014\)](#)

[Land Use Permit LUP-BMI, Building Movement - Investigator's Report \(rev. 8/2014\)](#)

[Land Use Permit LUP-BMR, Building Movement - Route Certification \(rev. 8/2014\)](#)

[Land Use Permit LUP-BMQ, Building Movement - Prequalification Questionnaire \(rev. 8/2014\)](#)

[Land Use Permit LUP-BMV, Building Movement - VDOT Recommendation \(rev. 8/2014\)](#)

[Land Use Permit LUP-CCV, Chemical Control of Vegetation \(rev. 7/2015\)](#)

[Land Use Permit LUP-CS, Cash Surety Affidavit \(rev. 8/2014\)](#)

[Land Use Permit LUP-CSB, Corporate Surety Bond \(rev. 8/2014\)](#)

[Land Use Permit LUP-CUA, Commercial Use Agreement \(rev. 8/2014\)](#)

[Land Use Permit LUP-ESCCC, Erosion & Sediment Control Contractor Certification \(rev. 8/2014\)](#)

[Land Use Permit LUP-IPP, Land Use Permit Application - In Place Utility, New Street Acceptance \(rev. 8/2014\)](#)

[Land Use Permit LUP-LC, Bank Irrevocable Letter of Credit \(rev. 8/2014\)](#)

[Land Use Permit LUP-MFV, Local Program for the Temporary Occupation of Right-of-Way by Mobile Food Vendors, \(eff. 9/2015\)](#)

[Land Use Permit LUP-OC, Open-Cut Pavement Restoration Requirements \(rev. 8/2014\)](#)

[Land Use Permit LUP-PA, Permit Agreement for Occupation of Right-of-Way \(rev. 8/2014\)](#)

[Land Use Permit LUP-PRU, Land Use Permit Application - Prior Rights Utility \(rev. 8/2014\)](#)

[Land Use Permit LUP-SB, Surety Bond \(rev. 8/2014\)](#)

[Land Use Permit LUP-SEA, Special Events Approvals \(rev. 8/2014\)](#)

[Land Use Permit LUP-SEI, Special Event Information \(rev. 8/2014\)](#)

[Land Use Permit LUP-SPG, Special Provisions - General \(rev. 8/2014\)](#)

[Land Use Permit LUP-WZTCC, Work Zone Traffic Control Certification \(rev. 8/2014\)](#)

[Land Use Permit Resolution \(rev. 8/2014\)](#)

VA.R. Doc. No. R25-8091; Filed September 20, 2024, 1:29 p.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.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Titles of Documents: [State Plan for Assistive Technology](#).

[State Plan for Independent Living](#).

[Workforce Innovation and Opportunity Act Combined State Plan 2024-2027 - Vocational Rehabilitation and Senior Community Service Employment Program](#).

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Charlotte Arbogast, Senior Policy Analyst and Regulatory Coordinator, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, FAX 804-662-7663, or email charlotte.arbogast@dars.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Documents: [CCC+ Waiver Manual, Chapter 8 Service Authorization](#).

[Durable Medical Equipment Manual, Chapter 7](#).

[Hospital Provider Manual Chapter 5](#).

[Residential Treatment Services Manual, Appendix A](#).

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 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 WATER CONTROL BOARD

Title of Document: [Reduced Monitoring](#).

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Azra Bilalagic, Training Specialist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 584-6674, or email azra.bilalagic@deq.virginia.gov.

The following guidance documents have been submitted for deletion and the listed agencies have opened up a 30-day public comment period. The listed agencies had previously identified these documents as certified guidance documents, pursuant to § 2.2-4002.1 of the Code of Virginia. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to view the deleted document and comment. This information is also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Titles of Documents: [2020-2023 Workforce Innovation and Opportunity Act Combined State Plan](#).

[Senior Community Service Employment Program State Plan Modification](#).

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Charlotte Arbogast, Senior Policy Analyst and Regulatory Coordinator, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, FAX 804-662-7663, or email charlotte.arbogast@dars.virginia.gov.

STATE AIR POLLUTION CONTROL BOARD

Title of Document: [Chain of Custody Policy and Procedures - Amendment 1](#).

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Guidance Documents

Agency Contact: Nelson Daniel, Water Policy Analyst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1752, or email nelson.daniel@deq.virginia.gov.

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Titles of Documents: [Procedures for Operating State Vehicles.](#)

[Virginia Environmental Excellence Program Operations Manual.](#)

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Melissa Porterfield, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, or email melissa.porterfield@deq.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Title of Document: [Virginia Environmental Excellence Program Operations Manual.](#)

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Melissa Porterfield, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, or email melissa.porterfield@deq.virginia.gov.

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Title of Document: [Chain of Custody Policy and Procedures - Amendment 1.](#)

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Nelson Daniel, Water Policy Analyst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1752, or email nelson.daniel@deq.virginia.gov.

VIRGINIA FIRE SERVICES BOARD

Titles of Documents: [Conference and Education Assistance Grant.](#)

[Live Fire Training Structure \(Burn Building\) Project Manual.](#)

[Live Fire Training Structure Grants.](#)

[Regional Fire Services Training Policy.](#)

[Virginia Fire Incident Reporting Hardware Grant.](#)

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Spencer Willett, Government Affairs Manager, Department of Fire Programs, 1005 Technology Park Drive, Glen Allen, VA 23059, or email spencer.willett@vdfp.virginia.gov.

BOARD OF HISTORIC RESOURCES

Titles of Documents: [Easement Program Information Packet.](#)

[Photographic Guidance for National Register Nominations in Virginia.](#)

[Virginia Battlefield Preservation Fund Guidelines for Applications, Prioritization, and Award of Grants.](#)

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Sarah Spota, Deputy Director, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, or email sarah.spota@dhr.virginia.gov.

DEPARTMENT OF HISTORIC RESOURCES

Titles of Documents: [Certified Local Government Grants Manual.](#)

[Guidelines for Conducting Historic Resources Survey in Virginia.](#)

[Historic Rehabilitation Tax Credit Guidance Documents.](#)

[Historic Rehabilitation Tax Credit Financial Report Guidance and Templates.](#)

[Historical African American Cemetery and Graves Fund Program Manual.](#)

[State Collections Management Standards.](#)

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Sarah Spota, Deputy Director, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, or email sarah.spota@dhr.virginia.gov.

DEPARTMENT OF STATE POLICE

Title of Document: [How the Complaint Process Works.](#)

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Keenon Hook, Director, Bureau of Strategic Governance, Virginia State Police, P.O. Box 27472, Richmond, VA 23261, telephone (804) 674-2000, or email keenon.hook@vsp.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Document: [Chain of Custody Policy and Procedures - Amendment 1.](#)

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Nelson Daniel, Water Policy Analyst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1752, or email nelson.daniel@deq.virginia.gov.

Titles of Documents: [Closure Guidance - Wood Treatment Facilities - Drip Pads.](#)

[Explosives Ordnance Disposal Emergency Response Operations and Emergency Permits Clarification.](#)

[Risk-Based Closure - Risk Exposure and Analysis Modeling System.](#)

[Solid Waste Permit Manual.](#)

[Waste Procedure Number 5 - Hazardous Waste Emergency Permits.](#)

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Samuel Jasinski, Policy Specialist, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2655, or email samuel.jasinski@deq.virginia.gov.

Title of Document: [Virginia Environmental Excellence Program Operations Manual.](#)

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Melissa Porterfield, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, or email melissa.porterfield@deq.virginia.gov.

STATE WATER CONTROL BOARD

Titles of Documents: [Chain of Custody Policy and Procedures - Amendment 1.](#)

[Checklists for Wastewater Laboratory Inspections - Amendment 2.](#)

[Checklists for Wastewater Laboratory Inspections - Amendment 3.](#)

[Checklists for Wastewater Laboratory Inspections - Amendment 4A.](#)

[Checklists for Wastewater Laboratory Inspections - Amendment 5.](#)

[Checklists for Wastewater Laboratory Inspections - Amendment 6.](#)

[Checklist for Wastewater Laboratory Inspections - Amendment 7.](#)

[Checklists for Wastewater Laboratory Inspections.](#)

[Process for Determination of Noncompliance with the General VPDES Permit for Storm Water Discharges Associated with Industrial Activity, VAR05.](#)

[Reissuance Procedures for Virginia Pollution Abatement Biosolids Land Application Permits.](#)

[Stormwater Management Model Ordinance.](#)

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Nelson Daniel, Water Policy Analyst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1752, or email nelson.daniel@deq.virginia.gov.

Titles of Documents: [Comprehensive Environmental Data System Tanks Compliance and Registration User Manual.](#)

[New Underground Storage Tank Requirements Effective January 1, 2018.](#)

[New Underground Storage Tank Requirements Effective January 1, 2021.](#)

[Quality Assurance Project Plan, State Lead Program, Revision 2.](#)

[Storage Tank Program Compliance Manual Volume 4: Compliance Process.](#)

[Storage Tank Program Quality Management Plan, Amendment 3.](#)

[Tank Ownership and Responsible Person Identification Changes.](#)

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Samuel Jasinski, Policy Specialist, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2655, or email samuel.jasinski@deq.virginia.gov.

Guidance Documents

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Title of Document: [Virginia Environmental Excellence Program Operations Manual](#).

Public Comment Deadline: November 20, 2024.

Effective Date: November 21, 2024.

Agency Contact: Melissa Porterfield, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, or email melissa.porterfield@deq.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Aqua Virginia Inc.

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Aqua Virginia Inc. for violations of the State Water Control Law in Palmyra, Virginia. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept comments by email or postal mail from October 21, 2024, through November 20, 2024.

Contact Information: John Brandt, Enforcement Manager, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, or email john.brandt@deq.virginia.gov.

Proposed Enforcement Action for 9DG LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for 9DG LLC for violations of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations at 2500 Tyler Road Travel Center in Christiansburg, Virginia. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept comments by email or postal mail from October 21, 2024, through November 20, 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.

Gateway Grid LLC Notice of Intent for a Small Renewable Energy Project (Energy Storage) - Botetourt County

Gateway Grid LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project in Botetourt County, Virginia, pursuant to 9VAC15-100. The project name is Gateway Grid Battery Storage Facility, the owner is Gateway Grid LLC, and the project developer is Eolian Energy. The DEQ project number is RE0000329.

The location of the project is 2151 Lee Highway, Troutville, VA 24175, and the project has a geographic information system (GIS) centroid of Latitude 37.380764, Longitude -79.905191. As proposed, the project will have a rated power capacity of 100 megawatts alternating current, include

approximately 116 battery modules, and have a disturbance area of approximately 13.7 acres.

Contact Information: Amber Foster, Small Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 7448474, or email amber.foster@deq.virginia.gov.

Hera Solar LLC Notice of Intent for a Small Renewable Energy Project (Solar) - Tazewell County

Hera Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project (solar) in Tazewell County, Virginia, pursuant to 9VAC15-60. The project owner is Hera Solar LLC and the project developer is Energix Renewables. The DEQ project number is RE0000328.

The project will encompass two parcels of approximately 720 acres north of Lake Witten Road with a geographic information system (GIS) centroid of Longitude 37.170322, Latitude -81.504903. As proposed, the project will have a maximum rated capacity of 20 megawatts alternating current and use approximately 48,000 photovoltaic panels.

Contact Information: Amber Foster, Small Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-8474, or email amber.foster@deq.virginia.gov.

Public Meeting and Opportunity for Public Comment - Cleanup Plan for Cedar Run, Mine Run, Mountain Run, and the Lower Rapidan River Basin in Orange, Culpeper, and Spotsylvania Counties

Purpose of Notice: The Department of Environmental Quality (DEQ) seeks public comment on the development of a cleanup plan for impaired waters, also known as an implementation plan (IP), for Cedar Run, Mine Run, Mountain Run, and the Lower Rapidan River Basin in Orange, Culpeper, and Spotsylvania Counties, Virginia. These streams are listed as impaired because monitoring data indicates that the waters do not meet Virginia's water quality standards due to an exceedance in E. coli. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop cleanup studies to address pollutants responsible for causing waters to be on Virginia's § 303(d) list of impaired waters. Once a cleanup study is developed, § 62.1-44.19:7 of the Code of Virginia outlines the requirements for a cleanup plan to address the pollutants contained in the study.

DEQ has developed a cleanup plan for Cedar Run, Mine Run, Mountain Run, and the Lower Rapidan River Basin that identifies corrective actions needed to improve water quality and discusses the associated costs and environmental benefits

General Notices

of the actions. A summary of the plan will be presented at the public meeting. Citizens are invited to provide comment on the plan and will learn how to be part of implementing the plan to improve water quality in the watershed. Community engagement meetings to assist in development of this cleanup plan were convened on April 12, 2024, and June 27, 2024.

Cleanup Plan Location: The cleanup plan addresses the following impaired stream segments for bacteria impairments:

Black Walnut Run, which begins at the Route 621 crossing and continues downstream until the confluence with Mine Run (6.48 mi.);

Brook Run, which begins at the confluence with an unnamed tributary to Brook Run at Route 647 and continues downstream until the confluence with the Rapidan River (2.51 mi.);

Cabin Branch, which begins at the perennial headwaters of Cabin Branch and continues downstream to the confluence with Cedar Run (3.19 mi.);

Cedar Run, which begins at the confluence with Cabin Branch and continues downstream until the confluence with the Rapidan River (2.26 mi.);

Cedar Run, which begins at the confluence with Buck Run and continues downstream until the confluence with Cabin Branch (3.54 mi.);

Mine Run, which begins at the confluence with Cormack Run, approximately 0.6 rivermiles upstream of Route 20, and continues downstream until the confluence with the Rapidan River (10.50 mi.);

Mountain Run, which begins at the confluence with Mill Run, approximately 0.25 rivermiles downstream of Route 617, and continues downstream until the confluence with Mine Run (10.11 mi.);

Mountain Run, which begins at the headwaters of Mountain Run and continues downstream until the confluence with Mill Run (7.46 mi.);

Potato Run, which begins at the headwaters of Potato Run and continues downstream until the confluence with the Rapidan River (6.84 mi.);

Rapidan River, which begins at the confluence with an unnamed tributary to the Rapidan River at rivermile 34.5, approximately 0.6 rivermiles downstream from Route 689, and continues downstream until the confluence with Cedar Run (4.66 mi.);

Rapidan River, which begins at the confluence with the Robinson River and continues downstream until the confluence with an unnamed tributary to the Rapidan River at rivermile 36.6 (3.40 mi.);

Rapidan River, which begins at the boundary of the public water supply area, approximately 1.17 rivermiles upstream from the Route 3 crossing, and continues downstream to the confluence with Lick Branch (3.41 mi.);

Sumerduck Run, which begins at the confluence with Dry Run and continues downstream until the confluence with the Rapidan River (6.21 mi.); and

Wilderness Run, which begins at the confluence of North Wilderness Run and South Wilderness Run and continues downstream until the confluence with the Rapidan River (5.56 mi.).

Public Meeting: George Washington Carver Agricultural Research Center, 9432 North James Madison Highway, Rapidan, VA 22733 on November 18, 2024, at 6:00 p.m. In the event of inclement weather, the meeting will be held on November 21, 2024, at the same time and location. This meeting was initially scheduled for October 3, 2024. The October 3, 2024, meeting has been canceled, and the meeting will now occur on November 18, 2024.

Public Comment Period: November 18, 2024, to December 18, 2024.

How to Comment: DEQ accepts written comments by email or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization represented (if any), mailing addresses, and telephone numbers of the commenter or requester.

Information about this plan will be posted throughout the development process at <https://www.deq.virginia.gov/our-programs/water/water-quality/implementation/implementation-plans-under-development>.

Contact Information: Kaitlin King, Nonpoint Source Coordinator, Department of Environmental Quality, Central Office, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 338-2430, or email kaitlin.king@deq.virginia.gov.

MARINE RESOURCES COMMISSION

Notice of Oyster Planting Grounds Application

H. M. Terry Company Inc. has applied for approximately 194.64 acres of oyster planting ground in Outlet Bay situated in Northampton City and Northampton County with Latitude N37-21.399, Longitude W75-50.982. View a map of the application or provide public comments at https://webapps.mrc.virginia.gov/public/oystergrounds/search_applications.php using the application number 2024037 or contact the Marine Resources Commission Shellfish Management Division at (757) 247-2262.

Send written comments to the contact listed.

Contact Information: Savannah Longest, Shellfish Aquaculture Specialist, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2262, FAX (757) 247-2002, or email savannah.longest@mrc.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Public Comment Opportunity on Intent to Amend State Plan - Supplemental Payments for Acute Care Hospital Chain with Level One Trauma Center

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates; In-Patient Hospital Care (12VAC30-70).

This notice is intended to satisfy the requirements of 42 CFR § 447.205 and § 1902(a)(13) of the *Social Security Act* (42 USC § 1396a(a)(13)). A copy of this notice is available for public review from the DMAS contact listed.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impacts of the proposed changes discussed in this notice. Comments or inquiries may be submitted in writing by November 20, 2024, and such comments are available for review at <https://townhall.virginia.gov/L/generalnotice.cfm>.

In accordance with Item 288 OO 10 of the 2024 Appropriations Act, DMAS will make the following changes:

Methods and Standards for Establishing Payment Rates; In-Patient Hospital Care (12VAC30-70)

DMAS is revising the state plan to make supplemental payments through an adjustment to the formula for indirect medical education reimbursement using managed care discharge days for an acute care hospital chain with a level one trauma center in the Tidewater Metropolitan Statistical Area in 2020, upon the execution of affiliation agreements with public entities that are capable of transferring funds to DMAS for purposes of covering the nonfederal share of the authorized payments. Such public entities would enter into an interagency agreement with DMAS for this purpose. Public entities are authorized to use general fund dollars to accomplish this transfer. The funds to be transferred must comply with 42 CFR §§ 433.51 and 433.54. As part of the interagency agreements, DMAS shall require the public entities to attest to compliance with applicable Centers for Medicare and Medicaid Services (CMS) criteria. DMAS shall also require any private hospital and related health systems receiving payments under this item to attest to compliance with applicable CMS criteria.

The expected increase in annual aggregate fee-for-service expenditures is \$17,200,000 in state general funds and \$25,800,000 in federal funds in federal fiscal year 2025. The expected increase in annual aggregate fee-for-service expenditures is \$17,531,100 in state general funds and \$25,468,900 in federal funds in federal fiscal year 2026.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

VIRGINIA CODE COMMISSION Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-20. Fees for Permits and Certificates.**

Publication: 39:5 VA.R. 604-609 October 24, 2022.

Correction to Final Regulation:

Page 607, 9VAC25-20-130, subdivision 4,

line 3, after "board" change "or" to "for"

VA.R. Doc. No. R23-7259; Filed September 27, 2024, 11:14 a.m.

STATE BOARD OF HEALTH

Title of Regulation: **12VAC5-421. Food Regulations.**

Publication: 37:18 VA.R. 2687-2738 April 26, 2021.

Correction to Fast-Track Regulation:

Page 2724, 12VAC5-421-2720,

line 1, after "**12VAC5-421-2720. Covering receptacles.**"

Insert on next line, "Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:"

VA.R. Doc. No. R21-5671; Filed September 27, 2024, 1:52 p.m.