



VIRGINIA

REGISTER OF REGULATIONS

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Virginia Code Commission

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

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

September 2025 through September 2026

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
42:8	November 10, 2025 (Monday)	December 1, 2025
42:9	November 24, 2025 (Monday)	December 15, 2025
42:10	December 9, 2025	December 29, 2025
42:11	December 22, 2025 (Monday)	January 12, 2026
42:12	January 6, 2026 (Tuesday)	January 26, 2026
42:13	January 21, 2026	February 9, 2026
42:14	February 4, 2026	February 23, 2026
42:15	February 18, 2026	March 9, 2026
42:16	March 4, 2026	March 23, 2026
42:17	March 18, 2026	April 6, 2026
42:18	April 1, 2026	April 20, 2026
42:19	April 15, 2026	May 4, 2026
42:20	April 29, 2026	May 18, 2026
42:21	May 13, 2026	June 1, 2026
42:22	May 27, 2026	June 15, 2026
42:23	June 10, 2026	June 29, 2026
42:24	June 24, 2026	July 13, 2026
42:25	July 8, 2026	July 27, 2026
42:26	July 22, 2026	August 10, 2026
43:1	August 5, 2026	August 24, 2026
43:2	August 19, 2026	September 7, 2026
43:3	September 2, 2026	September 21, 2026

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Initial Agency Notice

Title of Regulation: 18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.

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

Name of Petitioner: Joseph Foley, DC.

Nature of Petitioner's Request: The petitioner requests that the Board of Medicine amend 18VAC85-20-235 to (i) remove the requirement that doctors of chiropractic obtain clinical continuing education hours and (ii) require 24 of the 30 annual hours be in person, face-to-face.

Agency Plan for Disposition of Request: The petition will be published in the Virginia Register of Regulations on August 25, 2025. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which opens August 25, 2025, and closes September 24, 2025. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. Currently that meeting is scheduled for October 30, 2025. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: September 24, 2025.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA, 23233, telephone (804)750-3912, or email erin.barrett@dhp.virginia.gov.

VA.R. Doc. No. PFR26-03; Filed July 31, 2025, 8:34 a.m.

Agency Decision

Title of Regulation: 18VAC85-21. Regulations Governing Prescribing of Opioids and Buprenorphine.

Statutory Authority: §§ 54.1-2400 and 54.1-2928.2 of the Code of Virginia.

Name of Petitioner: Virginia Society of Addiction Medicine.

Nature of Petitioner's Request: The petitioner requests that the Board of Medicine amend 18VAC85-21-150 and 18VAC85-21-160 to (i) remove provision of counseling services or provision of a referral for counseling services to the patient, (ii) remove documentation requirements of the rationale for prescriptions of buprenorphine that exceed 24 milligrams per day, and (iii) remove the restriction on prescribing buprenorphine to patients younger than 16 years of age.

Agency Decision: Request denied.

Statement of Reason for Decision: At its August 1, 2025, meeting, the Board of Medicine voted to take no action on the petition. The board felt that the requirement to document the prescription of buprenorphine is not an onerous requirement, and no justification exists for changing it. Additionally, the use of buprenorphine is not currently approved by the U.S. Food and Drug Administration, and the board saw a lack of justification for changing it.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA, 23233, telephone (804)750-3912, or email erin.barrett@dhp.virginia.gov.

VA.R. Doc. No. PFR26-04; Filed May 5, 2025, 2:59 p.m.

BOARD OF COUNSELING

Agency Decision

Title of Regulation: 18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.

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

Name of Petitioner: Sharon Toliver-Hardy.

Nature of Petitioner's Request: The petitioner requests that the Board of Counseling amend 18VAC115-60-90 to permit licensed clinical social workers licensed for 10 years or more who also hold a certification as a substance abuse counselor and have practiced within the last five years to have the examination requirement to become a licensed substance abuse treatment provider waived, similar to an exemption for licensed professional counselors applying to become a licensed substance abuse treatment practitioner (LSATP).

Agency Decision: Request denied.

Statement of Reason for Decision: At its July 25, 2025, meeting, the board voted to take no action on the petition. While the board is supportive of the petition, the board would like to send this issue to the regulatory committee to consider other license types that should be exempted from the required examination to become a LSATP. This issue will also be considered as part of the upcoming periodic review of regulations.

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

VA.R. Doc. No. PFR26-02; Filed March 7, 2025, 2:00 p.m.

Petitions for Rulemaking

BOARD OF SOCIAL WORK

Initial Agency Notice

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

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

Name of Petitioner: Sara Pearce.

Nature of Petitioner's Request: The petitioner requests that the Board of Social Work amend 18VAC140-20-150 to include a new subsection that would require (i) up to three transitional sessions, delivered in person or via synchronous telehealth, to be performed that shall not be less than 45 minutes; (ii) a written referral list of at least three outpatient providers that the licensee has confirmed are accepting new clients as a written crisis-response plan that includes resources 24 hours per day, seven days a week and instructions for emergency care; and (iii) at the client's request, the licensee shall make one good-faith contact with the client's new therapist to provide a summary of care and current risk factors consistent with confidentiality requirements.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on August 25, 2025. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which opens August 25, 2025, and closes September 15, 2025. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. Currently that meeting is scheduled for September 26, 2025. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: September 15, 2025.

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

VA.R. Doc. No. PFR26-01; Filed July 23, 2025, 12:46 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-450, Regulations Governing Professional Development**, and determined that this regulation should be repealed. The board is publishing its report of findings dated July 31, 2025, to support this decision.

While the regulation is clearly written and easily understandable, it is not necessary for the protection of public health, safety, and welfare. Since the regulation was promulgated a different version of the Standards of Quality (currently Chapter 13.2 (§ 22.1-253.13:1 et seq.) of Title 22.1 of the Code of Virginia) has been adopted, and the Licensure Regulations for School Personnel (currently 8VAC20-23). As the regulation is no longer relevant to the structure of professional development necessary for license renewal and is not currently in use, it should be repealed.

The agency has not received any comments on the regulation and is not aware of any complaints concerning the regulation. The regulation is not complex. It does not appear that the regulation overlaps with current state or federal law. The regulation has not been amended since it became effective in 1980. The agency's decision will not impact 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.

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 **8VAC20-650, Regulations Governing the Determination of Critical Teacher Shortage Areas**, and determined that this regulation should be amended. The board is publishing its report of findings dated July 31, 2025, to support this decision.

The regulation is clearly written and easily understandable and remains necessary for the protection of public health, safety, and welfare. The regulation is also required by statute. 8VAC20-650-10 will be amended to reflect the 10-year renewable license of § 22.1-298.1 of the Code of Virginia, which was amended pursuant to Chapter 749 of the 2018 Acts of Assembly; 8VAC20-650-20 will be amended pursuant to § 22.1-290.2 of the Code of Virginia; and 8VAC20-650-30 should be updated pursuant to § 22.1-290.01 of the Code of

Virginia. The regulation was promulgated in 2003. Since that time, § 22.1-290.01 has been amended three times, and in 2020, § 22.1-290.2 was promulgated. Therefore, the regulation should be amended to reflect these statutory changes. There is a continued need for the regulation. No complaints or comments were received concerning the regulation. The regulation is not overly complex. This regulation does not overlap, duplicate, or conflict with federal or state law. This regulation has not been affected by changes in technology, economic conditions, or other factors since the chapter was promulgated in 2003. 8VAC20-650-30 was amended in 2009. The regulation has 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 **8VAC20-690, Regulations for Scoliosis Screening Program**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated July 31, 2025, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare in that it provides regulations for scoliosis screening programs in public schools as required by § 22.1-273.1 of the Code of Virginia. Regular scoliosis screening in the Commonwealth's public schools is vital to detection of the condition in children. The regulation seeks to ensure that screenings are uniformly and appropriately conducted across the state. The regulation is clearly written and easily understandable. The regulation will be retained.

Additionally, the board will consider combining this regulation with Regulations Governing the Testing of Sight and Hearing of Pupils (8VAC20-250) since the two regulations are commonly used by the same practitioners. By combining the two regulations concerned with administering medical screenings to students, the board will consolidate its regulatory catalog.

There is a continued need for the text of regulation. The agency has not received any comments and is not aware of any complaints concerning the regulation. The regulation is not complex. It does not appear that the regulation overlaps, duplicates, or conflicts with any other state or federal law or regulation. The regulation has been impacted by changes in technology, economic conditions, or other factors. The regulation has not been amended since it became effective on March 29, 2005. The agency's decision will not impact small business.

Periodic Reviews and Small Business Impact Reviews

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 **8VAC20-840, Virginia Child Care Provider Scholarship Program**, and determined that this regulation should be repealed. The board is publishing its report of findings dated July 31, 2025, to support this decision.

While the regulation is clearly written and easily understandable, it is neither necessary for the protection of public health, safety, and welfare nor required to be contained in the board's regulatory catalog pursuant to § 2.2-4002 B 4 of the Code of Virginia.

The periodic review found that there is no longer a need for this regulation as the subject matter is topically exempt from the provisions of the Administrative Process Act.

The agency is unaware of any complaints concerning the chapter and received no comments during the periodic review. The regulation is not overly complex. The content of the regulation does not duplicate, overlap, or conflict with other state or federal laws or regulation, except the exemption from the Administrative Process Act cited. The regulation was last amended in 2021 when the chapter and program moved from the authority of the State Board of Social Services to the State Board of Education. Changes in technology, economic conditions, or other factors have not impacted this regulatory chapter. The agency's decision is not expected to have any 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

Reports of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted periodic reviews and small business impact reviews of **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**, and determined that these regulations should be amended. The Proposed Actions, which are published in this issue of the Virginia Register, serve as the reports of findings.

Contact Information: Brenda Winn, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2675, or email brenda.winn@deq.virginia.gov.



NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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 Behavioral Health and Developmental Services intends to consider repealing **12VAC35-46, Regulations for Children's Residential Facilities**, and **12VAC35-105, Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services**. The purpose of the proposed action is to repeal these two chapters and replace them with a restructured approach to Department of Behavioral Health and Developmental Services (DBHDS) licensing regulation chapters.

In 2017, DBHDS conducted a periodic review of the licensing regulations. During that review, the Office of Regulatory Affairs extensively researched how other states structure licensing regulations. DBHDS also gathered information and comments for the new regulatory structure from internal subject matter experts, providers, and other state agencies with overlapping or associated regulatory authority. As a result of this research, DBHDS determined the licensing regulations should be broken into service-specific chapters. Therefore, DBHDS intends to propose to repeal the existing children's residential regulations and licensing regulations and replace them with one overarching general chapter applicable to all providers and five service-specific chapters. When applicable, the regulatory provisions from 12VAC35-46 and 12VAC35-105 will be pulled into the general chapter and the service-specific chapters and updated as appropriate.

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

Statutory Authority: §§ 37.2-203 and 37.2-304 of the Code of Virginia.

Public Comment Deadline: September 24, 2025.

Agency Contact: Susan Puglisi, Regulatory Research Specialist, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, telephone (804) 975-0538, fax (804) 371-6638, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

VA.R. Doc. No. R22-7294; Filed July 23, 2025, 2:11 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 Board of Behavioral Health and Developmental Services intends to consider promulgating **12VAC35-270, General Rules and Regulations for Licensing Providers by the Department of Behavioral**

Health and Developmental Services. The purpose of the proposed action is to serve as the general provisions chapter for the restructure of the licensing regulations for the Department of Behavioral Health and Developmental Services (DBHDS).

In 2017, DBHDS conducted a periodic review of the licensing regulations. During that review, the Office of Regulatory Affairs extensively researched how other states structure licensing regulations. DBHDS also gathered information and comments for the new regulatory structure from internal subject matter experts, providers, and other state agencies with overlapping or associated regulatory authority. As a result of this research, DBHDS determined the licensing regulations should be broken into service-specific chapters. Therefore, DBHDS intends to propose to repeal the existing children's residential regulations and licensing regulations, **Regulations for Children's Residential Facilities (12VAC35-46)** and **Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (12VAC35-105)**, and replace them with one overarching general chapter applicable to all providers and five service-specific chapters. These proposed chapters will address the following DBHDS service licensing responsibilities: residential, noncenter-based, center-based, crisis, and case management. This methodology is intended to allow more detailed, service-specific regulations where appropriate and offer more clarity for providers regarding exactly which provisions of the licensing regulations apply to their services. This general chapter will include provisions applying to (i) administration, (ii) personnel, (iii) operational practices, (iv) risk management and quality improvement, (v) responsibilities to individuals, (vi) physical environment standards, and (vii) emergency preparedness.

The entirety of this restructuring action will move through the regulatory process together, and in whole, promulgate General Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (12VAC35-270); Regulations for Residential and Inpatient Services (12VAC35-272); Regulations for Noncenter-Based Services (12VAC35-274); Regulations for Center-Based Services (12VAC35-276); Regulations for Crisis Services (12VAC35-278); and Regulations for Case Management Services (12VAC35-280). When applicable, the regulatory provisions from 12VAC35-46 and 12VAC35-105 will be pulled into this general chapter and the service-specific chapters and updated as appropriate. Each of these chapters will have a unique regulatory notice, proposed, and final stage provided in the Virginia Register. The Notices of Intended Regulatory Action for the service-specific chapters follow.

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

Statutory Authority: §§ 37.2-203 and 37.2-304 of the Code of Virginia.

Public Comment Deadline: September 24, 2025.

Notices of Intended Regulatory Action

Agency Contact: Susan Puglisi, Regulatory Research Specialist, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, telephone (804) 975-0538, fax (804) 371-6638, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

VA.R. Doc. No. R22-7101; Filed July 23, 2025, 2:57 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 Board of Behavioral Health and Developmental Services intends to consider promulgating **12VAC35-272, Regulations for Residential and Inpatient Services**. The purpose of the proposed action, which is part of the restructuring of Department of Behavioral Health and Developmental Services licensing regulations, is to provide service-specific regulation of residential and inpatient services. This chapter will include provisions applying to the following services: (i) clinically managed high-intensity residential, (ii) clinically managed low-intensity residential, (iii) clinically managed population-specific high-intensity residential, (iv) community geriatric psychiatric residential, (v) group home, (vi) intermediate care facilities for individuals with intellectual disability, (vii) inpatient, (viii) medically managed intensive inpatient, (ix) medically monitored intensive inpatient, (x) respite residential, (xi) substance abuse residential treatment for women with children, (xii) sponsored residential homes; and (xiii) supervised living.

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

Statutory Authority: §§ 37.2-203 and 37.2-304 of the Code of Virginia.

Public Comment Deadline: September 24, 2025.

Agency Contact: Susan Puglisi, Regulatory Research Specialist, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, telephone (804) 975-0538, fax (804) 371-6638, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

VA.R. Doc. No. R25-8086; Filed July 23, 2025, 2:58 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 Board of Behavioral Health and Developmental Services intends to consider promulgating **12VAC35-274, Regulations for Noncenter-Based Services**. The purpose of the proposed action, which is part of the restructuring of Department of Behavioral Health and Developmental Services licensing regulations, is to provide service-specific regulation of noncenter-based services. This chapter will include provisions applying to the following services: (i) assertive community treatment, (ii) noncenter-based day support, (iii) intensive community treatment, (iv)

functional family therapy, (v) intensive in-home, (vi) mental health skill building, (vii) multi-systemic therapy, (viii) home-based or noncenter-based respite care, (ix) supportive in-home, and (x) school-based therapeutic day treatment for children and adolescents.

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

Statutory Authority: §§ 37.2-203 and 37.2-304 of the Code of Virginia.

Public Comment Deadline: September 24, 2025.

Agency Contact: Susan Puglisi, Regulatory Research Specialist, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, telephone (804) 975-0538, fax (804) 371-6638, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

VA.R. Doc. No. R25-8154; Filed July 23, 2025, 3:00 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 Board of Behavioral Health and Developmental Services intends to consider promulgating **12VAC35-276, Regulations for Center-Based Services**. The purpose of the proposed action, which is part of the restructuring of Department of Behavioral Health and Developmental Services licensing regulations, is to provide service-specific regulation of center-based services. This chapter will include provisions applying to the following services: (i) center-based day support, (ii) mental health intensive outpatient, (iii) mental health outpatient, (iv) mental health partial hospitalization, (v) substance abuse partial hospitalization, (vi) psychosocial rehabilitation, (vii) substance abuse intensive outpatient, (viii) substance abuse outpatient, (ix) center-based therapeutic day treatment for children and adolescents, (x) center-based respite, and (xi) medication-assisted opioid treatment programs.

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

Statutory Authority: §§ 37.2-203 and 37.2-304 of the Code of Virginia.

Public Comment Deadline: September 24, 2025.

Agency Contact: Susan Puglisi, Regulatory Research Specialist, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, telephone (804) 975-0538, fax (804) 371-6638, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

VA.R. Doc. No. R26-8128; Filed July 23, 2025, 3:00 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 Board of Behavioral Health and

Developmental Services intends to consider promulgating **12VAC35-278, Regulations for Crisis Services**. The purpose of the proposed action, which is part of the restructuring of Department of Behavioral Health and Developmental Services licensing regulations, is to provide service-specific regulation of crisis services. This chapter will include provisions applying to the following services: (i) crisis receiving center, (ii) community-based crisis stabilization, (iii) crisis stabilization unit, and (iv) the regional education assessment crisis services habilitation (REACH) program.

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

Statutory Authority: §§ 37.2-203 and 37.2-304 of the Code of Virginia.

Public Comment Deadline: September 24, 2025.

Agency Contact: Susan Puglisi, Regulatory Research Specialist, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, telephone (804) 975-0538, fax (804) 371-6638, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

VA.R. Doc. No. R26-8115; Filed July 23, 2025, 3:01 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 Board of Behavioral Health and Developmental Services intends to consider promulgating **12VAC35-280, Regulations for Case Management Services**. The purpose of the proposed action, which is part of the restructuring of Department of Behavioral Health and Developmental Services licensing regulations, is to provide service-specific regulation of case management services. This chapter will include provisions applying to the following aspects of case management: (i) service description and requirements, (ii) screening and assessment, (iii) individualized service plans, (iv) progress notes, (v) enhanced case management and case manager choice, and (vi) qualifications for employees or contractors.

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

Statutory Authority: §§ 37.2-203 and 37.2-304 of the Code of Virginia.

Public Comment Deadline: September 24, 2025.

Agency Contact: Susan Puglisi, Regulatory Research Specialist, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, telephone (804) 975-0538, fax (804) 371-6638, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

VA.R. Doc. No. R26-8174; Filed July 23, 2025, 3:02 p.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending **13VAC5-21, Virginia Certification Standards**. The purpose of the proposed action is to update the Virginia Certification Standards (VCS) to coordinate with building code and fire code regulations of the Department of Housing and Community Development (DHCD). This action is to update the training and certification requirements for personnel performing enforcement activities under the building and fire regulations. The VCS will be updated as determined necessary by DHCD to coordinate with the building and fire regulations and ensure continued protection of public health, welfare, and safety.

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

Statutory Authority: § 36-137 of the Code of Virginia.

Public Comment Deadline: December 2, 2025.

Agency Contact: Chase Sawyer, Policy and Legislative Services Manager, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 310-5872, FAX (804) 371-7090, TDD (804) 371-7089, or email chase.sawyer@dhcd.virginia.gov.

VA.R. Doc. No. R26-8400; Filed August 6, 2025, 11:34 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending **13VAC5-95, Virginia Manufactured Home Safety Regulations**. The purpose of the proposed action is to update the Virginia Manufactured Home Safety Regulations (MHSR) to align with federal Manufactured Home Construction and Safety Standards (MHCSS) and the Virginia Uniform Statewide Building Code (USBC). Through a cooperative agreement with the U.S. Department of Housing and Urban Development (HUD), the Virginia Department of Housing and Community Development (DHCD) serves as the state administrative agency (SAA) for enforcement of the HUD Manufactured Home Construction and Safety Standards (MHCSS) in Virginia and administers Virginia's HUD Approved Manufactured Home Installation Program. To ensure DHCD can meet the SAA requirements and fulfill the cooperative agreement with HUD, the MHSR must be updated to ensure conformance and alignment.

Notices of Intended Regulatory Action

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

Statutory Authority: § 36-85.7 of the Code of Virginia.

Public Comment Deadline: December 2, 2025.

Agency Contact: Chase Sawyer, Policy and Legislative Services Manager, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 310-5872, FAX (804) 371-7090, TDD (804) 371-7089, or email chase.sawyer@dhcd.virginia.gov.

VA.R. Doc. No. R26-8401; Filed August 6, 2025, 11:35 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 FORESTRY

Fast-Track Regulation

Title of Regulation: 4VAC10-30. Virginia State Forests Regulations (amending 4VAC10-30-10, 4VAC10-30-30 through 4VAC10-30-60, 4VAC10-30-140, 4VAC10-30-170, 4VAC10-30-180, 4VAC10-30-200, 4VAC10-30-220 through 4VAC10-30-250, 4VAC10-30-290, 4VAC10-30-300, 4VAC10-30-310, 4VAC10-30-330, 4VAC10-30-340, 4VAC10-30-350; adding 4VAC10-30-420 through 4VAC10-30-450; repealing 4VAC10-30-70 through 4VAC10-30-130, 4VAC10-30-150, 4VAC10-30-160, 4VAC10-30-210, 4VAC10-30-260, 4VAC10-30-270, 4VAC10-30-280).

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 24, 2025.

Effective Date: October 9, 2025.

Agency Contact: Nathan Thomson, Policy and Legislative Analyst, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, or email nathan.thomson@dof.virginia.gov.

Basis: Section 10.1-1101 of the Code of Virginia authorizes the Department of Forestry to promulgate regulations necessary to the performance of duties or execution of powers conferred under Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia.

Purpose: This action benefits the public welfare by unencumbering citizens from unnecessarily complex or duplicative regulations and addressing emerging issues that are currently unregulated on Virginia's state forests.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial because it primarily eliminates regulations that are duplicative and modernizes language for state forest users, allowing the public a clearer understanding of the state forest regulations.

Substance: The amendments (i) eliminate language that is redundant to Virginia statute; (ii) clarify and consolidate regulatory requirements; and (iii) add sections that address horses, hours of operation, rock climbing, and target shooting.

Issues: The primary advantage of this action to the public will be to make the regulation easier to read and understand. No disadvantages to the public are anticipated. The amendments are anticipated to reduce confusion among forest users and improve rule-following behavior and reduce negative interactions between Department of Forestry employees and the public, including citation writing. The department does not anticipate any disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Department of Forestry (department) proposes revising Virginia State Forestry Regulations (4VAC10-30) to update terminology, clarify the language, remove sections that are redundant of statute or other regulations, and add four new sections to address emerging uses of state forests.

Background. Executive Directive 1 (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 The department undertook a comprehensive review of this regulation to meet this objective. The proposed changes would clarify or consolidate current requirements, remove requirements that are redundant of statute or other regulations, and add four sections pertaining to uses of state forests that are not currently addressed in the regulation. The proposed additions would reflect current practice and are intended to clarify what activities are allowed, with or without permits, and what activities are prohibited.

The most substantive changes are: 4VAC10-30-10 is amended to add certain definitions for clarity; definitions for "bicycle," "electric personal assistive mobility device," "electric power-assisted bicycle," and "motor vehicle" would refer to their current definitions in statute. Other terms such as "bike trail," "firearm," "group," "hiking trail," "hunting," "multi-use trail," "silvicultural activity," and "unmanned aerial system/unmanned aerial vehicle" would be newly defined. 4VAC10-30-40 is amended to specify the three types of permits currently issued by the department, the grounds for permit revocation, and penalties. Other sections in the regulation that pertain to specific activities would be amended to specify which permit is required, if any. 4VAC10-30-50 is amended to clarify that edible fruits, berries, fungi, or nuts may be collected for individual use only. 4VAC10-30-420 is added to specify that horses are only allowed on designated multi-use trails or roads designated for equestrian use, and that equestrian users

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shall remove residues (including manure) from designated parking areas. 4VAC10-30-430 is newly added to specify that state forests are open to public use during daylight hours only unless the forest user is permitted or engaged in lawful hunting activities as defined by the Virginia Department of Wildlife Resources and for other uses as permitted by the State Forests Superintendent. 4VAC10-30-440 is added to specify that these activities are prohibited in state forests except at designated areas and require a Conditional Activity Permit. 4VAC10-30-450 is added to prohibit target shooting in any state forest and to define target shooting as the discharge of a firearm, muzzleloader, or archery equipment for purposes other than hunting, trapping, or self-defense. Lastly, the following sections of the regulation would be struck because they are restatements of existing law or are otherwise no longer necessary: 4VAC10-30-70, 4VAC10-30-80, 4VAC10-30-90, 4VAC10-30-100, 4VAC10-30-110, 4VAC10-30-120, 4VAC10-30-130, 4VAC10-30-150, 4VAC10-30-160, 4VAC10-30-210, 4VAC10-30-260, 4VAC10-30-270, and 4VAC10-30-280).

Estimated Benefits and Costs. The proposed amendments seek to update and clarify the regulation to reflect current practice and remove redundant language. Members of the public would benefit from the proposed changes to the extent that they use the regulation to determine what activities are prohibited or need permits. The department website also provides the same information with a link to the regulation in the Virginia Administrative Code.³

Businesses and Other Entities Affected. The proposed amendments do not appear to directly affect any businesses or other entities. Businesses that operate educational or recreational group activities, or organize events, in state forests may benefit from referring to updated regulations. 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 Since the proposed changes do not create any new costs or reduce benefits, an adverse impact is not indicated.

Small Businesses⁶ Affected.⁷ The regulation particularly affects localities that contain state forests by protecting the air and water and other environmental determinants of public health, and by indirectly supporting private economic activity that relies on the continued maintenance and protection of state forests. For example, the presence of state forest land likely drives tourism to the locality and enables businesses connected to hunting, fishing, and other permitted recreational activities. The proposed amendments do not affect costs for local governments.

Localities⁸ Affected.⁹ The proposed amendment neither disproportionately affect any particular localities nor introduce costs for local governments.

Projected Impact on Employment. The proposed amendments do not affect total employment.

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

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.governor.virginia.gov/media/governorviriniagov/governor-of-virginia/pdf/ed/ED-1-Regulatory-Reduction.pdf>.

³ See <https://dof.virginia.gov/education-and-recreation/state-forests/before-you-visit/>.

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

Summary:

In response to Executive Directive One (2022), the amendments (i) update terminology, (ii) clarify language, (iii) eliminate redundancy, (iv) consolidate sections, and (v) add sections that address emerging state forest uses, including requirements regarding horses, hours of operation, rock climbing, and target shooting.

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

4VAC10-30-10. Definitions.

A. Section 46.2-100 of the Code of Virginia provides definitions for the following terms and phrases used in this chapter:

"Bicycle"

"Electric personal assistive mobility device"

"Electric power-assisted bicycle"

"Motor vehicle"

B. The following words and terms when used in this regulation shall chapter have the following meanings unless a different meaning is provided or is plainly required by the context clearly indicates otherwise:

"Bike trail" means any road or trail maintained for bicycles.

"Department" means the Department of Forestry, as defined by § 10.1-1100 of the Code of Virginia.

"Firearm," as defined by § 29.1-100 of the Code of Virginia, means any weapon that will or is designed to or may readily be converted to expel single or multiple projectiles by the action of an explosion of a combustible material.

"Forest or forests" means all state-owned lands designated as a state forest, including therein all sites, roadways, game food patches, ponds, lakes, streams, rivers, beaches, and recreational areas, together with recreational areas, beaches and lakes assigned to the Department of Forestry, for use, development, and administration.

"Forest Superintendent" means the individual designated the forest superintendent by the department or any assistant or assistants the Forest Superintendent may authorize to act for him.

"Group" means several individuals related by a common factor, having structured organization and defined leadership.

"Hiking trail" means any road or trail maintained for pedestrians.

"Hunting" means the lawful hunting of game animals as defined by the Virginia Department of Wildlife Resources.

"Multi-use trail" means any trail maintained for use for horseback riding, bicycling, hiking, or walking.

"Owner" means any person, firm, association, co-partnership, or corporation owning, leasing, or having the extensive use of a sawmill, chipper, debarker or any machinery any forest machinery for use in harvesting forest products, vehicle, animal, or any other property under a lease or otherwise.

"Parking area" means any area on a forest designated for parking of motor vehicles of all types, clearly marked on the ground and so indicated by signs or on state forest maps.

"Permits" means any written license issued by or under authority of the department, permitting the performance of a specified act or acts. Such permits may be purchased from a limited number of designated agents located within the general area of the forests.

"Permittee" means any person, partnership, corporation, company, or association in possession of a valid permit.

"Person" means any natural person, corporation, company, association, joint stock association, firm or co-partnership individual, firm, partnership, corporation, company, association, public or private institution, political subdivision, or government agency.

"Regulation" means any regulation adopted by the Department of Forestry.

"Road" means any road, logging road, trail, or path used in the harvesting and movement of forest products, hunting, or recreation, irrespective of the state of maintenance.

"Silvicultural activity" means any forest management activity, including harvest of timber, construction of roads and trails for forest management purposes, and preparation of property for reforestation.

"State Forests Superintendent" means the individual designated the State Forests Superintendent by the department or any assistant the State Forests Superintendent authorizes to act for in the superintendent.

"Timber sale" means any written signed agreement, pursuant to § 10.1-1107 of the Code of Virginia, wherein the State Forester agrees to sell and the purchaser agrees to purchase any designated forest products or other agricultural crops for a mutually agreed price per unit or lot.

"Unmanned aerial system," "UAS," "unmanned aerial vehicle," or "UAV," also known as a drone, is an aircraft that is remotely controlled and operates without a human pilot on board.

4VAC10-30-30. Territorial scope.

All Virginia State Forests Regulations shall be effective within and upon all state forests, lands, buildings, roads, sites, ponds, lakes, streams, rivers, beaches, trails, food patches, and recreational areas in the Commonwealth which may be that are under the jurisdiction of the department and shall regulate the use thereof of those areas by all persons. Areas designated by the department as state forests are: Appomattox in Buckingham County; Appomattox and Buckingham Counties; Bourassa in Bedford County; Browne in Essex and King and Queen Counties; Chilton Woods in Lancaster County; Conway Robinson in Prince William County; Crawfords in New Kent County; Cumberland in Cumberland County; Devil's Backbone in Shenandoah County; Hawks in Carroll County; Lesesne in Nelson County; Mathews in Grayson County; Niday Place in Craig County; Paul in Rockingham County;

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~~Prince Edward-Gallion in Prince Edward County; Sandy Point in King William County; Whitney in Fauquier County; and Zoar in King William County together with such other areas as the department may from time to time designate~~ Failure to comply with this chapter and other applicable laws and regulations and agency signage may result in revocation of permits or registrations, forfeiture of applicable prices paid, or a Virginia uniform summons, arrest, or prosecution.

4VAC10-30-40. Permits.

A. The department may issue a permit for activities otherwise prohibited in this chapter.

1. Use permits: A Virginia State Forest Use Permit is required for certain activities allowed by the department and authorized by law. The department may charge a fee for the Virginia State Forest Use Permit in accordance with § 10.1-1152 of the Code of Virginia. The holder of a Virginia State Forest Use Permit must always abide by the conditions and restrictions associated with the Virginia State Forest Use Permit and its associated activity. A State Forest Use Permit shall be valid for one year from the date of purchase.

2. Conditional activity permit: A State Forest Conditional Activity Permit grants authority to individuals or groups for specific activities that are otherwise prohibited on state forest property. An application for permit shall be made on a form prescribed by the department and shall be valid only for the period of time that appears on the Conditional Activity Permit.

3. Organized event permit: An Organized Event Permit grants organizers of a specific group the authority to conduct an organized event on state forest property. An Organized Event Permit shall be made on a form prescribed by the department and shall be valid only for the period of time that appears on the Organized Event Permit. The department may charge a fee for the Organized Event Permit in accordance with § 10.1-1152 of the Code of Virginia. This fee eliminates the requirement for one-time users participating in an organized event to obtain an annual Virginia State Forest Use Permit or a State Forest Conditional Activity Permit. The State Forests Superintendent may waive fees.

~~B. Any violation by a permit to do any act shall authorize the same only insofar as it may be performed in strict accordance with the terms and conditions thereof. Any violation by its holder or his agents or employees of the permit holder of any term or condition thereof of the permit shall constitute grounds for its permit revocation by the department, or by its authorized representative.~~

In case of revocation of any permit, all moneys paid for or on account thereof of the permit shall, at the option of the department, be forfeited to and be retained by it, and the department. The permit holder of such permit, together with his and any agents and employees who violated such terms and conditions, shall be jointly and severally liable to the

~~department for all damages and loss suffered by it in excess of the department in addition to money so forfeited and retained; but neither such. Neither the forfeiture and retention by the department of the whole or any part of such the moneys paid for the permit, nor the recovery or collection thereby of such damages, or both, shall in any manner relieve such person or persons from liability to punishment for any violation of any provision of any Virginia State Forests Regulation. A state forest special use permit will be required to hunt, trap, fish, ride bikes, or ride horses on any state forest or portion thereof on which hunting, trapping, fishing, riding bikes, or riding horses is permitted.~~

4VAC10-30-50. Preservation of the forest.

A. No person shall remove, destroy, deface, cut down, scar, mutilate, injure, take, or gather in any manner any tree, flower, artifact, fern, shrub, rock, or other plant or mineral in any forest, except only for botanical or mineral rock collection and then only with approval of the Forest State Forests Superintendent.

B. Edible fruits, berries, fungi, or nuts may be collected for personal or individual use only.

C. Silvicultural activities performed in accordance with an approved prescription by the State Forests Superintendent are exempt from the provisions of this section.

4VAC10-30-60. Buildings, signs, structures, or other property.

A. No person shall in any manner injure, deface, disturb, destroy, or disfigure any part of any forest, nor or any building, structure, sign, equipment, road, trail, field, parking area, or other property found therein in the forest.

B. The department may bill any damage to state forest buildings or structures that is not considered normal wear and tear to the person registering for the building or structure on an itemized cost basis in accordance with the reservation acknowledgment or reservation confirmation.

C. No temporary or permanent structure may be constructed unless by permit, except for a temporary tree stand or blind for the purpose of hunting, which may be placed in a manner that does not cause injury or damage to the tree and must be removed at the conclusion of the hunting season during which it was placed. Tree stands and blinds may be placed two weeks prior to the start of hunting season and must be removed one month after the end of the hunting season for which the structure was established, after which the department may remove and dispose of the structure.

D. The department shall not be responsible for any damage occurring to or injury resulting from the use of any temporary structure, stand, or concealment while on any state forest.

4VAC10-30-70. Refuse and rubbish; disposal. (Repealed.)

No person shall deposit in any part of any forest any garbage, sewerage, refuse, waste, fruit, vegetables, foodstuffs, boxes, tin cans, paper, or other litter or other waste material or obnoxious material, except in containers designed for such purposes, or on areas designated by and under conditions specified by the Forest Superintendent.

4VAC10-30-80. Pollution of waters. (Repealed.)

No person shall in the streams, lakes, or other waters of any forest violate any statute of the Virginia Code relating to the pollution of said waters.

4VAC10-30-90. Disorderly conduct, public nuisance, etc. (Repealed.)

No person, while in any forest, shall disobey a lawful order of a Virginia Forest Superintendent, caretaker, ranger, patrolman or other forest officer; nor commit a nuisance, nor use abusive, profane, or insulting language; nor unreasonably disturb or annoy others; be under the influence of intoxicants or unlawful drugs; do any act tending to or amounting to a breach of the peace nor conduct himself in any disorderly manner whatsoever.

4VAC10-30-100. Gambling. (Repealed.)

Gambling in any forest is prohibited and no person shall bring into the forest or have in his possession while there, any implement or device commonly used, or intended for gambling purposes.

4VAC10-30-110. Intoxicating liquors, beverages or unlawful drugs. (Repealed.)

No person shall become intoxicated, or be under the influence of intoxicants or unlawful drugs, in public while within the confines of any forest. Public display or use of beer, wine, whiskey or other intoxicating liquor, beverage or unlawful drugs, or the containers thereof is prohibited.

4VAC10-30-120. Charges. (Repealed.)

No person 16 years of age or older shall make, use, or gain admittance to, or attempt to use or gain admittance to the facilities in any forest for the use of which a special use permit is required by the department unless he shall obtain a special use permit and pay an annual fee of \$15. Any person under 16 years of age may hunt, trap, fish, ride bikes, or ride horses on any state forest and is not required to obtain a special use permit or pay an annual fee.

4VAC10-30-130. Picnic area. (Repealed.)

Picnicking is allowed only in the areas designated as picnic areas.

4VAC10-30-140. Camping.

No person may maintain a camp, either temporary or permanent, shall be maintained in any forest except under

permit, a Conditional Activity Permit and at such places and for such periods as may be designated by the Forest State Forests Superintendent.

4VAC10-30-150. Bathing, where permitted. (Repealed.)

No person shall bathe, wade, or swim in any waters in a forest except at such times, and in places as the Forest Superintendent may designate as bathing areas, and unless so covered with a bathing suit as to prevent any indecent exposure of the person.

4VAC10-30-160. Dressing and undressing. (Repealed.)

Dressing and undressing, except in bathhouses, tents, trailers, motor homes, campers or vacation cabins, is prohibited.

4VAC10-30-170. Explosives, and firearms, etc.

No person shall bring into or have in any forest any explosive or explosive substance, as defined by § 59.1-137 of the Code of Virginia. This regulation The provisions of this section shall not apply to the lawful carrying of firearms and firearms ammunition. No person shall discharge any firearm except in self-defense or as permitted under lawful hunting activities, as defined by the Virginia Department of Wildlife Resources.

4VAC10-30-180. Fires, and lighted cigarettes, etc.

In any forest, no No person shall kindle, build, maintain, or use a fire in any forest other than in places provided or designated for such purposes except by special permit a Conditional Activity Permit. Any fire shall be continuously under the care and direction of a competent person over 16 years of age or older from the time it is kindled until it is extinguished. No person within the confines of any forest shall throw away or discard any lighted match, cigarette, cigar, or other burning object. Any lighted match, cigarette, cigar, campfire, cooking fire, or other burning object must be entirely extinguished before being thrown away, abandoned, or discarded. All Individuals must comply with all forest fire laws must be complied with.

4VAC10-30-200. Hunting and fishing.

A. No person within the confines of any forest, shall hunt, trap, shoot, injure, kill, or molest in any way any bird or animal; nor shall any. No person have in his possession shall possess any bird or animal, dead or alive, within the forest except any bird or animal designated as a game bird or animal by the Virginia Board of Game and Inland Fisheries Department of Wildlife Resources (DWR), and the trapping of, hunting of, shooting at, or possession of any such bird or animal is prohibited except during the lawful hunting season set for the forest or forest portion thereof by the Virginia Board of Game and Inland Fisheries DWR and only in those forests or portion thereof forest portions designated by the Forest State Forests Superintendent as lawful hunting areas. A state forest special use permit will be required. All provisions of the Virginia Code concerning hunting must be complied with.

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B. Fishing is permitted in designated areas in each forest. A person fishing must have a valid state fishing license and a current Virginia State Forest Use Permit and comply with DWR regulations.

4VAC10-30-210. ~~Fishing. (Repealed.)~~

~~Fishing is permitted in designated areas in each forest, the only stipulation being that persons fishing must have a state fishing license, have a special use permit, and comply with the Virginia Game and Inland Fisheries rules and regulations.~~

4VAC10-30-220. Boating.

Use of boats on ponds, lakes, or streams within forest areas assigned to the administration of the ~~Department of Forestry department~~, in addition to other regulations of other state agencies, must comply with the rules and regulations of the ~~Department department~~ and the Virginia Department of Wildlife Resources, and such use requires a current Virginia State Forest Use Permit. Use of gasoline-fueled motors is prohibited.

4VAC10-30-230. Dogs and other animals.

No person shall cause or permit any animal ~~owned by him, in his custody, or under his control, except those animals of a resident employee and then only in the general area around the employee's residence, and in that person's custody,~~ except a dog restrained by a leash ~~not exceeding six feet in length, or harness,~~ to enter any forest, ~~and each such.~~ Any animal found at large may be seized and disposed of as provided by the law or ordinance covering disposal of stray animals on highways or public property ~~then currently in effect at the place when such where the animals may be animal is~~ seized, except during the lawful hunting season in effect in the particular forest or forest portion thereof. Any owner of an animal that is trained and accompanying the owner for the sole purpose of assisting the owner with mobility is exempt from the provision of this section.

The provisions of this section shall not apply to lawful horse activity as defined in 4VAC10-30-420.

4VAC10-30-240. Sports and games.

~~In any forest, no games or athletic contests shall be allowed except in such places as may be designated therefor. Sports activities, contests, and group events in any forest require an Organized Event Permit issued by the State Forests Superintendent.~~

4VAC10-30-250. Vehicles, where permitted.

A. No person shall drive operate a motorized vehicle anywhere in any forest on any, except on a road during any period where there is a sign or parking area designated by signs erected on or along the particular road or maps indicating that any such the road or parking area is closed open to vehicular motorized vehicle traffic.

B. Driving a motorized vehicle on a gated road is prohibited, except by Conditional Activity Permit. Any motorized vehicle

used on state forest lands must be a highway-legal vehicle in compliance with Virginia Department of Transportation regulations and insured and licensed pursuant to Department of Motor Vehicles regulations. Any operator of a vehicle must possess a valid driver's license issued by the person's state of residency.

C. Persons engaged in silvicultural or maintenance activities are exempt from requirements of this section, except legal requirements described in subsection B of this section.

D. Nothing in this section shall be construed to prohibit the use of electric personal assistive mobility device or class one or class two electric power-assisted bicycles where traditional bicycles are allowed. Class three electric power-assisted bicycles are prohibited on gated roads and trails.

E. When crossing rivers or streams, bicycle or e-bike use shall be confined to bridges, culverts, and designated fords or crossings, if available.

4VAC10-30-260. ~~Obstructing traffic. (Repealed.)~~

~~In any forest, no person or persons shall cause or permit a vehicle or vehicles to obstruct traffic on any road by unnecessary stopping, or to prevent or obstruct by any means the free use by others of any road.~~

4VAC10-30-270. ~~Speed limit. (Repealed.)~~

~~Rate of vehicular speed in any forest in excess of the rate as posted by the Virginia Department of Transportation or Forest Superintendent is prohibited.~~

4VAC10-30-280. ~~View into vehicles. (Repealed.)~~

~~Every car driven through any forest or parked in any parking space in any forest shall have the interior thereof open to full view at all times.~~

4VAC10-30-290. Use of roads.

~~No person shall operate an excessively loaded vehicle on any forest road. The determination of whether a load is excessive will be made by the Forest Superintendent and will be based upon the load and the condition of the road. In the exercise of his professional judgment, the Forest Superintendent may at any time close to public use any forest road, trail, or area.~~

4VAC10-30-300. ~~Meetings, exhibitions, commercial enterprises, etc~~ Commercial activity.

~~No person shall, in any forest, without a permit, sell or offer for sale, hire, lease or let out, any object or merchandise, property, privilege, service or any other thing, or engage in any business or erect any building, booth, tent, stall or any other structure whatsoever. No person to whom any property of any forest by authorized permit has been entrusted for personal use shall hire, lease, let out or sell, the same to any other person commercial activity on state forest lands or in state forest~~

structures unless an agreement or permit is made and approved by the department.

4VAC10-30-310. Advertising.

No person shall (i) erect or post a sign, notice, or advertisement, advertisement of any nature shall be erected or posted at any place within any forest without permission in writing from the Forest Superintendent; nor shall any musical instrument, radio, talking machine, or drum be operated or any (ii) make noise be made for the purpose of attracting attention to any exhibition of any kind at any place within any state forest. The State Forests Superintendent may authorize exceptions for temporary signs that are coincidental to activities approved by either a Conditional Activity Permit or an Organized Event Permit.

4VAC10-30-330. Alms Gifts and contributions.

No person shall within any forest solicit alms gifts or contributions within any forest for any purpose without written permission by the State Forests Superintendent.

4VAC10-30-340. Aviation.

No person shall voluntarily bring, land or cause to descend or alight land or unlawfully operate within or upon any forest; any aeroplane, flying machine airplane, remote control model, aircraft, helicopter, unmanned aerial vehicle, drone, balloon, parachute, or other apparatus for aviation except under permit. "Voluntarily" in this connection shall mean anything other than a forced landing by written permission of the State Forests Superintendent.

4VAC10-30-350. Sale of forest products.

From time to time, forest Forest products and agricultural crops may be sold from state forest land lands under conditions determined by the department and in accordance with law.

4VAC10-30-420. Horses and horseback riding.

A. No person shall use, ride, or drive a horse except to, from, or along designated multi-use trails or roads designated for equestrian use, including across bridges, culverts, and designated fords or crossings, if available.

B. Each equestrian user shall remove from designated parking areas all residues, including manure, generated by the equestrian user's horse.

4VAC10-30-430. Hours of operation.

State forests are open to public use during daylight hours only, unless the forest user is permitted or engaged in lawful hunting activities as defined by the Virginia Department of Wildlife Resources and for other uses as permitted by the State Forests Superintendent.

4VAC10-30-440. Rock climbing and rappelling.

No person shall engage in rock climbing, cliff climbing, or rappelling within the boundaries of a state forest, except at

designated areas and only after obtaining a Conditional Activity Permit.

4VAC10-30-450. Target shooting.

It shall be unlawful to target shoot on any state forest. Target shooting is defined as the discharge of a firearm as defined in § 18.2-308.2:2 of the Code of Virginia, a muzzleloader as defined in 4VAC15-50-71, or archery equipment as defined in 4VAC15-40-20 for purposes other than hunting, trapping, or self-defense.

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 (4VAC10-30)

[Application for State Forest Special Use Permit \(eff. 7/2025\)](#)

VA.R. Doc. No. R25-8285; Filed July 16, 2025, 9:00 a.m.

TITLE 8. EDUCATION

VIRGINIA MUSEUM OF FINE ARTS

Action Withdrawn

Title of Regulation: 8VAC103-10. Museum and Grounds Use and Access (amending 8VAC103-10-30).

Statutory Authority: § 23.1-3218 of the Code of Virginia.

The Virginia Museum of Fine Arts has WITHDRAWN the regulatory action for **8VAC103-10, Museum and Grounds Use and Access**, which was published as a Fast-track Regulation in **41:21 VA.R. 2325-2327 June 2, 2025**. The purpose of the proposed action was, as part of regulatory reduction pursuant to Executive Order 19 (2022), to shorten or remove four redundant sentences related to the posting of operating hours and the use of walkways on the museum campus by cyclists and pedestrians, which would have had a minimal impact on Virginians. The museum received more than the sufficient number of objections to require the standard regulatory process, and, although none objected to the substance of the amendments, after considering the extensive staff hours needed to continue an action that would only remove a small number of discretionary regulations on the public, decided on July 24, 2025, to withdraw this action. The current discretionary regulations on public use of the museum grounds will remain in place. The agency has already made a

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24% reduction in regulations as response to the Governor's Executive Order 19 (2022).

Agency Contact: David Cary, Director of Government Relations, Virginia Museum of Fine Arts, 200 North Arthur Ashe Boulevard, Richmond, VA, telephone (804) 340-1628, or email david.cary@vmfa.museum.

VA.R. Doc. No. R25-8125; Filed August 5, 2025, 12:45 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Proposed Regulation

Title of Regulation: **9VAC20-81. Solid Waste Management Regulations (amending 9VAC20-81-95).**

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 24, 2025.

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.

Basis: Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to supervise and control waste management activities in the Commonwealth and to promulgate regulations necessary to carry out the board's powers and duties.

Purpose: This regulatory action is required to develop regulatory conditions applicable to the offsite open burning of vegetative waste pursuant to Chapter 235 of the 2024 Acts of Assembly. This regulatory change is essential to protect the health, safety and welfare of citizens because the regulatory conditions for the offsite open burning (e.g., minimum setbacks, maximum frequency, and volume of waste to be burned) are necessary to minimize the potential for fire safety concerns, air quality concerns, and complaints.

Substance: Pursuant to Chapter 235 of the 2024 Acts of Assembly, the amendments (i) allow for offsite open burning of vegetative waste if it is impractical or unsafe to destroy such waste on the originating private property and (ii) provide a list of conditions that must be met for an offsite open burn of vegetative waste.

Issues: The primary advantage of this action to the public is the option to open burn vegetative waste off site if the site where the vegetative waste is generated is unsafe or impractical for open burning. The proposed amendments may also reduce the amount of vegetative waste disposed of at permitted solid waste disposal facilities. The primary advantage of this action to the Commonwealth is compliance with Chapter 235 of the

2024 Acts of Assembly. A potential disadvantage of the change is the potential increased open burning of vegetative waste instead of utilizing other management options higher in preference on the waste management hierarchy, such as mulching or composting.

Department of Planning and Budget 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 a 2024 legislative mandate, the Virginia Waste Management Board (board) proposes to amend 9VAC20-81-95 of 9VAC20-81, Solid Waste Management Regulation, to (i) allow for the offsite destruction of vegetative waste by the waste generator, if it is impractical or unsafe to destroy such waste on the originating private property, and (ii) provide a list of conditions that must be met for an offsite open burn of vegetative waste.

Background. The current regulation only allows for the open burning of vegetative waste onsite, at the location where the waste is generated, or at permitted solid waste landfills. The Department of Environmental Quality (DEQ) reports that land clearing and landscaping businesses that typically generate vegetative waste could also process the waste into firewood and mulch, or compost it, which may require a DEQ solid waste permit. However, the regulation does not allow for vegetative waste to be transported to a different location to be burned there. Chapter 235 of the 2024 Acts of Assembly directs the board to amend 9VAC20-81-95 to allow for vegetative waste to be transported to another location for open burning if it is impractical or unsafe to destroy such waste on the premises of private property.² However, the legislation does not specify what conditions would make it impractical or unsafe, nor any conditions for offsite open burning. Thus, DEQ convened a Regulatory Advisory Panel to develop the specific conditions that would fulfil the legislative mandate while protecting environmental and public safety in the vicinity of the open burn. The proposed additions to the regulatory text reflect a consensus of the panel. The proposed amendments would specify that: vegetative waste must be stored in compliance with current requirements in this regulation; no more than one burn shall occur per 60-day period, per location or generator, during which the event shall not exceed 72 hours (no smoldering); no more than 100 cubic yards of vegetative waste shall be burned per event; the offsite location must meet certain criteria regarding the minimum distance from occupied buildings, roadways, surface water bodies, drinking water sources, utility lines, and potentially combustible materials; the offsite location must not fall within a volatile organic compound emissions control area as designated under 9VAC5-20-206; the burning activities must comply with all state and local ordinances; notification shall be provided to the state or local fire marshal at least 48 hours prior to the start of the burn event; the burn must be attended at all times; certain materials cannot be used to start or maintain the burning; and a method of extinguishing the burning must be available at the site for the duration of the burn. Lastly, the amendments would also require

that the burning be extinguished if (i) wind speeds are greater than 20 mph; (ii) an official pollution alert, code red air quality action day, or air quality health advisory is declared for the area; or (iii) visibility on traveled roads or surrounding airports is impaired.

Estimated Benefits and Costs. The proposed amendments do not specify the conditions that would make it impractical or unsafe to conduct an onsite open burn but instead provide a number of conditions that must be met for an offsite open burn. Thus, the proposed amendments provide property owners or their contractors with the flexibility to determine whether it would be safer or more practical to move the vegetative waste offsite. By providing a safe and legal avenue to conduct offsite open burns, the proposed amendments benefit property owners (and any contracted land clearing or landscaping businesses) for whom it would be unsafe or impractical to burn vegetative waste onsite. Although some of the proposed conditions, such as requiring the burn event to be attended at all times or providing prior notice to the fire marshal, may create some costs, property owners or businesses would only incur such costs if they elect to conduct an offsite open burn. Residents in the vicinity of an offsite open burn location, or downwind from such a location, may be negatively affected by the pollution resulting from an open burn. However, the proposed requirements are intended to minimize the risk of harm while also fulfilling the legislative mandate.

Businesses and Other Entities Affected. DEQ reports that any private property owner (or contractor) performing property maintenance or land-clearing may potentially engage in the practice of transporting vegetative waste offsite for further management or disposal. This includes farms, land developers, private landowners, landscaping companies, and utility companies. 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 Since the proposed changes do not create any new costs or reduce benefits, except as required by statute, an adverse impact is not indicated.

Small Businesses⁵ Affected.⁶ This regulation does not have an adverse impact on small businesses. Small businesses that engage in land clearing or landscaping would benefit from having the option to move vegetative waste and conduct an offsite open burn.

Localities⁷ Affected.⁸ The proposed amendments do not affect costs for local governments. However, since the proposed amendments require entities conducting an offsite open burn to adhere to local ordinances, localities that have specific air pollution ordinances or that adopt an ordinance on open burns may be less affected by any resulting pollution. DEQ notes that if a locality wishes to adopt an ordinance relating to air pollution and governing open burning within its jurisdiction, the ordinance must first be approved by the State Air Pollution Control Board pursuant to 9VAC5-30-100.

Projected Impact on Employment. The proposed amendments do not affect total employment.

Effects on the Use and Value of Private Property. By increasing flexibility for the disposal of vegetative waste generated by land clearing or landscaping activity, the proposed amendments

potentially increase the value of certain private property and reduce 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 <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=241&typ=bil&val=ch235>.

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 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:

Pursuant to Chapter 235 of the 2024 Acts of Assembly, the proposed amendments (i) allow for offsite open burning of vegetative waste if it is impractical or unsafe to destroy such waste on the originating private property and (ii) provide a list of conditions that must be met for an offsite open burn of vegetative waste.

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9VAC20-81-95. Identification of solid waste.

A. Wastes identified in this section are solid wastes that are subject to this chapter unless regulated pursuant to other applicable regulations issued by the department.

B. Except as otherwise provided, the definition of solid waste per 40 CFR 261.2 as incorporated by 9VAC20-60-261, as amended, is also hereby incorporated as part of this chapter. Except as otherwise provided, all material definitions, reference materials, and other ancillaries that are a part of 9VAC20-60-261, as amended, are also hereby incorporated as part of this chapter as well.

C. Except as otherwise modified or excepted by 9VAC20-60, the materials listed in the regulations of the ~~United States~~ U.S. Environmental Protection Agency set forth in 40 CFR 261.4(a) are considered a solid waste for the purposes of this chapter. However, these materials are not regulated under the provisions of this chapter if all conditions specified ~~therein by this chapter~~ are met. This list and all material definitions, reference materials, and other ancillaries that are part of 40 CFR Part 261.4(a), as incorporated, modified, or accepted by 9VAC20-60 are incorporated as part of this chapter. In addition, the following materials are not solid wastes for the purpose of this chapter:

1. Materials generated by any of the following, which are returned to the soil as fertilizers:
 - a. The growing and harvesting of agricultural crops.
 - b. The raising and husbanding of animals, including animal manures and used animal bedding.
2. Mining overburden returned to the mine site.
3. Recyclable materials used in manner constituting disposal per 9VAC20-60-266.
4. Wood wastes burned for energy recovery.
5. Materials that are:
 - a. Used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as effective substitutes for commercial products or natural resources, provided the materials are not being reclaimed or accumulated speculatively; or
 - b. Returned to the original process from which they are generated.
6. Materials that are beneficially used as determined by the department under this subsection. The department may consider other waste materials and uses to be beneficial in accordance with the provisions of 9VAC20-81-97.
7. The following materials and uses listed in this part are exempt from this chapter as long as they are managed so that they do not create an open dump, hazard, or public nuisance. These materials and the designated use are considered a beneficial use of waste materials:

a. Clean wood, wood chips, or bark from land clearing, logging operations, utility line clearing and maintenance operations, pulp and paper production, and wood products manufacturing, when these materials are placed in commerce for service as mulch, landscaping, animal bedding, erosion control, habitat mitigation, wetlands restoration, or bulking agent at a compost facility operated in compliance with Part IV (9VAC20-81-300 et seq.) of this chapter;

b. Clean wood combustion residues when used for pH adjustment in compost, liquid absorbent in compost, or as a soil amendment or fertilizer, provided the application rate of the wood ash is limited to the nutrient need of the crop grown on the land on which the wood combustion residues will be applied and provided that such application meets the requirements of the Virginia Department of Agriculture and Consumer Services (2VAC5-400 and 2VAC5-410);

c. Compost that satisfies the applicable requirements of the Virginia Department of Agriculture and Consumer Services (2VAC5-400 and 2VAC5-410);

d. Nonhazardous, contaminated soil that has been excavated as part of a construction project and that is used as backfill for the same excavation or excavations containing similar contaminants at the same site, at concentrations at the same level or higher. Excess contaminated soil from these projects is subject to the requirements of this chapter;

e. Nonhazardous petroleum contaminated soil that has been treated to the satisfaction of the department in accordance with 9VAC20-81-660;

f. Nonhazardous petroleum contaminated soil when incorporated into asphalt pavement products;

g. Solid wastes that are approved in advance of the placement, in writing, by the department or that are specifically mentioned in the facility permit for use as alternate daily cover material or other protective materials for landfill liner or final cover system components;

h. Fossil fuel combustion products that are not CCR when used as a material in the manufacturing of another product (e.g., concrete, concrete products, lightweight aggregate, roofing materials, plastics, paint, flowable fill) or as a substitute for a product or material resource (e.g., blasting grit, roofing granules, filter cloth pre-coat for sludge dewatering, pipe bedding);

i. Tire chips and tire shred when used as a sub-base fill for road base materials or asphalt pavements when approved by the Virginia Department of Transportation or by a local governing body;

j. Tire chips, tire shred, and ground rubber used in the production of commercial products such as mats, pavement sealers, playground surfaces, brake pads, blasting mats, and other rubberized commercial products;

k. Tire chips and tire shred when used as backfill in landfill gas or leachate collection pipes, recirculation lines, and drainage material in landfill liner and cover systems, and gas interception or remediation applications;

l. Waste tires, tire chips, or tire shred when burned for energy recovery or when used in pyrolysis, gasification, or similar treatment process to produce fuel;

m. Waste-derived fuel product, as defined in 9VAC20-81-10, derived from nonhazardous solid waste;

n. Uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil, and rock placed in commerce for service as a substitute for conventional aggregate; and

o. Clean, ground gypsum wallboard when used as a soil amendment or fertilizer, provided the following conditions are met:

(1) No components of the gypsum wallboard have been glued, painted, or otherwise contaminated from manufacture or use (e.g., waterproof or fireproof drywall) unless otherwise processed to remove contaminants.

(2) The gypsum wallboard shall be processed so that 95% of the gypsum wallboard is less than 1/4 inch by 1/4 inch in size, unless an alternate size is approved by the department.

(3) The gypsum wallboard shall be applied only to agricultural, silvicultural, landscaped, or mined lands or roadway construction sites that need fertilization.

(4) The application rate for the ground gypsum wallboard shall not exceed the following rates.

Region	Rate
Piedmont, Mountains, and Ridge and Valley	250 lbs/1,000 ft ²
Coastal Plain	50 lbs/1,000 ft ²
Note: These weights are for dry ground gypsum wallboard.	

D. The following activities are conditionally exempt from this chapter provided no open dump, hazard, or public nuisance is created:

1. Composting of sewage sludge at the sewage treatment plant of generation without addition of other types of solid wastes.

2. Composting of household waste generated at a residence and composted at the site of generation.

3. Composting activities performed for educational purposes as long as no more than 100 cubic yards of materials are ~~onsite~~ on site at any time. Greater quantities will be allowed with suitable justification presented to the department. For

quantities greater than 100 cubic yards, approval from the department will be required prior to composting.

4. Composting of animal carcasses ~~onsite~~ on site at the farm of generation.

5. Composting of vegetative waste or yard waste generated ~~onsite~~ on site by owners or operators of agricultural operations or owners of the real property or those authorized by the owners of the real property, provided:

a. All decomposed vegetative waste and compost produced is utilized on ~~said~~ that property;

b. No vegetative waste or other waste material generated from other sources other than ~~said~~ that property is received;

c. All applicable standards of local ordinances that govern or concern vegetative waste handling, composting, storage, or disposal are satisfied; and

d. ~~They pose~~ The waste poses no nuisance or present no potential threat to human health or the environment.

6. Composting of yard waste by owners or operators who accept yard waste generated ~~offsite~~ off site shall be exempt from all other provisions of this chapter as applied to the composting activities, provided the requirements of 9VAC20-81-397 B are met.

7. Composting of preconsumer food waste and kitchen culls generated ~~onsite~~ on site and composted in containers designed to prohibit vector attraction and prevent nuisance odor generation.

8. Vermicomposting, when used to process Category I, Category II, or Category III feedstocks in containers designed to prohibit vector attraction and prevent nuisance odor generation. If offsite feedstocks are received, no more than 100 cubic yards of materials may be ~~onsite~~ on site at any one time. For quantities greater than 100 cubic yards, approval from the department will be required prior to composting.

9. Composting of sewage sludge or combinations of sewage sludge with nonhazardous solid waste, provided the composting facility is permitted under the requirements of a Virginia Pollution Abatement (VPA) or VPDES permit.

10. Management of solid waste in appropriate containers at the site of its generation, provided that:

a. Putrescible waste is not stored more than seven days between time of collection and time of removal for disposal;

b. Nonputrescible wastes are not stored more than 90 days between time of collection and time of removal for proper management; and

c. Treatment of waste is conducted in accordance with the following:

(1) In accordance with a waste analysis plan that:

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- (a) Contains a detailed chemical and physical analysis of a representative sample of the waste being treated and contains all records necessary to treat the waste in accordance with the requirements of this part, including the selected testing frequency; and
- (b) Is kept in the facility's onsite file and made available to the department upon request.
- (2) Notification is made to the receiving waste management facility that the waste has been treated.
- 11. Using rocks, brick, block, dirt, broken concrete, crushed glass, porcelain, and road pavement as clean fill.
- 12. Storage of less than 100 waste tires at the site of generation, provided that no waste tires are accepted from ~~offsite~~ off site and that the storage will not present a hazard or a nuisance.
- 13. Storage in piles of land-clearing debris, including stumps and brush, clean wood wastes, log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar organic wastes that do not readily decompose, are exempt from this chapter if they meet the following conditions at a minimum:
 - a. The wastes are managed in the following manner:
 - (1) ~~They~~ The wastes do not cause discharges of leachate, or attract vectors.
 - (2) ~~They~~ The wastes cannot be dispersed by wind and rain.
 - (3) Fire is prevented.
 - (4) ~~They~~ The wastes do not become putrescent.
 - b. Any facility storing waste materials under the provisions of this subsection shall obtain a stormwater discharge permit if ~~they~~ the waste materials are considered a significant source under the provisions of 9VAC25-31-120 A 1 c.
 - c. No more than a total of 1/3 acre of waste material is stored ~~onsite~~ on site and the waste pile does not exceed 15 feet in height above base grade.
 - d. Siting provisions.
 - (1) All log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar organic wastes that do not readily decompose are stored at the site of the industrial activity that produces them;
 - (2) A 50-foot fire break is maintained between the waste pile and any structure or tree line;
 - (3) The slope of the ground within the area of the pile and within 50 feet of the pile does not exceed ~~4:1~~ four to one;
 - (4) No waste material may be stored closer than 50 feet to any regularly flowing surface water body or river, floodplain, or wetland; and
 - (5) No stored waste materials shall extend closer than 50 feet to any property line.
- e. If activities at the site cease, any waste stored at the site must be properly managed in accordance with these regulations within 90 days. The director can approve longer timeframes with appropriate justification. Justification must be provided in writing no more than 30 days after ceasing activity at the site.
- f. Waste piles that do not meet these provisions are required to obtain a permit in accordance with the permitting provisions in Part V (9VAC20-81-400 et seq.) of this chapter and meet all of the applicable waste pile requirements in Part IV (9VAC20-81-300 et seq.) of this chapter. Facilities that do not comply with the provisions of this subsection and fail to obtain a permit are subject to the provisions of 9VAC20-81-40.
- 14. Storage of nonhazardous solid wastes and hazardous wastes, or hazardous wastes from very small quantity generators as defined in Virginia Hazardous Waste Management Regulations (9VAC20-60), at a transportation terminal or transfer station in closed containers meeting the U.S. Department of Transportation specifications is exempt from this section and the permitting provisions of Part V (9VAC20-81-400 et seq.) of this chapter, provided such wastes are removed to a permitted storage or disposal facility within 10 days from the initial receipt from the waste generator. To be eligible for this exemption, each shipment must be properly documented to show the name of the generator, the date of receipt by the transporter, and the date and location of the final destination of the shipment. The documentation shall be kept at the terminal or transfer station for at least three years after the shipment has been completed and shall be made available to the department upon request. All such activities shall comply with any local ordinances.
- 15. Open burning of solid wastes as provided in the following:
 - a. For forest management, agriculture practices, and highway construction and maintenance programs approved by the State Air Pollution Control Board.
 - b. For training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel with clearance from the local firefighting authority. Buildings that have not been demolished may be burned under the provisions of this subdivision only. Additionally, burning rubber tires, asphaltic materials, crankcase oil, impregnated wood, or other rubber-based or petroleum-based wastes is permitted when conducting bona fide firefighting instruction.
 - c. For the destruction of classified military documents under the supervision of the designated official.
 - d. For campfires or other fires using clean wood or vegetative waste that are used solely for recreational

purposes, for ceremonial occasions, for outdoor preparation of food, and for warming of outdoor workers.

e. For the onsite destruction of vegetative waste located on the premises of private property, provided that no regularly scheduled collection service for such vegetative waste is available at the adjacent street or public road.

f. For the onsite destruction of household waste by homeowners or tenants, provided that no regularly scheduled collection service for such household waste is available at the adjacent street or public road.

g. For the onsite destruction of clean wood waste and debris waste resulting from property maintenance; from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills; or from any other clearing operations.

h. For the offsite destruction of vegetative waste by the generator, if it is impractical or unsafe to destroy such waste on the premises of the originating private property, provided the offsite open burning meets the following criteria:

(1) Vegetative waste shall be stored in compliance with this subdivision 13;

(2) No more than one burn event shall occur per 60-day period, per location or generator, during which the event shall not exceed 72 hours (no smoldering);

(3) No more than 100 cubic yards of vegetative waste shall be burned per event;

(4) Burning shall be conducted in a location that meets the following conditions, at a minimum:

(a) 1,000 feet from any occupied building, unless the occupants have given prior written permission, other than a building located on the property where the burning is conducted;

(b) 300 feet from any roadway or structure;

(c) 200 feet from potable water wells or other drinking water sources;

(d) 100 feet from any regularly flowing surface water body, river, floodplain, or wetland;

(e) 50 feet from any property line;

(f) 50 feet from any utility lines or tree lines;

(g) 50 feet from any potentially combustible material; and

(h) Not within a volatile organic compound emissions control area as designated under 9VAC5-20-206;

(5) The burning activities shall comply with all state and local ordinances;

(6) Notification shall be provided to the state or local fire marshal at least 48 hours prior to the start of the burn event;

(7) The burn event shall be attended at all times;

(8) No liquid accelerants (e.g., diesel, motor oil) or other prohibited materials (e.g., building debris, treated wood, painted wood, asphaltic materials, tires, metal, garbage) shall be utilized to start or maintain the burning;

(9) A method of extinguishing the burning must be on site and available for the duration of the burn event; and

(10) The burning shall be extinguished if any of the following conditions are present:

(a) Wind speeds greater than 20 mph;

(b) An official pollution alert, code red air quality action day, or air quality health advisory is declared for the area; or

(c) Impairment to visibility on traveled roads or surrounding airports.

16. Open burning of vegetative waste is allowed at a closed landfill that has not been released from postclosure care. The activity shall be included in the text of the postclosure plan and conducted in accordance with § 10.1-1410.3 of the Code of Virginia.

17. Placement of trees, brush, or other vegetation from land used for agricultural or silvicultural purposes on the same property or other property of the same landowner.

18. Using fossil fuel combustion products that are not CCR in one or more of the following applications or when handled, processed, transported, or stockpiled for the following uses:

a. As a base, sub-base, or fill material under a paved road, the footprint of a structure, a paved parking lot, sidewalk, walkway, or similar structure, or in the embankment of a road. In the case of roadway embankments, materials will be placed in accordance with Virginia Department of Transportation specifications, and exposed slopes not directly under the surface of the pavement must have a minimum of 18 inches of soil cover over the fossil fuel combustion products, the top six inches of which must be capable of sustaining the growth of indigenous plant species or plant species adapted to the area. The use, reuse, or reclamation of unamended coal combustion byproduct shall not be placed in an area designated as a 100-year flood plain;

b. Processed with a cementitious binder to produce a stabilized structural fill product that is spread and compacted with proper equipment for the construction of a project with a specified end use; or

c. For the extraction or recovery of materials and compounds contained within the fossil fuel combustion products.

E. The following solid wastes are exempt from this chapter, provided that they are managed in accordance with the requirements promulgated by other applicable state or federal agencies:

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1. Management of wastes regulated by the State Board of Health, the State Water Control Board, the State Air Pollution Control Board, the Department of ~~Mines, Minerals and Energy~~, Department of Agriculture and Consumer Services, or any other state or federal agency with such authority.
2. Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.
3. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal.
4. Fossil fuel combustion products used for mine reclamation, mine subsidence, or mine refuse disposal on a mine site permitted by the Virginia Department of ~~Mines, Minerals and Energy (DMME)~~ when used in accordance with the standards.
5. Solid waste management practices that involve only the onsite placing of solid waste from mineral mining activities at the site of those activities and in compliance with a permit issued by the ~~DMME~~ Department of Energy, that do not include any municipal solid waste, are accomplished in an environmentally sound manner, and do not create an open dump, hazard, or public nuisance are exempt from all requirements of this chapter.
6. Waste or byproduct derived from an industrial process that meets the definition of fertilizer, soil amendment, soil conditioner, or horticultural growing medium as defined in § 3.2-3600 of the Code of Virginia, or whose intended purpose is to neutralize soil acidity (see § 3.2-3700 of the Code of Virginia), and that is regulated under the authority of the Virginia Department of Agriculture and Consumer Services.
7. Fossil fuel combustion products bottom ash or boiler slag used as a traction control material or road surface material if the use is consistent with Virginia Department of Transportation practices. This exemption does not apply to CCR used in this manner.
8. Waste tires generated by and stored at salvage yards licensed by the Department of Motor Vehicles, provided that such storage complies with requirements set forth in § 10.1-1418.2 of the Code of Virginia and such storage does not pose a hazard or nuisance.
9. Tire chips used as the drainage material in construction of seepage drain fields regulated under the authority of the Virginia Department of Health.
- F. The following solid wastes are exempt from this chapter, provided that ~~they~~ the solid wastes are reclaimed or temporarily stored incidentally to reclamation, are not accumulated speculatively, and are managed without creating an open dump, hazard, or a public nuisance:

1. Paper and paper products;
2. Clean wood waste that is to undergo size reduction in order to produce a saleable product, such as mulch;
3. Cloth;
4. Glass;
5. Plastics;
6. Tire chips, tire shred, ground rubber; and
7. Mixtures of above materials only. Such mixtures may include scrap metals excluded from regulation in accordance with the provisions of subsection C of this section.

VA.R. Doc. No. R25-8041; Filed July 24, 2025, 1:33 p.m.

STATE WATER CONTROL BOARD

Final Regulation

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

Titles of Regulations: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-10, 9VAC25-31-440).**

9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (amending 9VAC25-32-10, 9VAC25-32-305).

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

Effective Date: September 24, 2025.

Agency Contact: Neil Zahradka, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4102, or email neil.zahradka@deq.virginia.gov.

Summary:

Pursuant to Chapter 280 of the 2025 Acts of Assembly, the amendments (i) allow land application of sewage sludge for a research project through July 1, 2030, when such land is owned and operated by an institution of higher education in the Commonwealth and (ii) establish notification, setback, and recordkeeping requirements for those projects.

9VAC25-31-10. Definitions.

"Act" means Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), as amended, 33 USC § 1251 et seq.

"Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the CWA (33 USC § 1251 et seq.) and the law, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

"Approval authority" means the Director of the Department of Environmental Quality.

"Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in Part VII (9VAC25-31-730 et seq.) of this chapter and which has been approved by the director or by the administrator in accordance with 9VAC25-31-830.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123.

"Aquaculture project" means a defined managed water area that uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 9VAC25-31-770 and to prevent or reduce the pollution of surface waters. BMPs also include treatment

requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-31-540, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this chapter. Liquid biosolids contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry residue by weight.

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

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Class I sludge management facility" means any POTW identified under Part VII (9VAC25-31-730 et seq.) of this chapter as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator, in conjunction with the director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

"Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a Large CAFO or as a Medium CAFO, or that is designated as a Medium CAFO or a Small CAFO. Any AFO may be designated as a CAFO by the director in accordance with the provisions of 9VAC25-31-130 B.

1. "Large CAFO." An AFO is defined as a Large CAFO if it stables or confines as many or more than the numbers of animals specified in any of the following categories:

- a. 700 mature dairy cows, whether milked or dry;
- b. 1,000 veal calves;
- c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls and cow/calf pairs;
- d. 2,500 swine each weighing 55 pounds or more;
- e. 10,000 swine each weighing less than 55 pounds;
- f. 500 horses;
- g. 10,000 sheep or lambs;
- h. 55,000 turkeys;
- i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

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- k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or
- m. 5,000 ducks if the AFO uses a liquid manure handling system.

2. "Medium CAFO." The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges below that has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

a. The type and number of animals that it stables or confines falls within any of the following ranges:

- (1) 200 to 699 mature dairy cattle, whether milked or dry;
- (2) 300 to 999 veal calves;
- (3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls and cow/calf pairs;
- (4) 750 to 2,499 swine each weighing 55 pounds or more;
- (5) 3,000 to 9,999 swine each weighing less than 55 pounds;
- (6) 150 to 499 horses;
- (7) 3,000 to 9,999 sheep or lambs;
- (8) 16,500 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- (10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
- (11) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system;
- (12) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. Either one of the following conditions are met:

- (1) Pollutants are discharged into surface waters of the state through a man-made ditch, flushing system, or other similar man-made device; or
- (2) Pollutants are discharged directly into surface waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. "Small CAFO." An AFO that is designated as a CAFO and is not a Medium CAFO.

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility that meets the criteria of this definition, or that the department designates under 9VAC25-31-140. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility if it contains, grows, or holds aquatic animals in either of the following categories:

1. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

- a. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
- b. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding; or

2. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

- a. Closed ponds which discharge only during periods of excess run-off; or
- b. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

Cold water aquatic animals include the Salmonidae family of fish (e.g., trout and salmon).

Warm water aquatic animals include the Ictaluridae, Centrarchidae and Cyprinidae families of fish (e.g., respectively, catfish, sunfish and minnows).

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control authority" refers to the POTW if the POTW's pretreatment program submission has been approved in accordance with the requirements of 9VAC25-31-830 or the approval authority if the submission has not been approved.

"Controversial permit" means a water permitting action for which a public hearing has been granted pursuant to 9VAC25-31-315.

"Co-permittee" means a permittee to a VPDES permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"CWA" means the Clean Water Act (33 USC § 1251 et seq.) (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, Public Law 97-117, and Public Law 100-4.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" or "DEQ" means the Department of Environmental Quality.

"Designated project area" means the portions of surface within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants and be harvested within a defined geographic area.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Environmental Quality or an authorized representative.

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means "indirect discharge" as defined in this section.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface run-off that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report" or "DMR" means the form supplied by the department or an equivalent form developed by the permittee and approved by the department, for the reporting of self-monitoring results by permittees.

"Draft permit" means a document indicating the department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a

permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Effluent limitation" means any restriction imposed by the board or department on quantities, discharge rates, and concentrations of pollutants that are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VPDES point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VPDES program.

"General permit" means a VPDES permit authorizing a category of discharges under the CWA and the law within a geographical area.

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 pursuant to § 311 of the CWA.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharge" means the introduction of pollutants into a POTW from any nondomestic source regulated under § 307(b), (c) or (d) of the CWA and the law.

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"Indirect discharger" means a nondomestic discharger introducing pollutants to a POTW.

"Individual control strategy" means a final VPDES permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation or other documentation that shows that applicable water quality standards will be met not later than three years after the individual control strategy is established.

"Industrial residual" means solid or semisolid industrial waste including solids, residues, and precipitates separated or created by the unit processes of a device or system used to treat industrial wastes.

"Industrial user" or "user" means a source of indirect discharge.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resources.

"Institution of higher education" means a public institution of higher education, as that term is defined in § 23.1-100 of the Code of Virginia.

"Interference" means an indirect discharge that, alone or in conjunction with an indirect discharge or discharges from other sources, both: (i) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use, or disposal; and (ii) therefore is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of biosolids use or sewage sludge disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA) the Clean Air Act (42 USC § 701 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.), and the Marine Protection, Research and Sanctuaries Act (33 USC § 1401 et seq.).

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Land application" means, in regard to sewage, biosolids, and industrial residuals, the distribution of treated wastewater of acceptable quality, referred to as effluent, or stabilized sewage sludge of acceptable quality, referred to as biosolids, or industrial residuals by spreading or spraying on the surface of the land, injecting below the surface of the land, or

incorporating into the soil with a uniform application rate for the purpose of fertilizing crops or vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with this chapter are not considered to be treatment works. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. For the purpose of this chapter, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application.

"Land application area" means, in regard to an AFO, land under the control of an AFO owner or operator that is owned, rented, or leased to which manure, litter, or process wastewater from the production area may be applied.

"Land application area" means, in regard to biosolids, the area in the permitted field, excluding the setback area, where biosolids may be applied.

"Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance with § 62.1-44.16 or 62.1-44.19:3 of the Code of Virginia.

"Log sorting facilities" and "log storage facilities" mean facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

"Major facility" means any VPDES facility or activity classified as such by the regional administrator in conjunction with the department.

"Malodor" means an unusually strong or offensive odor associated with biosolids or sewage sludge as distinguished from odors normally associated with biosolids or sewage sludge.

"Man-made" means constructed by man and used for the purpose of transporting wastes.

"Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law, such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a

designated and approved management agency under § 208 of the CWA that discharges to surface waters of the state; (ii) designed or used for collecting or conveying stormwater; (iii) that is not a combined sewer; and (iv) that is not part of a publicly owned treatment works (POTW).

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"National pretreatment standard," "pretreatment standard," or "standard," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means any regulation containing pollutant discharge limits promulgated by EPA in accordance with § 307(b) and (c) of the CWA, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 9VAC25-31-770.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. That is not a new source; and
4. That has never received a finally effective VPDES permit for discharges at that site.

This definition includes an indirect discharger which commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit, and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New source," except when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA that are applicable to such source; or

2. After proposal of standards of performance in accordance with § 306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"New source," when used in Part VII of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under § 307(c) of the CWA that will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

1. a. The building, structure, facility, or installation is constructed at a site at which no other source is located;
- b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- c. The production of wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivision 1 b or c of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source as defined under this subdivision has commenced if the owner or operator has:

- a. Begun, or caused to begin, as part of a continuous on-site construction program:

- (1) Any placement, assembly, or installation of facilities or equipment; or
- (2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities that is necessary for the placement, assembly, or installation of new source facilities or equipment; or

- b. Entered into a binding contractual obligation for the purchase of facilities or equipment that are intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subdivision.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding

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topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia.

"Owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the VPDES program.

"Pass through" means a discharge that exits the POTW into state waters in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation).

"Permit" means an authorization, certificate, license, or equivalent control document issued by the department to implement the requirements of this chapter. Permit includes a VPDES general permit issued as a regulation adopted by the board. Permit does not include any permit that has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Point source" means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater run-off.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material that is injected into a well to

facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the department, and if the department determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"POTW treatment plant" means that portion of the POTW that is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes or by other means, except as prohibited in Part VII of this chapter. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with Part VII of this chapter.

"Pretreatment requirements" means any requirements arising under Part VII (9VAC25-31-730 et seq.) of this chapter including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the board. Pretreatment requirements do not include the requirements of a national pretreatment standard.

"Primary industry category" means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in 40 CFR Part 122 Appendix A.

"Privately owned treatment works" or "PVOTW" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Process wastewater" means any water that, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. Process wastewater from an AFO means water directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns,

manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of the animals; or dust control. Process wastewater from an AFO also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage areas include feed silos, silage bunkers, and bedding materials. The waste containment area includes settling basins, and areas within berms and diversions that separate uncontaminated stormwater. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

"Proposed permit" means a VPDES permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the CWA, which is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Recommencing discharger" means a source which recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Rock crushing and gravel washing facilities" means facilities that process crushed and broken stone, gravel, and riprap.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the law, the CWA and regulations.

"Secondary industry category" means any industry category that is not a primary industry category.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

"Setback area" means the area of land between the boundary of the land application area and adjacent features where biosolids or other managed pollutants may not be land applied.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under § 312 of CWA.

"Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes solids removed during primary, secondary, or advanced wastewater treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

"Sewage sludge use" or "disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use of biosolids, or disposal of sewage sludge.

"Significant industrial user" or "SIU" means:

1. Except as provided in subdivisions 2 and 3 of this definition:
 - a. All industrial users subject to categorical pretreatment standards under 9VAC25-31-780 and incorporated by reference in 9VAC25-31-30; and
 - b. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5.0% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the control authority, on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

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2. The control authority may determine that an industrial user subject to categorical pretreatment standards under 9VAC25-31-780 and 40 CFR Chapter I, Subchapter N is a nonsignificant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:

- a. The industrial user, prior to control authority's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;
- b. The industrial user annually submits the certification statement required in 9VAC25-31-840 together with any additional information necessary to support the certification statement; and
- c. The industrial user never discharges any untreated concentrated wastewater.

3. Upon a finding that an industrial user meeting the criteria in subdivision 1 b of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with Part VII (9VAC25-31-730 et seq.) of this chapter, determine that such industrial user is not a significant industrial user.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

"Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities that are operated in connection with silvicultural activities and from which pollutants are discharged into surface waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA § 404 permit.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sludge-only facility" means any treatment works treating domestic sewage whose methods of biosolids use or sewage sludge disposal are subject to regulations promulgated pursuant to the law and § 405(d) of the CWA, and is required to obtain a VPDES permit.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Standards for biosolids use or sewage sludge disposal" means the regulations promulgated pursuant to the law and § 405(d) of the CWA that govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use of biosolids or disposal of sewage sludge by any person.

"State" means the Commonwealth of Virginia.

"State/EPA agreement" means an agreement between the regional administrator and the state which coordinates EPA and state activities, responsibilities and programs including those under the CWA and the law.

"State Water Control Law" or "Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"Stormwater" means stormwater run-off, snow melt run-off, and surface run-off and drainage.

"Stormwater" discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in this definition, the term includes stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, byproduct, or waste product. The term excludes areas located on plant lands

separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in subdivisions 1 through 10 of this definition) include those facilities designated under the provisions of 9VAC25-31-120 A 1 c or under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation. The following categories of facilities are considered to be engaging in industrial activity for purposes of this subsection:

1. Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards that are exempted under category 10 of this definition);
2. Facilities classified as Standard Industrial Classifications (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373 (Office of Management and Budget (OMB) SIC Manual, 1987);
3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) authority has been released, or except for areas of non-coal mining operations that have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of such operations (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner or operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);
4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC § 6901 et seq.);
5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this

subsection) including those that are subject to regulation under Subtitle D of RCRA;

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as SIC 5015 and 5093;
7. Steam electric power generating facilities, including coal handling sites;
8. Transportation facilities classified as SIC 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 that have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or that are otherwise identified under subdivisions 1 through 7 or 9 and 10 of this definition are associated with industrial activity;
9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with § 405 of the CWA; and
10. Facilities under SIC 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25.

"Submission" means: (i) a request by a POTW for approval of a pretreatment program to the regional administrator or the director; (ii) a request by POTW to the regional administrator or the director for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals; or (iii) a request to EPA by the director for approval of the Virginia pretreatment program.

"Surface waters" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction

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of which would affect or could affect interstate or foreign commerce including any such waters:

- a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. That are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters under this definition;
 5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
 6. The territorial sea; and
 7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Treatment works treating domestic sewage" means a POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities),

used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.

"TWTDS" means treatment works treating domestic sewage.

"Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act (42 USC § 6901 et seq.).

"Upset," except when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40 CFR Part 125, or in the applicable effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on § 301(c), 301(g), 301(h), 301(i), or 316(a) of the CWA.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

"Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means an individual permit issued by the department, or a general permit issued as a regulation adopted by the board pursuant to this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use of biosolids or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

"VPDES application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the department for applying for a VPDES permit.

"Wastewater," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means liquid and water carried industrial

wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, that are contributed to the POTW.

"Wastewater works operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of wastewater works.

"Water Management Division Director" means the director of the Region III Water Management Division of the Environmental Protection Agency or this person's delegated representative.

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

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

9VAC25-31-440. Permits and direct enforceability.

A. The requirements in this part may be implemented through a permit issued to a treatment works treating domestic sewage, in accordance with this chapter. Treatment works treating domestic sewage shall submit a permit application in accordance with this chapter.

B. No person shall use biosolids or dispose of sewage sludge through any practice for which requirements are established in this part except in accordance with such requirements.

C. No person shall land apply Class B biosolids on any land in Virginia unless that land has been identified in an application to issue, reissue, or modify a permit and approved by the department.

D. No person shall land apply, market, or distribute biosolids in Virginia unless the biosolids source has been approved by the department.

E. The permitting requirements of this chapter shall not apply to any land application of biosolids for a research project when such land is owned and operated by an institution of higher education in the Commonwealth. At least 30 days prior to commencing any land application of biosolids, the institution of higher education shall notify the department and the owner of every adjoining property of its intent to land apply such biosolids. The institution of higher education shall comply

with setback and recordkeeping requirements as outlined in the Virginia Pollution Abatement Permit regulation (9VAC25-32).

F. The provisions of subsection E of this section shall expire on July 1, 2030.

9VAC25-32-10. Definitions.

A. The following words and terms, when used in this chapter and in VPA permits issued under this chapter, shall have the meanings defined in the State Water Control Law, unless the context clearly indicates otherwise and as follows:

"Active sewage sludge unit" means a sewage sludge unit that has not closed.

"Aerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

"Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

"Agricultural storm water discharge" means a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation or under the control of an animal waste end-user in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

"Agronomic rate" means, in regard to biosolids, the whole sludge application rate (dry weight basis) designed: (i) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land and (ii) to minimize the amount of nitrogen in the biosolids that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

"Anaerobic digestion" means the biochemical decomposition of organic matter in sewage sludge or biosolids into methane gas and carbon dioxide by microorganisms in the absence of air.

"Animal feeding operation" means a lot or facility where the following conditions are met:

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation

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if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Animal waste" means liquid, semisolid, and solid animal manure and process wastewater, compost, or sludges associated with animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.

"Animal waste end-user" means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an operation under his control.

"Animal waste fact sheet" means the document that details the requirements regarding utilization, storage, and management of animal waste by end-users. The fact sheet is approved by the department.

"Annual pollutant loading rate" or "APLR" means the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

"Annual whole sludge application rate" or "AWSAR" means the maximum amount of biosolids (dry weight basis) that can be applied to a unit area of land during a 365-day period.

"Apply biosolids" or "biosolids applied to the land" means land application of biosolids.

"Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or the environment.

"Best Management Practices (BMP)" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of state waters. BMPs include treatment requirements, operating and maintenance procedures, schedule of activities, prohibition of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

"Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-32-356, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this regulation. Liquid biosolids contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry residue by weight.

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

"Bulk biosolids" means biosolids that are not sold or given away in a bag or other container for application to the land.

"Bypass" means intentional diversion of waste streams from any portion of a treatment works.

"Confined animal feeding operation," for the purposes of this regulation, has the same meaning as an "animal feeding operation."

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys regardless of animal age or sex.

"Controversial permit" means a water permitting action for which a public hearing has been granted pursuant to 9VAC25-32-170 and 9VAC25-32-175.

"Critical areas" and "critical waters" mean areas and waters in proximity to shellfish waters, a public water supply, or recreation or other waters where health or water quality concerns are identified by the Department of Health.

"Cumulative pollutant loading rate" means the maximum amount of an inorganic pollutant that can be applied to an area of land.

"Density of microorganisms" means the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality, or an authorized representative.

"Discharge" means, when used without qualification, a discharge of a pollutant.

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to state waters or waters of the contiguous zone or ocean other than discharge from a vessel or other floating craft when being used as a means of transportation.

"Domestic septage" means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

"Domestic sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

"Draft VPA permit" means a document indicating the department's tentative decision to issue, deny, modify, revoke and reissue, terminate or reissue a VPA permit. A notice of intent to terminate a VPA permit and a notice of intent to deny a VPA permit are types of draft VPA permits. A denial of a

request for modification, revocation and reissuance or termination is not a draft VPA permit.

"Dry tons" means dry weight established as representative of land applied biosolids or industrial residuals and expressed in units of English tons.

"Dry weight" means the measured weight of a sample of sewage sludge, biosolids, or industrial residuals after all moisture has been removed in accordance with the standard methods of testing and often represented as percent solids.

"Dry weight basis" means calculated on the basis of having been dried at 105°C until reaching a constant mass (i.e., essentially 100% solids content).

"Exceptional quality biosolids" means biosolids that have received an established level of treatment for pathogen control and vector attraction reduction and contain known levels of pollutants, such that they may be marketed or distributed for public use in accordance with this regulation.

"Facilities" means, in regard to biosolids, processes, equipment, storage devices and dedicated sites, located or operated separately from a treatment works, utilized for sewage sludge management including, but not limited to, handling, treatment, transport, and storage of biosolids.

"Fact sheet" means the document that details the requirements regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers. The fact sheet is approved by the department in consultation with the Department of Conservation and Recreation.

"Feed crops" means crops produced primarily for consumption by animals.

"Fiber crops" means crops produced primarily for the manufacture of textiles, such as flax and cotton.

"Field" means an area of land within a site where land application is proposed or permitted.

"Food crops" means crops produced primarily for consumption by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

"Forest" means a tract of land thick with trees and underbrush.

"General VPA permit" means a VPA permit issued as a regulation adopted by the board authorizing a category of pollutant management activities.

"Generator" means the owner of a sewage treatment works that produces sewage sludge and biosolids.

"Groundwater" means water below the land surface in the saturated zone.

"Industrial residuals" means solid or semisolid industrial waste including solids, residues, and precipitates separated or created by the unit processes of a device or system used to treat industrial wastes.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resources.

"Institution of higher education" means a public institution of higher education, as that term is defined in § 23.1-100 of the Code of Virginia.

"Land application" means, in regard to sewage, biosolids, and industrial residuals, the distribution of treated wastewater, referred to as "effluent," stabilized sewage sludge, referred to as "biosolids," or industrial residuals by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing crops or vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with this regulation are not to be considered to be treatment works. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. For the purpose of this regulation, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application.

"Land application area" means, in regard to biosolids, the area in the permitted field, excluding the setback areas, where biosolids may be applied.

"Land applier" means someone who land applies biosolids or industrial residuals pursuant to a valid permit from the department as set forth in this regulation.

"Land with a high potential for public exposure" means land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

"Land with a low potential for public exposure" means land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

"Limitation" means any restriction imposed on quantities, rates or concentration of pollutants which are managed by pollutant management activities.

"Liner" means soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less.

"Local monitor" means a person or persons employed by a local government to perform the duties of monitoring the operations of land appliers pursuant to a local ordinance.

"Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance with § 62.1-44.16 or 62.1-44.19:3 of the Code of Virginia.

"Malodor" means an unusually strong or offensive odor associated with biosolids or sewage sludge as distinguished from odors commonly associated with biosolids or sewage sludge.

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"Monitoring report" means forms supplied by the department for use in reporting of self-monitoring results of the permittee.

"Monthly average" means the arithmetic mean of all measurements taken during the month.

"Municipality" means a city, county, town, district association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge or biosolids management; or a designated and approved management agency under § 208 of the federal Clean Water Act, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity; or an integrated waste management facility as defined in § 201(e) of the federal Clean Water Act, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge or biosolids.

"Nonpoint source" means a source of pollution, such as a farm or forest land runoff, urban storm water runoff or mine runoff that is not collected or discharged as a point source.

"Odor sensitive receptor" means, in the context of land application of biosolids, any health care facility, such as hospitals, convalescent homes, etc. or a building or outdoor facility regularly used to host or serve large groups of people such as schools, dormitories, or athletic and other recreational facilities.

"Operate" means the act of any person who may have an impact on either the finished water quality at a waterworks or the final effluent at a sewage treatment works, such as to (i) place into or take out of service a unit process or unit processes, (ii) make or cause adjustments in the operation of a unit process or unit processes at a treatment works, or (iii) manage sewage sludge or biosolids.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks or wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Other container" means either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

"Overflow" means the unintentional discharge of wastes from any portion of a treatment works.

"Owner" means the Commonwealth or any of its political subdivisions including sanitary districts, sanitation district commissions and authorities; federal agencies; any individual; any group of individuals acting individually or as a group; or any public or private institution, corporation, company, partnership, firm, or association that owns or proposes to own a sewerage system or treatment works as defined in § 62.1-44.3 of the Code of Virginia.

"Pasture" means land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

"Pathogenic organisms" means disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

"Permittee" means an owner or operator who has a currently effective VPA permit issued by the department or a general permit issued as a regulation adopted by the board.

"Person who prepares biosolids" means either the person that generates biosolids during the treatment of domestic sewage in a treatment works or the person that derives the material from sewage sludge.

"pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25°C or measured at another temperature and then converted to an equivalent value at 25°C.

"Place sewage sludge" or "sewage sludge placed" means disposal of sewage sludge on a surface disposal site.

"Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agricultural land.

"Pollutant" means, in regard to wastewater, any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by the Department of Energy unless the department determines that such injection or disposal will result in the degradation of ground or surface water resources.

"Pollutant" means, in regard to sewage sludge or biosolids, an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction

in reproduction), or physical deformations in either organisms or offspring of the organisms.

"Pollutant limit" means a numerical value that describes the amount of a pollutant allowed per unit amount of biosolids (e.g., milligrams per kilogram of total solids), the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare), or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

"Pollutant management activity" means a treatment works with a potential or actual discharge to state waters, but which does not have a point source discharge to surface waters.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters or soil as will, or is likely to, create a nuisance or render such waters or soil: (i) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (ii) unsuitable despite reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses. Such alteration is also deemed to be pollution, if there occurs: (a) an alteration of the physical, chemical, or biological property of state waters or soil, or a discharge or a deposit of sewage, industrial wastes, or other wastes to state waters or soil by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of, or discharge, or deposit, to state waters or soil by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters or soil; or (c) the contravention of standards of air or water quality duly established by the board.

"Poultry grower" or "grower" means any person who owns or operates a confined poultry feeding operation.

"Poultry waste" means dry poultry litter and composted dead poultry.

"Poultry waste broker" or "broker" means a person who possesses or controls poultry waste that is not generated on an animal feeding operation under his operational control and transfers or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined as a hauler for the purposes of this regulation.

"Poultry waste end-user" means any recipient of transferred poultry waste who stores or utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an operation under his control.

"Poultry waste hauler" or "hauler" means a person who provides transportation of transferred poultry waste from one entity to another and is not otherwise involved in the transfer or transaction of the waste nor responsible for determining the recipient of the waste. The responsibility of the recordkeeping and reporting remains with the entities to which the service was provided: grower, broker, and end-user.

"Primary sludge" means sewage sludge removed from primary settling tanks that is readily thickened by gravity thickeners.

"Privately owned treatment works (PVOTW)" means any sewage treatment works not publicly owned.

"Process" means a system, or an arrangement of equipment or other devices that remove from waste materials pollutants including, but not limited to, a treatment works or portions thereof.

"Public contact site" means land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, and golf courses.

"Publicly owned treatment works (POTW)" means any sewage treatment works that is owned by a state or municipality. Sewers, pipes, or other conveyances are included in this definition only if they convey wastewater to a POTW providing treatment.

"Public hearing" means a fact-finding proceeding held to afford interested persons an opportunity to submit factual data, views, and arguments to the department.

"Reclamation site" means drastically disturbed land that is reclaimed using biosolids. This includes, but is not limited to, strip mines and construction sites.

"Run-off" means rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the federal Clean Water Act (33 USC 1251 et seq.), the law, and board regulations, standards and policies.

"Setback area" means the area of land between the boundary of the land application area and adjacent features where biosolids or other managed pollutants may not be land applied.

"Sewage" means the water-carried and non-water-carried human excrement, kitchen, laundry, shower, bath, or lavatory wastes, separately or together with such underground, surface, storm, and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments, or other places.

"Sewage sludge" means any solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

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"Sewage sludge unit" means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include surface waters.

"Sewage sludge use or disposal" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

"Site" means the area of land within a defined boundary where an activity is proposed or permitted.

"Sludge" means solids, residues, and precipitates separated from or created by the unit processes of a treatment works.

"Sludge management" means the treatment, handling, transportation, storage, use, distribution, or disposal of sewage sludge.

"Specific oxygen uptake rate" or "SOUR" means the mass of oxygen consumed per unit time per mass of total solids (dry weight basis) in the sewage sludge.

"State waters" means all water on the surface or under the ground wholly or partially within or bordering the state or within its jurisdiction.

"State Water Control Law (law)" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"Store sewage sludge" or "storage of sewage sludge" means the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

"Substantial compliance" means designs and practices that do not exactly conform to the standards set forth in this chapter as contained in documents submitted pursuant to 9VAC25-32-60, but whose construction or implementation will not substantially affect health considerations or performance.

"Supernatant" means a liquid obtained from separation of suspended matter during sludge treatment or storage.

"Surface disposal site" means an area of land that contains one or more active sewage sludge units.

"Surface water" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate "wetlands";
3. All other waters such as inter/intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

- a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

- b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

- c. Which are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as surface waters of the United States under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. "Wetlands" adjacent to waters, other than waters that are themselves wetlands, identified in subdivisions 1 through 6 of this definition.

"Total solids" means the materials in sewage sludge that remain as residue when the sewage sludge is dried to 103°C to 105°C.

"Toxic pollutant" means any pollutant listed as toxic under § 307 (a)(1) of the CWA or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing § 405 (d) of the CWA.

"Toxicity" means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health, or other adverse environmental effects.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treat sewage sludge" or "treatment of sewage sludge" means the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

"Treatment works" means either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature. Treatment works may include but are not limited to pumping, power, and other equipment and their appurtenances; septic tanks; and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment. "Treatment works" does not include biosolids use on privately owned agricultural land.

"Twenty-five-year, 24-hour storm event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the

National Weather Service or appropriate regional or state rainfall probability information.

"Unstabilized solids" means organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit limitations because of factors beyond the permittee's reasonable control. An upset does not include noncompliance caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Use" means to manage or recycle a processed waste product in a manner so as to derive a measurable benefit as a result of such management.

"Variance" means a conditional approval based on a waiver of specific regulations to a specific owner relative to a specific situation under documented conditions for a specified period of time.

"Vector attraction" means the characteristic of biosolids or sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

"Virginia Pollution Abatement (VPA) permit" means a document issued by the department, pursuant to this chapter, authorizing pollutant management activities under prescribed conditions or a general permit issued as a regulation adopted by the board in accordance with 9VAC25-32-260.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued by the department pursuant to 9VAC25-31, authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters or a general permit issued as a regulation adopted by the board in accordance with 9VAC25-31-171.

"Volatile solids" means the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550°C in the presence of excess air.

"VPA application" means the standard form or forms approved by the department for applying for a VPA permit.

"Waste storage facility" means a (i) waste holding pond or tank used to store manure prior to land application, (ii) lagoon or treatment facility used to digest or reduce the solids or nutrients, or (iii) structure used to store manure or waste.

"300 animal units" means 300,000 pounds of live animal weight or the following numbers and types of animals:

- a. 300 slaughter and feeder cattle;
- b. 200 mature dairy cattle (whether milked or dry cows);
- c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers.

"Water quality standards" means the narrative statements for general requirements and numeric limits for specific requirements that describe the water quality necessary to meet and maintain reasonable and beneficial uses. Such standards are established by the board under § 62.1-44.15 (3a) of the Code of Virginia.

B. Generally used technical terms not defined in subsection A of this section or the department's latest definitions of technical terms as used to implement § 62.1-44.15 of the Code of Virginia shall be defined in accordance with "Glossary-Water and Wastewater Control Engineering" published by the American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and the Water Environment Federation (WEF).

9VAC25-32-305. Permits.

A. No owner shall cause or allow any land application, marketing, or distribution of biosolids except in compliance with a permit issued by the department that authorizes these activities.

B. A separate biosolids use permit shall be issued for each political jurisdiction (county or city) where land application is proposed.

C. No person shall land apply Class B biosolids on any land in Virginia unless that land has been identified in an application to issue, reissue or modify a permit and approved by the department.

D. No person shall land apply, market, or distribute biosolids in Virginia unless the biosolids source has been approved by the department.

E. The permitting requirements of this chapter shall not apply to any land application of biosolids for a research project when such land is owned and operated by an institution of higher education in the Commonwealth. At least 30 days prior to commencing any land application of such biosolids, the institution of higher education shall notify the department and the owner of every adjoining property of its intent to land apply such biosolids. The institution of higher education shall

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comply with setback requirements in 9VAC25-32-560 and applicable recordkeeping requirements in this chapter.

F. The provisions of subsection E of this section shall expire on July 1, 2030.

VA.R. Doc. No. R26-8298; Filed July 24, 2025, 7:59 a.m.

Final Regulation

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

Title of Regulation: 9VAC25-110. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day (amending 9VAC25-110-10 through 9VAC25-110-80).

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

Effective Date: August 1, 2026.

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

Summary:

The amendments (i) revise the term of the general permit to August 1, 2026, through July 31, 2031; (ii) update the publication date of federal regulations incorporated by reference; (iii) revise language to be consistent with Chapter 356 of the 2022 Acts of Assembly; (iv) adjust the annual monitoring period to match the new permit term; (v) revise electronic reporting language addressing permit applications to clarify that registration statements are subject to electronic submittal requirements once specified conditions are met; (vi) clarify that discharge monitoring reports for buildings or dwellings other than individual single family dwellings submitted to the department are subject to electronic submittal requirements once specified

conditions are met; (vii) revise the policy for Potomac River embayment monitoring requirements to clarify that monitoring results for buildings or dwellings other than individual single family dwellings are subject to electronic submission requirements; and (viii) revise the 24-hour noncompliance reporting requirements to include online reporting.

9VAC25-110-10. Definitions.

The words and terms used in this chapter shall have the same meanings as given in the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the VPDES Permit Regulation (9VAC25-31), unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"7Q10" means the lowest flow averaged over a period of seven consecutive days that can be statistically expected to occur once every 10 years.

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

"Combined application" means the Virginia Department of Health Discharging System Application for Single Family Dwellings Discharging Sewage Less Than or Equal to 1,000 Gallons per Day and ~~State Water Control Board~~ Virginia Department of Environmental Quality Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Domestic Sewage Discharges Less Than or Equal to 1,000 Gallons per Day. This application combines the VDH Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (12VAC5-640) requirements with the ~~board's~~ department's registration statement requirements.

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

"Domestic sewage" means the water-carried human wastes from residences, buildings, industrial establishments, or other places.

"Individual single family dwelling" means a structure, including any accessory structure such as a garage or pool house, housing one family or household or one that is designed for one family ~~only~~. When a treatment works serving an individual single family dwelling has additional unused connections, it remains a treatment works serving an individual single family dwelling until such time that an additional single family dwelling is connected to the treatment works.

"Receiving water" means a creek, stream, river, lake, estuary, groundwater formation, or other body of water into which treated waste or untreated waste is discharged.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a ~~waterbody~~ water body

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

"VDH" means the Virginia Department of Health.

9VAC25-110-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published as of July 1, ~~2024~~ 2024; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

9VAC25-110-20. Purpose; effective date of permit.

A. This general permit regulation governs domestic sewage discharges to surface waters from treatment works with a design discharge flow of less than or equal to 1,000 gallons per day on a monthly average.

B. This general VPDES permit ~~will become~~ becomes effective ~~on August 2, 2024~~ on August 1, 2026, and it expires ~~on July 31, 2026~~ on July 31, 2031. With respect to a particular dwelling, building, or site served, this general permit shall become effective upon the dwelling, building, or site served owner's compliance with the provisions of 9VAC25-110-60.

9VAC25-110-60. Authorization to discharge.

A. Any owner of a treatment works governed by this general permit is hereby authorized to discharge treated domestic sewage to surface waters of the Commonwealth of Virginia, provided that:

1. The owner submits a registration statement, if required to do so, in accordance with 9VAC25-110-70 and that registration statement is accepted by the ~~board~~ department. For an individual single family dwelling, the owner shall submit a combined application in place of a registration statement;
2. The owner complies with the effluent limitations and other requirements of 9VAC25-110-80; and
3. The ~~board~~ department has not notified the owner, in accordance with subsection B of this section, that the discharge is not eligible for coverage under this permit.

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

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

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

3. The owner is proposing to discharge to surface waters in an area where there are central sewage facilities reasonably available, as determined by the ~~board~~ department;

4. The owner of any proposed treatment works or any treatment works that has not previously been issued a VPDES permit has applied to the Virginia Department of Health for an onsite sewage disposal system permit, and the Virginia Department of Health has determined that an onsite system is available to serve that parcel of land in accordance with the criteria in 12VAC5-640;

5. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards; or

6. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

C. Compliance with this general permit constitutes compliance, for purposes of enforcement, with the federal Clean Water Act §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b), and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general VPDES permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation, including, for owners of sewage treatment works that serve individual single family dwellings, the Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (12VAC5-640) of the Virginia Department of Health adopted pursuant to §§ 32.1-12, 32.1-163, and 32.1-164 of the Code of Virginia and, for owners of sewage treatment works that serve buildings or dwellings other than individual single family dwellings, the Sewage Collection and Treatment Regulations (9VAC25-790) adopted by the State Water Control Board pursuant to § 62.1-44.19 of the Code of Virginia.

D. Continuation of permit coverage.

1. Permit coverage shall expire at the end of the applicable permit term. However, expiring permit coverages are continued if the owner has submitted a complete registration statement or, for an individual single family dwelling, a combined application, at least 60 days prior to the expiration date of the permit; or a later submittal date established by the ~~board~~ department, which cannot extend beyond the expiration date of the permit. Where the expiring permit coverage was originally based on automatic renewal as found in 9VAC25-110-70 A 2 b, such coverage is continued provided the owner continues to meet the automatic renewal criteria. The permittee is authorized to continue to discharge until such time as the ~~board~~ department either:

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- a. Issues coverage to the owner under this general permit; or
 - b. Notifies the owner that the discharge is not eligible for coverage under this general permit.
2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the ~~board~~ department may choose to do any or all of the following:
- a. Initiate enforcement action based upon the general permit coverage that has been continued;
 - b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the administratively continued coverage or be subject to enforcement action for operating without a permit;
 - c. Issue an individual permit with appropriate conditions; or
 - d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-110-70. Registration statement.

A. Deadlines for submitting registration statement. Any owner seeking coverage under this general permit, and who is required to submit a registration statement, shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the VPDES General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons per Day. For an individual single family dwelling, the owner shall submit a combined application in place of the registration statement.

1. New treatment works. Any owner proposing a new discharge shall submit a complete registration statement, or for an individual single family dwelling a combined application, to the department at least 60 days prior to the date planned for commencing operation of the treatment works or a later submittal date established by the ~~board~~ department.
2. Existing treatment works.
 - a. Any owner of an existing treatment works covered by an VPDES individual permit who is proposing to be covered by this general permit shall submit a complete registration statement, or for an individual single family dwelling a combined application, at least 240 days prior to the expiration date of the individual VPDES permit or a later submittal date established by the ~~board~~ department.
 - b. Any owner of a treatment works that was authorized to discharge under the expiring general permit and who intends to continue coverage under this general permit, is automatically covered by this general permit and is not required to submit a registration statement, or for an

individual single family dwelling a combined application, if:

- (1) The ownership of the treatment works has not changed since the registration statement or combined application for coverage under the expiring general permit was submitted, or, if the ownership has changed (i) a new registration statement or combined application or (ii) VPDES Change of Ownership form was submitted to the department by the new owner at the time of the title transfer;
 - (2) There has been no change in the design or operation, or both, of the treatment works since the registration statement or combined application for coverage under the expiring general permit was submitted;
 - (3) For treatment works serving individual single family dwellings, VDH has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the ~~board~~ department. If VDH objects to the automatic renewal for this treatment works, the owner will be notified by the ~~board~~ department in writing; and
 - (4) For treatment works serving buildings or dwellings other than individual single family dwellings, the ~~board~~ department has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the ~~board~~ department. If the ~~board~~ department objects to the automatic renewal for this treatment works, the owner will be notified by the ~~board~~ department in writing.
- c. Any owner of a treatment works that was authorized to discharge under the expiring general permit that does not qualify for automatic permit coverage renewal shall submit a complete registration statement, or for an individual single family dwelling a combined application, to the department at least 60 days prior to the expiration of the existing general permit or a later submittal date established by the ~~board~~ department.

3. Late registration statements. Registration statements, or for individual single family dwellings combined applications, for existing treatment works not covered under subdivision 2 b of this subsection will be accepted after the expiration of the existing general permit but authorization to discharge will not be retroactive.

B. Registration statement. The registration statement shall contain the following information:

1. a. Indicate if the building served by the treatment works is an individual single family dwelling. (If it is an individual single family dwelling, see the requirement to submit a combined application in 9VAC25-110-60 A 1.) If the building is not an individual single family dwelling, describe the use of the building or site served.

- b. Name and street address of the building or site served by the treatment works.
 2. a. Name, mailing address, email address (where available), and telephone number of the owner of the treatment works. Indicate if the owner is or will be the occupant of the dwelling or building served by the treatment works.
 - b. If the owner is not or will not be the occupant of the dwelling or building, provide an alternate contact name, mailing address, email address (where available), and telephone number of the dwelling or building, if available.
 3. Name of the water body receiving the discharge. Outfall latitude and longitude. Indicate if the discharge point is on a stream that usually flows during dry weather.
 4. The amount of discharge from the treatment works; in gallons per day, on a monthly average, and the design flow of the treatment works; in gallons per day.
 5. A description of any pollutants, other than domestic sewage, to be discharged.
 6. For a proposed treatment works, indicate if there are central sewage facilities available to serve the building or site.
 7. If the treatment works currently has a VPDES permit, provide the permit number. Indicate if the treatment works has been built and begun discharging.
 8. For the owner of any proposed treatment works or any treatment works that has not previously been issued a VPDES permit:
 - a. A ~~7.5-minute~~ 7.5-minute U.S. Geological Survey (USGS) topographic map or equivalent (e.g., a ~~computer generated~~ computer-generated map) that indicates the discharge point, the location of the property to be served by the treatment works, and the location of any wells, springs, other water bodies, and any residences within 1/2 mile downstream from the discharge point;
 - b. A site diagram of the existing or proposed treatment works; to include the property boundaries, the location of the dwelling, building, or site served, the individual sewage treatment units, the receiving water body, and the discharge line location; and
 - c. A copy of the notification from the Virginia Department of Health that an onsite sewage disposal system permit was applied for and that the Virginia Department of Health has determined that an onsite system cannot be constructed to serve that parcel of land.
 9. Operation and maintenance.
 - a. For the owner of a treatment works serving an individual single family dwelling, operation and maintenance requirements are specified in VDH regulations at 12VAC5-640;
 - b. For the owner of a treatment works serving a building or dwelling other than an individual single family dwelling, operation and maintenance must be consistent with Part I D 2 b, which requires that such owners engage a licensed operator.
 10. State Corporation Commission entity identification number for dwellings other than individual single family dwellings if the facility is required to obtain an entity identification number by law.
 11. The following certification: "I hereby grant to duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property where the treatment works is located for the purpose of determining compliance with or the suitability of coverage under the General Permit. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."
 - C. The registration statement or combined application shall be signed in accordance with 9VAC25-31-110 A of the VPDES Permit Regulation.
 - D. The registration statement or combined application shall be delivered to the department's regional office serving the area where the treatment facility is located by either postal or electronic mail. Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements ~~or combined applications~~), as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least ~~three months~~ a three-month notice provided between the notification from the department and the date after which such forms must be submitted electronically.
- 9VAC25-110-80. General permit.**
- Any owner whose registration statement is accepted by the ~~board department~~, or whose permit coverage is automatically renewed, shall comply with the requirements contained ~~herein~~ in this general permit and be subject to all requirements of 9VAC25-31-170.

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General Permit No.: VAG40
Effective Date: August 2, 2021 ~~1, 2026~~
Expiration Date: July 31, 2026 ~~2031~~

GENERAL PERMIT FOR DOMESTIC SEWAGE DISCHARGES OF LESS THAN OR EQUAL TO 1,000 GALLONS PER DAY

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

In compliance with the provisions of the Clean Water Act (33 USC § 1251 et seq.), as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of treatment works with domestic sewage discharges of a design flow of less than or equal to 1,000 gallons per day on a monthly average are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in board regulations that prohibit such discharges.

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

Part I

Effluent Limitations, Monitoring Requirements, and Special Conditions

A. Effluent limitations and monitoring requirements - receiving waters where the 7Q10 flows are less than 0.2 MGD.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters where the 7Q10 flows are less than 0.2 MGD.

The discharge shall be limited and monitored by the permittee as specified in the following table:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD) ⁽¹⁾	NA	NL	1/year	Estimate
BOD ₅	NA	30 mg/l	1/year	Grab
Total Suspended Solids	NA	30 mg/l	1/year	Grab
Total Residual Chlorine ⁽²⁾				
After contact tank	1.0 mg/l	NA	1/year	Grab
Final effluent	NA	0.016 mg/l ⁽⁶⁾	1/year	Grab
E. coli ⁽³⁾	NA	126 CFU/100 ml	1/year	Grab
enterococci ⁽⁴⁾	NA	35 CFU/100 ml	1/year	Grab
Fecal Coliform Bacteria ⁽⁵⁾	NA	200 CFU/100 ml	1/year	Grab
pH (standard units)	6.0	9.0	1/year	Grab
Dissolved Oxygen	5.0 mg/l ⁽⁶⁾	NA	1/year	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

⁽¹⁾The design flow of this treatment works is less than or equal to 1,000 gallons per day.

⁽²⁾Applies only when chlorine is used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).

(3)Applies only when methods other than chlorine are used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

(4)Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

(5)Applies only when the discharge is into shellfish waters (see 9VAC25-260-160 for the description of what are shellfish waters). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

(6)Does not apply when the receiving stream is an ephemeral stream. "Ephemeral streams" are drainage ways, ditches, hollows, or swales that contain only (i) flowing water during or immediately following periods of rainfall or (ii) water supplied by the discharger. These waterways would normally have no active aquatic community.

2. All monitoring data required by Part I A 1 shall be maintained on site in accordance with Part II B. Monitoring results for treatment works serving buildings or dwellings other than individual single family dwellings shall be submitted to the department on a Discharge Monitoring Report (DMR) no later than ~~the 10th of September~~ August 10 following the monitoring period ~~and are subject to the electronic submission requirements specified in Part II C 1.~~ The monitoring period is ~~September~~ August 1 through ~~August~~ July 31. A copy of the maintenance log required by Part I D 2 b (2) (e) shall also be submitted with the DMR. Monitoring results for treatment works serving individual single family dwellings are submitted to the Virginia Department of Health in accordance with 12VAC5-640.

[~~3. The 30-day average percent removal for BOD₅ and total suspended solids shall not be less than 85%.~~]

B. Effluent limitations and monitoring requirements - receiving waters where the 7Q10 flows are equal to or greater than 0.2 MGD.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters where the 7Q10 flows are equal to or greater than 0.2 MGD.

The discharge shall be limited and monitored by the permittee as specified in the following table:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD) ⁽¹⁾	NA	NL	1/year	Estimate
BOD ₅	NA	30 mg/l	1/year	Grab
Total Suspended Solids	NA	30 mg/l	1/year	Grab
Total Residual Chlorine ⁽²⁾				
After contact tank	1.0 mg/l	NA	1/year	Grab
Final effluent	NA	2.0 mg/l	1/year	Grab
E. coli ⁽³⁾	NA	126 CFU/100 ml	1/year	Grab
enterococci ⁽⁴⁾	NA	35 CFU/100 ml	1/year	Grab
Fecal Coliform Bacteria ⁽⁵⁾	NA	200 CFU/100 ml	1/year	Grab
pH (standard units)	6.0	9.0	1/year	Grab
NL = No Limitation, monitoring required				
NA = Not Applicable				

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- (1)The design flow of this treatment works is less than or equal to 1,000 gallons per day.
- (2)Applies only when chlorine is used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).
- (3)Applies only when methods other than chlorine are used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.
- (4)Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.
- (5)Applies only when the discharge is into shellfish waters (see 9VAC25-260-160 for the description of what are shellfish waters). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

2. All monitoring data required by Part I B 1 shall be maintained on site in accordance with Part II B. Monitoring results for treatment works serving buildings or dwellings other than individual single family dwellings shall be submitted to the department on a Discharge Monitoring Report (DMR) no later than ~~the 10th of September~~ August 10 following the monitoring period ~~and are subject to the electronic submission requirements specified in Part II C 1.~~ The monitoring period is ~~September~~ August 1 through ~~August~~ July 31. A copy of the maintenance log required by Part I D 2 b (2) (e) shall also be submitted with the DMR. Monitoring results for treatment works serving individual single family dwellings are submitted to the Virginia Department of Health in accordance with 12VAC5-640.

[~~3. The 30-day average percent removal for BOD₅ and total suspended solids shall not be less than 85%.~~]

C. Effluent limitations and monitoring requirements - discharges to receiving waters subject to the Policy for the Potomac River Embayments (9VAC25-415).

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters subject to the Policy for the Potomac River Embayments (9VAC25-415).

Discharges subject to the requirements in 9VAC25-415-40⁽¹⁾ shall be limited and monitored by the permittee as specified in the following table:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD) ⁽²⁾	NA	NL	1/3 months	Estimate
pH (standard units)	6.0	9.0	1/3 months	Grab
cBOD ₅	NA	5 mg/l	1/3 months	Grab
Total Suspended Solids	NA	6.0 mg/l	1/3 months	Grab
Ammonia as N (Apr 1 - Oct 31)	NA	1.0 mg/l	1/3 months	Grab
Ammonia as N (Nov 1 - Mar 31)	NA	3.1 mg/l	1/3 months	Grab
Dissolved Oxygen	6.0 mg/l	NA	1/3 months	Grab
E. coli ⁽⁴⁾	NA	126 CFU/100 ml	1/3 months	Grab
enterococci ⁽⁵⁾	NA	35 CFU/100 ml	1/3 months	Grab

Total Phosphorus	NA	0.18 mg/l	1/3 months	Grab
Total Residual Chlorine ⁽³⁾				
After contact tank	1.0 mg/l	NA	1/3 months	Grab
Final effluent	NA	0.016 mg/l	1/3 months	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

⁽¹⁾Note conditional exemptions in 9VAC25-415-30.

⁽²⁾The design flow of this treatment works is less than or equal to 1,000 gallons per day.

⁽³⁾Applies only when chlorine is used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).

⁽⁴⁾Applies only when methods other than chlorine are used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

⁽⁵⁾Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

2. All monitoring data required by Part I C 1 shall be maintained on site in accordance with Part II B. Monitoring results shall be submitted to the department on a Discharge Monitoring Report (DMR) no later than the 10th day of the month following the monitoring period. Monitoring results for treatment works serving buildings or dwellings other than individual single family dwellings are subject to the electronic submission requirements specified in Part II C 1. The quarterly monitoring periods shall be January through March, April through June, July through September, and October through December. A copy of the maintenance log required by Part I D 2 b (2) (e) shall also be submitted with the DMR. Monitoring results for treatment works serving individual single family dwellings shall also be submitted to the Virginia Department of Health in accordance with 12VAC5-640.

~~[3. The 30-day average percent removal for BOD₅ and total suspended solids shall not be less than 85%.]~~

D. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.

2. Operation and maintenance.

a. Treatment works serving individual single family dwellings. Operation and maintenance requirements for treatment works serving individual single family dwellings are specified in the Virginia Department of Health regulations at 12VAC5-640.

b. Treatment works serving buildings or dwellings other than individual single family dwellings.

(1) To ensure the treatment works is operated, maintained, monitored, and reported properly, the permittee shall engage a licensed operator as defined in subdivision D 3 of this section.

(2) The permittee shall:

(a) Have the system operated and maintained by a licensed operator, including the responsibilities specified in Part I D 2 b (3);

(b) Have a licensed operator visit the system at least semiannually;

(c) Have a licensed operator collect, analyze, and submit to the department any samples required under Part I A, Part I B, or Part I C, as appropriate, of this general permit;

(d) Provide prompt maintenance and repair of the treatment works once notified by the operator that repair or maintenance is necessary. The owner is responsible for all costs associated with the maintenance or repair. Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated from the building or dwelling or otherwise ensure that no discharge occurs if full and complete repairs cannot be accomplished within 48 hours;

(e) Maintain a copy of the log provided by the operator on the property where the system is located in electronic or hard copy form, make the log available to the department upon request, and make a reasonable effort to transfer the log to any future owner; and

(f) Follow the treatment works operation and maintenance (O&M) manual (where available) and keep a copy of the O&M manual in electronic or hard copy form on the property where the system is located, make the O&M

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manual available to the department upon request, and make a reasonable effort to transfer the O&M manual to any future owner;

(3) The licensed operator has the following responsibilities:

(a) Perform all monitoring required in accordance with either Part I A, Part I B, or Part I C, as appropriate, and periodic (at least semiannually) inspections of the treatment works. ~~Note:~~ Discharges from the treatment works should to the maximum extent feasible be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that treatment works);

(b) During visits required by this subsection, fulfill the operator responsibilities specified in this subsection through observing the system and through laboratory or field tests required by this permit or that the operator deems appropriate. In performing a required visit, the operator is responsible for the entire system and, where applicable, shall follow the O&M manual;

(c) Provide a written or electronic notification to the owner within 24 hours whenever the operator becomes aware that maintenance or repair of the owner's treatment works is necessary;

(d) Report monitoring results to DEQ as required in Part I A 2, Part I B 2, and Part I C 2, as applicable, as well as Part II C, and maintain at the treatment works and provide to the permittee a log of the following items:

(i) Results of all tests and sampling. ~~Note:~~ If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts and document and explain why no sample was taken or possible;

(ii) Alarm activation incidents, including the date and time of equipment failure and return to service;

(iii) Maintenance, including the date and amount of disinfection chemicals added to the chlorinator, the date and amount of dechlorination chemicals added if applicable, the date and approximate volume of sludge removed, and date receipts for chemicals and equipment purchased and maintenance performed;

(iv) Corrective or repair activities performed;

(v) Recommended repair or replacement items;

(vi) Copies of all reports prepared by the operator; and

(vii) Sludge or solids removal; and

(e) Conduct an inspection within 48 hours after notification by the owner that a problem may be occurring.

3. All individuals who perform maintenance on discharging systems pursuant to this general permit are required to hold a valid Class IV or higher wastewater works operator license or an alternative onsite sewage system operator license issued by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. For

purposes of this general permit, this requirement is satisfied where an individual is directly supervised by and under the direction of a licensed operator who remains responsible for such maintenance.

4. Compliance recordkeeping under Part I A, Part I B, and Part I C.

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

Effluent Parameter	Quantification Level
BOD ₅	2 mg/l
cBOD ₅	2 mg/l
Ammonia as N	0.20 mg/l
Total Phosphorus	0.10 mg/l
TSS	1.0 mg/l
Chlorine	0.10 mg/l

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

b. Recording results. Any concentration data below the QL used in the analysis shall be recorded as "<QL" if it is less than the QL in ~~subdivision Part I D 4 a of this subsection.~~ Otherwise the numerical value shall be recorded.

c. Monitoring results shall be recorded using the same number of significant digits as listed in the permit. Regardless of the rounding convention used by the permittee (e.g., 5 always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

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

Part II

Conditions Applicable to All VPDES Permits

A. Monitoring.

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

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

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

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

Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

B. Records.

1. Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individuals who performed the sampling or measurements;
- c. The dates and times analyses were performed;
- d. The individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board department.

C. Reporting monitoring results. Monitoring results under this permit must be submitted consistent with the requirements in Part I A 2, Part I B 2, and Part I C 2, as applicable.

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

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

be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.

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

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

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

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

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

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

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

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5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge, including a bypass or upset, should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include any discharge resulting from:

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

I. Reports of noncompliance.

1. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.
 - a. [An oral ~~A~~ or online] report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:
 - (1) Any unanticipated bypass; and
 - (2) Any upset that causes a discharge to surface waters.
 - b. A written report shall be submitted within five days and shall contain:
 - (1) A description of the noncompliance and its cause;
 - (2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

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

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

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

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

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

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
 - (1) After promulgation of standards of performance under § 306 of the Clean Water Act (33 USC § 1251 et seq.) that are applicable to such source; or
 - (2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;
 - b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or
 - c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the

application of permit conditions that are different from or absent in the existing permit, including notification of additional use or of disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

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

K. Signatory requirements.

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

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

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

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

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

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

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field,

superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

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

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

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

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

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

M. Duty to reapply.

1. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, and the permittee does not qualify for automatic permit coverage renewal, the permittee shall submit a new registration statement, or for an individual single family dwelling a combined application, at least 60 days before the expiration

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

2. A permittee qualifies for automatic permit coverage renewal and is not required to submit a registration statement, or for an individual single family dwelling a combined application, if:

a. The ownership of the treatment works has not changed since this general permit went into effect on August 2, ~~2024~~ 1, 2026, or, if the ownership has changed, (i) a new registration statement or for an individual single family dwelling a combined application or (ii) a VPDES Change of Ownership form was submitted to the department by the new owner at the time of the title transfer;

b. There has been no change in the design ~~or~~, operation, or both, of the treatment works since this general permit went into effect on August 2, ~~2024~~ 1, 2026;

c. For treatment works serving individual single family dwellings, the Virginia Department of Health does not object to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the ~~board~~ department. If the Virginia Department of Health objects to the automatic renewal for this treatment works, the permittee will be notified by the ~~board~~ department in writing; and

d. For treatment works serving buildings or dwellings other than single family dwellings, the ~~board~~ department has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the ~~board~~ department. If the ~~board~~ department objects to the automatic renewal for this treatment works, the permittee will be notified by the ~~board~~ department in writing.

3. Any permittee that does not qualify for automatic permit coverage renewal shall submit a new registration statement, or for an individual single family dwelling a combined application, in accordance with Part II M 1.

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

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

described in Part II V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

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

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

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

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

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

U. Bypass.

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

2. Notice.

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

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

3. Prohibition of bypass.

a. Bypass is prohibited, and the ~~board~~ department may

take enforcement action against a permittee for bypass, unless:

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

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

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

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

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

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

- a. An upset occurred and that the permittee can identify the cause of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required in Part II I; and
- d. The permittee complied with any remedial measures required under Part II S.

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

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

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

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

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

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

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permit coverage. Permit coverage is not transferable to any person except after notice to the department. Coverage under this permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the ~~board~~ department;
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
3. The ~~board~~ department does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2.

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

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 (9VAC25-110)

~~VPDES Change of Ownership Agreement Form (eff. 7/2010)~~

~~Virginia DEQ Registration Statement~~ ~~VPDES General Permit for Domestic Sewage Discharges Less than or Equal to~~

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1,000 Gallons Per Day (2021 Reissuance (rev. 8/2021))

[VPDES Change of Ownership Agreement Form \(eff. 4/2018\)](#)

[Virginia DEQ Registration Statement VPDES General Permit for Domestic Sewage Discharges Less than or Equal to 1,000 Gallons Per Day \(rev. 12/2024\)](#)

[Combined Application - Virginia Department of Health Discharging System Application for Single Family Dwellings Discharging Sewage Less Than or Equal to 1,000 Gallons per Day and State Water Control Board Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Domestic Sewage Discharges Less Than or Equal to 1,000 Gallons per Day \(eff. 4/2014\)](#)

VA.R. Doc. No. R24-7822; Filed July 24, 2025, 8:38 a.m.

Final Regulation

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

Title of Regulation: 9VAC25-115. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities (amending 9VAC25-115-10 through 9VAC25-115-50).

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

Effective Date: July 1, 2026.

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.

Summary:

The amendments (i) revise the term of the general permit to July 1, 2026, through June 30, 2031; (ii) ensure consistency with Chapter 356 of the 2022 Acts of Assembly, which clarifies that regulatory actions fall under the State Water Control Board, while permitting

actions fall under the Department of Environmental Quality; (iii) define the term "director"; (iv) update the publication date of the federal regulations incorporated by reference; (v) clarify language for annual and semiannual reporting requirements; (vi) reduce monitoring frequency from quarterly to semiannually; (vii) align the list of authorized non-stormwater discharges with the Industrial Storm Water General Permit; and (viii) update compliance reporting requirements, including revising provisions to address online reporting.

Changes to the proposed regulation include conforming text regarding notification of title transfers to 40 CFR 122.61(b)(1) in response to an EPA review.

9VAC25-115-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) unless the context clearly indicates otherwise. Additionally, for the purposes of this chapter:

"Best management practices" or "BMPs" means schedules of activities, practices, prohibitions of practices, structures, vegetation, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the discharge of pollutants to surface waters.

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

"Control measure" means any best management practice or other method, including effluent limitations, used to prevent or reduce the discharge of pollutants to surface waters.

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

"Department" or "DEQ" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality or an authorized representative.

"Industrial activity" means the facilities classified under NAICS 311710 and SIC Code 2091 or 2092.

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

"NAICS" means North American Industry Classification System from the U.S. Office of Management and Budget, 2017 edition.

"No exposure" means all industrial materials or activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff.

"Seafood" includes crabs, oysters, hand-shucked clams, scallops, squid, eels, turtles, fish, conchs, and crayfish.

"Seafood processing facility" means any facility that processes or handles seafood intended for human consumption or as bait, except a mechanized clam facility, where the primary purpose is classified under the following NAICS and SIC codes:

1. NAICS Code 311710 – Seafood Product Preparation and Packaging and SIC Code 2091 – Canned and Cured Fish and Seafoods, 2092 – Prepared Fresh or Frozen Fish and Seafoods;
2. NAICS Code 424420 – Packaged Frozen Food Merchant Wholesalers and SIC Code 5142 – Packaged Frozen Foods; and
3. NAICS Code 424460 – Fish and Seafood Merchant Wholesalers and SIC Code 5146 – Fish and Seafoods.

This definition does not include aquaculture facilities, (including hatcheries), classified under SIC Code 0272 or 0921 and NAICS Code 112512.

"SIC" means the Standard Industrial Classification from the U.S. Office of Management and Budget Standard Industrial Classification Manual, 1987 edition.

"Significant materials" includes raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production (except oyster, clam, or scallop shells); hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601); any chemical the facility is required to report pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

"Stormwater discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term includes stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled

by carriers of raw materials, manufactured products, waste material, or byproducts (except for oyster, clam, or scallop shells) used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage ~~area~~ areas (including tank farms) for raw materials and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, byproduct, or waste product (except for oyster, clam, or scallop shells). The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with stormwater drained from the ~~above-described areas~~ described in this definition. Industrial facilities, including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in the "industrial activity" definition, include those facilities designated under the provisions of 9VAC25-31-120 A 1 c or A 7 a (1) or (2) of the VPDES Permit Regulation.

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

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

9VAC25-115-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, ~~2020~~ 2024; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

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9VAC25-115-20. Purpose; effective date of permit.

A. This general permit regulation governs the discharge of wastewater from seafood processing facilities and stormwater associated with industrial activity from seafood processing facilities classified NAICS Code 311710 and as SIC Codes 2091 and 2092.

B. This general permit will become effective on July ~~24, 2021~~ 1, 2026, and will expire on June 30, ~~2026~~ 2031. For any covered owner, this general permit is effective upon compliance with all the provisions of 9VAC25-115-30.

9VAC25-115-30. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge process wastewater and stormwater as described in 9VAC25-115-20 A to surface waters of the Commonwealth of Virginia, provided that:

1. The owner files a registration statement, in accordance with 9VAC25-115-40, and that registration statement is accepted by the board department;
2. The owner submits the required permit fee;
3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-115-50; and
4. The owner has not been notified by the board department that the discharge is not eligible for coverage under this permit in accordance with subsection B of this section.

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

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;
2. The owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;
3. The owner is proposing to discharge annual mass loadings of total nitrogen in excess of 2,300 pounds per year or of total phosphorus in excess of 300 pounds per year;
4. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Water Quality Standards; or
5. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

C. Conditional exclusion for no exposure to stormwater. Any owner covered by this permit that becomes eligible for a no exposure exclusion from stormwater permitting under 9VAC25-31-120 E may file a no exposure certification. Upon submission and acceptance by the board department of a complete and accurate no exposure certification, the permit requirements for stormwater no longer apply. A no exposure

certification must be submitted to the board department once every five years.

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

E. Continuation of permit coverage.

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

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

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

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

9VAC25-115-40. Registration statement.

A. Deadlines for submitting registration statement. Any owner seeking coverage under this general permit shall submit a complete general VPDES permit registration statement in accordance with this chapter, which shall serve as a notice of intent for coverage under the VPDES general permit regulation for seafood processing facilities.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement to the board department at least 60 days prior to the date planned for commencement of the discharge.
2. Existing facilities.

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

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

c. Any owner of an existing seafood processing facility adding a new process after coverage under the general permit is obtained shall submit an amended registration statement to the ~~board~~ department at least 60 days prior to commencing operation of the new process or a later submittal established by the ~~board~~ department.

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

B. The registration statement shall contain the following information:

1. Facility name, owner name, mailing address, email address (where available), and telephone number;
2. Facility street address (if different from mailing address);
3. Facility operator name, mailing address, email address, and telephone number if different than owner;
4. Does the facility discharge to surface waters? Name of receiving stream ~~or streams~~ if yes and, if no, describe the discharge ~~or discharges~~;
5. Does the facility have a current VPDES Permit? Include the permit number if yes;
6. The original date of construction of the seafood processing facility building and dates and description of all subsequent facility construction;
7. A U.S. Geological Survey (USGS) ~~7.5-minute~~ 7.5-minute topographic map or other equivalent ~~computer-generated~~ computer-generated map with sufficient resolution to clearly

show the facility location, the discharge location ~~or locations~~, and the receiving water body;

8. Facility SIC code ~~or codes~~;

9. Nature of business at the facility;

10. Discharge outfall information, including latitude and longitude, seafood process, receiving stream, discharge flow, and days per year of discharge for each outfall;

11. Facility maximum production information;

12. Facility line (water balance) drawing;

13. Discharge and outfall descriptions for different seafood processes that operate simultaneously;

14. Treatment and solid waste disposal information;

15. Information on use of chemicals at the facility;

16. State Corporation Commission entity identification number if the facility is required to obtain an entity identification number by law; and

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

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

C. The registration statement shall be delivered to the department's regional office where the seafood processing facility is located by either postal or electronic mail. Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements) as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least ~~three months~~ a three-month notice provided between the notification from the department and the date after which such forms must be submitted electronically.

9VAC25-115-50. General permit.

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

General Permit No.: VAG52

Effective Date: ~~July 24, 2021~~ July 1, 2026

Expiration Date: June 30, ~~2026~~ 2031

GENERAL PERMIT FOR SEAFOOD PROCESSING FACILITIES

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

Regulations

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

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

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. SEAFOOD PROCESSING NOT LIMITED ELSEWHERE IN PART I: A- — SIC 2091, 2092, 5142, AND 5146 SOURCES EXCEPT MECHANIZED CLAM FACILITIES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from seafood processing not otherwise classified from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/YEAR	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/YEAR	Grab
TSS	NL	NL	NA	NA	NA	1/YEAR	Composite
Oil and Grease	NL	NL	NA	NA	NA	1/YEAR	Grab
Production	NA	NL	NA	NA	NA	1/YEAR	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

~~Samples 1/Year = one sample shall be collected by the end of the calendar year and reported by the 10th of January of the following calendar year on the facility's (January 1 through December 31) with the Discharge Monitoring Report (DMR) due to the department no later than January 10 of the following calendar year.~~ All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING — EXISTING SOURCES PROCESSING MORE THAN 3,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
TSS	NL	NL	0.74	2.2	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	0.20	0.60	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

3. CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING — ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab

Regulations

BOD ₅	NL	NL	0.15	0.30	NA	1/3 1/6 Months	Composite
TSS	NL	NL	0.45	0.90	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	0.065	0.13	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

~~1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and to be reported on the DMR due July 10 following each applicable semiannual period; July 1 through December 31 and, to be reported by the 10th of the on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period.~~ All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

4. MECHANIZED BLUE CRAB PROCESSING — ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
TSS	NL	NL	12	36	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	4.2	13	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following each applicable semiannual period. All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

5. MECHANIZED BLUE CRAB PROCESSING — ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
BOD ₅	NL	NL	2.5	5.0	NA	1/3 1/6 Months	Composite
TSS	NL	NL	6.3	13	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	1.3	2.6	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

6. NON-BREADED SHRIMP PROCESSING — EXISTING SOURCES PROCESSING MORE THAN 2,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
TSS	NL	NL	38	110	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	12	36	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected ~~by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period.~~ All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

7. NON-BREADED SHRIMP PROCESSING — ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
BOD ₅	NL	NL	25	63	NA	1/3 1/6 Months	Composite
TSS	NL	NL	10	25	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	1.6	4.0	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

8. BREADED SHRIMP PROCESSING — EXISTING SOURCES PROCESSING MORE THAN 2,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate

Regulations

pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
TSS	NL	NL	93	280	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	12	36	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

~~1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period.~~ All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

9. BREADED SHRIMP PROCESSING — ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
BOD ₅	NL	NL	40	100	NA	1/3 1/6 Months	Composite
TSS	NL	NL	22	55	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	1.5	3.8	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

10. TUNA PROCESSING — ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	4/3 <u>1/6</u> Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	4/3 <u>1/6</u> Months	Grab
TSS	NL	NL	3.3	8.3	NA	4/3 <u>1/6</u> Months	Composite
Oil and Grease	NL	NL	0.84	2.1	NA	4/3 <u>1/6</u> Months	Grab
Production	NA	NL	NA	NA	NA	4/3 <u>1/6</u> Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

11. TUNA PROCESSING — ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 <u>1/6</u> Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 <u>1/6</u> Months	Grab
BOD ₅	NL	NL	8.1	20	NA	1/3 <u>1/6</u> Months	Composite
TSS	NL	NL	3.0	7.5	NA	1/3 <u>1/6</u> Months	Composite
Oil and Grease	NL	NL	0.76	1.9	NA	1/3 <u>1/6</u> Months	Grab
Production	NA	NL	NA	NA	NA	1/3 <u>1/6</u> Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

12. CONVENTIONAL BOTTOM FISH PROCESSING — EXISTING SOURCES PROCESSING MORE THAN 4,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	4/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	4/3 1/6 Months	Grab
TSS	NL	NL	2.0	3.6	NA	4/3 1/6 Months	Composite
Oil and Grease	NL	NL	0.55	1.0	NA	4/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	4/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

13. CONVENTIONAL BOTTOM FISH PROCESSING — ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	4/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	4/3 1/6 Months	Grab

Regulations

BOD ₅	NL	NL	0.71	1.2	NA	1/3 1/6 Months	Composite
TSS	NL	NL	0.73	1.5	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	0.042	0.077	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

~~1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period.~~ All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

14. MECHANIZED BOTTOM FISH PROCESSING — ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
TSS	NL	NL	12	22	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	3.9	9.9	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected ~~by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the~~ on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

15. MECHANIZED BOTTOM FISH PROCESSING — ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified below in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	4/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	4/3 1/6 Months	Grab
BOD ₅	NL	NL	7.5	13	NA	4/3 1/6 Months	Composite
TSS	NL	NL	2.9	5.3	NA	4/3 1/6 Months	Composite
Oil and Grease	NL	NL	0.47	1.2	NA	4/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	4/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected ~~by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the~~ on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

Regulations

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A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

16. HAND-SHUCKED CLAM PROCESSING — EXISTING SOURCES PROCESSING MORE THAN 4,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
TSS	NL	NL	18	59	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	0.23	0.60	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

17. HAND-SHUCKED CLAM PROCESSING — ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	4/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	4/3 1/6 Months	Grab
TSS	NL	NL	17	55	NA	4/3 1/6 Months	Composite
Oil and Grease	NL	NL	0.21	0.56	NA	4/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	4/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

18. HAND-SHUCKED OYSTER PROCESSING — EXISTING SOURCES PROCESSING MORE THAN 1,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	4/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	4/3 1/6 Months	Grab
TSS	NL	NL	16	23	NA	4/3 1/6 Months	Composite

Regulations

Oil and Grease	NL	NL	0.77	1.1	NA	4/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	4/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Raw material = The weight of oyster meat after shucking.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

~~1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period.~~ All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

19. HAND-SHUCKED OYSTER PROCESSING — ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	4/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	4/3 1/6 Months	Grab
TSS	NL	NL	16	23	NA	4/3 1/6 Months	Composite
Oil and Grease	NL	NL	0.77	1.1	NA	4/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	4/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

~~1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period.~~ All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

20. STEAMED AND CANNED OYSTER PROCESSING — ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 <u>1/6</u> Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 <u>1/6</u> Months	Grab
TSS	NL	NL	190	270	NA	1/3 <u>1/6</u> Months	Composite
Oil and Grease	NL	NL	1.7	2.3	NA	1/3 <u>1/6</u> Months	Grab
Production	NA	NL	NA	NA	NA	1/3 <u>1/6</u> Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected ~~by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the~~ on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

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A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

21. STEAMED AND CANNED OYSTER PROCESSING — ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

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EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
BOD ₅	NL	NL	17	67	NA	1/3 1/6 Months	Composite
TSS	NL	NL	39	56	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	0.42	0.84	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected ~~by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period.~~ All calculations shall be submitted with the DMR.

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A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

22. SCALLOP PROCESSING — ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 1/6 Months	Composite

Oil and Grease	NL	NL	0.23	7.3	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

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A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

23. SCALLOP PROCESSING — ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified below in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

Regulations

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A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

24. FARM-RAISED CATFISH PROCESSING — EXISTING SOURCES PROCESSING MORE THAN 3,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
TSS	NL	NL	9.2	28	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	3.4	10	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement
NL = No limitation, monitoring required. NA = Not applicable. Grab = Individual grab sample is to be taken in the middle of a composite sampling period. Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples. Production = See Special Condition No. 5 (Part I B 5). <u>1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.</u>							

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

25. FARM-RAISED CATFISH PROCESSING — ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day	DISCHARGE LIMITATIONS kg/kg	Sample Frequency	Sample Type
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	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
BOD ₅	NL	NL	2.3	4.6	NA	1/3 1/6 Months	Composite
TSS	NL	NL	5.7	11	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	0.45	0.90	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

26. HERRING PROCESSING — ALL

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
TSS	NL	NL	24	32	NA	1/3 1/6 Months	Composite

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Oil and Grease	NL	NL	10	27	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

~~1/6 Months = Samples shall be collected by March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the month on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.~~

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

27. HERRING PROCESSING — ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from ~~outfall(s)~~ outfalls _____.

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 1/6 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 1/6 Months	Grab
BOD ₅	NL	NL	15	16	NA	1/3 1/6 Months	Composite
TSS	NL	NL	5.2	7.0	NA	1/3 1/6 Months	Composite
Oil and Grease	NL	NL	1.1	2.9	NA	1/3 1/6 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 1/6 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

1/6 Months = Samples shall be collected by ~~March 31, once each semiannual period with the following schedule: January 1 through June 30, September 30, and December 31 and to be reported by the 10th of the~~ on the DMR due July 10 following each applicable semiannual period; July 1 through December 31, to be reported on the DMR due January 10 following month on the facility's Discharge Monitoring Report (DMR) each applicable semiannual period. All calculations shall be submitted with the DMR.

B. SPECIAL CONDITIONS APPLYING TO PART I A 1 THROUGH PART I A 27.

1. No sewage shall be discharged from a point source to surface waters at this facility except under the provisions of another VPDES permit specifically issued for that purpose.
2. There shall be no chemicals added to the water or waste to be discharged, other than those listed on the owner's accepted registration statement.
3. Wastewater should be reused or recycled to the maximum extent practicable.
4. The permittee shall comply with the following solids management ~~plan~~ requirements:
 - a. There shall be no discharge of floating solids or visible foam in other than trace amounts.
 - b. All floors, machinery, conveyor belts, dock areas, ~~etc.~~ and other processing areas shall be dry swept or dry brushed prior to washdown.
 - c. All settling basins shall be cleaned frequently in order to achieve effective settling.
 - d. All solids resulting from the seafood processes covered under this general permit, other than oyster, clam, or scallop shells, shall be handled, stored, and disposed of so as to prevent a discharge to state waters of such solids or industrial wastes or other wastes from those solids.
 - e. The permittee shall install and properly maintain wastewater treatment necessary ~~in order~~ to remove organic solids present in the wastewater that may settle and accumulate on the substrate of the receiving waters in other than trace amounts.
 - f. All employees shall receive training relative to preventive measures to be taken to control the release of solids from the facility into surface waters.

5. Production to be reported and used in calculating effluent discharge levels in terms of kg/kkg shall be the weight in kilograms of raw material processed, in the form in which it is received at the processing plant, on the day of effluent sampling, except for the hand-shucked oyster, steamed and canned oyster, and scallop processing subcategories, for which production shall mean the weight of oyster or scallop meat after processing. The effluent levels in terms of kg/kkg shall be calculated by dividing the measured pollutant load in kg/day by the production level in kkg (thousands of kilograms).

6. The permittee shall notify the department as soon as they know or have reason to believe:

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

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

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

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

7. Compliance reporting and recordkeeping under Part I A.

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

Effluent Parameter	Quantification Level
BOD	2 mg/l
TSS	1.0 mg/l
Oil and Grease	5.0 mg/l

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

b. Recording results. Any concentration below the QL used in the analysis shall be recorded as "<QL" if it is less

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than the QL used in the analysis (the QL must be less than or equal to the QL in subdivision 7 a of this subsection. Otherwise, the numerical value shall be recorded.

c. Monitoring results shall be recorded using the same number of significant digits as listed in the permit. Regardless of the rounding conventions used by the permittee (e.g., five always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

8. The discharges authorized by this permit shall be controlled as necessary to meet water quality standards in 9VAC25-260.

9. If a new process is added after coverage under the general permit is obtained, an amended registration statement must be submitted at least 60 days prior to commencing operation of the new process or a later submittal approved by the ~~board~~ department.

10. Notice of termination.

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

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

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

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

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

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

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

(2) Facility name and location;

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

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

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

(b) A statement indicating that operations have ceased at the facility, and there are no longer discharges from the facility;

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

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

(5) The following certification: "I certify under penalty of law that all wastewater and stormwater discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge seafood processing wastewater or, for facilities classified as SIC Code 2091 or 2092, stormwater associated with industrial activity in accordance with the general permit, and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

c. The notice of termination shall be submitted to the department and signed in accordance with Part III K.

Part II Stormwater Management

The following stormwater management requirements apply only to seafood processors classified as Standard Industrial Classifications (SIC) Codes 2091 and 2092.

A. Monitoring and inspections.

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

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

b. Samples will be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed three hours, provided that the permittee explains in the stormwater pollution prevention plan (SWPPP) why an examination during the first 30 minutes was impractical) of when the runoff or snowmelt begins discharging. All such samples shall be collected from the discharge resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event") ~~providing, provided~~ the interval from the preceding measurable storm event is at least 72 hours. The

required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the facility. The 72-hour storm event interval may also be waived where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted.

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

d. If no qualifying storm event resulted in discharge from the facility during a monitoring period, or adverse weather conditions create dangerous conditions for personnel during each measurable storm event during a monitoring period, visual monitoring is exempted, provided this is documented in the SWPPP. Acceptable documentation includes dates and times the outfalls were viewed or sampling was attempted, national Climatic Data Center weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

e. Representative outfalls – substantially identical stormwater discharges. If the facility has two or more outfalls that discharge substantially identical stormwater effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, frequency of discharges, and stormwater management practices occurring within the drainage areas of the outfalls, the permittee may conduct quarterly visual monitoring on the stormwater discharges of just one representative outfall.

f. Visual monitoring reports shall be maintained ~~on-site~~ on site with the SWPPP. The report shall include:

- (1) Outfall location;
- (2) Monitoring date and time;
- (3) Duration of storm event;
- (4) Rainfall measurement or estimate (in inches) of the storm event that generated the discharge;
- (5) Duration between the storm event sampled and the end of the previous measurable storm event;
- (6) Monitoring personnel;
- (7) Nature of the discharge (i.e., runoff or snow melt);
- (8) Visual quality of the stormwater discharge, including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution;
- (9) Probable sources of any observed stormwater contamination;
- (10) ~~Why it was not possible to take~~ The reason taking the sample within the first 30 minutes was not possible (if applicable); and
- (11) Documentation to support substantially identical outfalls (if applicable) required by Part II A 1 e.

g. Corrective action. Whenever the visual monitoring shows evidence of stormwater pollution, the SWPPP and stormwater control measures shall be updated per Part II B.

2. Routine facility inspections. Personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of control measures shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater.

a. Inspections include loading and unloading areas, storage areas, including associated containment areas, waste management units, vents and stacks emanating from industrial activities, spoiled product and broken product container hold areas, animal holding pens, staging areas, air pollution control equipment, areas where spills or leaks have occurred in the past three years, discharge points, and control measures.

b. At least one member of the pollution prevention team shall participate in the routine facility inspections.

c. The inspection frequency shall be specified in the SWPPP based upon a consideration of the level of industrial activity at the facility but shall be at a minimum of once per calendar quarter unless written approval is received from the department for less frequent intervals. Inspections shall be performed during operating hours. At least once each calendar year, the routine facility inspection shall be conducted during a period when a stormwater discharge is occurring.

d. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 60 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP and shall include, at a minimum:

- (1) The inspection date;
- (2) The names of the inspectors;
- (3) Weather information and a description of any discharges occurring at the time of the inspection;
- (4) Any previously unidentified discharges of pollutants from the site;
- (5) Any control measures needing maintenance or repairs;
- (6) Any failed control measures that need replacement;
- (7) Any incidents of noncompliance observed; and
- (8) Any additional control measures needed to comply with the permit requirements.

e. Corrective action. Whenever the routine inspection shows evidence of stormwater pollution, the SWPPP and stormwater control measures shall be updated per Part II B.

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

3. Nonstormwater discharges.

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

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

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

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

- (1) Discharges from emergency firefighting activities or firefighter training activities managed in a manner to avoid an instream impact in accordance with § 9.1-207.1 of the Code of Virginia;
- (2) Fire hydrant flushing, managed in a manner to avoid an instream impact;
- (3) Potable water, including water line flushing, managed in a manner to avoid an instream impact;
- (4) Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;
- (5) Irrigation drainage;
- (6) Landscape watering, provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;
- (7) Pavement wash waters where no detergents or hazardous cleaning products are used and no spills or leaks of toxic or hazardous materials have occurred, unless all spilled material has been removed. Pavement wash waters shall be managed in a manner to avoid an instream impact;
- (8) Routine external building washdown ~~that does not use,~~ provided no soaps, solvents, or detergents are used, external surfaces do not contain hazardous cleaning products substances, and the wash water is filtered, settled, or similarly treated prior to discharge;

(9) Pavement wash waters, provided no soaps, solvents, detergents, or hazardous cleaning products are used, and no spills or leaks of toxic or hazardous materials have occurred, unless all spilled or leaked material is removed prior to washing, and the wash water is filtered, settled, or similarly treated prior to discharge;

~~(9)~~ (10) Uncontaminated groundwater or spring water;

~~(10)~~ (11) Foundation or footing drains where flows are not contaminated with process materials; and

~~(11)~~ (12) Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

B. Corrective actions. The permittee shall take corrective action whenever:

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

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

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

4. Any corrective actions taken shall be documented and retained with the SWPPP. Reports of corrective actions shall be signed in accordance with Part III K.

C. Stormwater pollution prevention plans (SWPPPs). An SWPPP shall be developed and implemented for the facility covered by this permit, which has stormwater discharges associated with industrial activity and is classified under SIC Code 2091 or 2092. The SWPPP is intended to document the

selection, design, and installation of control measures, including BMPs, to minimize the pollutants in all stormwater discharges from the facility and to meet applicable effluent limitations and water quality standards.

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents, such as an erosion and sediment control (ESC) plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act, or best management practices (BMP) programs otherwise required for the facility, provided that the incorporated plan meets or exceeds the plan requirements of Part II C 2 (Contents of the SWPPP). If an ESC plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate ~~plan~~ approving plan-approving authority authorized under the Virginia Erosion and Stormwater Management Regulation (9VAC25-875). All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Part III C 2, the permittee shall develop the missing SWPPP elements and include them in the required plan.

1. Deadlines for SWPPP preparation and compliance.

a. Owners of facilities that were covered under the [~~2016~~ 2021] Seafood Processing Facilities General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP within 60 days of the ~~board~~ department granting coverage under this permit.

b. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit that elect to be covered under this general permit shall prepare and implement the SWPPP within 60 days of the ~~board~~ department granting coverage under this permit.

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

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

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

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

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

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

(2) ~~Site map.~~ A site map identifying the following:

(a) The boundaries of the property and the size of the property in acres;

(b) The location and extent of significant structures and impervious surfaces;

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

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

(e) Locations of all water bodies receiving discharges from the site, including wetlands;

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

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

(h) Locations of stormwater outfalls, monitoring locations, an approximate outline of the area draining to each outfall, the drainage area of each outfall in acres, the longitude and latitude of each outfall, the location of any municipal separate storm sewer system (MS4) conveyance receiving discharge from the facility, and each outfall identified with a unique numerical identification ~~codes. For example: code (e.g.,~~ Outfall Number 001, Outfall Number 002, ~~etc.);~~

(i) Location and description of all nonstormwater discharges;

(j) Location of any storage piles containing salt;

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

(l) Locations of vents and stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage area if exposed to precipitation or runoff.

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

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product. For each separate area identified, the description shall include:

(1) Activities in area. A list of the industrial activities exposed to stormwater;

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

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

d. Control measure considerations. Control measures shall be implemented for all the areas identified in Part II C 2 c (Summary of potential pollutant sources) to prevent or control pollutants in stormwater discharges from the facility. If applicable, regulated stormwater discharges from the facility include stormwater run-on that commingles with stormwater discharges associated with industrial activity at the facility. The SWPPP shall describe the type, location, and implementation of all control measures for each area where industrial materials or activities are exposed to stormwater. Selection of control measures shall take into consideration:

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

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

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

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

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

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

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

e. ~~Control measures~~ Nonnumeric technology-based effluent limits. The permittee shall implement the following types of control measures to prevent and control pollutants in the stormwater discharges from the facility, unless it can be demonstrated and documented that ~~such~~ the controls are not relevant to the discharges.

(1) Good housekeeping. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants to stormwater discharges. The permittee shall perform the following good housekeeping measures to minimize pollutant discharges:

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

(b) Sweep or vacuum as feasible;

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

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

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

(f) Implement BMPs to eliminate stormwater discharges of plastics.

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

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

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

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

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

(e) Utilize appropriate spill or overflow protections equipment;

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

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

(3) Preventive maintenance. The SWPPP shall include preventive maintenance that includes a description of procedures and a regular schedule for inspection of the following:

(a) All control measures ~~that includes~~, including a description of the back-up practices that are in place should a runoff event occur while a control measure is ~~off line~~ offline; and

(b) Testing, maintenance, and repairing of all industrial equipment and systems to avoid situations that could result in leaks, spills, and other releases of pollutants in stormwater discharged from the facility.

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

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

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

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

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

(5) Employee training. The permittee shall implement a stormwater employee training program for the facility. The SWPPP shall include a schedule for all training and

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

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

(7) Management of runoff. The plan shall describe the stormwater runoff management practices (i.e., permanent structural control measures) for the facility. These types of control measures shall be used to divert, infiltrate, reuse, or otherwise reduce pollutants in stormwater discharges from the site.

Structural control measures may require a separate permit under § 404 of the federal Clean Water Act and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

3. Signature and SWPPP review.

a. Signature and location. The SWPPP, including revisions to the SWPPP to document any corrective actions taken as required by Part II B, shall be signed in accordance with Part III K, dated, and retained ~~on-site~~ on site at the facility covered by this permit. All other changes to the SWPPP, and other permit compliance documentation, must be signed and dated by the person preparing the change or documentation.

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

c. Required modifications. The permittee shall modify the SWPPP whenever necessary to address all corrective actions required by Part II B. Changes to the SWPPP shall be made in accordance with the corrective action deadlines in Part II B and shall be signed and dated in accordance

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with Part III K. The director may notify the permittee at any time that the SWPPP, control measures, or other components of the facility's stormwater program do not meet one or more of the requirements of this permit. The notification shall identify specific provisions of the permit that are not being met and may include required modifications to the stormwater program, additional monitoring requirements, and special reporting requirements. The permittee shall make any required changes to the SWPPP within 60 days of receipt of ~~such~~ the notification, unless permission for a later date is granted in writing by the director, and shall submit a written certification to the director that the requested changes have been made.

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

- a. There is construction or a change in design, operation, or maintenance at the facility that has an effect on the discharge, or the potential for the discharge, of pollutants from the facility;
- b. Routine inspections or visual monitoring determine that there are deficiencies in the control measures, including BMPs;
- c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;
- d. There is a significant spill, leak, or other release at the facility; or
- e. There is an unauthorized discharge from the facility.
- f. SWPPP modifications shall be made within 60 calendar days after the discovery, observation, or event requiring a SWPPP modification. Implementation of new or modified control measures shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a control measure or implement additional control measures shall be documented in the SWPPP.
- g. If the SWPPP modification is based on a significant spill, leak, release, or unauthorized discharge, include a description and date of the incident, the circumstances leading to the incident, actions taken in response to the incident, and measures to prevent the recurrence of such releases. Unauthorized discharges are subject to the reporting requirements of Part III G of this permit.

Part III

Conditions Applicable to All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods

approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

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

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

1. Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individuals who performed the sampling or measurements;
- c. The dates and times analyses were performed;
- d. The individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

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

C. Reporting monitoring results.

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

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

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

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

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

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

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

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

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part III F (Unauthorized discharges); or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify (see Part III I 3) the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after ~~said~~ the discovery. A written report of the unauthorized discharge

shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge, including a bypass or upset, should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include any discharge resulting from:

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

I. Reports of noncompliance.

1. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.
 - a. [An oral A or online] report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:
 - (1) Any unanticipated bypass; and
 - (2) Any upset that causes a discharge to surface waters.

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

- (1) A description of the noncompliance and its cause;
- (2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

3. The immediate (within 24 hours) reports required in Part III G, H, and I ~~may~~ shall be made to the department's regional office. Reports may be made by telephone, or online at <https://www.deq.virginia.gov/our-programs/pollution-response> [(online reporting is preferred)].

For reports outside normal working hours, ~~leave a message and this the online portal shall fulfill the immediate reporting requirement be used.~~ For emergencies, call the Virginia [Department of Emergency] Management maintains a 24-hour telephone service [Management's] Emergency Operations Center (24 hours) at 1-800-468-8892.

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

J. Notice of planned changes.

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

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

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

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified under Part I B 6; or

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

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

K. Signatory requirements.

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

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

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

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

2. Reports and other information. All reports required by permits; and other information requested by the ~~board,~~ department shall be signed by a person described in Part III

K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described in Part III K 1;
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and
- c. The written authorization is submitted to the department.

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

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

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

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

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

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement

at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board department. The board department shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

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

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

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

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

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

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

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

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U. Bypass.

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

2. Notice.

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

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

3. Prohibition of bypass.

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

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

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

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

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

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

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

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

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

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

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

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

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

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

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

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

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

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

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permit coverage.

1. Permit coverage is not transferable to any person except after notice to the department.

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

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

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

c. The ~~board~~ department does not notify the existing permittee and the proposed new permittee of its intent to deny the permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2.

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

V.A.R. Doc. No. R24-7823; Filed July 24, 2025, 8:19 a.m.

Proposed Regulation

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

Title of Regulation: 9VAC25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (amending 9VAC25-660-27, 9VAC25-660-30, 9VAC25-660-100; repealing 9VAC25-660-25, 9VAC25-660-35).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:21 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 24, 2025.

Agency Contact: Brenda Winn, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2675, or email brenda.winn@deq.virginia.gov.

Summary:

The proposed amendments (i) reissue the Virginia Water Protection General Permit for Impacts Less than One-Half Acre (9VAC25-660), which expires August 1, 2026, for another 10-year term; (ii) clarify provisions related to

coverage expiration, transition, and continuation; (iii) correct citations and typographical errors; (iv) update forms and reference documents; and (v) clarify administrative procedures.

Chapter 660

Virginia Water Protection (VWP) General Permit for Impacts Less Than One-Half Acre

9VAC25-660-25. Authorization for coverage under VWP general permit effective August 1, 2006. (Repealed.)

~~A. All complete applications or notifications received by the department through 11:59 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a completeness determination, the applicant shall reapply for coverage under the VWP general permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.~~

~~B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP authorization cover page, unless otherwise revoked or terminated or unless a notice of project completion is received by the department on or before that date. Any permittee that desires to continue an authorized activity beyond the stated expiration date must reapply for coverage under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and conditions, or apply for a VWP individual permit, including payment of any required permit application fee. This section shall only apply to permittees holding valid authorizations for coverage granted under the VWP general permit effective August 1, 2006, through August 1, 2016.~~

9VAC25-660-27. VWP general permit and coverage; expiration; transition; continuation.

A. The general permit in 9VAC25-660-100 is effective August 2, 2026, and expires August 1, 2036. All applications or notifications received on or after August 2, 2016 2026, will be processed in accordance with the VWP general permit regulation effective August 2, 2016 2026. If there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a permit coverage decision, the applicant shall reapply for coverage under the next consecutive VWP general permit or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.

B. ~~The general permit in 9VAC25-660-100 is effective August 2, 2016, and expires August 1, 2026. Any coverage that is granted pursuant to 9VAC25-660-30 shall remain in full force and effect until 11:59 p.m. on August 1, 2026 2036, unless the general permit coverage is terminated or revoked on~~

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or before this date. Where a permittee that has received general permit coverage desires to continue or complete the authorized activities beyond August 1, ~~2026~~ 2036, the permittee shall reapply for new general permit coverage or for a VWP individual permit, including payment of any required permit application fee. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted and effective or a VWP individual permit is issued by the department.

C. In any case where an existing permittee has submitted a timely and complete notification or application for coverage under the next consecutive VWP general permit in accordance with this chapter, and the board, through no fault of the permittee, does not issue the next consecutive VWP general permit with an effective date on or before the expiration date of the expiring VWP general permit, the conditions of that expiring VWP general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive VWP general permit. Application may be made at any time for a VWP individual permit in accordance with 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted and effective or a VWP individual permit is issued by the department.

9VAC25-660-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit effective August 2, ~~2016~~ 2026, may permanently or temporarily impact less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed, provided that:

1. The applicant submits notification as required in ~~9VAC25-660-50 and 9VAC25-660-60~~ this chapter using forms of application or notification.
2. The applicant remits any required permit application fee.
3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.
4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 for the proposed project impacts. The applicant, at ~~his~~ the applicant's discretion, may seek a VWP individual permit or coverage under another applicable VWP general permit in lieu of coverage under this VWP general permit.
5. Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.
 - a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several

single and complete projects), the department may, at its discretion, require a VWP individual permit.

b. For the purposes of this chapter, when an interchange has multiple crossings of surface waters, the entire interchange shall be considered the single and complete project.

6. The stream impact criterion applies to all components of the project, including structures and stream channel manipulations.

7. When required, compensation for unavoidable impacts is provided in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-660-70, and the associated provisions of 9VAC25-210-116.

B. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the department, any person claiming this waiver shall demonstrate to the satisfaction of the department that he qualifies for the waiver.

C. Coverage under this VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

D. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the department has issued § 401 certification in accordance with 9VAC25-210-130 H as of August 2, ~~2016~~ 2026, shall constitute coverage under this VWP general permit, unless a state program general permit (SPGP) is required and granted for the activity or impact.

E. When the department determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the department may require a VWP individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this VWP general permit.

9VAC25-660-35. Administrative continuance. (Repealed.)

~~Beginning on August 2, 2016, in any case where an existing permittee has submitted a timely and complete notification or application for coverage under the next consecutive VWP general permit, in accordance with 9VAC25-660-50 and 9VAC25-660-60 and the board, through no fault of the permittee, does not issue the next consecutive VWP general permit with an effective date on or before the expiration date of the expiring VWP general permit, the conditions of that expiring VWP general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive VWP general permit.~~

9VAC25-660-100. VWP general permit.

**VWP GENERAL PERMIT NO. WP1 FOR IMPACTS LESS
THAN ONE-HALF ACRE UNDER THE VIRGINIA
WATER PROTECTION PERMIT AND THE VIRGINIA
STATE WATER CONTROL LAW**

Effective date: August 2, ~~2016~~ 2026

Expiration date: August 1, ~~2026~~ 2036

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit ~~set forth herein~~; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I.

Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts to less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the department in the coverage letter, if any, shall be enforceable conditions of this permit.
2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-660-80. An application or request for modification to coverage or another VWP permit application may be required.
3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-660-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.
4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed ~~in accordance with~~ to comply with the requirements of the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 Stormwater Management Regulation (9VAC25-875). These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized ~~in accordance to comply with the requirements of the~~

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Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 Stormwater Management Regulation (9VAC25-875).

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in

wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in a Department of Environmental Quality VWP general permit coverage letter, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and ~~stream-bank~~ streambank protection.

1. Riprap bank stabilization and riprap aprons for outfalls shall be of an appropriate size and design ~~in accordance to~~ comply with the requirements of the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 Stormwater Management Regulation (9VAC25-875).

~~2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.~~

~~3. 2.~~ For ~~stream-bank~~ streambank protection activities, the structure and backfill shall be placed as close to the ~~stream bank~~ streambank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

~~4. 3.~~ All ~~stream-bank~~ streambank protection control structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

~~5. 4.~~ Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

~~6. 5.~~ Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

~~7. 6.~~ No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and are accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II.

Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit.

2. Compensation options that may be considered under this VWP general permit include the purchase of mitigation bank credits or the purchase of in-lieu fee program credits with a primary service area that covers the impact site in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-660-70, and the associated provisions of 9VAC25-210-116.

3. The final compensation plan shall be submitted to and approved by the department prior to a construction activity in permitted impacts areas. The department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the department.

B. Impact site construction monitoring.

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1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs remain on the project site and shall depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted in this subdivision. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-660-100 Part II C of this permit. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of

Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first authorized impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered that require debris removal or involve a potentially toxic ~~substance~~ substances. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

6. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

7. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

8. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters, including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

9. Submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III.

Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. Coverage under this VWP general permit does not convey property rights in either real or personal

property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein in this general permit shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the department of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The department does not within 15 days notify the current and new permittees of the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-660-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the department after public notice and opportunity for a hearing in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

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2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to the VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the department shall follow the applicable procedures for termination under ~~9VAC25-210-180~~ 9VAC25-210, this chapter, and § 62.1-44.15:25 subdivision (5) of § 62.1-44.15 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-660-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity

is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have

been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the department information that the department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 as published in the July 1, 2024, update, Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include, as appropriate:

- a. The date, exact place, and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alter or degrade existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-660-27.

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 (9VAC25-660)

[Department of Environmental Quality Water Division Permit Application Fee Form, Form 5 \(rev. 10/2018\)](#)

~~Standard Joint Permit Application for Projects in Waters and Wetlands of the Commonwealth of Virginia (rev. 9/2018)~~

~~Virginia Department of Transportation, Inter Agency Coordination Meeting Joint Permit Application (eff. 6/2008)~~

[Standard Joint Permit Application for Projects in Waters and Wetlands of the Commonwealth of Virginia \(rev. 8/2023\)](#)

[Virginia Department of Transportation, Interagency Coordination Meeting Joint Permit Application \(rev. 7/2017\)](#)

[Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide \(eff. 8/2007\)](#)

Regulations

DOCUMENTS INCORPORATED BY REFERENCE
(9VAC25-660)

~~Classification of Wetlands and Deepwater Habitats of the United States, Cowardin, Lewis M. H., et al., United States Fish and Wildlife Service, December 1979, Reprinted 1992.~~

[Classification of Wetlands and Deepwater Habitats of the United States, adapted from Cowardin, Carter, Golet, and LaRoe \(1979\), Wetlands Subcommittee, Federal Geographic Data Committee, August 2013](#)

Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230

~~Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation~~

~~Virginia Invasive Plant Species List, Natural Heritage Technical Document 14-11, Department of Conservation and Recreation, Division of Natural Heritage (2014)~~

[Virginia Invasive Plant Species List, Division of Natural Heritage, Department of Conservation and Recreation, September 2024](#)

VA.R. Doc. No. R25-8056; Filed July 30, 2025, 1:53 p.m.

Proposed Regulation

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

Title of Regulation: 9VAC25-670. 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 (amending 9VAC25-670-27, 9VAC25-670-30, 9VAC25-670-100; repealing 9VAC25-670-25, 9VAC25-670-35).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:21 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 24, 2025.

Agency Contact: Brenda Winn, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2675, or email brenda.winn@deq.virginia.gov.

Summary:

The proposed amendments (i) 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 (9VAC25-670), which expires August 1, 2026, for another 10-year term; (ii) clarify provisions related to coverage expiration, transition, and continuation; (iii) correct citations and typographical errors; (iv) update forms and reference documents; and (v) clarify administrative procedures.

Chapter 670

Virginia Water Protection (VWP) 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

9VAC25-670-25. Authorization for coverage under VWP general permit effective August 1, 2006. (Repealed.)

~~A. All complete applications or notifications received by the department through 11:59 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a completeness determination, the applicant shall reapply for coverage under the VWP general permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.~~

~~B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP authorization cover page, unless otherwise revoked or terminated or unless a notice of project completion is received by the department on or before that date. Any permittee that desires to continue an authorized activity beyond the stated expiration date must reapply for coverage under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and conditions, or apply for a VWP individual permit, including payment of any required permit application fee. This section shall only apply to permittees holding valid authorizations for coverage granted under the VWP general permit effective August 1, 2006, through August 1, 2016.~~

9VAC25-670-27. VWP general permit and coverage; expiration; transition; continuation.

A. The general permit in 9VAC25-670-100 is effective August 2, 2026, and expires August 1, 2036. All applications or notifications received on or after August 2, 2016 2026, will be processed in accordance with the VWP general permit regulation effective August 2, 2016 2026. If there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a permit coverage decision, the applicant shall reapply for coverage under the next consecutive VWP general permit or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.

B. The general permit in 9VAC25-670-100 is effective August 2, 2016, and expires August 1, 2026. Any coverage that is granted pursuant to 9VAC25-670-30 shall remain in full force and effect until 11:59 p.m. on August 1, 2026 2036, unless the general permit coverage is terminated or revoked on or before this date. Where a permittee that has received general permit coverage desires to continue or complete the authorized activities beyond August 1, 2026 2036, the permittee shall reapply for new general permit coverage or for a VWP individual permit, including payment of any required permit application fee. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted and effective or a VWP individual permit is issued by the department.

C. In any case where an existing permittee has submitted a timely and complete notification or application for coverage under the next consecutive VWP general permit in accordance with this chapter and the board, through no fault of the permittee, does not issue the next consecutive VWP general permit with an effective date on or before the expiration date of the expiring VWP general permit, the conditions of that expiring VWP general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive VWP general permit. Application may be made at any time for a VWP individual permit in accordance with 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted and effective or a VWP individual permit is issued by the department.

9VAC25-670-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit effective August 2, ~~2016~~ 2026, may permanently or temporarily impact up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and other utility line activities, provided that:

1. The applicant submits notification as required in ~~9VAC25-670-50 and 9VAC25-670-60~~ this chapter using forms of application or notification.

2. The applicant remits any required permit application fee.

3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.

4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 for the proposed project impacts. The applicant, at ~~his~~ the applicant's discretion, may seek a VWP individual permit or coverage under another applicable VWP general permit in lieu of this VWP general permit.

5. Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.

a. Where a utility line has multiple crossings of surface waters (several single and complete projects) with more than minimal impacts, the department may, at its discretion, require a VWP individual permit for the project.

b. Where an access road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the department may, at its discretion, require a VWP individual permit.

6. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations.

7. When functions of surface waters are permanently adversely affected, such as for conversion of forested to emergent wetlands in a permanently maintained utility right-of-way, compensation shall be required for impacts outside of a ~~20-foot-wide~~ 20-foot-wide permanently maintained corridor. Compensation shall not be required for impacts within the ~~20-foot-wide~~ 20-foot-wide portion of permanently maintained corridor. For example, with a ~~50-foot-wide~~ 50-foot-wide permanently maintained corridor, compensation on each side of the 20-foot portion would be required for impacts that occur between the 20-foot and the 50-foot marks.

8. When required, compensation for unavoidable impacts is provided in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-670-70, and 9VAC25-210-116.

B. Activities that may be granted coverage under this VWP general permit include the following:

1. The construction, maintenance, or repair of utility lines, including outfall structures and the excavation, backfill, or

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bedding for utility lines, provided there is no change in preconstruction contours.

2. The construction, maintenance, or expansion of a substation facility or pumping station associated with a power line or utility line.

3. The construction or maintenance of foundations for overhead utility line towers, poles, or anchors, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a single pad) are used where feasible.

4. The construction of access roads for the construction or maintenance of utility lines including overhead power lines and utility line substations, provided the activity in combination with any substation does not exceed the threshold limit of this VWP general permit.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the department, any person claiming this waiver shall demonstrate to the satisfaction of the department that he qualifies for the waiver.

D. Coverage under this VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the department has issued § 401 certification in accordance with 9VAC25-210-130 H as of August 2, ~~2016~~ 2026, shall constitute coverage under this VWP general permit unless (i) a state program general permit (SPGP) is required and granted for the activity or impact; or (ii) coverage under a VWP general permit is not allowed pursuant to subdivision D 2 of § 62.1-44.15:21 of the State Water Control Law.

F. When the department determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the department may require a VWP individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this VWP general permit.

9VAC25-670-35. Administrative continuance. (Repealed.)

~~Beginning on August 2, 2016, in any case where an existing permittee has submitted a timely and complete notification or application for coverage under the next consecutive VWP general permit in accordance with 9VAC25-670-50 and 9VAC25-670-60 and the board, through no fault of the permittee, does not issue the next consecutive VWP general permit with an effective date on or before the expiration date of the expiring VWP general permit, the conditions of that expiring VWP general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive VWP general permit.~~

9VAC25-670-100. VWP general permit.

VWP GENERAL PERMIT NO. WP2 FOR FACILITIES AND ACTIVITIES OF UTILITIES AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, ~~2016~~ 2026

Expiration date: August 1, ~~2026~~ 2036

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of surface waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I.

Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the department in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-670-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-670-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs,

provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed ~~in accordance with~~ to comply with the requirements of the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 Stormwater Management Regulation (9VAC25-875). These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted area. All denuded areas shall be properly stabilized ~~in accordance with~~ to comply with the requirements of the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 Stormwater Management Regulation (9VAC25-875).

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways), and demolition activities associated with the project shall be accomplished in such a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude any unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

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12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact areas where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct ~~his~~ activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in a Department of Environmental Quality VWP general permit coverage letter, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands, not to exceed 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a trench drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and ~~stream bank~~ streambank protection.

1. Riprap bank stabilization and riprap aprons for outfalls shall be of an appropriate size and design ~~in accordance to comply with the requirements of the~~ Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 Stormwater Management Regulation (9VAC25-875).

~~2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.~~

~~3.~~ 2. For ~~stream bank~~ streambank protection activities, the structure and backfill shall be placed as close to the ~~stream bank~~ streambank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

~~4.~~ 3. All ~~stream bank~~ streambank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

~~5.~~ 4. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

~~6.~~ 5. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. ~~6.~~ No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

Part II.

Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-670-70.

3. The permittee-responsible compensation site ~~or sites~~ depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site. A site change may require a modification to coverage.

4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has been submitted to and received by the Department of Environmental Quality.

5. The final compensation plan shall be submitted to and approved by the department prior to a construction activity in permitted impact areas. The department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the department.

a. The final permittee-responsible wetlands compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and

the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the protection of the compensation site ~~or sites~~, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

b. The final permittee-responsible stream compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing ~~or drawings~~ of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing ~~or drawings~~ of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site ~~or sites~~, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site.

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Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.

b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the department.

c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.

d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at a minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle.

Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the department. All vegetation removal shall be done by manual means, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted in this subdivision. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in ~~9VAC25-670-100~~ Part II E of the permit. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as ~~±~~ plus or minus 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site ~~or sites~~ are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year one) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years one, two, three, and five, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the fifth monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued,

providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with ~~9VAC25-670-100~~ Part II E 6 of the permit.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the ~~stream-bank~~ streambank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the ~~stream-banks~~ streambanks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation

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construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site ~~or sites~~. Aerial surveys shall include the variation from actual ground conditions, such as ~~+/-~~ plus or minus 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year one) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years one and two, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted in accordance with ~~9VAC25-670-100~~ Part II E 6 of the permit.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

- a. Construction activities have not yet started;
- b. Construction activities have started;
- c. Construction activities have started but are currently inactive; or
- d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site, including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site, including a site location map identifying photo-monitoring stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) Summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered that require debris removal or involve potentially toxic ~~substance~~ substances. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental

Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters, including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III.

Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely affecting human health or the environment.

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C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained ~~herein~~ in this general permit shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the department of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such

responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The department does not within the 15 days notify the current and new permittees of the board's intent to modify or revoke and reissue the VWP general permit.

- I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-670-80.

- J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the department after public notice and opportunity for a hearing in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to the VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

- K. The department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the department shall follow the applicable procedures for termination under ~~9VAC25-210-180~~ 9VAC25-210, ~~this chapter~~, and ~~§ 62.1-44.15:25 subdivision (5) of § 62.1-44.15~~ of the Code of Virginia.

- L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-670-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall

constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;
2. Name and location of the activity;
3. The VWP general permit tracking number; and
4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless

otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the department any information that the department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 as published in the July 1, 2024, update, Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years

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from the date of general permit expiration. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include, as appropriate:

- a. The date, exact place, and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-670-27.

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 (9VAC25-670)

[Department of Environmental Quality Water Division Permit Application Fee Form, Form 5 \(rev. 10/2018\)](#)

~~Standard Joint Permit Application for Projects in Waters and Wetlands of the Commonwealth of Virginia (rev. 9/2018)~~

~~Virginia Department of Transportation, Inter Agency Coordination Meeting Joint Permit Application (eff. 6/2008)~~

[Standard Joint Permit Application for Projects in Waters and Wetlands of the Commonwealth of Virginia \(rev. 8/2023\)](#)

[Virginia Department of Transportation, Interagency Coordination Meeting Joint Permit Application \(rev. 7/2017\)](#)

[Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide \(eff. 8/2007\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-670)

~~Classification of Wetlands and Deepwater Habitats of the United States, Cowardin, Lewis M. II, et al., United States Fish and Wildlife Service, December 1979, Reprinted 1992~~

[Classification of Wetlands and Deepwater Habitats of the United States, adapted from Cowardin, Carter, Golet, and LaRoe \(1979\), Wetlands Subcommittee, Federal Geographic Data Committee, August 2013](#)

[Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230](#)

~~Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation~~

~~Virginia Invasive Plant Species List, Natural Heritage Technical Document 14-11, Department of Conservation and Recreation, Division of Natural Heritage (2014)~~

[Virginia Invasive Plant Species List, Division of Natural Heritage, Department of Conservation and Recreation, September 2024](#)

VA.R. Doc. No. R25-8057; Filed July 30, 2025, 1:59 p.m.

Proposed Regulation

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

Title of Regulation: 9VAC25-680. **Virginia Water Protection General Permit for Linear Transportation Projects (amending 9VAC25-680-27, 9VAC25-680-30, 9VAC25-680-100; repealing 9VAC25-680-25, 9VAC25-680-35).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:21 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 24, 2025.

Agency Contact: Brenda Winn, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2675, or email brenda.winn@deq.virginia.gov.

Summary:

The proposed amendments (i) reissue the Virginia Water Protection General Permit for Linear Transportation Projects (9VAC25-680), which expires August 1, 2026, for another 10-year term; (ii) clarify provisions related to coverage expiration, transition, and continuation; (iii) correct citations and typographical errors; (iv) update forms and reference documents; and (v) clarify administrative procedures.

Chapter 680

Virginia Water Protection (VWP) General Permit for Linear Transportation Projects

9VAC25-680-25. Authorization for coverage under VWP general permit effective August 1, 2006. (Repealed.)

~~A. All complete applications or notifications received by the department through 11:59 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit~~

~~regulation in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a completeness determination, the applicant shall reapply for coverage under the VWP general permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.~~

~~B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP authorization cover page, unless otherwise revoked or terminated or unless a notice of project completion is received by the department on or before that date. Any permittee that desires to continue an authorized activity beyond the stated expiration date must reapply for coverage under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and conditions, or apply for a VWP individual permit, including payment of any required permit application fee. This section shall only apply to permittees holding valid authorizations for coverage granted under the VWP general permit effective August 1, 2006, through August 1, 2016.~~

9VAC25-680-27. VWP general permit and coverage; expiration; transition; continuation.

A. The general permit in 9VAC25-680-100 is effective August 2, 2026, and expires August 1, 2036. All applications or notifications received on or after August 2, 2016 2026, will be processed in accordance with the VWP general permit regulation effective August 2, 2016 2026. If there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a permit coverage decision, the applicant shall reapply for coverage under the next consecutive VWP general permit or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.

~~B. The general permit in 9VAC25-680-100 is effective August 2, 2016, and expires August 1, 2026. Any coverage that is granted pursuant to 9VAC25-680-30 shall remain in full force and effect until 11:59 p.m. on August 1, 2026 2036, unless the general permit coverage is terminated or revoked on or before this date. Where a permittee that has received general permit coverage desires to continue or complete the authorized activities beyond August 1, 2026 2036, the permittee shall reapply for new general permit coverage or for a VWP individual permit, including payment of any required permit application fee. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted and effective or a VWP individual permit is issued by the department.~~

C. In any case where an existing permittee has submitted a timely and complete notification or application for coverage under the next consecutive VWP general permit in accordance with this chapter and the board, through no fault of the

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~~permittee, does not issue the next consecutive VWP general permit with an effective date on or before the expiration date of the expiring VWP general permit, the conditions of that expiring VWP general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive VWP general permit.~~ Application may be made at any time for a VWP individual permit in accordance with 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted and effective or a VWP individual permit is issued by the department.

9VAC25-680-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit effective August 2, ~~2016~~ 2026, may permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for linear transportation projects, provided that:

1. The applicant submits notification as required in ~~9VAC25-680-50 and 9VAC25-680-60~~ this chapter using forms of application or notification.
2. The applicant remits any required permit application fee.
3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.
4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 for the proposed project impacts. The applicant, at ~~his~~ the applicant's discretion, may seek a VWP individual permit or coverage under another applicable VWP general permit in lieu of coverage under this VWP general permit.
5. Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.
 - a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of state waters (several single and complete projects), the department may, at its discretion, require a VWP individual permit.
 - b. For the purposes of this chapter, when an interchange has multiple crossings of state waters, the entire interchange shall be considered the single and complete project.
6. The stream impact criterion applies to all components of the project, including structures and stream channel manipulations.
7. Dredging does not exceed 5,000 cubic yards.
8. When required, compensation for unavoidable impacts is provided in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-680-70, and 9VAC25-210-116.

B. Activities that may be granted coverage under this VWP general permit include the construction, expansion,

modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, bicycle and pedestrian paths, and airport runways and taxiways, including all attendant features, both temporary and permanent).

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the department, any person claiming this waiver shall demonstrate to the satisfaction of the department that he qualifies for the waiver.

D. Coverage under this VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the department has issued § 401 certification in accordance with 9VAC25-210-130 H as of August 2, ~~2016~~ 2026, shall constitute coverage under this VWP general permit, unless a state program general permit (SPGP) is required and granted for the activity or impact.

F. When the department determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the department may require a VWP individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this VWP general permit.

9VAC25-680-35. Administrative continuance. (Repealed.)

~~Beginning on August 2, 2016, in any case where an existing permittee has submitted a timely and complete notification or application for coverage under the next consecutive VWP general permit in accordance with 9VAC25-680-50 and 9VAC25-680-60 and the board, through no fault of the permittee, does not issue the next consecutive VWP general permit with an effective date on or before the expiration date of the expiring VWP general permit, the conditions of that expiring VWP general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive VWP general permit.~~

9VAC25-680-100. VWP general permit.

VWP GENERAL PERMIT NO. WP3 FOR LINEAR
TRANSPORTATION PROJECTS UNDER THE VIRGINIA
WATER PROTECTION PERMIT AND THE VIRGINIA
STATE WATER CONTROL LAW

Effective date: August 2, ~~2016~~ 2026

Expiration date: August 1, ~~2026~~ 2036

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not

cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit ~~set forth herein~~; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I.

Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the department in the coverage letter, if any, shall be enforceable conditions of this permit.
2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-680-80. An application or request for modification to coverage or another VWP permit application may be required.
3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-680-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.
4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.
2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless specifically approved by the Department of Environmental Quality on a case-by-case basis and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk,

floodplain pipe and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes or culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed ~~in accordance with~~ to comply with the requirements of the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 Stormwater Management Regulation (9VAC25-875). These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized ~~in accordance to comply with the requirements of the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 Stormwater Management Regulation (9VAC25-875).~~

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum

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extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in Department of Environmental Quality VWP general permit coverage, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be

used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and ~~stream bank~~ streambank protection.

1. Riprap bank stabilization and riprap aprons for outfalls shall be of an appropriate size and design ~~in accordance to comply with the requirements of the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 Stormwater Management Regulation (9VAC25-875).~~

~~2. Riprap aprons for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.~~

~~3.~~ 2. For ~~bank~~ streambank protection activities, the structure and backfill shall be placed as close to the ~~stream bank~~ streambank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

~~4.~~ 3. All ~~stream bank~~ streambank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

~~5.~~ 4. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

~~6.~~ 5. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

~~7.~~ 6. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease, and the Department of Environmental Quality shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted.

6. For navigation channels the following shall apply:

a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, filter bags, or other similar filtering practices, any of which shall be properly stabilized prior to placing the dredged material within the containment area.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

G. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

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3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II.

Construction and Compensation Requirements, Monitoring and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-680-70.

3. The permittee-responsible compensation site ~~or sites~~ depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site. A site change may require a modification to coverage.

4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has been submitted to and received by the Department of Environmental Quality.

5. The final compensatory mitigation plan shall be submitted to and approved by the department prior to a construction activity in permitted impact areas. The department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the department.

a. The final permittee-responsible wetlands compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the protection of the compensation site ~~or sites~~, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

b. The final permittee-responsible stream compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing ~~or drawings~~ of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, ~~etc.~~); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing ~~or drawings~~ of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site ~~or sites~~, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan ~~or plans~~.

b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the department.

c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.

d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for the Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall

restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the department. All vegetation removal shall be done by manual means only, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted in this subdivision. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in ~~9VAC25-680-100~~ Part II E of this

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permit. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

- a. A sampling station shall be located upstream and immediately downstream of the relocated channel.
- b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.
- c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as ~~±~~ plus or minus 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site ~~or sites~~ are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year one) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years one, two, three, and five, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured weekly during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from

on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with ~~9VAC25-680-100~~ Part II E 6 of this permit.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the ~~stream bank~~ streambank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the ~~stream banks~~ streambanks and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph

orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as $\pm$ plus or minus 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year one) after stream compensation site constructions activities, including planting, have been completed. Monitoring shall be required for monitoring years one and two, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted in accordance with ~~9VAC25-680-100~~ Part II E 6 of this permit.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the

following statements for each authorized surface water impact location:

- a. Construction activities have not yet started;
- b. Construction activities have started;
- c. Construction activities have started but are currently inactive; or
- d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

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(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) Summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered that require debris removal or involve potentially toxic ~~substance~~ substances. Measures to remove the obstruction, material, or toxic ~~substance~~ substances or to change the location of a

structure are prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III.

Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained ~~herein~~ in this general permit shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the department of the proposed transfer of the general permit coverage and

provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The department does not within 15 days notify the current and new permittees of the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-680-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the department after public notice and opportunity for a hearing in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the department shall follow the applicable procedures for termination under ~~9VAC25-210-180~~ 9VAC25-210, this chapter, and § 62.1-44.15:25 subdivision (5) of § 62.1-44.15 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent

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within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;
2. Name and location of the activity;
3. The VWP general permit tracking number; and
4. One of the following certifications:

- a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit coverage."

- b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

- c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface

waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit authorization or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the department any information that the department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 as published in the July 1, 2024, update, Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP

general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include, as appropriate:

- a. The date, exact place, and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after August 1, 2001, for linear transportation projects of the Virginia Department of Transportation, or on and after October 1, 2001, for all other projects, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-680-27.

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 (9VAC25-680)

[Department of Environmental Quality Water Division Permit Application Fee Form, Form 5 \(rev. 10/2018\)](#)

~~Standard Joint Permit Application for Projects in Waters and Wetlands of the Commonwealth of Virginia (rev. 9/2018)~~

~~Virginia Department of Transportation, Inter Agency Coordination Meeting Joint Permit Application (eff. 6/2008)~~

[Standard Joint Permit Application for Projects in Waters and Wetlands of the Commonwealth of Virginia \(rev. 8/2023\)](#)

[Virginia Department of Transportation, Interagency Coordination Meeting Joint Permit Application \(rev. 7/2017\)](#)

[Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide \(eff. 8/2007\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-680)

~~Classification of Wetlands and Deepwater Habitats of the United States, Cowardin, Lewis M. II, et al., United States Fish and Wildlife Service, December 1979, Reprinted 1992~~

[Classification of Wetlands and Deepwater Habitats of the United States, adapted from Cowardin, Carter, Golet, and LaRoe \(1979\), Wetlands Subcommittee, Federal Geographic Data Committee, August 2013](#)

Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230

~~Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation~~

~~Virginia Invasive Plant Species List, Natural Heritage Technical Document 14-11, Department of Conservation and Recreation, Division of Natural Heritage (2014)~~

[Virginia Invasive Plant Species List, Division of Natural Heritage, Department of Conservation and Recreation, September 2024](#)

VA.R. Doc. No. R25-8058; Filed July 30, 2025, 2:00 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to

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assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (amending 9VAC25-690-27, 9VAC25-690-30, 9VAC25-690-100; repealing 9VAC25-690-25, 9VAC25-690-35).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:21 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 24, 2025.

Agency Contact: Brenda Winn, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2675, or email brenda.winn@deq.virginia.gov.

Summary:

The proposed amendments (i) reissue the Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (9VAC25-690), which expires August 1, 2026, for another 10-year term; (ii) clarify provisions related to coverage expiration, transition, and continuation; (iii) correct citations and typographical errors; (iv) update forms and reference documents; and (v) clarify administrative procedures.

Chapter 690

Virginia Water Protection (VWP) General Permit for Impacts from Development and Certain Mining Activities

9VAC25-690-25. Authorization for coverage under VWP general permit effective August 1, 2006. (Repealed.)

~~A. All complete applications or notifications received by the department through 11:59 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a completeness determination, the applicant shall reapply for coverage under the VWP general permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.~~

~~B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP authorization cover page, unless otherwise revoked or terminated or unless a notice of project completion is received~~

~~by the department on or before that date. Any permittee that desires to continue an authorized activity beyond the stated expiration date must reapply for coverage under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and conditions, or apply for a VWP individual permit, including payment of any required permit application fee. This section shall only apply to permittees holding valid authorizations for coverage granted under the VWP general permit effective August 1, 2006, through August 1, 2016.~~

9VAC25-690-27. VWP general permit and coverage; expiration; transition; continuation.

A. The general permit in 9VAC25-690-100 is effective August 2, 2026, and expires August 1, 2036. All applications or notifications received on or after August 2, 2016 2026, will be processed in accordance with the VWP general permit regulation effective August 2, 2016 2026. If there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a permit coverage decision, the applicant shall reapply for coverage under the next consecutive VWP general permit or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.

B. ~~The general permit in 9VAC25-690-100 is effective August 2, 2016, and expires August 1, 2026.~~ Any coverage that is granted pursuant to 9VAC25-690-30 shall remain in full force and effect until 11:59 p.m. on August 1, ~~2026~~ 2036, unless the general permit coverage is terminated or revoked on or before this date. Where a permittee that has received general permit coverage desires to continue or complete the authorized activities beyond August 1, ~~2026~~ 2036, the permittee shall reapply for new general permit coverage or for a VWP individual permit, including payment of any required permit application fee. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted and effective or a VWP individual permit is issued by the department.

C. In any case where an existing permittee has submitted a timely and complete notification or application for coverage under the next consecutive VWP general permit in accordance with this chapter and the board, through no fault of the permittee, does not issue the next consecutive VWP general permit with an effective date on or before the expiration date of the expiring VWP general permit, the conditions of that expiring VWP general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive VWP general permit. Application may be made at any time for a VWP individual permit in accordance with 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted and effective or a VWP individual permit is issued by the department.

9VAC25-690-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit effective August 2, ~~2016~~ 2026, may permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for general development and certain mining activities, provided that:

1. The applicant submits notification as required in ~~9VAC25-690-50 and 9VAC25-690-60~~ this chapter using forms of application or notification.
2. The applicant remits any required permit application fee.
3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.
4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 for the proposed project impacts. The applicant, at ~~his~~ the applicant's discretion, may seek a VWP individual permit, or coverage under another applicable VWP general permit, in lieu of coverage under this VWP general permit.
5. Impacts, both temporary and permanent, result from a single and complete project including all attendant features.
 - a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the department may, at its discretion, require a VWP individual permit.
 - b. For the purposes of this chapter, when an interchange has multiple crossings of surface waters, the entire interchange shall be considered the single and complete project.
6. The stream impact criterion applies to all components of the project, including structures and stream channel manipulations.
7. Dredging does not exceed 5,000 cubic yards.
8. When required, compensation for unavoidable impacts is provided in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-690-70, and 9VAC25-210-116.

B. Activities that may be granted coverage under this VWP general permit include the following:

1. Residential, commercial, institutional. The construction or expansion of building foundations, building pads, and attendant features for residential, commercial, and institutional development activities.
 - a. Residential developments include both single and multiple units.

b. Commercial developments include retail stores, industrial facilities, restaurants, business parks, office buildings, and shopping centers.

c. Institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.

d. Attendant features include roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities (such as playgrounds, playing fields, and golf courses). Attendant features must be necessary for the use and maintenance of the structures.

2. Recreational facilities. The construction or expansion of recreational facilities and small support facilities.

a. Recreational facilities include hiking trails, bike paths, horse paths, nature centers, and campgrounds (but not trailer parks). Boat ramps (concrete or open-pile timber), boathouses, covered boat lifts, mooring piles and dolphins, fender piles, camels (wooden floats serving as fenders alongside piers), and open-pile piers (including floating piers, and travel-lift piers, ~~etc.~~) associated with recreational facilities are also included.

b. Recreational facilities do not include as a primary function the use of motor vehicles, buildings, or impervious surfaces.

c. Golf courses and ski area expansions may qualify as recreational facilities provided the construction of the proposed facility does not result in a substantial deviation from the natural contours and the facility is designed to minimize adverse effects on state waters and riparian areas. Measures that may be used to minimize adverse effects on waters and riparian areas include the implementation of integrated pest management plans, adequate stormwater management, vegetated buffers, and fertilizer management plans.

d. Small support facilities are authorized provided they are directly related to the recreational activity. Small support facilities include maintenance storage buildings and stables.

e. The following do not qualify as recreational facilities: hotels, restaurants, playing fields (e.g., baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, or new ski areas.

f. The recreational facility must have an adequate water quality management plan, such as a stormwater management plan, to ensure that the recreational facility results in no substantial adverse effects to water quality.

3. Stormwater management facilities. The construction, maintenance, and excavation of stormwater management facilities; the installation and maintenance of water control structures, outfall structures, and emergency spillways; and

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the maintenance dredging of existing stormwater management facilities.

a. Stormwater management facilities include stormwater ponds and facilities, detention basins, retention basins, traps, and other facilities designed to reduce pollutants in stormwater runoff.

b. The stormwater management facility must:

(1) To the maximum extent practicable, be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates).

(2) Not permanently restrict or impede the passage of normal or expected high flows, unless the primary purpose of the facility is to impound waters.

(3) Withstand expected high flows.

(4) To the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and not increase water flows from the project site, relocate water, or redirect flow beyond preconstruction conditions.

(5) To the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the facility is part of a larger system designed to manage water flows.

(6) Be designed using best management practices (BMPs) and watershed protection techniques. ~~Examples of such BMPs are described in the Virginia Stormwater Management Handbook and include to minimize adverse effects to aquatic resources, including forebays, vegetated buffers, bioengineering methods, and siting considerations to minimize adverse effects to aquatic resources.~~

c. Maintenance excavation shall be in accordance with the original facility maintenance plan, or when unavailable, an alternative plan approved by the Department of Environmental Quality, and shall not exceed, to the maximum extent practicable, the character, scope, or size detailed in the original design of the facility.

4. Mining facilities. The construction or expansion of mining facilities and attendant features for a single and complete project. This general permit may not be used to authorize impacts from in-stream mining activities or operations as defined in 9VAC25-690-10.

a. Mining facilities include activities directly associated with aggregate mining (e.g., sand, gravel, and crushed or broken stone); hard rock/mineral mining (e.g., metalliferous ores); and surface coal, natural gas, and coalbed methane gas mining, as authorized by the Virginia Department of Energy.

b. Attendant features are authorized provided they are directly related to the mining facility, and include access road construction, parking lots, offices, maintenance shops, garages, and stormwater management facilities.

c. Both direct impacts (e.g., footprints of all fill areas, road crossings, sediment ponds, and stormwater management facilities; mining through state waters; stockpile of overburden; and excavation) and indirect impacts (e.g., diversion of surface water and reach of state waters affected by sediment pond pool and sediment transport) shall be considered when granting coverage under this general permit.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the department, any person claiming this waiver shall demonstrate to the satisfaction of the department that he qualifies for the waiver.

D. Coverage under VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the department has issued § 401 certification in accordance with 9VAC25-210-130 H as of August 2, ~~2016~~ 2026, shall constitute coverage under this VWP general permit unless (i) a state program general permit (SPGP) is required and granted for the activity or impact; or (ii) coverage under a VWP general permit is not allowed pursuant to subdivision D 2 of § 62.1-44.15:21 of the State Water Control Law.

F. Coverage under a permit issued by the Department of Energy under the Virginia Coal Surface Mining Control and Reclamation Act, Chapter 10 (§ 45.2-1000 et seq.) of Title 45.2 of the Code of Virginia, where such permit authorizes activities that may be permitted by this chapter and contains a mitigation plan for the impacts from the mining activities, shall also constitute coverage under this VWP general permit.

G. When the department determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the department may require a VWP individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this VWP general permit.

9VAC25-690-35. Administrative continuance. (Repealed.)

~~Beginning on August 2, 2016, in any case where an existing permittee has submitted a timely and complete notification or application for coverage under the next consecutive VWP general permit in accordance with 9VAC25-690-50 and 9VAC25-690-60 and the board, through no fault of the permittee, does not issue the next consecutive VWP general permit with an effective date on or before the expiration date of the expiring VWP general permit, the conditions of that expiring VWP general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive VWP general permit.~~

9VAC25-690-100. VWP general permit.

VWP GENERAL PERMIT NO. WP4 FOR IMPACTS
FROM DEVELOPMENT AND CERTAIN MINING
ACTIVITIES UNDER THE VIRGINIA WATER
PROTECTION PERMIT AND THE VIRGINIA STATE
WATER CONTROL LAW

Effective date: August 2, ~~2016~~ 2026
Expiration date: August 1, ~~2026~~ 2036

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit ~~set forth herein~~; any requirements in coverage granted under this general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I.

Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the department in the coverage letter, if any, shall be enforceable conditions of this permit.
2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-690-80. An application or request for modification to coverage or another VWP permit application may be required.
3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-690-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.
4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.
2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.
3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.
4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
5. Erosion and sedimentation controls shall be designed ~~in accordance with~~ to comply with the requirements of the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 Stormwater Management Regulation (9VAC25-875), or for mining activities covered by this general permit, the standards issued by the Virginia Department of Energy that are effective as those in ~~the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 9VAC25-875~~. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These

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controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized ~~in accordance to comply~~ with the requirements of the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 Stormwater Management Regulation (9VAC25-875).

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the

Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in Department of Environmental Quality VWP general permit coverage, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on

surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized the Department of Environmental Quality. Restoration shall be the seeding of planting of the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List, September 2024, shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and ~~stream-bank~~ streambank protection.

1. Riprap bank stabilization and riprap aprons for outfalls shall be of an appropriate size and design ~~in accordance to comply with the requirements of the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 Stormwater Management Regulation (9VAC25-875).~~

~~2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.~~

~~3. 2.~~ For ~~stream-bank~~ streambank protection activities, the structure and backfill shall be placed as close to the ~~stream bank~~ streambank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

~~4. 3.~~ All ~~stream-bank~~ streambank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

~~5. 4.~~ Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

~~6. 5.~~ Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

~~7. 6.~~ No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease, and the Department of Environmental Quality shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted.

6. For navigation channels the following shall apply:

a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

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10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, filter bags, or other similar filtering practices, any of which shall be properly stabilized prior to placing the dredged material within the containment area.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

G. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II.

Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-690-70.

3. The permittee-responsible compensation site ~~or sites~~ depicted in the conceptual compensation plan submitted

with the application shall constitute the compensation site. A site change may require a modification to coverage.

4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has been submitted to and received by the Department of Environmental Quality.

5. The final compensation plan shall be submitted to and approved by the department prior to a construction activity in permitted impact areas. The department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the department.

a. The final permittee-responsible wetlands compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the compensation site ~~or sites~~, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

b. The final permittee-responsible stream compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing ~~or drawings~~ of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, and substrate, ~~etc.~~); a site access plan; a monitoring plan, including a monitoring

and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing ~~or drawings~~ of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site ~~or sites~~, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

- a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan ~~or plans~~.
- b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the department.
- c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.
- d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.
- e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.
- f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined, and a corrective action plan shall be submitted to the Department of Environmental Quality for approval with or before that

year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the wetlands compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the wetlands or stream compensation site ~~or sites~~ without prior authorization by the department. All vegetation removal shall be done by manual means, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

- a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.
- b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar

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month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted in this subdivision. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in ~~9VAC25-690-100~~ Part II E of the permit. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

- a. A sampling station shall be located upstream and immediately downstream of the relocated channel.
- b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.
- c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as ~~+/-~~ plus or minus 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same

locations and view directions at the site ~~or sites~~ are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year one) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years one, two, three, and five, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with ~~9VAC25-690-100~~ Part II E of the permit.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed

mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the ~~stream bank~~ streambank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the ~~stream banks~~ streambanks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as ~~+/-~~ plus or minus 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year one) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years one and two, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted by in accordance with ~~9VAC25-690-100~~ Part II E of the permit.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

- a. Construction activities have not yet started;
- b. Construction activities have started;
- c. Construction activities have started but are currently inactive; or
- d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site, including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

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(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site, including a site location map identifying photo-monitoring stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or

cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) Summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered that require debris removal or involve potentially toxic ~~substance~~ substances. Measures to remove the obstruction, material, or toxic ~~substance~~ substances or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters, including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information

submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

Part III.

Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credential, the permittee shall allow the department or any duly authorized

agent of the department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained ~~herein~~ in this general permit shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the department of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The department does not within 15 days notify the current and new permittees of the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-690-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the department after public notice and opportunity for a hearing in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the department that the authorized activity endangers human health or the environment and can

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be regulated to acceptable levels by a modification to VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the department shall follow the applicable procedures for termination under 9VAC25-210-180 9VAC25-210, this chapter, and § 62.1-44.15:25 subdivision (5) of § 62.1-44.15 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-690-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;
2. Name and location of the activity;
3. The VWP general permit tracking number; and
4. One of the following certifications:
 - a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

- b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the department any information that the department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.
2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 as published in the July 1, 2024, update, Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the department at any time.
4. Records of monitoring information shall include, as appropriate:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The name of the individuals who performed the sampling or measurements;
 - c. The date and time the analyses were performed;
 - d. The name of the individuals who performed the analyses;
 - e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;
 - f. The results of such analyses; and
 - g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

- a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
- b. Filling or dumping;
- c. Permanent flooding or impounding; or
- d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-690-27.

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 (9VAC25-690)

[Department of Environmental Quality Water Division Permit Application Fee Form, Form 5 \(rev. 10/2018\)](#)

~~Standard Joint Permit Application for Projects in Waters and Wetlands of the Commonwealth of Virginia (rev. 9/2018)~~

~~Virginia Department of Transportation, Inter Agency Coordination Meeting Joint Permit Application (eff. 6/2008)~~

[Standard Joint Permit Application for Projects in Waters and Wetlands of the Commonwealth of Virginia \(rev. 8/2023\)](#)

[Virginia Department of Transportation, Interagency Coordination Meeting Joint Permit Application \(rev. 7/2017\)](#)

[Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide \(eff. 8/2007\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-690)

~~Classification of Wetlands and Deepwater Habitats of the United States, Cowardin, Lewis M. II, et al., United States Fish and Wildlife Service, December 1979, Reprinted 1992~~

[Classification of Wetlands and Deepwater Habitats of the United States, adapted from Cowardin, Carter, Golet, and](#)

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[LaRoe \(1979\), Wetlands Subcommittee, Federal Geographic Data Committee, August 2013](#)

Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230

~~Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation~~

~~Virginia Invasive Plant Species List, Natural Heritage Technical Document 14-11, Department of Conservation and Recreation, Division of Natural Heritage (2014)~~

~~Virginia Stormwater Management Handbook, First Edition, 1999, Department of Conservation and Recreation~~

[Virginia Invasive Plant Species List, Division of Natural Heritage, Department of Conservation and Recreation, September 2024](#)

V.A.R. Doc. No. R25-8059; Filed July 30, 2025, 2:02 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health 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: 12VAC5-90. Regulations for Disease Reporting and Control (amending 12VAC5-90-80).

Statutory Authority: §§ 32.1-12 and 32.1-35 of the Code of Virginia.

Effective Date: September 24, 2025.

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

Summary:

Pursuant to Chapter 375 of the 2024 Acts of Assembly, the amendments add Alpha-gal Syndrome to the list of diseases required to be reported in accordance with § 32.1-35 of the Code of Virginia.

12VAC5-90-80. Lists of diseases that shall be reported.

A. Reportable disease list. The board declares suspected or confirmed cases of the following named diseases, toxic effects,

and conditions to be reportable by the persons enumerated in 12VAC5-90-90. Conditions identified by an asterisk (*) require immediate communication to the local health department by the most rapid means available upon suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis, unless otherwise specified in this section. Neonatal Abstinence Syndrome shall be reported as specified in subsection E of this section. Coronavirus disease 2019 (SARS-CoV-2) shall be reported as specified in subsection I of the section.

Alpha-gal Syndrome (AGS)

Amebiasis (*Entamoeba histolytica*)

*Anthrax (*Bacillus anthracis*)

Arboviral infections (e.g., CHIK, dengue, EEE, LAC, SLE, WNV, Zika)

Babesiosis (*Babesia* spp.)

*Botulism (*Clostridium botulinum*)

*Brucellosis (*Brucella* spp.)

Campylobacteriosis (*Campylobacter* spp.)

Candida auris, infection or colonization

Carbapenemase-producing organism, infection or colonization

Chancroid (*Haemophilus ducreyi*)

Chickenpox (Varicella virus)

Chlamydia trachomatis infection

*Cholera (*Vibrio cholerae* O1 or O139)

*Coronavirus infection, severe (e.g., SARS-CoV, MERS-CoV)

Coronavirus disease 2019 (COVID-19 or SARS-CoV-2)

Cryptosporidiosis (*Cryptosporidium* spp.)

Cyclosporiasis (*Cyclospora* spp.)

*Diphtheria (*Corynebacterium diphtheriae*)

*Disease caused by an agent that may have been used as a weapon

Ehrlichiosis/Anaplasmosis (*Ehrlichia* spp., *Anaplasma phagocytophilum*)

Giardiasis (*Giardia* spp.)

Gonorrhea (*Neisseria gonorrhoeae*)

Granuloma inguinale (*Calymmatobacterium granulomatis*)

*Haemophilus influenzae infection, invasive

Hantavirus pulmonary syndrome

Hemolytic uremic syndrome (HUS)

*Hepatitis A

Hepatitis B (acute and chronic)

Hepatitis C (acute and chronic)

Hepatitis, other acute viral

Human immunodeficiency virus (HIV) infection

Influenza, confirmed

*Influenza-associated deaths if younger than 18 years of age

Lead, blood levels

Legionellosis (*Legionella* spp.)

Leprosy (Hansen's disease) (*Mycobacterium leprae*)

Leptospirosis (*Leptospira interrogans*)

Listeriosis (*Listeria monocytogenes*)

Lyme disease (*Borrelia* spp.)

Lymphogranuloma venereum (*Chlamydia trachomatis*)

Malaria (*Plasmodium* spp.)

*Measles (Rubeola)

*Meningococcal disease (*Neisseria meningitidis*)

Mumps

Neonatal abstinence syndrome (NAS)

Ophthalmia neonatorum

*Outbreaks, all (including foodborne, health care-associated, occupational, toxic substance-related, waterborne, and any other outbreak)

*Pertussis (*Bordetella pertussis*)

*Plague (*Yersinia pestis*)

*Poliovirus infection, including poliomyelitis

*Psittacosis (*Chlamydophila psittaci*)

*Q fever (*Coxiella burnetii*)

*Rabies, human and animal

Rabies treatment, post-exposure

*Rubella, including congenital rubella syndrome

Salmonellosis (*Salmonella* spp.)

Shiga toxin-producing *Escherichia coli* infection

Shigellosis (*Shigella* spp.)

*Smallpox (*Variola* virus)

Spotted fever rickettsiosis (*Rickettsia* spp.)

Streptococcal disease, Group A, invasive or toxic shock

Streptococcus pneumoniae infection, invasive if younger than five years of age

Syphilis (*Treponema pallidum*) report *congenital, *primary, *secondary, and other

Tetanus (*Clostridium tetani*)

Toxic substance-related illness

Trichinosis (Trichinellosis) (*Trichinella spiralis*)

*Tuberculosis, active disease (*Mycobacterium tuberculosis* complex)

Tuberculosis infection

*Tularemia (*Francisella tularensis*)

*Typhoid/Paratyphoid infection (*Salmonella* Typhi, *Salmonella* Paratyphi)

*Unusual occurrence of disease of public health concern

*Vaccinia, disease or adverse event

Vancomycin-intermediate or vancomycin-resistant *Staphylococcus aureus* infection

*Vibriosis (*Vibrio* spp.)

*Viral hemorrhagic fever

*Yellow fever

Yersiniosis (*Yersinia* spp.)

B. Conditions reportable by directors of laboratories. Laboratories shall report all test results indicative of and specific for the diseases, infections, microorganisms, conditions, and toxic effects specified in this subsection for humans. Such tests include microbiological culture, isolation, or identification; assays for specific antibodies; and identification of specific antigens, toxins, or nucleic acid sequences. Additional condition-specific requirements are noted in this subsection and subsection D of this section. Conditions identified by an asterisk (*) require immediate communication to the local health department by the most rapid means available upon suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis.

Alpha-gal Syndrome (AGS) - Serum or plasma immunoglobulin E specific to alpha-gal (sIgE) test results of ≥ 0.1 IU/mL or ≥ 0.1 kU/L

Amebiasis (*Entamoeba histolytica*)

*Anthrax (*Bacillus anthracis*)

Arboviral infection, for example, CHIK, dengue, EEE, LAC, SLE, WNV, or Zika

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Babesiosis (*Babesia* spp.)

*Botulism (*Clostridium botulinum*)

*Brucellosis (*Brucella* spp.)

Campylobacteriosis (*Campylobacter* spp.)

Candida auris - Include available antimicrobial susceptibility findings in report.

Carbapenemase-producing organism - Include available antimicrobial susceptibility findings in report.

Chancroid (*Haemophilus ducreyi*)

Chickenpox (*Varicella* virus)

Chlamydia trachomatis infection

*Cholera (*Vibrio cholerae* O1 or O139)

*Coronavirus infection, severe (e.g., SARS-CoV, MERS-CoV)

Coronavirus disease 2019 (COVID-19 or SARS-CoV-2)

Cryptosporidiosis (*Cryptosporidium* spp.)

Cyclosporiasis (*Cyclospora* spp.)

*Diphtheria (*Corynebacterium diphtheriae*)

Ehrlichiosis/Anaplasmosis (*Ehrlichia* spp., *Anaplasma phagocytophilum*)

Giardiasis (*Giardia* spp.)

Gonorrhea (*Neisseria gonorrhoeae*) - Include available antimicrobial susceptibility findings in report.

**Haemophilus influenzae* infection, invasive

Hantavirus pulmonary syndrome

*Hepatitis A

Hepatitis B (acute and chronic) - For All hepatitis B patients, also report available results of serum alanine aminotransferase (ALT) and all available results from the hepatitis panel.

Hepatitis C (acute and chronic) - For all patients with any positive HCV test, also report all results of HCV viral load tests, including undetectable viral loads and report available results of serum alanine aminotransferase (ALT) and all available results from the hepatitis panel.

Hepatitis, other acute viral - Any finding indicative of acute infection with hepatitis D, E, or other cause of viral hepatitis. For any reportable hepatitis finding, submit all available results from the hepatitis panel.

Human immunodeficiency virus (HIV) infection - For HIV-infected patients, report all results of CD4 and HIV viral load tests, including undetectable viral loads. For HIV-infected patients, report all HIV genetic nucleotide sequence data

associated with HIV drug resistance tests by electronic submission. For children younger than three years of age, report all tests regardless of the test findings (e.g., negative or positive).

Influenza, confirmed - By culture, antigen detection by direct fluorescent antibody (DFA), or nucleic acid detection.

Lead, blood levels - All lead results from tests of venous or capillary blood performed by a laboratory certified by the Centers for Medicare and Medicaid Services in accordance with 42 USC § 263a, the Clinical Laboratory Improvement Amendment of 1988 (CLIA-certified).

Legionellosis (*Legionella* spp.)

Leptospirosis (*Leptospira interrogans*)

Listeriosis (*Listeria monocytogenes*), invasive or if associated with miscarriage or stillbirth from placental or fetal tissue

Lyme disease (*Borrelia* spp.)

Malaria (*Plasmodium* spp.)

*Measles (Rubeola)

*Meningococcal disease (*Neisseria meningitidis*), invasive - Include identification of gram-negative diplococci.

Mumps

*Mycobacterial diseases - (See 12VAC5-90-225 B) Report any of the following:

1. Acid fast bacilli;
2. *M. tuberculosis* complex or any other mycobacteria;
3. Antimicrobial susceptibility results for *M. tuberculosis* complex.

*Pertussis (*Bordetella pertussis*)

*Plague (*Yersinia pestis*)

*Poliovirus infection

*Psittacosis (*Chlamydophila psittaci*)

*Q fever (*Coxiella burnetii*)

*Rabies, human and animal

*Rubella

Salmonellosis (*Salmonella* spp.)

Shiga toxin-producing *Escherichia coli* infection

Shigellosis (*Shigella* spp.)

*Smallpox (*Variola* virus)

Spotted fever rickettsiosis (*Rickettsia* spp.)

Streptococcal disease, Group A, invasive or toxic shock

Streptococcus pneumoniae infection, invasive if younger than five years of age

*Syphilis (Treponema pallidum)

Toxic substance-related illness - By blood or urine laboratory findings above the normal range, including heavy metals, pesticides, and industrial-type solvents and gases. When applicable and available, report speciation of metals when blood or urine levels are elevated in order to differentiate the chemical species (elemental, organic, or inorganic).

Trichinosis (Trichinellosis) (Trichinella spiralis)

Tuberculosis infection

*Tularemia (Francisella tularensis)

*Typhoid/Paratyphoid infection (Salmonella Typhi, Salmonella Paratyphi A, Salmonella Paratyphi B, Salmonella Paratyphi C)

*Vaccinia, disease or adverse event

Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection - Include available antimicrobial susceptibility findings in report.

*Vibriosis (Vibrio spp., Photobacterium damsela, Grimontia hollisae), other than toxigenic Vibrio cholera O1 or O139, which are reportable as cholera

*Viral hemorrhagic fever

*Yellow fever

Yersiniosis (Yersinia spp.)

C. Reportable diseases requiring rapid communication. Certain of the diseases in the list of reportable diseases require immediate identification and control because of their extremely contagious nature, potential for greater harm, or availability of a specific intervention that must be administered in a timely manner ~~require immediate identification and control~~. Reporting of persons confirmed or suspected of having these diseases, listed in this subsection, shall be made immediately by the most rapid means available, preferably by telephone to the local health department. (These same diseases are also identified by an asterisk (*) in subsections A and B, where applicable, of this section.)

Anthrax (Bacillus anthracis)

Botulism (Clostridium botulinum)

Brucellosis (Brucella spp.)

Cholera (Vibrio cholerae O1 or O139)

Coronavirus infection, severe (e.g., SARS-CoV, MERS-CoV)

Diphtheria (Corynebacterium diphtheriae)

Disease caused by an agent that may have been used as a weapon

Haemophilus influenzae infection, invasive

Hepatitis A

Influenza-associated deaths if younger than 18 years of age

Influenza A, novel virus

Measles (Rubeola virus)

Meningococcal disease (Neisseria meningitidis)

Outbreaks, all

Pertussis (Bordetella pertussis)

Plague (Yersinia pestis)

Poliovirus infection, including poliomyelitis

Psittacosis (Chlamydia psittaci)

Q fever (Coxiella burnetii)

Rabies, human and animal

Rubella, including congenital rubella syndrome

Smallpox (Variola virus)

Syphilis, congenital, primary, and secondary (Treponema pallidum)

Tuberculosis, active disease (Mycobacterium tuberculosis complex)

Tularemia (Francisella tularensis)

Typhoid/Paratyphoid infection (Salmonella Typhi, Salmonella Paratyphi (all types))

Unusual occurrence of disease of public health concern

Vaccinia, disease or adverse event

Vibriosis (Vibrio spp., Photobacterium damsela, Grimontia hollisae), other than toxigenic Vibrio cholerae O1 or O139, which are reportable as cholera

Viral hemorrhagic fever

Yellow fever

D. Submission of initial isolate or other specimen for further public health testing. A laboratory identifying evidence of any of the conditions in this subsection shall notify the local health department of the positive culture or other positive test result within the timeframes specified in subsection B of this section and submit the initial isolate (preferred) or other initial specimen to the Division of Consolidated Laboratory Services or other public health laboratory where specified in this subsection within seven days of identification. All specimens must be identified with the patient and physician information required in 12VAC5-90-90 B.

Anthrax (Bacillus anthracis)

Botulism (Clostridium botulinum)

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Brucellosis (*Brucella* sp.)

Candida auris

Candida haemulonii

Carbapenem-resistant Enterobacteriaceae

Carbapenem-resistant *Pseudomonas aeruginosa*

Cholera (*Vibrio cholerae* O1 or O139)

Coronavirus infection, severe (e.g., SARS-CoV, MERS-CoV)

Diphtheria (*Corynebacterium diphtheriae*)

Haemophilus influenzae infection, invasive

Influenza, unsubtypeable

Listeriosis (*Listeria monocytogenes*)

Meningococcal disease (*Neisseria meningitidis*)

Plague (*Yersinia pestis*)

Poliovirus infection

Q fever (*Coxiella burnetii*)

Salmonellosis (*Salmonella* spp.)

Shiga toxin-producing *E. coli* infection (Laboratories that identify a Shiga toxin but do not perform simultaneous culture for Shiga toxin-producing *E. coli* should forward all positive stool specimens or positive enrichment broths to the Division of Consolidated Laboratory Services for confirmation and further characterization.)

Shigellosis (*Shigella* spp.)

Streptococcal disease, Group A, invasive

Tuberculosis (A laboratory identifying *Mycobacterium tuberculosis* complex (see 12VAC5-90-225) shall submit a representative and viable sample of the initial culture to the Division of Consolidated Laboratory Services or other laboratory designated by the board to receive such specimen.)

Tularemia (*Francisella tularensis*)

Typhoid/Paratyphoid infection (*Salmonella* Typhi, *Salmonella* Paratyphi (all types))

Vancomycin-intermediate or vancomycin-resistant *Staphylococcus aureus* infection

Vibriosis (*Vibrio* spp., *Photobacterium damsela*, *Grimontia hollisae*)

Yersiniosis (*Yersinia* spp.)

Other diseases as may be requested by the health department.

E. Neonatal abstinence syndrome. Neonatal abstinence syndrome shall be reported by physicians and directors of

medical care facilities when a newborn has been diagnosed with neonatal abstinence syndrome, a condition characterized by clinical signs of withdrawal from exposure to prescribed or illicit drugs. Reports shall be submitted within one month of diagnosis by entering the information into the Virginia Department of Health's online Confidential Morbidity Report portal (<http://www.vdh.virginia.gov/clinicians>).

F. Outbreaks. The occurrence of outbreaks or clusters of any illness that may represent a group expression of an illness that may be of public health concern shall be reported to the local health department immediately by the most rapid means available, preferably by telephone.

G. Toxic substance-related illnesses. All toxic substance-related illnesses, including pesticide and heavy metal poisoning or illness resulting from exposure to an occupational dust or fiber or radioactive substance, shall be reported.

If such illness is verified or suspected and presents an emergency or a serious threat to public health or safety, the report of such illness shall be made immediately by the most rapid means available, preferably by telephone.

H. Unusual occurrence of disease of public health concern. Unusual or emerging conditions of public health concern shall be reported to the local health department immediately by the most rapid means available, preferably by telephone. In addition, the commissioner or the commissioner's designee may establish surveillance systems for diseases or conditions that are not on the list of reportable diseases. Such surveillance may be established to identify cases (delineate the magnitude of the situation), to identify the mode of transmission and risk factors for the disease, and to identify and implement appropriate action to protect public health. Any person reporting information at the request of the department for special surveillance or other epidemiological studies shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

I. Coronavirus disease 2019 (SARS-CoV-2). COVID-19 shall be reported by physicians and directors of medical care facilities when a person who is infected with or who is suspected of having COVID-19 is treated or examined, hospitalized, or admitted into the intensive care unit. Physicians and directors of medical care facilities shall report that person's name, telephone number, address, age, date of birth, race, ethnicity, sex, and pregnancy status; name of disease diagnosed or suspected; the medical record number (if applicable); the date of onset of illness; available laboratory tests and results; and the name, address, and telephone number of the physician and medical facility where the examination was made. Case reports shall be submitted within three days of the suspicion or confirmation of disease by entering the information into the Virginia Department of Health online Confidential Morbidity Report portal at <http://www.vdh.virginia.gov/clinicians> or via electronic case reporting (<https://www.vdh.virginia.gov/meaningful-use/meaningful-use-submissions-of-electronic-case-reports/>).

J. Positive SARS-CoV-2 tests shall be reported by directors of laboratories, including other entities that hold Clinical Laboratory Improvement Amendments Certificates of Waiver. Each report shall give the source of the specimen and the laboratory method and result; the name, telephone number, email address, address, age, date of birth, race, ethnicity, sex, and pregnancy status (if known) of the person from whom the specimen was obtained; and the name, address, and telephone number of the physician at whose request and medical facility at which the examination was made. Reports shall be submitted within three days of identification of evidence of disease. Reports shall be made by entering information into the department's available portal for laboratory reporting at <http://www.vdh.virginia.gov/clinicians> or via electronic laboratory reporting at <http://www.vdh.virginia.gov/meaningful-use/submissionofreportablelabresults>.

VA.R. Doc. No. R26-8290; Filed July 23, 2025, 1:27 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health 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: 12VAC5-410. Regulations for the Licensure of Hospitals in Virginia (amending 12VAC5-410-10, 12VAC5-410-280, 12VAC5-410-420, 12VAC5-410-1170).

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Effective Date: September 24, 2025.

Agency Contact: Geoff Garner, Senior Policy Analyst, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 685-9690, or email regulatorycomment@vdh.virginia.gov.

Summary:

The amendments conform the regulation to Chapters 207, 249, 441, and 505 of the 2024 Acts of Assembly, including (i) requiring a surgical smoke evacuation system in an operating room during procedures that are likely to generate surgical smoke and that every hospital where surgical procedures are performed adopt a policy for using such a system and (ii) requiring that all emergency departments have at least one physician on duty and physically present at all times. Chapters 207, 249, 441, and 505 became effective July 1, 2025.

12VAC5-410-10. Definitions.

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

"Board" means the State Board of Health.

"Chief executive officer" means a job descriptive term used to identify the individual appointed by the governing body to act on its behalf in the overall management of the hospital. Job titles may include administrator, superintendent, director, executive director, president, vice-president, and executive vice-president.

"Commissioner" means the State Health Commissioner.

"Consultant" means one who provides services or advice upon request.

"Department" means an organized section of the hospital.

"Designated support person" means a person who is knowledgeable about the needs of a person with a disability and who is designated, orally or in writing, by the individual with a disability, the individual's guardian, or the individual's care provider to provide support and assistance, including physical assistance, emotional support, assistance with communication or decision-making, or any other assistance necessary as a result of the person's disability, to the person with a disability at any time during which health care services are provided.

"Direction" means authoritative policy or procedural guidance for the accomplishment of a function or activity.

"Facilities" means buildings, equipment, and supplies necessary for implementation of services by personnel.

"Full-time" means a 37-1/2 to 40 hour work week.

"General hospital" means institutions as defined by § 32.1-123 of the Code of Virginia with an organized medical staff; with permanent facilities that include inpatient beds; and with medical services, including physician services, dentist services, and continuous nursing services, to provide diagnosis and treatment for patients who have a variety of medical and dental conditions that may require various types of care, such as medical, surgical, and maternity.

"Home health care department/service/program" means a formally structured organizational unit of the hospital that is designed to provide health services to patients in their place of residence and that meets Part II (12VAC5-381-150 et seq.) of the Regulations for the Licensure of Home Care Organizations.

"Intelligent personal assistant" means a combination of an electronic device and a specialized software application designed to assist users with basic tasks using a combination of natural language processing and artificial intelligence, including combinations known as digital assistants or virtual assistants.

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"Medical" means pertaining to or dealing with the healing art and the science of medicine.

"Nursing care unit" means an organized jurisdiction of nursing service in which nursing services are provided on a continuous basis.

"Nursing home" means an institution or any identifiable component of any institution as defined by § 32.1-123 of the Code of Virginia with permanent facilities that include inpatient beds and whose primary function is the provision, on a continuing basis, of nursing and health related services for the treatment of patients who may require various types of long term care, such as skilled care and intermediate care.

"Nursing services" means patient care services pertaining to the curative, palliative, restorative, or preventive aspects of nursing that are prepared or supervised by a registered nurse.

"Office of Licensure and Certification" or "OLC" means the Office of Licensure and Certification of the Virginia Department of Health.

"Organized" means administratively and functionally structured.

"Organized medical staff" means a formal organization of physicians and dentists with the delegated responsibility and authority to maintain proper standards of medical care and to plan for continued betterment of that care.

"Outpatient hospital" means institutions as defined by § 32.1-123 of the Code of Virginia that primarily provide facilities for the performance of surgical procedures on outpatients. Such patients may require treatment in a medical environment exceeding the normal capability found in a physician's office, but do not require inpatient hospitalization.

"Ownership/person" means any individual, partnership, association, trust, corporation, municipality, county, governmental agency, or any other legal or commercial entity that owns or controls the physical facilities or manages or operates a hospital.

"Rural hospital" means any general hospital in a county classified by the federal Office of Management and Budget (OMB) as rural, any hospital designated as a critical access hospital, any general hospital that is eligible to receive funds under the federal Small Rural Hospital Improvement Grant Program, or any general hospital that notifies the commissioner of its desire to retain its rural status when that hospital is in a county reclassified by the OMB as a metropolitan statistical area as of June 6, 2003.

"Service" means a functional division of the hospital and is also used to indicate the delivery of care.

"Smoke evacuation system" means the same as that term is defined in § 32.1-127 B 32 of the Code of Virginia.

"Special care unit" means an appropriately equipped area of the hospital where there is a concentration of physicians, nurses, and others who have special skills and experience to provide optimal medical care for patients assigned to the unit.

"Special hospital" means institutions, as defined by § 32.1-123 of the Code of Virginia, that provide care for a specialized group of patients or limit admissions to provide diagnosis and treatment for patients who have specific conditions (e.g., tuberculosis, orthopedic, pediatric, maternity).

"Staff privileges" means authority to render medical care in the granting institution within well-defined limits based on the individual's professional license and the individual's experience, competence, ability, and judgment.

"Unit" means a functional division or facility of the hospital.

12VAC5-410-280. Emergency service.

A. Hospitals with an emergency department or service shall have 24-hour staff coverage and shall have at least one physician ~~on-call~~ who is primarily responsible for the emergency department on duty and physically present at all times. Hospitals without emergency service shall have written policies governing the handling of emergencies.

B. No fewer than one registered nurse shall be assigned to the emergency service on each shift. Such assignment need not be exclusive of other duties, but must have priority over all other assignments.

C. Those hospitals that provide ambulance services shall comply with Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia and 12VAC5-31.

D. The hospital shall provide equipment, drugs, supplies, and ancillary services commensurate with the scope of anticipated needs, including radiology and laboratory services and facilities for handling and administering blood and blood products. Emergency drugs and equipment shall remain accessible in the emergency department at all times.

E. A current roster of medical staff members on emergency call, including alternates and medical specialists or consultants, shall be posted in the emergency department.

F. Hospitals shall make special training available, as required, for emergency department personnel.

G. Toxicology reference material and poison antidote information shall be available along with telephone numbers of the nearest poison control centers.

H. Each emergency department shall post notice of the existence of a human trafficking hotline to alert possible witnesses or victims of human trafficking to the availability of a means to gain assistance or report crimes. This notice shall be in a place readily visible and accessible to the public, such as the patient admitting area or public or patient restrooms. The

notice shall meet the requirements of § 40.1-11.3 C of the Code of Virginia.

I. Every hospital with an emergency department shall establish a security plan for each emergency department that:

1. Is developed using standards established in the Healthcare Security Industry Guidelines, 13th Edition (International Association for Healthcare Security and Safety);

2. Is based on:

- a. The results of a security risk assessment of each emergency department location of the hospital; and
- b. Risks for the emergency department identified in consultation with the emergency department medical director and nurse director, including:

- (1) Trauma level designation;
- (2) Overall patient volume;
- (3) Volume of psychiatric and forensic patients;
- (4) Incidents of violence against staff;
- (5) Level of injuries sustained from such violence; and
- (6) Prevalence of crime in the community;

3. Includes the presence of one or more off-duty law-enforcement officers or trained security personnel in the emergency department at all times, except as provided in subsection L of this section, and as indicated to be necessary and appropriate by the security risk assessment; and

4. Outlines training requirements for security personnel in:

- a. The potential use of and response to weapons;
- b. Defensive tactics;
- c. De-escalation techniques;
- d. Appropriate physical restraint and seclusion techniques;
- e. Crisis intervention;
- f. Trauma-informed approaches; and
- g. Safely addressing situations involving patients, family members, or other persons who pose a risk of harm to themselves or others due to mental illness or substance abuse or who are experiencing a mental health crisis.

J. The hospital may:

1. Accept from its security personnel the satisfactory completion of the Department of Criminal Justice Services minimum training standards for auxiliary police officers as required by § 15.2-1731 of the Code of Virginia in lieu of the training prescribed by subdivision I 4 of this section; and

2. Request to use industry standards other than those specified in subdivision I 1 of this section by submitting a written request for alternative industry standards to the OLC that:

- a. Specifies the title, edition if applicable, and author of the alternative industry standards; and

b. Provides an explanation of how the alternative industry standards are substantially similar to those specified in subdivision I 1 of this section.

K. Every hospital with an emergency department shall update its security plan, including its security risk assessment, for each emergency department location of the hospital as often as necessary but not to exceed two years.

L. The commissioner shall provide a waiver from the requirement that at least one off-duty law-enforcement officer or trained security personnel be present at all times in the emergency department if the hospital demonstrates that a different level of security is necessary and appropriate for any of its emergency departments based upon findings in the security risk assessment.

1. A hospital shall submit a written request for a waiver pursuant to this subsection and shall:

- a. Specify the location of the emergency department for which the waiver is requested;
- b. Provide a dated copy of the security risk assessment performed for the specified emergency department that has been reviewed and approved by the governing body or its designee; and
- c. Indicate the requested duration of the waiver.

2. The commissioner shall specify in any waiver granted pursuant to this subsection:

- a. The location of the emergency department for which the waiver is granted;
- b. The level of security to be provided at the specified emergency department location;
- c. The effective date of the waiver; and
- d. The duration of the waiver, which may not exceed two years from the date of issuance.

3. A hospital granted a waiver pursuant to this subsection shall:

- a. Notify the commissioner in writing no less than 30 calendar days after its security risk assessment changes if such change impacts when or how many off-duty law-enforcement officers or trained security personnel should be present at the emergency department for which a waiver was granted;
- b. Provide a dated copy of the changed security risk assessment performed for the specified emergency department that has been reviewed and approved by the governing body or its designee; and
- c. Indicate whether the hospital is:

- (1) Requesting a modification to its existing waiver; or
- (2) Surrendering its existing waiver.

4. The commissioner may request additional information from the hospital in evaluating the requested waiver.

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5. The commissioner may modify or rescind a waiver granted pursuant to this subsection if:

- a. Additional information becomes known that alters the basis for the original decision, including if the security risk assessment changes regarding how many off-duty law-enforcement officers or trained security personnel should be present at the emergency department for which a waiver was granted; or
- b. Results of the waiver jeopardize the health or safety of patients, employees, contractors, or the public.

6. Pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia), the Virginia Department of Health:

- a. May not release to the public information that a hospital discloses pursuant to this subsection, the waiver request, or the response to the waiver to the extent those records are exempt from disclosure; and
- b. Shall notify the Secretary of Public Safety and Homeland Security of any request for records specified in subdivision L 6 a of this section, the person making such request, and the Virginia Department of Health's response to the request.

M. Each hospital with an emergency department shall establish a protocol for the treatment and discharge of individuals experiencing a substance use-related emergency, which shall include provisions for:

1. Appropriate screening and assessment of individuals experiencing substance use-related emergencies to identify medical interventions necessary for the treatment of the individual in the emergency department; and
2. Recommendations for follow-up care following discharge for any patient identified as having a substance use disorder, depression, or mental health disorder, as appropriate. For patients who have been treated for substance use-related emergencies, including opioid overdose, or other high-risk patients, recommendations may include:
 - a. The dispensing of naloxone or other opioid antagonist used for overdose reversal pursuant to § 54.1-3408 X of the Code of Virginia at discharge; or
 - b. Issuance of a prescription for and information about accessing naloxone or other opioid antagonist used for overdose reversal, including information about accessing naloxone or other opioid antagonist used for overdose reversal at a community pharmacy, including an outpatient pharmacy operated by the hospital, or through a community organization or pharmacy that may dispense naloxone or other opioid antagonist used for overdose reversal without a prescription pursuant to a statewide standing order.

The protocol may also provide for referrals of individuals experiencing a substance use-related emergency to peer

recovery specialists and community-based providers of behavioral health services or to providers of pharmacotherapy for the treatment of drug or alcohol dependence or mental health diagnoses.

12VAC5-410-420. Surgical service.

A. The surgical department/service shall have a defined organization and shall be governed by written policies and procedures.

B. The surgical department/service shall be under the medical supervision of a physician who meets the requirements of the medical staff bylaws.

C. The operating suite shall be:

1. Under the supervision of a registered professional nurse.
2. Designed to include operating and recovery rooms, proper scrubbing, sterilizing and dressing room facilities, and storage for anesthetic agents and shall be equipped as required by the scope and complexity of the services.
3. Provided with prominently posted safety policies and procedures.

D. A roster of current surgical privileges of every surgical staff member shall be maintained on file in the operating suite.

E. An operating room register shall be maintained, which shall include, as a minimum:

1. Patient's name and hospital number;
2. ~~Pre-~~ Pre-operative and post-operative diagnosis;
3. Complications, if any;
4. Name of surgeon, first assistant, anesthesiologist or anesthesiologist, scrub nurse, and circulating nurse;
5. Operation performed; and
6. Type of anesthesia.

F. Every hospital where surgical procedures are performed shall adopt a policy requiring the use of a smoke evacuation system for all planned surgical procedures that are likely to generate surgical smoke.

G. Policies and procedures governing infection control and reporting techniques shall be established in accordance with 12VAC5-410-490.

~~G.~~ H. The patient's medical chart shall be available in the surgical suite at time of surgery and shall contain no less than the following information:

1. A medical history and physical examination;
2. Evidence of appropriate informed consent; and
3. A pre-operative diagnosis.

~~H.~~ I. An accurate and complete description of operative procedure shall be recorded by the operating surgeon within 48 hours following completion of surgery and made part of the patient's clinical record.

12VAC5-410-1170. Policy and procedures manual.

A. Each outpatient surgical hospital shall develop a policy and procedures manual that shall include provisions covering the following items:

1. The types of emergency and elective procedures that may be performed in the facility.
2. Types of anesthesia that may be used.
3. Admissions and discharges, including:
 - a. Criteria for evaluating the patient before admission and before discharge; and
 - b. Protocols to ensure that any patient scheduled to receive an elective surgical procedure for which the patient can reasonably be expected to require outpatient physical therapy as a follow-up treatment after discharge is informed that the patient:
 - (1) Is expected to require outpatient physical therapy as a follow-up treatment; and
 - (2) Will be required to select a physical therapy provider prior to being discharged from the hospital.
4. Written informed consent of patient prior to the initiation of any procedures.
5. Procedures for housekeeping and infection control and prevention.
6. Disaster preparedness.
7. Facility security.

B. Every outpatient surgical hospital where surgical procedures are performed shall adopt a policy requiring the use of a smoke evacuation system for all planned surgical procedures that are likely to generate surgical smoke.

~~C.~~ A copy of approved policies and procedures and revisions thereto shall be made available to the OLC upon request.

~~C.~~ D. Each outpatient surgical hospital shall establish a protocol relating to the rights and responsibilities of patients based on the Joint Commission on Accreditation of Healthcare Organizations Standards for Ambulatory Care (2000 Hospital Accreditation Standards, January 2000). The protocol shall include a process reasonably designed to inform patients of patient rights and responsibilities. Patients shall be given a copy of patient rights and responsibilities upon admission.

~~D.~~ E. If the Governor has declared a public health emergency related to the novel coronavirus (COVID-19), each outpatient surgical hospital shall allow a person with a disability who requires assistance as a result of such disability to be

accompanied by a designated support person at any time during which health care services are provided.

1. A designated support person shall not be subject to any restrictions on visitation adopted by such outpatient surgical hospital. However, such designated support person may be required to comply with all reasonable requirements of the outpatient surgical hospital adopted to protect the health and safety of patients and staff of the outpatient surgical hospital.
2. Every outpatient surgical hospital shall establish policies applicable to designated support persons and shall:
 - a. Make such policies available to the public on a website maintained by the outpatient surgical hospital; and
 - b. Provide such policies, in writing, to the patient at such time as health care services are provided.

~~E.~~ F. Each outpatient surgical hospital shall obtain a criminal history record check pursuant to § 32.1-126.02 of the Code of Virginia on any compensated employee not licensed by the Board of Pharmacy whose job duties provide access to controlled substances within the outpatient surgical hospital pharmacy.

~~F.~~ G. During a declared public health emergency related to a communicable disease of public health threat, each hospital shall establish a protocol to allow patients to receive visits from a rabbi, priest, minister, or clergy member of a religious denomination or sect. Such protocol shall be consistent with guidance from the Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services and subject to compliance with an executive order, order of public health, department guidance, or other applicable federal or state guidance having the effect of limiting visitation.

1. The protocol may restrict the frequency and duration of visits and may require visits to be conducted virtually using interactive audio or video technology.
2. The protocol may require the person visiting a patient pursuant to this subsection to comply with all reasonable requirements of the hospital adopted to protect the health and safety of the person, patients, and staff of the hospital.

V.A.R. Doc. No. R26-7975; Filed July 23, 2025, 1:32 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC35-260. Certified Recovery Residences (amending 12VAC35-260-10, 12VAC35-260-20).**

Statutory Authority: §§ 37.2-203 and 37.2-431.1 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 24, 2025.

Effective Date: October 9, 2025.

Regulations

Agency Contact: Susan Puglisi, Regulatory Research Specialist, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, fax (804) 371-6638, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the State Board of Behavioral Health and Developmental Services to adopt regulations necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the Department of Behavioral Health and Developmental Services (DBHDS). Section 37.2-431.1 of the Code of Virginia authorizes DBHDS to certify recovery residences in accordance with regulations developed by the board.

Purpose: Treatment and recovery services offer individuals with substance use disorders the opportunity to work towards achieving healthier lifestyles. Recovery residences are intended to provide stable, drug-free and alcohol-free housing and increase rates of successful recovery; however, a return to substance use happens for some individuals, increasing the risk for overdose. This action is intended to promote increased accountability in recovery residence settings. Reporting deaths and serious injuries in certified recovery residences will allow the state to begin tracking these occurrences, which will help inform the General Assembly and DBHDS where additional resources are potentially needed to prevent such incidents from occurring in these settings, thereby improving public health, safety, and welfare.

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 aligns the regulation with statute.

Substance: Pursuant to Chapter 30 of the 2024 Acts of Assembly, the amendments (i) add a definition of "serious injury" and (ii) require that any certified recovery residence in Virginia report any death or serious injury that occurs in the recovery residence to DBHDS.

Issues: The primary advantage to the public is that the amendments will provide the Commonwealth, including the General Assembly, with more data about any such death or injury so that the state can make informed decisions. There are no disadvantages to the public. The primary advantage to the agency is receiving more data on what is occurring with individuals across the state in recovery residences. A manageable disadvantage for the agency is that a new reporting process needs to be put in place for recovery residences to report deaths and serious injuries similarly to licensed facilities reporting these occurrences.

Department of Planning and Budget 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. To fulfill a 2024 legislative mandate, the State Board of Behavioral Health and Developmental Services (board) seeks to add a reporting requirement for deaths and serious injuries that occur at certified recovery residences. The proposed language is nearly identical to current reporting requirements for providers licensed by the Department of Behavioral Health and Developmental Services (DBHDS).

Background. Recovery residences are intended to provide stable drug and alcohol-free housing in order to increase rates of successful recovery for individuals with substance use disorders. However, some individuals may return to substance use, and DBHDS reports that the risk for overdose can increase when this occurs. DBHDS also reports that individuals have died in such settings and in some cases have remained undiscovered for days. Family members impacted by such deaths have advocated for increased reporting and accountability in such settings. As a result of such advocacy, Chapter 30 of the 2024 Acts of Assembly amended § 37.2-431.1 of the Code of Virginia to state that board regulations shall require recovery residences to report to the department any death or serious injury that occurs in the recovery residence. Accordingly, the board proposes to make the following changes: 12VAC35-260-10 adds a definition of "serious injury" to mean 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. This definition is identical to the DBHDS licensing regulations, 35VAC105-20; and 12VAC35-260-20 adds that each recovery residence shall report deaths and serious injuries within 48 hours of discovery, including deaths that occur in a hospital as a result of illness or injury while the individual was in a recovery residence. All reports would have to include (i) the date and place of the death or serious injury, (ii) nature of the injuries, and (iii) circumstances of the death or serious injury. These requirements are identical to the requirements for licensed providers (in 35VAC115-230 B 3) except to allow 48 hours rather than 24, which the board considered to be more realistic. The proposed language does not specify the manner of reporting. However, DBHDS reports that a reporting link was circulated to certified residences via credentialing bodies, via email, with instructions and during scheduled monthly reporting meetings.

Estimated Benefits and Costs. The proposed change would meet the requirements of § 37.2-431.1 of the Code of Virginia and benefit individuals in recovery residences as well as their families by providing greater transparency and oversight. DBHDS reports that the cost of establishing a reporting system for recovery residences to report deaths or serious injuries can be absorbed within existing agency information technology and staff resources. Although recovery residences may incur costs in filing a report in the event of a serious injury or death, DBHDS anticipates that recovery residences can absorb such costs within their existing operations. The reporting requirements may also incentivize some residences to implement better monitoring, if they have not already, to ensure a faster response to any serious injuries or deaths.

Businesses and Other Entities Affected. DBHDS reports indicate that there are 279 certified recovery residences as of April 2025.² 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 Since the proposed requirements are mandated by statute, no adverse impact is indicated.

Small Businesses⁵ Affected.⁶ Most recovery residences likely meet the definition of small businesses; however, some may operate as a nonprofit. However, the proposed amendments would not create new costs that are not required by statute. Thus, the proposed amendments do not adversely affect small businesses.

Localities⁷ Affected.⁸ The proposed amendments do not disproportionately affect particular localities or affect costs for local governments.

Projected Impact on Employment. The proposed amendments do not affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments affect neither the use and value of private property nor 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 <https://dbhds.virginia.gov/office-of-recovery-services/recovery-residences/>. There are 111 recovery residences under Oxford House and 168 under VARR.

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

Summary:

Pursuant to Chapter 30 of the 2024 Acts of Assembly, the amendments (i) add a definition of "serious injury" and (ii) require that any certified recovery residence in Virginia report any death or serious injury that occurs in the recovery residence to the Department of Behavioral Health and Developmental Services.

12VAC35-260-10. Definitions.

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

"Certification list" means the list of certified recovery residences maintained by DBHDS.

"Credentialing entity" means a nonprofit organization that develops and administers professional certification programs according to standards of the National Alliance for Recovery Residences or standards endorsed by Oxford House, Inc.

"DBHDS" means the Virginia Department of Behavioral Health and Developmental Services.

"Level of support" means the level of support and structure that a recovery residence provides to residents, as specified in the standards of the National Alliance for Recovery Residences.

"Recovery residence" means a housing facility that (i) is certified by DBHDS in accordance with this chapter; (ii) provides alcohol-free and illicit-drug-free housing to individuals with substance abuse disorders and individuals with co-occurring mental illnesses and substance abuse disorders; and (iii) does not include clinical treatment services.

"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.

12VAC35-260-20. Recovery residence.

A. Any person, nonprofit organization, or business entity seeking to operate a recovery residence under this chapter shall for each location (i) meet the qualifications, policies, and practices of a credentialing entity and hold a credential,

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accreditation, or charter from the Virginia Association of Recovery Residences or Oxford House, Inc.; and (ii) be certified by DBHDS.

B. A recovery residence seeking to be certified by DBHDS shall:

1. Submit a completed application on a form provided by DBHDS;
2. Provide evidence of accreditation by a charter from or membership in a credentialing entity listed in this section; and
3. Provide evidence that the recovery residence complies with any minimum square footage requirements related to beds and sleeping rooms established by the credentialing entity or the square footage requirements set forth in § 36-105.4 of the Code of Virginia, whichever is greater.

C. Each recovery residence shall report the following information concerning deaths and serious injuries to DBHDS in a manner prescribed by DBHDS within 48 hours of discovery. All deaths that occur as a result of illness or injury occurring when the individual was in a recovery residence shall be reported regardless of the location where the death occurs. All reports of death and serious injuries shall include:

1. Date and place of the death or serious injury;
2. Nature of the injuries; and
3. Circumstances of the death or serious injury.

VA.R. Doc. No. R25-7939; Filed July 25, 2025, 1:04 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Final Regulation

Title of Regulation: **18VAC15-40. Home Inspector Licensing Regulations (amending 18VAC15-40-10 through 18VAC15-40-33, 18VAC15-40-35, 18VAC15-40-48, 18VAC15-40-50, 18VAC15-40-60, 18VAC15-40-72, 18VAC15-40-75 through 18VAC15-40-105, 18VAC15-40-120 through 18VAC15-40-160, 18VAC15-40-180, 18VAC15-40-210 through 18VAC15-40-270; adding 18VAC15-40-73; repealing 18VAC15-40-108).**

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Effective Date: October 1, 2025.

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.

Summary:

The amendments (i) add new definitions, remove unnecessary definitions, and clarify existing definitions; (ii) revise licensure entry requirements, including establishing a points-based system for education and experience qualifications; (iii) adjust requirements for renewal of a license; (iv) adjust standards for conducting home inspections; (v) update standards of conduct pertaining to conflicts of interest; and (vi) revise prohibited acts in the standards of conduct and practice.

Changes to the proposed regulation include (i) removing references to mailing address as address of record in anticipation of a paperless system; (ii) increasing to \$2,000 the threshold of value required to establish financial interest; (iii) removing references to the Commission on Colleges of the Southern Association of Colleges and Schools as an acceptable accrediting organization; and (iv) removing a requirement that a licensee disclose whether they have performed an inspection on the home to be inspected within the preceding 12 months.

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.

18VAC15-40-10. Definitions.

A. Section 54.1-500 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Board"
"Home inspection"
"Home inspector"
"Person"
"Residential building"

B. Section 54.1-517.2:1 of the Code of Virginia provides definitions of the following terms and phrases as used in 18VAC15-40-130:

"Bonding"
"Corrugated stainless steel tubing"
"Grounding"

C. The following words and terms when used in this chapter shall have the following meanings unless a different meaning is provided or is plainly required by the context:

"Address of record" means the [~~mailing~~] address designated by the licensee to receive notices and correspondence from the board.

"Adjacent" means adjoining or within three feet of the residential building and that may affect the residential building.

"Applicant" means an individual who has submitted an application for licensure.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

"Client" means a person who engages the services of a home inspector for a home inspection.

"Compensation" means the receipt of monetary payment or other valuable consideration for services rendered.

~~"Component" means a part of a system.~~

"Contact hour" means 50 minutes of participation in a structured training activity.

"Course of construction inspection" means one or more inspections conducted during the construction of a new residential structure.

"CPE" means continuing professional education.

"Department" means the Department of Professional and Occupational Regulation.

"Describe" means to report a system or component by its type or other observed significant characteristics to distinguish it from other systems or components.

"Direct supervision" means that a licensed home inspector is physically present on the premises at all times and is at all times responsible for compliance with this chapter.

"Financial interest" means financial benefit accruing to an individual or to a member of an individual's immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership exceeds 3.0% of the total equity of the business; (ii) annual gross income that exceeds or may be reasonably anticipated to exceed [~~\$1,000~~ \$2,000] from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, forgiveness of debt, or benefits from the use of property, or any combination of ~~it these~~, paid or provided by a ~~business person~~ that exceeds or may be reasonably expected to exceed [~~\$1,000~~ \$2,000] annually; (iv) ownership of real or personal property if the interest exceeds [~~\$1,000~~ \$2,000] in value and excluding ownership in business, income, salary, other compensation, fringe benefits, or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds 3.0% of the asset value of the business; or (vi) an option for ownership of a business, real property, or personal property if the ownership interest will consist of clause (i) or (iv) of this definition.

"Fireplace" means an ~~interior fire-resistant masonry permanent or prefabricated fixture that can be used to burn fuel and is either vented or unvented~~ assembly consisting of a hearth and fire chamber of noncombustible material provided with a chimney for use with solid fuel.

"Foundation" means the element of a structure that connects to the ground and transfers loads from the structure to the ground. Foundations may be shallow or deep.

"Good working order" means, with respect to a smoke alarm inspected during a home inspection, that the smoke alarm is securely attached, not physically damaged, and operation of the test function is successful.

"Licensee" means a home inspector as defined in Chapter 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without such license.

"New residential structure" or "NRS" means a residential structure for which the first conveyance of record title to a purchaser has not occurred or the purchaser has not taken possession, whichever occurs later.

"NRS specialty" means a designation granted by the board to a home inspector that authorizes such ~~individual licensee~~ to conduct a home inspection on any a new residential structure.

"Outbuilding" means any structure on the property that is more than three feet from the residential building and that may affect the residential building.

~~"Prelicense education course" means an instruction program approved by the board and is one of the requirements for licensure effective July 1, 2017.~~

"Qualifying experience" means the experience used by a home inspector applicant to qualify for licensure.

"Readily accessible" means available for access without requiring moving or removing of any obstacles.

"Reinstatement" means 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 the process and requirements for periodically approving the continuance of a license.

"Residential structure" means a structure consisting of no more than two dwelling units or a townhouse.

"Smoke alarm" means (i) a single station or multiple station alarm responsive to smoke; or (ii) a "smoke detector" as used in Chapter 398 of the 2022 Acts of Assembly.

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~~"Solid fuel-burning fuel-burning appliances" means a hearth and fire chamber or similarly prepared place in which a fire may be built and that is built in conjunction with a chimney, or a listed assembly of a fire chamber, its chimney, and related factory-made parts designed for unit assembly without requiring field construction chimney-connected devices that burn solid fuel for purposes of heating, cooking, or both. Such appliances include wood stoves, fireplace wood-burning inserts, wood pellet-burning appliances, or similar solid fuel-burning devices.~~

~~"System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.~~

"Virginia Residential Code" means the provisions of the Virginia Construction Code (Part I (13VAC5-63-10 ~~et seq.~~ through 13VAC5-63-390) of 13VAC5-63) applicable to R-5 residential structures and ~~that~~ includes provisions of the International Residential Code as amended by the Board of Housing and Community Development.

18VAC15-40-20. Necessity for licensure.

A. It shall be unlawful for any individual who does not possess a license as a home inspector issued by the board to perform a home inspection ~~for compensation on a residential building.~~

B. A home inspection on a new residential structure, to include any course of construction inspection, shall only be conducted by a home inspector with the NRS specialty ~~and who has completed a training module on the Virginia Residential Code.~~

C. An individual who does not hold a license as a home inspector and who is only conducting inspections of a component or system of a residential building is not considered to be performing a home inspection.

18VAC15-40-25. Application procedures.

A. All applicants seeking licensure ~~shall~~ must submit an application with the appropriate fee specified in 18VAC15-40-50. Application ~~shall will~~ be made on forms provided by the board or ~~its the board's~~ agent.

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 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 to confirm or amplify information supplied. All applications ~~shall 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 within 30 days of the board's receipt of an initial application if the application is incomplete. An individual who fails 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 ~~shall~~ must immediately report all changes in information supplied with the application, if applicable, prior to issuance of the license or expiration of the application.

18VAC15-40-30. General requirements for licensure.

A. In addition to the provisions of 18VAC15-40-32, every applicant for a home inspector license ~~shall~~ must meet the requirements provided in this section.

B. The applicant ~~shall~~ must be at least 18 years old.

C. The applicant ~~shall~~ must provide [~~a mailing an~~] address, which ~~shall will~~ serve as the address of record. A post office box is only acceptable as the address of record when a physical address is also provided.

D. In accordance with § 54.1-204 of the Code of Virginia, each applicant ~~shall~~ must disclose the following information:

1. All misdemeanor convictions ~~involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury, except marijuana convictions~~, within ~~five~~ three years of the date of the application; and
2. All felony convictions ~~during the applicant's lifetime.~~

~~Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The record of 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.~~

E. The applicant for licensure ~~shall~~ must be in compliance with the standards of conduct and practice set forth in Part V (18VAC15-40-140 ~~et seq.~~ through 18VAC15-40-180) of this chapter at the time of application, while the application is under review by the board, and at all times when the license is in effect.

F. The applicant ~~shall~~ must report any ~~suspension, revocation, or surrender of a license, certification, or registration in connection with a disciplinary action or a license, certification, or registration that has been the subject of discipline in any jurisdiction prior to applying for licensure~~ action taken by any board or administrative body in any jurisdiction against a professional or occupational license, certification, or registration issued to the applicant, to include any suspension, revocation, or surrender of a license, certification, or registration; imposition of a monetary penalty; or requirement to take remedial education or other corrective action. The

board, in its discretion, may deny licensure to any applicant based on prior suspensions, revocations, or surrender of licenses based on disciplinary action by for any prior action taken by any board or administrative body in any jurisdiction. The applicant has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

G. The applicant for licensure ~~shall~~ must submit evidence satisfactory to the board of having obtained general liability insurance with minimum limits of \$250,000 per occurrence. A business liability insurance policy or a commercial general liability insurance policy with minimum limits of \$250,000 may be considered to meet such requirement, so long as the applicant is listed as an additional insured. If for any reason the board cannot reasonably ensure that the applicant is sufficiently covered in accordance with this subsection, the board may require that requisite coverage be obtained in the name of the applicant. Proof of such insurance policy must be submitted in order to obtain the license.

18VAC15-40-32. Qualifications for licensure.

A. Qualifications for licensure. An applicant for licensure as a home inspector ~~shall~~ must furnish documentation acceptable to the board ~~that one of the qualifications for licensure in Table 1 has been met.~~

TABLE 1			
	Board-approved prelicense education course contact hours	Experience	Passed the board-approved examination
1.	35	Completion of 100 home inspections prior to July 1, 2017	Yes
2.	35	Completion of 50 home inspections under the direct supervision of a home inspector	Yes
3.	70	Completion of 50 home inspections prior to July 1, 2017	Yes
4.	70	Completion of 25 home inspections under the direct supervision of a home inspector	Yes
5.	None	Verification of 10 years' experience as a home inspector prior to July 1, 2017, with a minimum of 250 home inspections completed during such time period	Yes

B. ~~Prelicense education courses must be approved by the board pursuant to Part VI (18VAC15-40-200 et seq.) of this chapter. No more than half of the required hours may be completed using distance or online education technology.~~

C. ~~Verification of home inspections completed under the direct supervision of a home inspector must be provided by an individual who was properly licensed or certified by the board during the applicable time period.~~

D. ~~The National Home Inspector Examination provided by the Examination Board of Professional Home Inspectors is the board-approved examination pursuant to § 54.1-517.2 A 2 c of the Code of Virginia. of the following:~~

1. The applicant has passed a board-approved examination. The National Home Inspector Examination provided by the Examination Board of Professional Home Inspectors is the board-approved examination pursuant to § 54.1-517.2 A 2 c of the Code of Virginia.

2. A minimum of 15 qualifying points from a combination of the following education and experience, with a minimum of five points from each category in Tables 1 and 2. An applicant cannot be assigned points from multiple areas in each table for the same activity for which credit is being sought. Except as provided in Tables 1 and 2, an applicant cannot be assigned points multiple times for the same activity for which credit is being sought.

TABLE 1 Qualifying Points Table: Education Category		
Points Assigned	Education Description	Maximum Allowable Points
5	<u>Successfully completed a three credit-hour minimum class with a passing grade in home inspection from an accredited college or university pursuant to 18VAC15-40-32 C.</u>	5
1	<u>Successfully completed a three credit-hour minimum class with a passing grade in construction, remodeling, engineering, architecture, building design, building technology, or real estate from an accredited college or university pursuant to 18VAC15-40-32 C. [*]</u>	3
1	<u>Successfully completed a four-hour minimum course specific to home inspection contracts, home inspection reports, or topics covered on the board-approved examination. [*]</u>	3

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<u>5</u>	<u>Successfully completed a minimum 35-hour prelicense education course approved by the board in accordance with Part VI (18VAC15-40-200 through 18VAC15-40-300) of this chapter.</u>	<u>5</u>
<u>10</u>	<u>Successfully completed a minimum 70-hour prelicense education course approved by the board in accordance with Part VI (18VAC15-40-200 through 18VAC15-40-300) of this chapter.</u>	<u>10</u>
[* Points may be assigned multiple times for this activity.]		
TABLE 2 Qualifying Points Table: Experience Category		
<u>Points Assigned</u>	<u>Experience Description</u>	<u>Maximum Allowable Points</u>
<u>2</u>	<u>One month of full-time qualifying experience pursuant to subsection B of this section. [*]</u>	<u>12</u>
<u>1</u>	<u>Completion of five home inspections under the direct supervision of a home inspector or without supervision if lawfully conducted as authorized under the laws of the applicable jurisdiction. [*]</u>	<u>12</u>
<u>1</u>	<u>Membership in a home inspector trade or professional association. [*]</u>	<u>2</u>
<u>2</u>	<u>One year teaching at an accredited college or university, trade school, or private business for monetary compensation in construction, remodeling, engineering, architecture, building design, building technology, real estate, or home inspections. [*]</u>	<u>6</u>
<u>2</u>	<u>The qualified individual of a contractor license issued pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia for one or more of the following classifications or specialty services:</u> <u>1. Residential building contractors (RBC)</u>	<u>2</u>

	<u>2. Home improvement contracting (HIC)</u> <u>3. Commercial building contractors (CBC)</u>	
<u>1</u>	<u>The qualified individual of a contractor license issued pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia for one or more of the following classifications: [*]</u> <u>1. Electrical contractors (ELE)</u> <u>2. HVAC contractors (HVA)</u> <u>3. Plumbing contractors (PLB)</u>	<u>3</u>
<u>2</u>	<u>Architect or professional engineer licensed pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia.</u>	<u>2</u>
<u>2</u>	<u>Building code official certified pursuant to the Department of Housing and Community Development Virginia Certification Standards (13VAC5-21).</u>	<u>2</u>
[* Points may be assigned multiple times for this activity.]		

B. Qualifying experience. In order to be acceptable, qualifying experience must meet all of the following:

1. Experience must be verified by one or more of the following: licensed home inspector; qualified individual or responsible manager of a licensed contractor; or any combination of at least three licensed real estate professionals or clients.

2. An applicant's experience must have been gained by assisting a properly licensed or certified home inspector, as applicable, and under such home inspector's direct supervision or through the performance of home inspections as authorized under the laws of the applicable jurisdiction.

3. For the purposes of this part, experience requirements are expressed in terms of calendar periods of full-time employment.

a. A month of full-time qualifying experience is a minimum of 146 hours during a one-month period or a minimum of 18 workdays in a one-month period. More than 146 hours or 18 workdays during a one-month period will not be considered as more than one month of full-time employment.

b. Partial credit may be given for actual hours of qualifying experience if the applicant's experience was gained working less than full time.

C. Accredited colleges or universities and verification procedures. An applicant seeking to qualify for licensure based on completion of a class from an accredited college or university must submit an official transcript from the school where the applicable class was completed. Only classes from an accredited college or university that is approved or accredited by ~~[the Commission on Colleges of the Southern Association of Colleges and Schools,]~~ a regional or national accreditation association [~~;~~] or ~~[by]~~ an accrediting agency that is recognized by the U.S. Secretary of Education will be considered. An applicant seeking to qualify for licensure based on working or teaching at an accredited college or university must submit evidence satisfactory to the board of employment by the college or university. Only employment with an accredited college or university that is approved or accredited by ~~[the Commission on Colleges of the Southern Association of Colleges and Schools,]~~ a regional or national accreditation [~~;~~] or ~~[by]~~ an accrediting agency that is recognized by the U.S. Secretary of Education will be considered.

18VAC15-40-33. Examination conduct.

Procedures and appropriate conduct established by the board or examination organization administering the examination approved by the board, or both, ~~shall~~ must be followed by the applicant. Such procedures ~~shall~~ include written instructions communicated prior to the examination date and instructions communicated at the site ~~[, either written or oral,]~~ on the date of the examination. Failure to comply with all procedures established by the board or the examination organization with regard to conduct at the examination ~~shall~~ will be grounds for denial of the application.

18VAC15-40-35. Qualifications for the new residential structure specialty.

To obtain the NRS specialty, the applicant ~~[shall must]~~ submit the appropriate application form and fee pursuant to 18VAC15-40-50 and meet the following qualifications:

1. Hold a current and valid home inspector license. An applicant who does not hold a current and valid home inspector license ~~[shall must]~~ apply for such licensure and meet the requirements contained in 18VAC15-40-30 and 18VAC15-40-32.
2. Submit proof of successful completion of an NRS training module approved by the board pursuant to Part VI (18VAC15-40-200 ~~et seq.~~ through 18VAC15-40-300) of this chapter and completed no more than two years prior to the date of application.

18VAC15-40-48. General fee requirements.

All fees are nonrefundable and ~~shall~~ will not be prorated. The date on which the fee is received by the department or ~~its~~ the department's agent will determine whether the fee is on time. Checks or money orders ~~shall~~ must be made payable to the Treasurer of Virginia.

18VAC15-40-50. Fees.

~~[A.]~~ The following table lists fees:

Fee type	Fee amount	When due
Initial home inspector application	\$80	With application for home inspector
Initial NRS specialty application	\$80	With application for NRS specialty designation
Home inspector renewal	\$45	With renewal application
Home inspector with NRS specialty renewal	\$90	With renewal application
Home inspector reinstatement	\$125	With reinstatement application
Home inspector with NRS specialty reinstatement	\$170	With reinstatement application
Prelicensure education course approval	\$250	With prelicensure education course approval application
NRS training module approval	\$150	With NRS training module approval application
NRS CPE course approval	\$150	With NRS CPE course approval application

~~For licenses expiring after February 1, 2020, and before February 1, 2022, the renewal fees shall be as follows:~~

Home inspector renewal	\$40
Home inspector with NRS specialty renewal	\$80

~~For reinstatement applications received after March 1, 2020, and on or before February 28, 2022, the reinstatement fees shall be as follows:~~

Home inspector reinstatement	\$120
Home inspector with NRS specialty reinstatement	\$160

~~[B. For licenses expiring after February 1, 2022, and before February 1, 2024, the renewal fees shall be as follows:~~

Home inspector renewal	\$25
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Home inspector with NRS specialty renewal \$50

~~C. For reinstatement applications received after March 1, 2022, and on or before February 29, 2024, the reinstatement fees shall be as follows:~~

Home inspector reinstatement \$105

Home inspector with NRS specialty reinstatement \$130]

18VAC15-40-60. Renewal required.

Licenses issued under this chapter ~~shall~~ will expire two years from the last day of the month in which they were issued.

18VAC15-40-72. Continuing professional education required for home inspector licensure.

A. Each licensee ~~shall have completed~~ must complete 16 contact hours of continuing professional education (CPE) during each license renewal cycle. CPE can be met through classroom instruction, distance learning, or online education technology.

B. Notwithstanding the provisions of 18VAC15-40-75, the subject matter addressed during CPE contact hours ~~shall be~~ is limited to the content areas covered by the board's approved examination and the list of acceptable topics provided in 18VAC15-40-73.

C. The licensee ~~shall~~ will not receive CPE credit for the same training course more than once during a single license renewal cycle.

D. A licensee who completes the initial training module required by 18VAC15-40-35 to obtain an NRS specialty may count completion of the module ~~towards~~ toward the required 16 hours of CPE credit for that renewal cycle.

18VAC15-40-73. Acceptable topics for continuing professional education.

A. The following topics will be accepted for CPE credit, all as related to home inspection services:

1. Site conditions;
2. Exterior components;
3. Roof components;
4. Structural components;
5. Electrical systems;
6. Cooling systems;
7. Heating systems;
8. Insulation, moisture management systems, and ventilation systems;
9. Mechanical exhaust systems;

10. Plumbing systems;

11. Interior components;

12. Fireplaces, fuel-burning appliances, chimney, and vent systems;

13. Common permanently installed kitchen appliances;

14. Home inspection reporting requirements;

15. Responsibilities to the client, including required home inspection contract elements;

16. Laws and regulations applicable to the profession; and

17. Content areas covered by the board's approved examination.

B. In addition to the topics provided in subsection A of this section, a licensee may receive a maximum of four contact hours of CPE credit for completion of training required to maintain credentials related to home inspection services, including asbestos inspection, lead inspection, and radon testing.

C. A licensee may apply completion of the NRS CPE course, as applicable, toward the 16 contact hours of CPE required for license renewal.

18VAC15-40-75. Board-approved new residential structure update continuing professional education course required to maintain new residential structure specialty.

A. In addition to the CPE requirements of 18VAC15-40-72, to maintain the NRS specialty, the licensee ~~shall~~ must submit proof of completion of a ~~four-hour~~ board-approved NRS CPE course, ~~which can be applied toward the 16 contact hours of CPE required for the license renewal.~~

B. A licensee who has taken the initial NRS training module pursuant to subdivision 2 of 18VAC15-40-35 no more than one year before the expiration date on the license will not require proof of the NRS CPE course for that renewal. All other requirements for renewal must be met in order to renew the license and the home inspector is still required to have completed all other CPE requirements pursuant to this chapter.

18VAC15-40-76. Continuing professional education for instructors.

A licensee may receive CPE credit for teaching a course that otherwise meets the requirements of this chapter; however, additional credit ~~shall~~ will not be given for subsequent offerings of a course or activity with the same content within the same licensing cycle. In addition, a licensee may receive two hours of CPE no more than once during a single licensing cycle for the initial development or substantial updating of a CPE course.

18VAC15-40-78. Maintenance of continuing professional education records.

A. Each licensee ~~shall~~ must maintain evidence of the satisfactory completion of CPE for at least three years following the end of the license renewal cycle for which the CPE was taken. Such documentation ~~shall~~ must be provided to the board or ~~its~~ the board's duly authorized agents upon request. The following ~~shall~~ will be maintained by the licensee to document completion of the hours of CPE specified in 18VAC15-40-72:

1. Evidence of completion that ~~shall contain~~ contains the name, address, and [~~telephone number~~ contact information] of the training provider;
2. The dates the ~~applicant~~ licensee participated in the training;
3. Descriptive material of the subject matter presented documenting that ~~it the subject matter~~ covers the content areas covered by the board's examination or the list of acceptable topics provided in 18VAC15-40-73; and
4. A statement from the provider verifying the number of CPE contact hours completed.

B. The board may conduct an audit of its licensees to ensure compliance with the applicable CPE requirements. Licensees who are selected for audit ~~shall~~ must provide the necessary documentation stipulated in this section.

C. The licensee may request additional time to meet the CPE requirement; however, CPE hours earned during a license renewal cycle to satisfy the CPE requirement of the preceding license renewal cycle ~~shall~~ will be valid only for that preceding license renewal cycle.

18VAC15-40-80. Procedures for renewal.

A. Prior to the expiration date shown on the license, the board ~~shall will~~ [~~mail~~ send] a renewal notice to the licensee's address of record.

B. Prior to the expiration date shown on the license, ~~the a~~ licensee desiring to renew ~~his a~~ license ~~shall~~ must [~~return~~ submit] to the board ~~the renewal notice~~ (i) a completed renewal application, (ii) proof of insurance required by 18VAC15-40-30, (iii) proof of completion of CPE, in accordance with 18VAC15-40-72, and (iv) the appropriate fee specified in 18VAC15-40-50.

C. ~~Prior to the expiration date shown on the license~~ In addition to the requirements of subsection B of this section, a licensee with the NRS specialty must submit proof of completion of four hours of board-approved NRS CPE, in accordance with 18VAC15-40-75, ~~along with the renewal notice and the appropriate fee specified in 18VAC15-40-50.~~

D. Failure to receive the renewal notice does not relieve the licensee of the obligation to renew. [~~If the licensee fails to~~

~~receive the renewal notice, a copy of the license may be submitted with the required fee and any other required documentation as an application for renewal.~~] The date on which the renewal application is received by the department or ~~its~~ the department's agent will determine whether the renewal application was received on time.

E. By submitting the renewal application, the licensee is affirming that [~~the CPE requirements of 18VAC15-40-72 have been met~~]; [~~and~~] he the licensee is in continued compliance with this chapter.

18VAC15-40-90. Reinstatement.

A. If the requirements for renewal of a license, as provided in 18VAC15-40-80, are not completed by the licensee within 30 days after the expiration date on the license, reinstatement of the license ~~shall~~ will be required.

B. [~~All applicants for reinstatement~~] ~~shall~~ [~~must meet all requirements set forth in 18VAC15-40-30, 18VAC15-40-72, and 18VAC15-40-75, as applicable.~~

~~C.~~] A license may be reinstated for up to two years following the expiration date upon submittal of the reinstatement application consisting of (i) payment of the reinstatement fee, (ii) proof of insurance required by 18VAC15-40-30, (iii) proof of CPE in accordance with 18VAC15-40-72, and (iv) proof of CPE to maintain the NRS specialty, if applicable. After two years, the license ~~shall~~ will not be reinstated under any circumstances, and the individual ~~shall~~ must apply as a new applicant and meet entry requirements current at the time of submittal of the new application.

[~~D. C.~~] By submitting the reinstatement application, the individual is affirming ~~that he is in~~ continued compliance with this chapter.

18VAC15-40-105. Status of licensee during the period prior to reinstatement.

A. A licensee who reinstates ~~his a~~ license ~~shall~~ will be regarded as having been continuously licensed without interruption ~~and shall~~ will remain under the disciplinary authority of the board during this entire period; and ~~shall~~ will be held accountable for ~~his the licensee's~~ activities during this period.

B. 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.) of Title 54.1 of the Code of Virginia.

18VAC15-40-108. License renewal or reinstatement after July 1, 2017. (Repealed.)

~~A licensee eligible for renewal or reinstatement on or after July 1, 2017, shall be required to meet the requirements of this part as amended effective July 1, 2017, upon submittal of the renewal or reinstatement application, as applicable.~~

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18VAC15-40-120. Home inspection contract.

A. For the protection of both the client and the licensee, both parties ~~shall~~ must sign a legible, written contract clearly specifying the terms, conditions, and limitations and exclusions of the work to be performed. Prior to the commencement of work or acceptance of payments, the contract must be signed by both (i) the client or the client's authorized representative and (ii) the licensee. The licensee must [~~make prompt delivery~~ promptly deliver] to the client or client's authorized representative a fully executed copy of the contract in compliance with this section before work begins. Any modification to the contract that changes the cost, scope of work to be performed, or estimated completion date must be in writing and signed by all parties.

B. At a minimum, the written contract ~~shall~~ must include:

1. ~~Name, business name (if applicable), business address, and telephone number of the home inspector. The following information applicable to the home inspector:~~

a. Name;

b. Business name, if applicable;

c. Address;

d. Telephone number, email address, or other contact information, as applicable; and

e. License number and notation of NRS specialty, if applicable.

~~2. License number of the home inspector and notation of NRS specialty, if applicable.~~

~~3. 2. Name of the clients client.~~

~~4. 3. Physical address of the residential property building or NRS to be inspected.~~

~~5. 4. Cost of the home inspection.~~

~~6. 5. A listing of all areas and systems to be inspected, including those inspections that are either partial or limited in scope.~~

~~7. 6. A statement in the contract that the home inspection does not include a review for compliance with regulatory requirements (Virginia Uniform Statewide Building Code or other codes, regulations, laws, or ordinances, etc.).~~

~~8. To the extent that any of the following categories are not covered by the home inspection, they shall be noted as exclusions in the inspection contract~~ 7. A statement disclosing any exclusions to the home inspection. Such exclusions may include the following:

a. The condition of systems or components that are not readily accessible.

b. The remaining life of any system or component.

c. The strength, adequacy, effectiveness, or efficiency of any system or component.

d. The causes of any condition or deficiency.

e. The methods, materials, or costs of corrections.

f. Future conditions, including failure of systems and components.

g. The suitability of the property for any specialized use.

h. The market value of the property or its marketability.

i. The advisability of the purchase of the property.

j. The presence of diseases harmful to humans or potentially hazardous plants or animals, including wood-destroying organisms and mold.

k. The presence of any environmental hazards, including toxins, carcinogens, noise, asbestos, lead-based paint, mold, radon, and contaminants in soil, water, and air.

l. The effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances.

m. The operating costs of systems or components.

n. The acoustical properties of any system or component.

o. The presence of components involved in manufacturer's recalls.

p. The inspection of outbuildings.

~~To the extent any other items are not specifically included in the home inspection by agreement of the parties, they shall also be noted as exclusions in the home inspection contract.~~

~~9. 8. Estimated delivery date of the home inspection report to the client of the home inspection report.~~

~~10. 9. Dated signatures of both the home inspector and the client or the client's authorized representative.~~

10. A statement providing that any modification to the contract that changes the cost, scope of work to be performed, or estimated completion date must be in writing and signed by all parties.

11. Disclosure of the cancellation rights of the parties.

12. A general statement on the limits of the home inspector's liability.

C. The home inspection contract ~~shall~~ must make written disclosure that the home inspection report is (i) based upon visual observation of existing conditions of the inspected ~~property~~ residential building or NRS at the time of the inspection, and is (ii) not intended to be, or to be construed as, a guarantee, warranty, or any form of insurance. This provision does not prevent a home inspector from offering a separate guarantee, warranty, or any form of insurance if ~~he~~ the home inspector so chooses.

D. The requirements of 18VAC15-40-130 D regarding smoke alarms will not be excluded from the home inspection contract.

E. ~~If the home inspector recommends a person to the client for repairs or modifications to the inspected property, the home~~

inspector shall disclose to the client all financial interests that the home inspector has with the recommended person. The disclosure shall be written within the home inspection contract. The home inspection contract must disclose any financial interest that the licensee has or reasonably expects to have with any person whom the licensee recommends to the client for the repairs or modifications to the residential building or NRS.

F. If the home inspector has designed or performed repairs or modifications to [~~or has inspected,~~] the residential building or NRS to be inspected within the preceding 12 months, the home inspection contract must disclose to the client the specifics of the repairs or modifications the home inspector designed or performed [~~or any inspection the home inspector performed~~].

18VAC15-40-130. Home inspection report.

A. A home inspection report is a written evaluation of the readily accessible components of a residential building or NRS, including heating, cooling, plumbing, and electrical systems; structural components; foundation; roof; masonry structure; exterior and interior components; and other related residential housing components.

B. Home inspection reports ~~shall~~ must contain:

1. Information pertaining to the licensee, including:
 - a. ~~Licensee's name~~ Name;
 - b. ~~Business address~~ Address;
 - c. Telephone number, email address, or other contact information, as applicable; and
 - d. License number and expiration date, to be followed by "NRS" if so designated and performing a home inspection on a new residential structure;
2. The name, ~~address, and telephone number~~ contact information of the client or the client's authorized representative, ~~if available at the time of the inspection~~;
3. The physical address of the residential ~~property~~ building or NRS inspected; and
4. The date; ~~time~~ [{ }] to include both start and finish times of the home inspection; ~~and weather conditions at the time of the home inspection.~~

~~B. C.~~ In conducting a home inspection and reporting its findings, the home inspector, ~~at a minimum, shall~~ must inspect the condition of and ~~shall~~ must describe in writing the composition ~~or~~ and characteristics of the following readily accessible components and readily observable defects ~~of the residential building or NRS~~, except as may be limited ~~in~~ by the home inspection contract ~~agreement~~:

1. Structural system.
 - a. Foundation.
 - b. Framing.

c. Stairs.

d. Crawl space; ~~the~~ The method of inspecting the crawl space ~~shall~~ must be noted and explained ~~in the home inspection report. If the crawl space cannot be inspected, the licensee shall explain in the home inspection report why this component was not inspected.~~

e. Crawl space ventilation and vapor barriers.

f. Slab floor, ~~when present.~~

g. Floors, ~~ceilings, and walls.~~

h. Ceilings.

i. Walls.

2. Roof structure, attic, and insulation systems and components.

a. Roof covering. The method of inspecting the roof covering ~~shall~~ must be noted and explained ~~in the home inspection report. If the roof covering cannot be inspected, the licensee shall explain in the home inspection report why this component was not inspected.~~

b. Roof ventilation.

c. Roof drainage system, to include gutters and downspouts.

d. Roof flashings, if readily visible.

e. Skylights, chimneys, and roof penetrations, but not antennae or other roof attachments.

f. Roof framing and sheathing.

g. Attic, ~~unless area is not readily accessible.~~

h. Attic insulation.

3. Exterior ~~of residential building or NRS~~ systems and components.

a. Wall covering, flashing, and trim.

b. ~~Readily accessible doors~~ Doors and windows, ~~but, This does not include~~ the operation of associated security locks, devices, or systems.

c. Decks, balconies, stoops, steps, porches, attached garages, carports, and any associated railings that are adjacent to the residential building or NRS and on the same property ~~but, This does not include~~ associated screening, shutters, awnings, storm windows, detached garages, or storm doors.

d. Eaves, soffits, and fascias where readily accessible from ground level.

e. Walkways, grade steps, patios, and driveways, ~~but, This does not include~~ fences or privacy walls.

f. Vegetation, trees, grading, drainage, and ~~any~~ retaining walls adjacent to the residential building or NRS.

g. Visible exterior portions of chimneys.

4. Interior ~~of residential building or NRS~~ systems and components.

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- a. Interior walls, ceilings, and floors of the residential building or NRS and any adjacent garage.
 - b. Steps, stairways, railings, and balconies and associated railings.
 - c. Countertops and installed cabinets, including hardware.
 - d. Doors and windows, ~~but~~. This does not include the operation of associated security locks, devices, or systems.
 - e. Garage doors and permanently mounted and installed garage door operators. The automatic safety reverse function of garage door openers ~~shall~~ must be tested, either by physical obstruction as specified by the manufacturer, or by breaking the beam of the electronic photo eye but only when the test can be safely performed and will not risk damage to the door, the opener, any nearby structure, or any stored items.
 - f. Fireplaces, venting systems, hearths, dampers, and fireboxes, ~~but~~. This does not include mantles, fire screens and doors, or seals, and gaskets.
 - g. Solid ~~fuel-burning~~ fuel-burning appliances, ~~if applicable~~.
5. Plumbing system.
- a. Interior water supply and distribution systems, including water supply lines and all fixtures and faucets, ~~but~~. This does not include water conditioning systems or fire sprinkler systems.
 - b. Water drainage, waste, and vent systems, including all associated fixtures.
 - c. Drainage sumps, sump pumps, and related piping.
 - d. Water heating equipment, including energy source and related vent systems, flues, and chimneys, ~~but~~. This does not include solar water heating systems.
 - e. Fuel storage and distribution systems ~~for visible leaks~~.
6. Electrical system.
- a. Service drop.
 - b. Service entrance conductors, cables, and raceways.
 - c. Service equipment and main disconnects.
 - d. Service grounding.
 - e. Interior components of service panels and sub panels, including feeders.
 - f. Conductors.
 - g. Overcurrent protection devices.
 - h. ~~Readily accessible installed~~ Installed lighting fixtures, switches, and receptacles.
 - i. Ground fault circuit interrupters.
 - j. Presence or absence of smoke alarms or carbon monoxide detectors.
 - k. Presence of solid conductor aluminum branch circuit wiring.
- l. Arc fault interrupters ~~shall~~ must be noted if installed but not tested if equipment is attached to them.
7. Heating system.
- a. Heating equipment, including operating controls, ~~but~~. This does not include heat exchangers, gas logs, built-in gas burning appliances, grills, stoves, space heaters, solar heating devices, or heating system accessories such as humidifiers, air purifiers, motorized dampers, and heat reclaimers.
 - b. Energy source.
 - c. Heating distribution system.
 - d. Vent systems, flues, and chimneys, including dampers.
8. Air conditioning system.
- a. Central and installed wall air conditioning equipment.
 - b. Operating controls, access panels, and covers.
 - c. Energy source.
 - d. Cooling distribution system.
- ~~C. D. To the extent that a component or system cannot be inspected, the home inspection report must identify such component or system and provide an explanation for why the component or systems was not inspected.~~
- E. Systems in the home that are turned off, winterized, or otherwise secured so that they do not respond to normal activation using standard operating controls need not be put into operating condition. The home inspector shall inspection report must state, in writing, the reason these systems or components were not inspected.
- ~~D. F. For any smoke alarms that are readily accessible in the residential building or NRS, the home inspection report must include a determination of whether the smoke alarms are in good working order as defined in 18VAC15-40-10.~~
1. A home inspector is not required to operate the test function of a smoke alarm if the smoke alarm is part of a central alarm system or security system in which such testing will automatically alert a fire department or other authority. To the extent the home inspector is unable to determine whether testing will cause an automatic alert, the home inspector is not required to operate the test function of the smoke alarm.
 2. If a smoke alarm is not readily accessible or there are any limitations in determining whether it is in good working order, the home inspection report must state that it is not readily accessible or describe such limitations, as applicable.
 3. The home inspection report must include the substance of the following: It is recommended that a home have smoke alarms on each level of the dwelling and in every bedroom or sleeping area. Clients should replace any existing smoke alarms that are not in good working order with new ones and install smoke alarms where they may be missing or not

properly located. Any test of a smoke alarm during a home inspection only reflects its condition at the time of inspection and is not a guarantee, warranty, or any form of insurance. A test performed during the home inspection does not supersede the smoke alarm manufacturer's testing recommendations. Clients should follow the manufacturer's instructions for proper placement, installation, and maintenance.

~~E. G.~~ In accordance with § 54.1-517.2:1 of the Code of Virginia, if a home inspector observes the presence of any shade of yellow corrugated stainless steel tubing during a home inspection in a home that was built prior to the adoption of the 2006 Virginia Construction Code, effective May 1, 2008, the home inspector shall include that observation in the report along with the following statement: "Manufacturers believe that this product is safer if properly bonded and grounded as required by the manufacturer's installation instructions. Proper bonding and grounding of the product should be determined by a contractor licensed to perform the work in the Commonwealth of Virginia."

18VAC15-40-140. Conflict of interest.

A. The licensee ~~shall~~ will not:

1. Design or perform repairs or modifications to a residential building or NRS on which ~~he~~ the licensee has performed a home inspection ~~as a result of the findings of the home inspection~~ within 12 months after the date ~~he~~ the licensee performed the home inspection, except in cases where the home inspector purchased the residence after ~~he performed~~ the home inspection was performed;
2. Perform a home inspection of a residential building or NRS upon which ~~he~~ the licensee has designed or performed repairs or modifications within the preceding 12 months without disclosing to the client in the home inspection contract the specifics of the repairs or modifications ~~he~~ the licensee designed or performed;
3. Refer ~~his~~ the licensee's client to another person to make repairs or modifications to a residential building or NRS on which ~~he~~ the licensee has performed a home inspection unless, in accordance with 18VAC15-40-120 D, ~~he~~ the licensee provides written documentation to ~~his~~ the licensee's client that clearly discloses ~~all any financial interests~~ interest that the licensee has or reasonably expects to have with the person who is recommended for the repairs or modifications;
4. Represent the ~~financial~~ interests, either personally or through ~~his~~ employment, of any of the parties to the transfer or sale of a residential building or NRS on which ~~he~~ the licensee has performed a home inspection without disclosing such fact to the client; or
5. Perform a home inspection of a residential building or NRS under a contingent agreement whereby any

compensation or future referrals are dependent on the reported findings or on the sale of the property.

B. ~~The~~ Notwithstanding the provisions of 18VAC15-40-180, ~~the licensee shall~~ must not disclose any information concerning the results of the home inspection without the approval of the client for whom the home inspection was performed. However, the licensee may disclose information in situations where there is an imminent endangerment to life or health.

C. The licensee ~~shall~~ must not accept compensation from more than one interested party for the ~~same service~~ home inspection on the same property without the consent of all interested parties.

D. The licensee ~~shall~~ must not accept nor offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with ~~work for which the licensee is responsible~~ the home inspection. Additionally, the licensee ~~shall~~ must not enter into any financial relationship with any party that may compromise the licensee's commitment to the best interest of ~~his~~ the licensee's client.

E. A home inspector may provide services to a client in addition to a home inspection. The home inspector must disclose to the client the additional services to be performed and how such services may conflict with the home inspection. The disclosure must be in writing and may be incorporated into the home inspection contract or contained in a separate written agreement with the client. Any additional services performed pursuant to this subsection must be performed in accordance with applicable laws and regulations.

F. The home inspection ~~shall~~ must not be used as a pretext by the licensee to solicit or obtain work in another field, except for additional diagnostic inspections or testing.

18VAC15-40-145. Competency for assignments.

A. The licensee ~~shall~~ must undertake to perform professional assignments only when qualified by education or experience, or both.

B. A licensee ~~shall~~ must not misrepresent to a prospective or existing client or employer ~~his~~ the licensee's qualifications ~~and~~ or the scope of ~~his~~ the licensee's responsibility in connection with a home inspection.

18VAC15-40-150. Grounds for disciplinary action.

The board [has the power to] ~~place a licensee on probation, [may impose a monetary penalty in accordance with § 54.1-202 A of the Code of Virginia or reprimand, fine,]~~ revoke, [or] suspend [or refuse to renew] a license [in accordance with § 54.1-516 of the Code of Virginia] when the 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.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), or 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia or this chapter.

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18VAC15-40-152. Notice of adverse action.

A. A licensee ~~shall~~ must notify the board of the following actions against the licensee:

1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including any (i) reprimand; (ii) license or certificate revocation, suspension, or denial; (iii) monetary penalty; (iv) requirement for remedial education; or (v) other corrective action.
2. Any voluntary surrendering of a related license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.
3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, in any jurisdiction of the United States of any ~~(i) misdemeanor involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury or relating to performing a home inspection, except marijuana convictions, or (ii) felony, for which there being is no appeal pending therefrom or the time for appeal having has lapsed.~~ Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. ~~Any plea of nolo contendere shall be considered a conviction for the purpose of this section.~~

B. The notice must be made to the board in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. ~~The record of conviction, finding, or case decision shall be considered prima facie evidence of a conviction or finding of guilt.~~

18VAC15-40-155. Prohibited acts.

The following acts are prohibited and any violation may result in disciplinary action by the board:

1. Violating, including inducing another to violate, cooperating with another to violate, or combining or conspiring with or acting as agent, partner, or associate for another to violate any of the provisions of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), or 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia or any of the regulations of the board.
2. Obtaining or attempting to obtain a license by false or fraudulent representation; [or] maintaining, renewing, or reinstating a license by false or fraudulent representation [; or furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining of a license].
2. ~~Performing improvements or repairs to a residential building as a result of the findings of the home inspection within 12 months before or after performing a home inspection on it, except in cases where the home inspector~~

~~purchased the residential building after he performed the home inspection.~~

~~3. Violating or inducing another person to violate any of the provisions of Chapter 1, 2, 3, or 5 of Title 54.1 of the Code of Virginia or this chapter.~~

~~4. A licensee having~~ 3. Failing to maintain the insurance policy required pursuant to 18VAC15-40-30 G.

4. Failing to report a change or maintain records pursuant to 18VAC15-40-160.

5. Having been convicted, or found guilty, in any jurisdiction or disciplined by any jurisdiction, board, or administrative body in any jurisdiction of any offense or violation enumerated in 18VAC15-40-152. Review of convictions shall will be subject to the requirements of § 54.1-204 of the Code of Virginia.

~~5. 6. Failing to inform the board in writing within 30 days that the licensee was convicted, or found guilty, in any jurisdiction or disciplined in by any jurisdiction, board, or administrative body of any offense or violation enumerated in 18VAC15-40-152.~~

~~6. Failing to act as a licensee in such a manner as to safeguard the interests of the public.~~

7. Engaging Failing to use a contract that complies with 18VAC15-40-120.

8. Failing to produce a home inspection report that complies with 18VAC15-40-130.

9. Failing to comply with the requirements of 18VAC15-40-140.

10. Committing an action that constitutes negligence, incompetence, or misconduct in the practice of the profession, including:

a. Having performed a home inspection when not qualified by training or experience to competently perform any part of the home inspection.

b. Failing to demonstrate reasonable care, judgment, or application of the required knowledge, skill, and ability in the performance of the licensee's duties.

c. Conducting a home inspection on any new residential structure without the NRS specialty issued by the board.

d. Having cited, stated, or represented that there exists a violation of the Virginia Uniform Statewide Building Code (13VAC5-63) in a home inspection report or other document prepared relative to a home inspection.

e. Advising a client as to whether the client should or should not engage in a real estate transaction or providing an opinion of value regarding the residential building or NRS that is the subject of the home inspection.

f. Failing to adequately supervise and review work by unlicensed individuals who are gaining experience under the direct supervision of the licensee.

11. Committing an action that constitutes engaging in improper, fraudulent, or dishonest conduct in conducting a home inspection.

8. Having performed a home inspection when not qualified by training or experience to competently perform any part of the home inspection.

9. Failing to maintain, through training, the proficiency to perform Virginia home inspections.

10. Conducting a home inspection on any new residential structure without the NRS specialty issued by the board.

11. Failing to maintain the insurance policy required pursuant to 18VAC15-40-30 G.

12. Failing to report a change pursuant to 18VAC15-40-160.

13. Having cited, stated, or represented that there exists a violation of the Virginia Uniform Statewide Building Code (13VAC5-63) in a home inspection report or other document prepared relative to a home inspection, including:

a. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

b. Knowingly misrepresenting factual information in expressing a professional opinion.

c. Intentionally and without justification failing to complete work contracted for or to comply with the terms in the contract.

d. Retaining or misapplying funds paid for which work is either not performed or performed only in part.

12. Allowing a license issued by the board to be used by another.

13. Failing to comply with the requirements of 18VAC15-40-180.

18VAC15-40-160. Maintenance of licenses, reports, and documentation.

A. The licensee ~~shall~~ must at all times keep the board informed of ~~his~~ the licensee's current address of record, to include the physical address, as applicable. Changes of address ~~shall~~ must be reported to the board in writing within 30 calendar days after such change. A post office box is acceptable as the address of record only when a physical address is also provided. The board ~~shall~~ will not be responsible for the licensee's failure to receive notices, communications, and correspondence caused by the licensee's failure to promptly notify the board of any change of address.

B. The licensee ~~shall~~ must notify the board in writing of a name change within 30 calendar days of any change in the licensee's legal name. Such notification ~~shall~~ must be

accompanied by a copy of a marriage license, divorce decree, court order, or other documentation that verifies the name change.

C. The licensee ~~shall~~ must retain all records pertaining to home inspections performed to include written reports and supporting documentation for a period of three years from the date of the related home inspection.

D. The licensee ~~shall~~ must report the cancellation, amendment, expiration, or any other change of the insurance policy submitted in accordance with 18VAC15-40-30 G within 30 days of the change.

18VAC15-40-180. Response to inquiry of the board.

A. A licensee must respond within 10 days to a request by the board or any of ~~its~~ the board's agents regarding any complaint filed with the department.

B. Unless otherwise specified by the board, a licensee of the board ~~shall~~ must produce to the board or any of ~~its~~ the board's agents within 10 days of the request any document, book, or record concerning any transaction pertaining to a complaint filed in which the licensee was involved, or for which the licensee is required to maintain records. The board may extend such timeframe upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. A licensee ~~shall~~ must not provide a false, misleading, or incomplete response to the board or any of ~~its~~ the board's agents seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsections A and B of this section, a licensee must respond to an inquiry by the board or ~~its~~ the board's agent within 21 days.

18VAC15-40-210. Approval of prelicense education courses.

A training provider seeking approval of a prelicense education course ~~shall~~ must submit an application for prelicense education course approval on a form provided by the board. In addition to the appropriate fee provided in 18VAC15-40-50, the application ~~shall~~ must include:

1. The name of the provider;
2. Provider contact person, address, and [~~telephone number~~ contact information];
3. Course contact hours;
4. Schedule of prelicense education courses if established, including dates, times, and locations;
5. Method of delivery;
6. Instructor information, including name, license number, if applicable, and a list of trade-appropriate designations, as well as a professional resume with a summary of teaching

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experience and subject matter knowledge and qualifications acceptable to the board;

7. Materials to be provided to students; [and]

8. [~~Fees for prelicense education course and materials; and~~

9.] Training module syllabus.

18VAC15-40-220. Prelicense education course requirements.

A prelicense education course must be a minimum of 35 hours. The syllabus for each type of prelicense education course ~~shall~~ must encompass the following subject areas and include methods for identification and inspection, safety and maintenance, and standards for material selection and installation procedures, as applicable:

1. Site conditions;
2. Exterior components of the residential building;
3. Structural system elements;
4. Electrical system elements;
5. Heating and cooling systems;
6. Insulation, moisture management systems, and ventilation systems;
7. Plumbing systems;
8. Interior components;
9. Fireplace and chimney systems;
10. Common permanently installed appliances;
11. Inspection report requirements;
12. Responsibilities to the client, including required contract elements; and
13. Overview of the board's regulations.

18VAC15-40-230. Approval of new residential structures training modules and new residential structures continuing professional education.

A training provider seeking approval of an NRS training module or NRS CPE course ~~shall~~ must submit an application for NRS training module or NRS CPE course approval on a form provided by the board. NRS training modules and NRS CPE can be provided in a classroom environment, online, or through distance learning. In addition to the appropriate fee provided in 18VAC15-40-50, the application ~~shall~~ must include:

1. The name of the provider;
2. Provider contact person, address, and [~~telephone number~~ contact information];
3. Module or CPE course contact hours;

4. Schedule of training module or CPE course if established, including dates, times, and locations;

5. Method of delivery;

6. Instructor information, including name, license number, if applicable, and a list of trade-appropriate designations, as well as a professional resume with a summary of teaching experience and subject matter knowledge and qualifications acceptable to the board;

7. Materials to be provided to students; [and]

8. [~~Fees for NRS training module or NRS CPE course and materials; and~~

9.] Training module syllabus.

18VAC15-40-240. New residential structures training module requirements.

A. In order to qualify as an NRS training module under 18VAC15-40-35, the training module must include a minimum of eight contact hours, and the syllabus ~~shall~~ must encompass all of the subject areas set forth in subsection B of this section.

B. The following subject areas as they relate to the Virginia Residential Code ~~shall~~ must be included in all NRS training modules. The time allocated to each subject area must be sufficient to ensure adequate coverage of the subject as determined by the board.

1. Origin of the Virginia Residential Code.
 - a. Overview of Title 36 of the Code of Virginia.
 - b. Roles and responsibilities of the Board of Housing and Community Development and the Department of Housing and Community Development.
 - c. Virginia Uniform Statewide Building Code, Part I (13VAC5-63-10 through 13VAC5-63-390) of 13VAC5-63.
2. Scope of the Virginia Residential Code.
 - a. Purpose of the Virginia Residential Code.
 - b. Exemptions from the Virginia Residential Code.
 - c. Compliance alternatives.
 - d. Code official discretion in administration and enforcement of the Virginia Residential Code.
 - e. Process for amending the Virginia Residential Code.
 - f. Code violations and enforcement.
 - (1) Statute of limitations.
 - (2) Effect of violations.
 - g. Examples of code and non-code violations.
3. Roles of the building code official and the home inspector, including an overview of § 36-105 of the Code of Virginia.

18VAC15-40-250. New residential structures training modules and new residential structures continuing professional education requirements.

In order to qualify for NRS CPE for the renewal of home inspector licenses with the NRS specialty, the NRS CPE must include a minimum of four contact hours and the syllabus ~~shall~~ must encompass all of the topic areas listed in 18VAC15-40-240 for an NRS training module.

18VAC15-40-260. Documentation of prelicense education courses, new residential structures training modules, and new residential structures continuing professional education completion requirements.

All prelicense education course, NRS training module, and NRS CPE providers must provide each student who successfully completes the course or training module with a certificate of completion or other documentation that the student may use as proof of course or training module completion. Such documentation ~~shall~~ must contain the contact hours completed, the date of training, and the course identification number assigned by the board.

18VAC15-40-270. Maintenance of records.

All providers of approved prelicense education courses, NRS training modules, or NRS CPE courses must establish and maintain a record for each student. The record ~~shall~~ must include the student's name and address, the training module or course name and hours attended, the training module or course syllabus or outline, the ~~name or~~ names of the instructors, the date of successful completion, and the board's approved training module or course identification number. Records ~~shall~~ must be available for inspection during normal business hours by authorized representatives of the board. Providers must maintain these records for a minimum of five years.

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 (18VAC15-40)

~~Home Inspector License Application, A506-3380LIC v4 (eff. 12/2021)~~

~~Home Inspector NRS Specialty Designation Application, A506-3380NRS v1 (eff. 7/2017)~~

~~Home Inspector Experience Verification Form, A506-3380EXP v7 (eff. 9/2017)~~

~~Home Inspectors - Inspection Log, A506-3380ILOG v1 (eff. 9/2017)~~

~~Home Inspector Reinstatement Application, A506-3380REI v4 (eff. 2/2022)~~

~~Home Inspector - Course Approval Application, Prelicense Education Course/NRS Training Module/NRS CPE, A506-3331HICRS v3 (eff. 2/2020)~~

[Home Inspector License Application, A506-3380LIC-v5 \(eff. 10/2025\)](#)

[Home Inspector NRS Specialty Designation Application, A506-3380NRS-v2 \(eff. 10/2025\)](#)

[Home Inspector Qualifying Experience Verification Form, A506-3380EXP-v8 \(eff. 10/2025\)](#)

[Home Inspectors - Inspection Log, A506-3380ILOG-v2 \(eff. 10/2025\)](#)

[Home Inspector Renewal or Reinstatement Application, A506-3380REN_REI-v1 \(eff. 10/2025\)](#)

[Home Inspector - Course Approval Application, Prelicense Education Course, NRS Training Module, or NRS CPE, A506-3331HICRS-vs4 \(eff. 10/2025\)](#)

VA.R. Doc. No. R21-6496; Filed July 28, 2025, 9:33 a.m.

AUCTIONEERS BOARD

Final Regulation

Title of Regulation: 18VAC25-21. Regulations of the Virginia Auctioneers Board (amending 18VAC25-21-10 through 18VAC25-21-50, 18VAC25-21-70 through 18VAC25-21-120, 18VAC25-21-140, 18VAC25-21-150, 18VAC25-21-170 through 18VAC25-21-190, 18VAC25-21-230 through 18VAC25-21-270; repealing 18VAC25-21-60, 18VAC25-21-130, 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.

Effective Date: October 1, 2025.

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@dpwr.virginia.gov.

Summary:

Pursuant to Executive Directive One (2022), the 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.

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Changes to the proposed regulation include (i) revising requirements regarding reporting of prior disciplinary actions; (ii) reinstating requirements for advertisements to include licensee information; (iii) removing a requirement that a licensee inform the board of all licenses, certificates, and registrations affected by an address change; (iv) reinstating a prohibition on not demonstrating reasonable care, judgment, or application of duties; and (v) revising course approval forms.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Chapter 21

Regulations of the Virginia Auctioneers Board

18VAC25-21-10. Definitions.

The following word or term when used in this chapter ~~shall~~ have has 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 [for individuals].

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 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~~ The applicant must report any action taken by any board or administrative body in any jurisdiction against a professional or occupational license, certification, or registration issued to the applicant, to include any suspension, revocation, or surrender of a license, certification, or registration; imposition of a monetary penalty; or requirement to take remedial education or other corrective action. The board, in its discretion, may deny licensure to any applicant for any prior action taken by any board or administrative body in any jurisdiction]

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 report any action taken by any board or administrative body in any jurisdiction against a professional or occupational license, certification, or registration issued to the applicant, to include any suspension, revocation, or surrender of a license, certification, or registration; imposition of a monetary penalty; or requirement to take remedial education or other corrective action. The board, in its discretion, may deny licensure to any applicant for any prior action taken by any board or administrative body in any jurisdiction].

~~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 will~~] apply:

- | | |
|----------------------------------|------|
| 1. Individual auctioneer license | \$25 |
| 2. Auctioneer firm license | \$55 |

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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 will~~] 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 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 [(if applicable)], 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 (shills). 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.~~

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~~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. F.~~ 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 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

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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.

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.

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 (18VAC25-21)

[Auctioneer License by Examination Application, A429-2907EXLIC-v4 \(rev. 6/2015\)](#)

[Auctioneer Surety Bond Form, 2905_07BOND \(rev. 4/2010\)](#)

[Auctioneer Firm License Application, 2908LIC \(rev. 11/2008\)](#)

[Auction Firm Surety Bond Form, 2906_08BOND \(rev. 11/2008\)](#)

[States with Approved Reciprocal Agreements, 29RECST \(rev. 2/2012\)](#)

[Virginia Approved Auctioneering Schools, 29SCHLST \(rev. 9/2013\)](#)

~~Auctioneering School Application for Course Approval, 29CRS (rev. 11/2008)~~

[School of Auctioneering - Course Approval Application, A429-29CRS-v3 \(rev. 10/2025\)](#)

[Auctioneer License By Reciprocity Application, 2907RECLIC \(rev. 11/2008\)](#)

[Auctioneer License Reinstatement Application, 2905_07REI \(rev. 11/2008\)](#)

~~Application for Continuing Education Course Approval, 29CECRS (rev. 11/2008)~~

[Application for Continuing Education Course Approval, A429-29CECRS-v4 \(rev. 10/2025\)](#)

[Auctioneer Firm License Renewal Form, 2906_08REN \(eff. 11/2008\)](#)

[Individual Auctioneer License Renewal Form, 2905_07REN \(eff. 11/2008\)](#)

[Continuing Education Medical Exemption Request, 2905_07CEXMP \(eff. 11/2008\)](#)

[Criminal Conviction Reporting Form, A406-01CCR-v2 \(rev. 9/2015\)](#)

[Disciplinary Action Reporting Form, A406-01DAR-v1 \(5/2015\) \]](#)

VA.R. Doc. No. R23-7468; Filed July 29, 2025, 12:49 p.m.

BOARD FOR CONTRACTORS

Final Regulation

REGISTRAR'S NOTICE: The Board for Contractors 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 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: 18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-100).

Regulations

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: September 24, 2025.

Agency Contact: Cameron Parris, Regulatory Operations Administrator, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-9183, fax (866) 350-5354, or email cameron.parris@dpor.virginia.gov.

Summary:

Pursuant to Chapters 127 and 133 of the 2025 Acts of Assembly, the amendments remove a provision that allows a refund of the \$25 Recovery Fund assessment when an application does not result in the issuance of a license.

18VAC50-22-100. Fees.

Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the Department of Professional and Occupational Regulation:

Fee Type	When Due	Amount Due
Class C Initial License	with license application	\$235
Class B Initial License	with license application	\$380
Class A Initial License	with license application	\$400
Temporary License	with license application and applicable initial license fee	\$60
Residential Building Energy Analyst Firm License	with license application	\$240

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.

VA.R. Doc. No. R26-8287; Filed August 1, 2025, 7:49 a.m.

BOARD OF PHARMACY

Fast-Track Regulation

Title of Regulation: **18VAC110-15. Regulations for Delegation to an Agency Subordinate (amending 18VAC110-15-10).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 24, 2025.

Effective Date: October 9, 2025.

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.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Pharmacy to promulgate regulations that are reasonable and necessary to effectively administer the regulatory system.

Purpose: This action allows agency subordinates to hear credentials cases, which benefits public health by expediting the review process and getting practitioners into the workforce faster.

Rationale for Using Fast-Track Rulemaking Process: This action is noncontroversial and appropriate for the fast-track rulemaking process because it conforms the regulation to statute and will lead to faster adjudication of applicant cases.

Substance: Pursuant to Chapter 191 of the 2023 Acts of Assembly, the amendment removes a limitation that agency subordinates be used only for disciplinary matters, which will allow the board to employ agency subordinates to hear credentials cases as well as disciplinary cases.

Issues: There are no primary advantages or disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The current Regulations for Delegation to an Agency Subordinate (regulation) allows the Board of Pharmacy (board) to delegate an informal fact-finding proceeding to an agency subordinate² only upon a determination that probable cause exists that a practitioner or an entity may be subject to a disciplinary action. Following changes made by Chapter 191 of the 2023 Acts of Assembly (legislation), the board proposes to remove this restriction from the regulation.

Background. Section 54.1-2400 of the Code of Virginia authorizes the board to appoint a special conference committee to ascertain

the fact basis for their decisions of cases through informal conference or consultation proceedings. The statute provides that this may occur upon receipt of information that a practitioner or permit holder of the appropriate board may be subject to disciplinary action or to consider an application for a license, certification, registration, or permit. Prior to the 2023 legislation, the same statute indicated that the board may delegate to an appropriately qualified agency subordinate the authority to conduct informal fact-finding proceedings, but only upon receipt of information that a practitioner may be subject to a disciplinary action. This effectively prevented delegation from occurring to consider nonroutine³ applications for a license, certification, registration, or permit. The legislation removed the requirement that a practitioner must be subject to a disciplinary action in order for the board to make such delegation. Accordingly, the board is now proposing to remove that same restriction from the regulation as it is no longer mandated by statute.

Estimated Benefits and Costs. By removing the restriction, the legislation newly permitted the delegation of an informal fact-finding proceeding to occur for nonroutine applications for licensure, certification, registration, or a permit. However, the current regulation only allows such delegation to occur when there is information that a practitioner or an entity may be subject to a disciplinary action. When statute and regulation conflict, the statute prevails. Thus, amending the regulation to reflect the legislation would not affect what is permitted, but would be beneficial in accurately informing readers of the regulation concerning what is permitted.

Businesses and Other Entities Affected. According to the Department of Health Professions, there are about five to 10 nonroutine applications per year for board licensure, certification, registration, or permit that require evidentiary hearings. Such applicants, as well as potential delegated agency subordinates, would be particularly affected. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁴ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.⁵ As there is no increase in net cost nor reduction in net revenue, an adverse impact is not indicated.

Small Businesses⁶ Affected.⁷ The proposed amendment does not adversely affect small businesses.

Localities⁸ Affected.⁹ The proposed amendment neither disproportionately affects any particular locality, nor introduces costs for local governments.

Projected Impact on Employment. The proposed amendment does not appear to affect total employment.

Effects on the Use and Value of Private Property. The legislation may quicken the licensing of pharmacists and wholesale distributors, the permitting of pharmacies, manufacturers and third-party logistics providers, and the registration of pharmacy technicians with nonroutine applications for licensure. Such individuals may start practicing and operating in Virginia sooner. The proposed amendment does 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 The current and proposed regulations state that an agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

³ Nonroutine applications may require evidentiary hearings. In contrast, routine applications for licensure do not require such proceedings.

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 Board of Pharmacy concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

Pursuant to Chapter 191 of the 2023 Acts of Assembly, the amendment removes a limitation that agency subordinates be used only for disciplinary matters, which will allow the Board of Pharmacy to employ agency subordinates to hear credentials cases as well as disciplinary cases.

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18VAC110-15-10. Criteria for delegation of informal fact-finding proceeding to an agency subordinate.

A. Decision to delegate. In accordance with subdivision 10 of § 54.1-2400 of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate ~~upon determination that probable cause exists that a practitioner or an entity may be subject to a disciplinary action.~~

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except as may be approved by a committee of the board, include those that involve:

1. Intentional or negligent conduct that causes or is likely to cause injury to a patient;
2. Drug diversion;
3. Impairment with an inability to practice with skill and safety;
4. Indiscriminate dispensing; and
5. Medication error in administration or dispensing.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of ~~their~~ training and experience in administrative proceedings involving the regulation and discipline of health professionals.
2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.
3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

VA.R. Doc. No. R26-8063; Filed August 1, 2025, 2:21 p.m.

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: September 24, 2025.

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@bhp.virginia.gov.

Summary:

Pursuant to Chapters 171 and 172 of the 2023 Acts of Assembly, the amendments expand the conditions for

which a pharmacist can initiate treatment. The amendments add group A streptococcus bacteria infections, influenza virus infections, COVID-19 virus infections, and urinary tract infections as diseases and conditions for which pharmacists can initiate treatment with controlled substances or devices for persons 18 years of age and older, as clinical decision-making for these four diseases and conditions can be guided by a clinical test that is classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988 (42 USC § 263a).

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 and vaccines for COVID-19;
8. Tuberculin purified protein derivative for tuberculosis testing;
9. Controlled substances for the prevention of human immunodeficiency virus, including controlled substances

prescribed for pre-exposure and post-exposure prophylaxis 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; and

12. Controlled substances or devices for the initiation of treatment of the following diseases or conditions for which clinical decision making can be guided by a clinical test that is classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a:

a. Group A Streptococcus bacteria infection;

b. Influenza virus infection;

c. COVID-19 virus infection; and

d. Urinary tract infection.

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, 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:

- 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
- 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 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 requirements of § 54.1-3303 of the Code of Virginia and consistent with the applicable standard of care.

VA.R. Doc. No. R24-7530; Filed July 24, 2025, 9:02 a.m.

REAL ESTATE BOARD

Proposed Regulation

Title of Regulation: **18VAC135-20. Virginia Real Estate Board Licensing Regulations (amending 18VAC135-20-10, 18VAC135-20-20, 18VAC135-20-30, 18VAC135-20-45, 18VAC135-20-50, 18VAC135-20-55, 18VAC135-20-65, 18VAC135-20-70, 18VAC135-20-90, 18VAC135-20-101, 18VAC135-20-110, 18VAC135-20-140, 18VAC135-20-150**

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through 18VAC135-20-170, 18VAC135-20-185 through 18VAC135-20-240, 18VAC135-20-260, 18VAC135-20-270, 18VAC135-20-280, 18VAC135-20-300, 18VAC135-20-310, 18VAC135-20-340, 18VAC135-20-345, 18VAC135-20-360, 18VAC135-20-390, 18VAC135-20-400, 18VAC135-20-410; adding 18VAC135-20-13, 18VAC135-20-15, 18VAC135-20-35, 18VAC135-20-95, 18VAC135-20-145, 18VAC135-20-181, 18VAC135-20-361, 18VAC135-20-362; repealing 18VAC135-20-40, 18VAC135-20-60, 18VAC135-20-80, 18VAC135-20-120, 18VAC135-20-130, 18VAC135-20-180, 18VAC135-20-250, 18VAC135-20-290, 18VAC135-20-350, 18VAC135-20-370, 18VAC135-20-380).

Statutory Authority: §§ 54.1-201 and 54.1-2105 of the Code of Virginia.

Public Hearing Information:

September 25, 2025 - 2 p.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Board Room 3 Richmond, VA 23233.

Public Comment Deadline: October 24, 2025.

Agency Contact: Anika Coleman, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, fax (866) 826-8863, or email reboard@dpwr.virginia.gov.

Basix: Section 54.1-201 of the Code of Virginia provides for the powers and duties of regulatory boards to establish the qualifications of applicants for certification or licensure and promulgate regulations necessary to ensure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system. Section 54.1-2105 of the Code of Virginia provides that the Real Estate Board may do all things necessary and convenient for carrying into effect the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia and may promulgate necessary regulations. The board shall adopt regulations establishing minimum educational requirements as conditions for licensure and establish criteria to (i) ensure that prelicensure and broker licensure courses meet the standards of quality deemed by the board to be necessary to protect the public interests and (ii) delineate the permitted activities of unlicensed individuals employed by, or affiliated as an independent contractor with, real estate licensees or under the supervision of a real estate broker.

Purpose: The General Assembly has charged the board with the responsibility for regulating those individuals, firms, and business entities that act as a real estate broker or a real estate salesperson or act or offer to act as a real estate firm or real estate team by requiring such individuals, firms, and business entities to obtain a license in order to engage in this activity. The board protects the public welfare, in part, by establishing through regulation (i) the minimum qualifications of applicants for certification or licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to ensure continued competency and to prevent deceptive or misleading

practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the board.

Substance: Amendments consolidate, reorganize, and clarify definitions, fees, entry requirements for licensure, reinstatement and renewal requirements, continuing education, recordkeeping, prohibited acts, and school certification. Substantive amendments in this action include:

1. Replacing a requirement for broker-owned sole proprietorships firms to file a certification with the board regarding the firm's assumed or fictitious name with a less restrictive requirement to provide proof that such names are registered with the State Corporation Commission (SCC) providing that non-broker owned sole proprietorships and other types of firms must be organized as business entities under Virginia law or otherwise be authorized to transact business in Virginia, and providing that firms must register any trade or fictitious names with the SCC.

2. Requiring that all firms must have a principal broker whose license is active.

3. Removing a provision for individual licensure that an applicant must have a good reputation for honesty, truthfulness, and fair dealing and be competent to transact business in such a manner as to safeguard the interests of the public are removed. Disclosure of prior regulatory discipline requirements are revised to (i) remove requirements that applicants be in good standing in all jurisdictions where licensed and not have been subject to discipline; (ii) require individual applicants to report any disciplinary action that has occurred against a professional or occupational license issued to the applicant; and (iii) provide that the board may deny licensure based on any prior disciplinary action taken by any board or administrative body. A provision stipulating that an applicant sign a statement indicating the applicant has read and understands the applicable laws and regulations is being added.

4. Revising provisions for continuing education (CE) requirements so that the topic of "real estate contracts" includes contract principles, contract forms, and escrow deposits and accounts; broker CE topic of supervision and management of real estate agents and brokerage firms is revised to include oversight of contracts and agency; the list of approved elective CE topics includes topics for closing disclosures, cyber security and data protection, and social responsibility in real estate; and that licensees provide proof of CE completion to the board or the board's agents upon request.

5. Removing any references indicating that licensees must submit an application form to the board for license renewal.

6. Stating that licensees who reinstate are considered continuously licensed during the time between license expiration and reinstatement and may be subject to discipline by the board for activities conducted during this period.

7. Removing requirements that a place of business in a residence must be separate and distinct from the living quarters of the residence with its own entrance and accessible to the

public.

8. Adding a duty for a supervising broker to respond in a timely manner to inquiries from the public, cooperating brokers, and licensees affiliated with the supervising broker's firm regarding existing or contemplated transactions.

9. Revising provisions regarding the maintenance of licenses to (i) provide that principal brokers must keep the board informed of their business entity name; (ii) replace provisions mandating that a principal broker return the license of a salesperson or broker that is discharged from a firm or sole proprietorship to the board with a less restrictive requirement that the principal broker notify the board; (iii) replace provisions that the firm return the license of a principal broker who is discharged from a firm to the board with a less restrictive requirement that the firm notify the board; and (iv) provide that the board has the authority to terminate the license of a firm or business entity that is no longer authorized to conduct business in the Commonwealth.

10. Removing provisions pertaining to the reporting of improper conduct that causes noncompliance with escrow maintenance requirements.

11. Revising recordkeeping requirements for principal brokers, including requiring that records be readily accessible from the broker's place of business or in the firm's Virginia office if the principal broker's office is located outside of Virginia and requiring disclosures to unrepresented parties to provide that such records must be retained from the date of closing, or date of ratification if the transaction fails to close.

12. Providing that all advertising by a firm or affiliated licensee must contain a clear, legible, and conspicuous advertising disclosure that must include the firm's name and the office contact information. All advertising by an affiliated licensee must be done under the policies of the principal or supervising broker.

13. Requiring mandatory audits to be conducted within 90 days prior to the expiration of the firm's license.

14. Revising prohibited acts so that obtaining or attempting to obtain, renew, reinstate, or maintain a license or certification by false or fraudulent representation is prohibited; removing provisions that treat pleas of nolo contendere as convictions; revising regulatory discipline to address any professional or occupational license that has been subject to disciplinary action rather than only looking at salesperson or broker licenses; prohibiting knowingly providing false, misleading, or incomplete information to an inquiry of the board or the board's agents; and prohibiting violating, or inducing another to violate, cooperating with another to violate, or combining or conspiring with or acting as an agent, partner, or associate for another to violate any provisions of applicable statutes or regulations prohibited.

15. Removing the provisions specifying that performing regulated activities for any client outside of the licensee's brokerage firm or sole proprietorship is a conflict of interest.

16. Reducing the stringency of the requirement pertaining to a licensee accepting a commission, fee, or compensation for real estate services from a person other than the licensee's broker; expanding the list of parties who must provide consent if a licensee will financially benefit from the use of information about a property, transaction, or parties to the transaction when the information is gained as a result of the licensee's performing of regulated activity; and removing provisions that prohibit receiving financial benefit from any person other than the principal broker at the time of the transaction for performing regulated activities without the prior written consent of the principal broker.

17. Requiring an applicant for certification as a proprietary school to submit either (i) a CPA-certified letter attesting to the applicant's net worth; or (ii) a CPA-certified balance sheet or financial statement. Provisions that allow for an applicant to certify the accuracy of a balance sheet or financial statement are removed.

18. Removing a specific requirement that the application for certification as a proprietary school provide information explaining how the courses will require a minimum number of hours of study and adding a requirement that course content must be specific to the current laws and regulations of Virginia, where applicable; and requiring credentials expire three years from the last day of the month in which they were issued instead of expiring on December 31 three years after initial issuance.

19. Allowing that the board may withdraw approval if a school or instructor fails to submit course completion date in a timely manner.

Issues: The primary advantages to the public, the regulated community, the agency, and the Commonwealth are that the amendments to the regulation will update and clarify the regulation; remove regulatory requirements that are not necessary to protect the public health, safety, or welfare, or to effectively administer the program; reduce requirements that are not necessary to protect the public; and ensure the regulation conforms to statute and reflects current agency procedures. 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 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 Real Estate Board (board) proposes to revise advertising standards, standards for improper financial transactions, requirements for certification of proprietary schools, and several administrative requirements; in addition, significant changes are proposed to

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clarify, reorganize, and incorporate current practices in the regulatory text.

Background. This regulation sets out licensing requirements for individuals, firms, and business entities that act as a real estate broker or salesperson, or act or offer to act as a real estate firm or real estate team. Pursuant to the 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, the board proposes several substantive changes in addition to clarifying, formatting, and editorial changes.

Estimated Benefits and Costs. Advertising: One of the proposed changes would revise the advertising standards. Currently, the regulation stipulates specific advertising requirements. The proposal would replace most of the current stipulations with a less restrictive requirement that the principal or supervising broker would determine the advertising policies for their own firm and any affiliate, thus providing more flexibility. **Improper financial transactions:** The proposal would revise the standards for financial transactions in two ways, with the effect of both reducing and expanding certain restrictions. Currently, the regulation strictly prohibits a licensee from accepting a commission, fee, compensation, or valuable consideration for licensed real estate activity from any person or entity other than the licensee's principal broker or supervising broker. The board would replace this with a requirement that such compensation may be accepted if the licensee's principal broker provides written consent, therefore reducing the restrictiveness of the current requirement. In addition, provisions regarding improper financial transactions and dealings would also be revised to expand the list of parties that must provide written consent to include the clients and, when applicable, the parties to the transaction. This expanded consent would apply if the licensee is to receive financial benefit from the use of information about the property, the transaction, or parties to the transaction when such information is gained as a result of performing regulated activities, which would increase the stringency of the requirement. **Certification of proprietary schools:** The proposed changes would provide that a proprietary school applicant must submit evidence of financial responsibility by providing either (i) a certified public accountant (CPA) - certified letter attesting to the applicant's net worth; or (ii) a CPA-certified balance sheet or financial statement rather than the current requirement that the school submit either (i) a CPA-certified letter; or (ii) a balance sheet or financial statement that the applicant certifies is accurate. This change would increase the credibility of the applicant's statements but may also introduce additional costs to obtain CPA certification of documentation. **Administrative changes:** One of the proposed changes would replace the requirement for brokers and firms to physically return licenses to the board upon the discharge of a salesperson, broker, or principal broker with a less restrictive requirement to notify the board of such changes. This change is expected to reduce the burden of having to physically return the licenses to the board. Another proposed change would replace a requirement for physical maintenance of records with a less burdensome requirement of online availability. The board would allow principal brokers to

have financial records regarding any real estate transaction under the authority of the broker's license readily accessible (e.g., online) from the broker's place of business; or from the firm's Virginia office if the principal broker's office is located outside of Virginia and the firm has a branch office in Virginia. Currently, the regulation requires that principal brokers physically maintain these records in the place of business or a designated branch office. If the principal broker's license is located outside of Virginia, the records must be maintained in the firm's Virginia branch office if the firm has a branch office in Virginia. According to the board, this change accounts for modern business recordkeeping practices in which records are stored electronically, and is expected to reduce the administrative burden on principle brokers. The regulation would also be revised to provide that the mandatory audit must be conducted by the principal broker within 90 days prior to the expiration of the firm's license. Currently, the regulation provides that the mandatory audit must be conducted at least once during the firm's two-year license term. While this change would increase the stringency of the current requirement, it should encourage brokers to conduct audits in a more timely manner.

Businesses and Other Entities Affected. The proposed changes apply to all Virginia licensed real estate individuals, licensed real estate firms, certified real estate proprietary schools, and those that might seek to obtain a license, certification, or approval from the board. As of April 1, 2025, there were 5,951 real estate associate brokers, 934 real estate sole proprietors, 5,471 real estate principal brokers, 52,817 real estate salespersons, 718 real estate branch offices, 5,093 real estate firms, 4,265 real estate business entities, 883 real estate sole proprietor firms, 2 real estate settlement agents, 441 real estate course instructors, and 212 real estate proprietary schools licensed, certified, or approved by the board. No regulated 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 A few of the proposed changes (i.e., expanded list of parties that must consent to receiving a financial benefit, CPA-certification of proprietary schools financial documents, and mandatory audit requirements) would be more stringent and may add to compliance costs of certain affected parties. Thus, an adverse impact is indicated.

Small Businesses⁴ Affected.⁵ According to the board, some approved real estate firms, business entities, sole proprietor firms, and proprietary schools likely meet the definition of "small business" in § 2.2- 4007.1 of the Code of Virginia. **Types and Estimated Number of Small Businesses Affected:** The board does not have information on the number of small businesses that may be affected. **Costs and Other Effects:** A few of the proposed amendments increase the stringency of the regulation (i.e., expanded list of parties that must consent to receiving a financial benefit, CPA-certification of proprietary school financial documents, and mandatory audit requirements). To the extent any of the affected regulants meet the definition of small business an adverse impact on them would be indicated. **Alternative Method that Minimizes Adverse Impact:** There are no clear alternative

methods that both reduce adverse impact and meet the intended policy goals.

Localities⁶ Affected.⁷ The proposed amendments do not introduce costs for localities.

Projected Impact on Employment. While a few proposed changes increase the stringency of the regulation, other changes provide more flexibility. However, the net impact of the proposed changes on total employment is not known, but is unlikely to be significant.

Effects on the Use and Value of Private Property. Similarly, while a few proposed changes increase the stringency of the regulation and may add to overall compliance costs, other changes provide more flexibility and may offset the costs. It is unlikely that proposed changes would significantly 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 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.

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 Response to Economic Impact Analysis: The Real Estate Board concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

The proposed amendments include: (i) allowing the principal or supervising broker to determine the advertising policies for their own firm and any affiliate; (ii) allowing a licensee to accept a commission, fee, compensation, or valuable consideration for licensed real estate activity from any person or entity if the licensee's principal broker provides written consent; (iii) expanding the list of parties who must provide written consent, including the clients and the parties to the transaction, if the licensee is to receive financial benefit from the use of information about the property, transaction, or parties to the transaction when such information is gained as a result of performing regulated activities; (iv) requiring a proprietary school applicant to submit evidence of financial responsibility by providing either a letter attesting to the applicant's net worth certified by a certified public accountant (CPA) or a CPA-certified balance sheet or financial statement; (v) allowing brokers and firms to simply notify the board upon discharge of a salesperson, broker, or principal broker; (vi) allowing online only maintenance of records if principal brokers have financial records regarding any real estate transaction under the authority of the broker's license readily accessible from the broker's place of business or from the Virginia office if the principal broker's office is located outside of Virginia and the firm has a branch office in Virginia; (vii) revising the mandatory audit requirement to be conducted by the principal broker within 90 days prior to the expiration of a firm license; and (viii) reorganizing, streamlining, and clarifying the regulation generally.

18VAC135-20-10. Definitions.

The following words and terms when used in this chapter ~~shall~~ have the following meanings unless a different meaning is provided or is plainly required by the context:

"Accredited university, college, community college, or other school or educational institution" means (i) institutions of higher learning approved by the State Council of Higher Education for Virginia; (ii) those institutions listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers; or (iii) any state-accredited secondary school that offers adult distributive education courses.

"Active" means any broker or salesperson, who is in good standing, who is under the supervision of a principal or supervising broker of a firm or sole proprietor, and who is performing those activities defined in § 54.1-2100 of the Code of Virginia.

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"Actively engaged" means active licensure with a licensed real estate firm or sole proprietorship in performing those activities as defined in § 54.1-2100 of the Code of Virginia for an average of at least 40 hours per week. ~~This requirement may be waived at the discretion of the board in accordance with § 54.1-2105 of the Code of Virginia.~~

~~"Actively engaged in the brokerage business" means anyone who holds an active real estate license.~~

"Advertising" means all communication disseminated through any medium to consumers for any purpose related to licensed real estate activity.

"Affiliated licensee" means any broker, salesperson, business entity, or real estate team that has an active license.

"Another state" means the same as the term is defined in § 54.1-205 of the Code of Virginia.

"Application deposit" means the same as the term is defined in § 55.1-1200 of the Code of Virginia.

"Associate broker" means any individual licensee of the board holding a broker's license other than one who has been designated as the principal broker.

"Board" means the Real Estate Board.

"Branch office" means the same as the term is defined in § 54.1-2100 of the Code of Virginia.

"Class hour or clock hour" means 50 minutes of instruction.

"Client" means a person who has entered into a brokerage relationship with a licensee as defined by § 54.1-2130 of the Code of Virginia.

"Contact information" means telephone number, email address, or web address of the firm or branch office, or a digital link thereto when used in digital advertising.

"Cooperating broker" means the broker representing the client on the other side of the existing or contemplated real estate transaction.

"Firm" means any business entity or sole proprietorship (nonbroker owner), partnership, association, limited liability company, or corporation, other than a sole proprietorship (principal broker owner), which is that transacts real estate business required by 18VAC135-20-20 B to obtain a separate brokerage firm license. ~~The firm's licensed name may be any assumed or fictitious name properly filed with the board.~~

"Inactive status" means any broker or salesperson who is not under the supervision of a principal broker or supervising broker, ~~who is not active with a firm or sole proprietorship, and who is not performing any of the activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.~~

"Independent contractor" means a licensee who acts for or represents a client other than as a standard agent and whose

duties and obligations are governed by a written contract between the licensee and the client.

"Licensee" means real estate brokers and salespersons as defined in Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or real estate firms.

"Moral turpitude" means, but is not limited to, lying, cheating, or stealing.

"MLS" means Multiple Listing Service.

"Neighboring state" means the same as the term is defined in § 54.1-205 of the Code of Virginia.

"Place of business" means the same as the term is defined in § 54.1-2100 of the Code of Virginia.

~~"Principal broker" means the individual broker who shall be designated by each firm to ensure compliance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia and this chapter and to receive communications and notices from the board that may affect the firm or any licensee active with the firm regarding such compliance. In the case of a sole proprietorship, the licensed broker who is the sole proprietor shall have the responsibilities of is the principal broker. The principal broker shall have responsibility for the activities of the firm and all its licensees. The principal broker shall have signatory authority on all escrow accounts maintained by the firm.~~

"Principal to a transaction" means a party to a real estate transaction, including a seller or buyer, landlord or tenant, optionor or optionee, ~~or~~ licensor or licensee, or assignor or assignee. For the purposes of this chapter, the listing or selling broker, or both, are not by virtue of their brokerage relationship, principals to the transaction.

"Proprietary school" means (i) a privately owned school, (ii) a real estate professional association, or (iii) a related entity, which is not under the authority of the Department of Education, but approved by the board to teach real estate courses.

"Provider" means an (i) accredited university, college, community college; (ii) a high school offering adult distributive education courses; or (iii) a proprietary school.

~~"Sole proprietor" means any individual, not a corporation, limited liability company, partnership, or association, who is trading under the individual's name or under an assumed or fictitious name pursuant to the provisions of Chapter 5 (§ 59.1-69 et seq.) of Title 59.1 of the Code of Virginia.~~

"Standard agent" means a licensee who acts for or represents a client in an agency relationship. A standard agent ~~shall~~ will have the obligations as provided in Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia.

"Supervising broker" means (i) the individual broker ~~who shall~~ be designated by the principal broker to supervise the provision of

real estate brokerage services by the associate brokers and salespersons assigned to branch offices or real estate teams or (ii) the broker, who may be the principal broker, designated by the principal broker to supervise a designated agent as stated in § 54.1-2130 of the Code of Virginia.

18VAC135-20-13. General fee requirements.

A. All fees are nonrefundable. The date of receipt by the

board or its agent is the date that will be used to determine whether a fee is on time.

B. The fee for examination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts.

18VAC135-20-15. Fee schedule.

The following fees apply:

<u>Fee Type</u>	<u>Fee Amount</u>		<u>Recovery Fund Assessment* (if applicable)</u>	<u>Total Amount Due</u>	<u>When fee is due</u>
<u>Salesperson by education and examination</u>	<u>\$210</u>	<u>+</u>	<u>\$20</u>	<u>\$230</u>	<u>With initial application for salesperson license</u>
<u>Salesperson by reciprocity</u>	<u>\$210</u>	<u>+</u>	<u>\$20</u>	<u>\$230</u>	<u>With initial application for salesperson license</u>
<u>Salesperson renewal</u>	<u>\$100</u>			<u>\$100</u>	<u>At renewal</u>
<u>Salesperson reinstatement</u>	<u>\$155</u>			<u>\$155</u>	<u>At reinstatement</u>
<u>Salesperson or broker license as a business entity</u>	<u>\$265</u>	<u>+</u>	<u>\$20</u>	<u>\$285</u>	<u>With initial application for business entity license</u>
<u>Salesperson or broker license as a business entity renewal</u>	<u>\$135</u>			<u>\$135</u>	<u>At renewal</u>
<u>Salesperson or broker license as a business entity reinstatement</u>	<u>\$205</u>			<u>\$205</u>	<u>With reinstatement application</u>
<u>Broker by education and examination</u>	<u>\$265</u>	<u>+</u>	<u>\$20</u>	<u>\$285</u>	<u>With initial application for broker license</u>
<u>Broker by reciprocity</u>	<u>\$265</u>	<u>+</u>	<u>\$20</u>	<u>\$285</u>	<u>With initial application for broker license</u>
<u>Broker renewal</u>	<u>\$120</u>			<u>\$120</u>	<u>At renewal</u>
<u>Broker reinstatement</u>	<u>\$180</u>			<u>\$180</u>	<u>At reinstatement</u>
<u>Broker concurrent license</u>	<u>\$195</u>			<u>\$195</u>	<u>With application for concurrent broker license</u>
<u>Concurrent broker renewal</u>	<u>\$80</u>			<u>\$80</u>	<u>At renewal</u>
<u>Concurrent broker reinstatement</u>	<u>\$180</u>			<u>\$180</u>	<u>At reinstatement</u>
<u>Firm license</u>	<u>\$350</u>	<u>+</u>	<u>\$20</u>	<u>\$370</u>	<u>With initial application for firm license</u>
<u>Firm renewal</u>	<u>\$240</u>			<u>\$240</u>	<u>At renewal</u>
<u>Firm reinstatement</u>	<u>\$370</u>			<u>\$370</u>	<u>At reinstatement</u>
<u>Branch office license</u>	<u>\$265</u>			<u>\$265</u>	<u>With application for branch office license</u>

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<u>Branch office renewal</u>	<u>\$135</u>			<u>\$135</u>	<u>At renewal</u>
<u>Branch office reinstatement</u>	<u>\$205</u>			<u>\$205</u>	<u>With reinstatement application</u>
<u>Transfer application</u>	<u>\$90</u>			<u>\$90</u>	<u>With application for transfer</u>
<u>Activation application</u>	<u>\$90</u>			<u>\$90</u>	<u>With application for activation</u>
<u>Exchange to salesperson license</u>	<u>\$120</u>			<u>\$120</u>	<u>With application to exchange to a salesperson license</u>
<u>Upgrade to broker</u>	<u>\$120</u>			<u>\$120</u>	<u>With application to upgrade to a broker license</u>
<u>Proprietary school certificate</u>	<u>\$265</u>			<u>\$265</u>	<u>With initial application for proprietary school certificate</u>
<u>Proprietary school renewal</u>	<u>\$135</u>			<u>\$135</u>	<u>With renewal application</u>
<u>Proprietary school reinstatement</u>	<u>\$205</u>			<u>\$205</u>	<u>With reinstatement application</u>
<u>Prelicense education instructor certificate</u>	<u>\$265</u>			<u>\$265</u>	<u>With initial application for prelicense education instructor certificate</u>
<u>Prelicense education instructor renewal</u>	<u>\$115</u>			<u>\$115</u>	<u>With renewal application</u>
<u>Prelicense education instructor reinstatement</u>	<u>\$170</u>			<u>\$170</u>	<u>With reinstatement application</u>

* In accordance with § 54.1-2113 of the Code of Virginia.

18VAC135-20-20. ~~Necessity~~ Requirements for firm license (Refer to § 54.1-2106.1 of the Code of Virginia.).

A. Sole proprietor (principal broker owner). ~~A real estate broker's license shall be issued to an~~ In accordance with § 54.1-2106.1 of the Code of Virginia, broker owned sole proprietorships are not required to hold a firm license. ~~An individual trading operating under an assumed or a fictitious or assumed name, that is, a name other than the individual's full name, only after the individual signs and acknowledges a certificate provided by the board that sets forth the name under which the business is to be organized and conducted, the address of the individual's residence, and the address of the individual's place of business. The board will consider the application of an individual only after the individual is authorized to conduct business in accordance with~~ must provide proof that the name is properly registered with the State Corporation Commission pursuant to Chapter 5 (§ 59.1-69 et seq.) of Title 59.1 of the Code of Virginia and must provide the address for the individual's residence and address for the individual's place of business.

B. Sole proprietor (nonbroker owner), partnership, association, limited liability company, or corporation.

1. Every ~~sole proprietor (nonbroker owner), partnership, association, limited liability company, or corporation~~ firm

must secure a real estate firm license for its ~~firm~~ before transacting real estate business. This license is separate and distinct from the ~~individual broker license~~ licenses required of each partner, associate, manager of a limited liability company, and officer of a corporation ~~the individuals or business entities~~ who ~~is~~ are active in the firm's brokerage business.

2. Each applicant ~~for such license shall~~ must disclose, and the license ~~shall~~ will be issued to, the name under which the applicant ~~intends to do or does business and~~ holds itself out to the public. Firms must register any trade or fictitious names with the State Corporation Commission in accordance with Chapter 5 of Title 59.1 (§ 59.1-69 et seq.) of the Code of Virginia.

3. Each applicant ~~shall also~~ must disclose the ~~business~~ address of the place of business for the firm.

~~The board will consider the application of any partnership, association, corporation, or limited liability company only after the entity is~~ 4. Firms must be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to conduct ~~transact~~ business in accordance with Chapter 5 (§ 59.1-69 et seq.) of Title 59.1 of the Code of Virginia.

C. Each real estate firm is required to have a principal broker whose license is ~~in good standing with the board in order to transact real estate business~~ active.

D. Branch office license ~~in accordance with § 54.1-2106.1 of the Code of Virginia~~. If a ~~real estate principal~~ broker maintains more than one place of business within the state, ~~the principal broker must secure~~ a branch office license ~~shall be issued~~ for each additional place of business maintained other than the broker's primary place of business noted on the firm license application. ~~Application for the license shall be made on forms provided by the board and shall reveal the name of the firm, the location of the branch office, and the name of the supervising broker for that branch office. The branch office license shall be maintained at the branch office location.~~

1. No branch office license ~~shall~~ will be required for:

1. ~~a.~~ A location that the principal broker or those employed by or affiliated as an independent contractor with the principal broker does not own, lease, or maintain exclusive access to, maintenance of, and control of, unless it is held out to the public as a location where such persons or entities are regularly engaging in the activities of a real estate broker or salesperson;
2. ~~b.~~ A motor vehicle or watercraft;
3. ~~c.~~ A place that is solely devoted to advertising real estate matters of a general nature or to making a real estate broker's business name generally known, such as a trade show or expo;
4. ~~d.~~ A residence, unless it is held out to the public as a location where the principal broker or those employed by or affiliated as an independent contractor with the principal broker is regularly engaging in the activities of a real estate broker or salesperson;
5. ~~e.~~ A post office box, mail drop location, or other similar facility; or
6. ~~f.~~ A public location, such as a coffee shop or restaurant.

2. Each application must disclose the name of the firm, the location of the branch office, and the name of the supervising broker for that branch office.

3. The branch office license must be maintained at the branch office location.

18VAC135-20-30. Qualifications for individual licensure.

Every applicant to the ~~Real Estate Board~~ board for an individual ~~salesperson's~~ salesperson or ~~broker's~~ broker license ~~shall must~~ have the following qualifications:

1. The applicant ~~shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate broker or a real estate salesperson in such a manner as to safeguard the interests of the public~~ must be at least 18 years of age.

2. The applicant ~~shall meet the current educational requirements by achieving a passing grade in all required courses of § 54.1-2105 of the Code of Virginia prior to the time the applicant sits for the licensing examination and applies for licensure~~ must have a high school diploma or equivalent.

3. The applicant ~~shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. The applicant shall be in compliance with all the terms of all board orders, including but not limited to paying imposed monetary penalties and costs, plus any accrued interest and other fees, and completing imposed education~~ must report any action taken by any board or administrative body in any jurisdiction against a professional or occupational license, certification, or registration issued to the applicant, to include any suspension, revocation, or surrender of a license, certification, or registration, imposition of a monetary penalty, or requirement to take remedial education or other corrective action. The board, in its discretion, may deny licensure to any applicant for any prior action taken by any board or administrative body in any jurisdiction. The applicant has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant ~~shall must~~ submit to fingerprinting and ~~shall must~~ disclose the following information:

- a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or ~~physical injury~~ battery within five years of the date of the application; and
- b. All felony convictions ~~during his lifetime~~.

~~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.~~

5. The applicant shall be at least 18 years old.

6. The applicant ~~shall have a high school diploma or its equivalent~~.

7. The applicant, within 12 months prior to submitting a complete application for a license, shall have passed a written examination provided by the board or by a testing service acting on behalf of the board.

8. ~~5.~~ The applicant ~~shall follow all procedures established with regard to conduct at the examination. Failure to comply~~

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~~with all procedures established with regard to conduct at the examination may be grounds for denial of application must sign a statement verifying that the applicant has read and understands the provisions of this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.~~

~~9.~~ 6. Applicants for licensure who do not meet the requirements set forth in subdivisions 3 and 4 of this section may be approved for licensure following consideration by the board.

18VAC135-20-35. Additional qualifications for individual licensure.

A. In addition to the requirements in 18VAC135-20-30, an applicant for an individual license as a real estate salesperson, real estate broker, or as an applicant by reciprocity must meet the requirements established in this section as applicable.

B. Applicants for initial licensure must achieve a passing grade in all courses required by § 54.1-2105 of the Code of Virginia applicable to the license being sought prior to sitting for the licensing examination and applying for licensure.

C. Applicants for licensure as a real estate broker must have been actively engaged as defined in 18VAC135-20-10 as a real estate salesperson for a period of 36 of the 48 months immediately preceding application. The applicant's experience must be verified by the principal or supervising broker for whom the applicant worked at the time of obtaining that experience.

D. Applicants for initial licensure, within 12 months prior to submitting a complete application for a license, must have passed a written examination provided by the board or by a testing service acting on behalf of the board. The applicant must follow all procedures established with regard to conduct at the examination. Failure to comply with all such procedures established with regard to conduct at the examination may be grounds for denial of application.

E. Applicants for licensure as a real estate salesperson or real estate broker by reciprocity must meet the following requirements as applicable to the license sought:

1. Applicants must, within 12 months prior to submitting a complete application for a license, have passed a written examination provided by the board or a testing service acting on behalf of the board covering real estate license law and regulations of the board.

2. Applicants must have received the salesperson or broker license by virtue of having passed in the jurisdiction of licensure a written examination deemed to be substantially equivalent to the Virginia examination.

3. An applicant for a salesperson license must have met educational requirements that are substantially equivalent to those required in Virginia.

4. An applicant for a broker license must have met educational requirements that are substantially equivalent to those required in Virginia, and the applicant must have been actively engaged as defined by 18VAC135-20-10 for 36 of the preceding 48 months. The broker applicant's experience must be verified by an individual who has direct knowledge of the applicant's activities as defined in § 54.1-2100 of the Code of Virginia.

F. In accordance with § 54.1-2105 of the Code of Virginia, the board, at its discretion, may waive the education and experience requirements of this section.

18VAC135-20-40. Additional qualifications for brokers. (Repealed.)

~~An applicant for an individual license as a real estate broker shall meet the following requirements in addition to those set forth in 18VAC135-20-30:~~

~~1. The applicant shall meet the current educational requirements of § 54.1-2105 of the Code of Virginia.~~

~~2. The applicant shall have been actively engaged as defined in 18VAC135-20-10 as a real estate salesperson for a period of 36 of the 48 months immediately preceding application. This requirement may be waived at the discretion of the board in accordance with § 54.1-2105 of the Code of Virginia.~~

~~3. The applicant's experience must be verified by the principal or supervising broker for whom the licensee worked at the time of obtaining that experience.~~

18VAC135-20-45. Additional qualifications for salesperson's salesperson or broker's broker license as a business entity.

~~An~~ In addition to the applicable requirements in 18VAC135-20-30 and 18VAC135-20-35, an applicant for a salesperson's salesperson or broker license as a business entity shall must meet the following requirements ~~in addition to those set forth in 18VAC135-20-30:~~

1. Every owner or officer who actively participates in the real estate business shall must hold a license as a salesperson or broker. The business entity license does not replace the individual license. More than one licensee may be a participant of the business entity.

2. When one licensee is the owner or officer, the business entity shall be named in accordance with § 54.1-2106.1 C of the Code of Virginia.

3. The board will consider the application of any partnership, association, corporation or limited liability company only after the entity is 2. Business entities must be organized under the laws of the Commonwealth of Virginia or otherwise authorized to ~~do~~ transact business in Virginia and must register any trade or fictitious names with the State Corporation Commission in accordance with §§ 59.1-69

through 59.1-76 Chapter 5 of Title 59.1 (§ 59.1-69 et seq.) of the Code of Virginia.

18VAC135-20-50. Concurrent licenses.

~~Concurrent licenses shall be issued by the board to brokers A. In order to be active as a broker in more than one firm upon receipt of a concurrent license form and written statements verifying that written notice of the applicant's concurrent licensure status has been provided to at the same time, brokers must obtain concurrent licenses by submitting the concurrent license application, which must be approved by the principal broker of each firm with which the applicant is and will be associated.~~

~~B. Payment of the fee specified in 18VAC135-20-15 is required for each concurrent license. A concurrent license will not be issued to an individual applying to be associated with a firm if that individual has an expired license associated with the same firm and the expired license may be reinstated.~~

18VAC135-20-55. Exchange to salesperson's salesperson license.

~~A broker who wants seeking to exchange his license(s) the broker's license for that of a salesperson must submit a complete application to the board with appropriate fee specified in 18VAC135-20-15. When exchanging the license(s) a license, the licensee agrees his the current broker's license(s) broker license ceases to exist, and if he the licensee chooses to become licensed as a broker again, he the licensee must pass the current broker examination and must meet the current education and experience requirements in effect at the time of application.~~

18VAC135-20-60. Qualifications for licensure by reciprocity. (Repealed.)

~~An individual who is currently licensed as a real estate salesperson or broker in another jurisdiction may obtain a Virginia real estate license by meeting the following requirements:~~

- ~~1. The applicant shall be at least 18 years of age.~~
- ~~2. The applicant shall have a high school diploma or its equivalent.~~
- ~~3. The applicant shall have received the salesperson's or broker's license by virtue of having passed in the jurisdiction of licensure a written examination deemed to be substantially equivalent to the Virginia examination.~~
- ~~4. The applicant shall sign a statement verifying that the applicant has read and understands the provisions of this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.~~
- ~~5. The applicant, within 12 months prior to submitting a complete application for a license, shall have passed a written examination provided by the board or by a testing~~

~~service acting on behalf of the board covering Virginia real estate license law and regulations of the Real Estate Board.~~

~~6. The applicant shall follow all procedures established with regard to conduct at the examination. Failure to comply with all procedures established by the board with regard to conduct at the examination may be grounds for denial of application.~~

~~7. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. The applicant shall be in compliance with all the terms of all board orders, including paying imposed monetary penalties and costs, plus any accrued interest and other fees, and completing imposed education.~~

~~8. At the time of application for a salesperson's license, the applicant must have met educational requirements that are substantially equivalent to those required in Virginia. At the time of application for a broker's license, the applicant must have met educational requirements that are substantially equivalent to those required in Virginia, and the applicant must have been actively engaged as defined by 18VAC135-20-10 for 36 of the preceding 48 months. The broker applicant's experience must be verified by an individual who has direct knowledge of the applicant's activities as defined in § 54.1-2100 of the Code of Virginia. These requirements may be waived at the discretion of the board in accordance with § 54.1-2105 of the Code of Virginia.~~

~~9. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing and be competent to transact the business of a real estate salesperson or broker in such a manner as to safeguard the interests of the public.~~

~~10. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall submit to fingerprinting and shall disclose the following information:~~

- ~~a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within five years of the date of the application; and~~
- ~~b. All felony convictions during the applicant's lifetime.~~

~~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.~~

~~11. Applicants for licensure who do not meet the requirements set forth in subdivisions 7 and 10 of this~~

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~~section may be approved for licensure following consideration by the board.~~

18VAC135-20-65. Universal license recognition.

A. Licensed in a neighboring state. The board will issue a salesperson or broker license under universal license recognition to an individual who meets the following qualifications:

1. The individual holds a current and valid license with a similar scope of practice in a neighboring state;
2. The individual's other license is in good standing with no reported pending complaints;
3. The individual has met the requirements set in subdivision 4 of 18VAC135-20-30;
4. The individual has not been subject to professional discipline involving harm to the public or license probation, suspension, or revocation;
5. The individual pays the reciprocity application fee as listed in ~~18VAC135-20-80~~ 18VAC135-20-15; and
6. The individual successfully passes the Virginia Real Estate Exam.

B. Licensed in another state. The board will issue a salesperson or broker license under universal license recognition to an individual who meets the following qualifications:

1. The individual holds a current and valid license with a similar scope of practice in another state, territory, possession, or jurisdiction of the United States for at least three years;
2. The individual was licensed in the other state after having passed a state required exam and met education, training, or experience requirements to obtain the license;
3. The individual's other license is in good standing with no reported pending complaints;
4. The individual has met the requirements set in subdivision 4 of 18VAC135-20-30;
5. The individual has not been subject to professional discipline involving harm to the public or license probation, suspension, or revocation;
6. The individual pays the reciprocity application fee as listed in ~~18VAC135-20-80~~ 18VAC135-20-15; and
7. The individual successfully passes the Virginia Real Estate Exam.

C. Experience in a state that does not require licensure. The board will hold an individual to have met all experience, training, and education requirements if the applicant has three years of experience in a state that does not require licensure.

1. To be exam eligible under universal license recognition, an individual must have:

- a. Demonstrated at least three years of experience as a salesperson or broker in another state that does not issue an occupational or professional license for that respective profession;
- b. Met the requirements set in subdivision 4 of 18VAC135-20-30;
- c. Not been subject to professional discipline involving harm to the public or license probation, suspension, or revocation; and
- d. Paid the applicable application fee as listed in ~~18VAC135-20-80~~ 18VAC135-20-15.

2. Under this subsection, individuals are required to pass all exams required of initial applicants for the license under ~~18VAC135-20-30~~ 18VAC135-20-35.

18VAC135-20-70. Activation or transfer of license.

A. Any inactive licensee may activate that license with a licensed real estate firm or sole proprietorship by completing an activate form prescribed by the board.

1. A licensee who submits an activate application to the board ~~shall~~ must not conduct ~~business licensed activity~~ with the real estate firm or sole proprietorship set forth in the application until the ~~application is processed and the license is issued by the board.~~

2. Continuing education pursuant to § 54.1-2105.03 of the Code of Virginia ~~shall~~ must be completed within two years prior to activation of a license when the license has been inactive for more than 30 days.

3. Any licensee who has not been active with a licensed real estate firm or sole proprietorship for a period of greater than three years shall be required to meet the existing prelicense educational requirements.

B. Any licensee may transfer from one licensed real estate firm or sole proprietorship to another by completing and submitting to the board a transfer application and the fee as set forth in ~~18VAC135-20-80~~ 18VAC135-20-15.

1. The transfer application ~~shall~~ must include the signature of the new principal broker or supervising broker with signature authority who ~~will be~~ responsible for the licensee's real estate activities ~~and shall~~

2. The ~~transfer will~~ be effective upon the ~~new~~ principal broker or supervising broker's execution of the transfer application.

18VAC135-20-80. Application fees. (Repealed.)

~~A. All application fees for licenses are nonrefundable and the date of receipt by the board or its agent is the date that will be used to determine whether the fee is on time.~~

B. Application fees are as follows:

Salesperson by education and examination	\$240
Salesperson by reciprocity	\$210
Salesperson's or broker's license as a business entity	\$265
Broker by education and examination	\$265
Broker by reciprocity	\$265
Broker concurrent license	\$195
Firm license	\$350
Branch office license	\$265
Transfer application	\$90
Activate application	\$90
Downgrade to salesperson	\$120
Upgrade to broker	\$120

C. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts.

18VAC135-20-90. Renewal required.

Licenses issued under this chapter for salespersons, brokers, and firms ~~shall will~~ expire two years from the last day of the month in which ~~they the~~ licenses were issued, as indicated on the license, except concurrent broker licenses ~~which shall that~~ will expire on the same date as the original broker license.

18VAC135-20-95. Post-license education requirements for salespersons.

A. In accordance with § 54.1-2105.01 A of the Code of Virginia, a salesperson who is renewing a license for the first time is required to have completed 30 hours of post-license education as outlined in subsection B of this section within the first year of licensure regardless of whether the salesperson's license is active or inactive. Failure to complete the 30-hour post-licensure curriculum within one year from the last day of the month in which the license was issued will result in the license being placed on inactive status by the board until the curriculum has been completed.

B. A salesperson within the first year of licensure must complete the following education:

1. Two hours of fair housing, Americans with Disabilities Act (42 USC § 12101 et seq.), and civil rights;

2. Six hours of real estate law and regulations;
3. Three hours of ethics and standards of conduct;
4. Two hours of current industry issues and trends;
5. Three hours of agency law;
6. Six hours of contract writing;
7. Three hours of risk management;
8. Three hours of escrow requirements; and
9. Two hours of real estate-related finance.

18VAC135-20-101. Qualification for renewal; continuing education requirements.

A. Continuing education requirements at renewal.

1. Subsequent salesperson renewals. As a condition of renewal, and pursuant to § 54.1-2105.03 of the Code of Virginia, all active salespersons, ~~resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be are~~ required to satisfactorily complete a course of not less than a total of 16 classroom, correspondence, or other distance learning instruction hours during each licensing term, ~~except for salespersons who are renewing for the first time and are required to complete 30 hours of post license education regardless of whether the licenses are active or inactive. All active brokers, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course of not less than a total of 24 classroom, correspondence, or other distance learning instruction hours during each licensing term. Active licensees called to active duty in the Armed Forces of the United States may complete these courses within six months of release from active duty. Inactive brokers and salespersons are not required to complete the continuing education course as a condition of renewal (see 18VAC135-20-70, Activation or transfer of license).~~

1. Providers shall be those as defined in 18VAC135-20-350;

2. For salespersons, 11 of the required 16 hours shall must include:

- ~~two~~ a. Two hours in fair housing laws;
- ~~three~~ b. Three hours in ethics and standards of conduct;
- ~~two~~ c. Two hours in real estate agency;
- ~~two~~ d. Two hours in real estate contracts including contract principles, contract forms, and escrow deposits and accounts; and
- ~~two~~ e. Two hours in legal updates and emerging trends, to include flood zone areas and the National Flood Insurance Program.

The remaining elective hours must be obtained in subject areas listed in subsection B of this section.

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2. Broker renewals. All active brokers are required to satisfactorily complete a course of not less than a total of 24 classroom, correspondence, or other distance learning instruction hours during each licensing term. For brokers, 19 of the 24 required hours ~~shall~~ must include:

~~eight~~ a. Eight hours in supervision and management of real estate agents and the management of real estate brokerage firms, including oversight of contracts and agency, two hours of which ~~shall~~ must include an overview of the broker supervision requirements under this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia;

~~two~~ b. Two hours in fair housing laws;

~~three~~ c. Three hours in ethics and standards of conduct;

~~two~~ d. Two hours in real estate agency;

~~two~~ e. Two hours in real estate contracts, including contract principles, contract forms, and escrow deposits and accounts; and

~~two~~ f. Two hours in legal updates and emerging trends, to include flood zone areas and the National Flood Insurance Program.

The remaining elective hours must be obtained in subject areas listed in subsection B of this section.

3. Armed Forces of the United States renewals. If an active licensee is called to active duty or deployed in the Armed Forces of the United States, such licensee may complete these courses within six months of the licensee's release from active duty or deployment.

4. Inactive licenses. Inactive brokers and salespersons are not required to complete the continuing education course as a condition of renewal.

5. If the licensee submits a notarized affidavit to the board that certifies that the licensee does not practice residential real estate brokerage, residential management, or residential leasing and ~~shall will~~ not do so during the licensing term, training in fair housing ~~shall is~~ not be required; instead, such licensee ~~shall must~~ receive training in other applicable federal and state discrimination laws and regulations.

The remaining B. Any elective hours ~~shall~~ not specified in subsection A of this section must be on subjects from the following list:

~~a.~~ 1. Property rights;

~~b.~~ 2. Contracts;

~~c.~~ 3. Deeds;

~~d. Mortgages~~ 4. Financing and types of mortgages and deeds of trust;

~~e. Types of mortgages;~~

~~f.~~ 5. Leases;

~~g.~~ 6. Liens;

~~h.~~ 7. Real property and title insurance;

~~i. Investment;~~

~~j.~~ 8. Taxes in real estate;

~~k. Real estate financing~~ 9. Closing disclosures;

~~l.~~ 10. Brokerage and agency contract responsibilities;

~~m.~~ 11. Real property management;

~~n.~~ 12. Search, examination, and registration of title;

~~o.~~ 13. Title closing;

~~p.~~ 14. Appraisal of real property;

~~q.~~ 15. Planning subdivision developments and condominiums;

~~r. Regulatory statutes;~~

~~s. Housing legislation;~~

~~t.~~ 16. Fair housing;

~~u.~~ 17. Real Estate Board estate statutes and board regulations;

~~v. Land use;~~

~~w.~~ 18. Business law;

~~x.~~ 19. Real estate markets and economics;

~~y.~~ 20. Real estate investments;

~~z.~~ 21. Federal real estate law;

~~aa.~~ 22. Commercial real estate;

~~bb.~~ 23. Americans with Disabilities Act;

~~cc.~~ 24. Environmental issues ~~impacting real estate,~~ sustainability, and energy efficiency;

~~dd.~~ 25. Building codes and design;

~~ee. Local laws and~~ 26. Land use, zoning, and local laws;

~~ff.~~ 27. Escrow ~~requirements~~ accounts and deposits;

~~gg.~~ 28. Ethics and standards of conduct; ~~and~~

~~hh.~~ 29. Common interest ~~ownership~~ communities, including the Resale Disclosure Act (Chapter 23.1 of Title 55.1 of the Code of Virginia);

30. Cyber security and data protection; and

31. Social responsibility in real estate, including affordable housing, multicultural market, gentrification, diversity, multigenerational, and cultural competency.

3. C. Salespersons and brokers holding active licenses in multiple jurisdictions.

1. Salespersons holding licenses in ~~other~~ multiple jurisdictions must complete ~~11~~ 16 hours of continuing education, 11 of which are mandatory board-approved courses, that ~~shall~~ must include two hours in fair housing laws; three hours in ethics and standards of conduct; two hours in real estate agency; two hours in real estate contracts; and two hours of legal updates and emerging trends, to include flood zone areas and the National Flood Insurance Program. Such salespersons may substitute education completed in ~~the salesperson's~~ their jurisdiction for the remaining five elective hours required by ~~subdivision 2~~ subsection B of this section.

2. Brokers holding licenses in ~~other~~ multiple jurisdictions must complete ~~19~~ 24 hours of continuing education, 19 of which are mandatory board-approved courses that ~~shall~~ must include eight hours in supervision and management of real estate agents and the management of real estate brokerage firms, two hours of which ~~shall~~ must include an overview of the broker supervision requirements under this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia; two hours in fair housing laws; three hours in ethics and standards of conduct; two hours in real estate agency; two hours in real estate contracts; and two hours in legal updates and emerging trends, to include flood zone areas and the National Flood Insurance Program. Such brokers may substitute education completed in ~~the broker's~~ their jurisdiction for the remaining five elective hours required by ~~subdivision 2~~ subsection B of this section.

~~4. The board may approve additional subjects at D. In its discretion, and in accordance with § 54.1-2105.03 of the Code of Virginia, the board may approve additional subjects toward fulfillment of the elective continuing education hours required by this section.~~

~~5. E. Credit for continuing education course completion is given for each class hour/clock hour as defined in 18VAC135-20-350 class hour or clock hour.~~

6. F. Licensees are responsible for retaining for three years and providing proof of continuing education to the board or the board's duly authorized agents upon request. Proof of course completion shall be made on a form prescribed by the board. Failure to provide documentation of completion as directed by the board may result in the license not being renewed, disciplinary action pursuant to this chapter, or both.

7. G. Instructors who are also licensees of the board may earn continuing education credit for teaching continuing education courses.

8. H. Any continuing education credits completed by the licensee in excess of that required in the current license term that are obtained in the six months immediately prior to the license expiration date shall carry over into the next two-year renewal period.

18VAC135-20-110. Procedures for renewal.

A. Prior to the expiration date of the license, the board will send a renewal notice to the licensee.

~~B. Prior to the expiration date shown on of the license, each licensee desiring to renew the license shall must return to the board the renewal application forms notice and the appropriate fee as outlined specified in 18VAC135-20-120 18VAC135-20-15.~~

C. Failure to receive notices from the board regarding license renewal does not relieve the licensee of the obligation to renew.

18VAC135-20-120. Fees for renewal. (Repealed.)

~~A. All fees for renewals are nonrefundable, and the date of receipt by the board or its agent is the date that will be used to determine whether the fee is on time.~~

~~B. Renewal fees are as follows:~~

Salesperson	\$100
Salesperson's or broker's license as a business entity	\$135
Broker	\$120
Concurrent broker	\$120
Firm	\$240
Branch office	\$135

18VAC135-20-130. Board discretion to deny renewal. (Repealed.)

~~The board may deny renewal of a license for (i) the same reasons as it may refuse initial licensure or discipline a current licensee; (ii) failure to meet the terms of an agreement for licensure or other board order; or (iii) failure to fully pay monetary penalties and costs imposed by the board, plus any accrued interest.~~

18VAC135-20-140. Failure to renew; reinstatement required.

A. All applicants for reinstatement must meet all the applicable continuing education requirements set forth in 18VAC135-20-101. Applicants for reinstatement who want to activate a license must have completed the continuing education requirement in order to reinstate and activate the license. Applicants for reinstatement of an inactive license are not required to complete the continuing education requirement for license reinstatement.

B. If the requirements for renewal of a license, including receipt of the fee by the board, are not completed by the licensee within 30 days of the expiration date noted on the license, a the applicable reinstatement fee specified in 18VAC135-20-15 is required as follows:

Salesperson	\$155
Salesperson's or broker's license as a business entity	\$205
Broker	\$180

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Concurrent Broker	\$180
Firm	\$370
Branch Office	\$205

C. A license may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. When a license is reinstated, the licensee will continue to have the same license number and will be assigned an expiration date two years from the previous expiration date of the license. After one year, the license may not be reinstated under any circumstances and the applicant must meet all current educational and examination requirements and apply as a new applicant.

D. ~~A licensee~~ An individual, business entity, or firm may not perform activities defined in § 54.1-2100 of the Code of Virginia with an expired license. Any real estate activity conducted subsequent to the expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

18VAC135-20-145. Status of licensee during the period prior to reinstatement.

A licensee who reinstates a license will be regarded as having been continuously licensed without interruption and will remain under the disciplinary authority of the board during this entire period and will be held accountable for activities during this period.

18VAC135-20-150. Board discretion to deny renewal or reinstatement.

The board may deny renewal or reinstatement of a license for (i) the same reasons as it may refuse initial licensure or discipline a current licensee; (ii) failure to meet the terms of an agreement for licensure or other board order; or (iii) failure to fully pay monetary penalties and costs imposed by the board, plus any accrued interest.

18VAC135-20-155. Grounds for disciplinary action.

A. The board has the power to ~~fine~~ impose a monetary penalty against any licensee or certificate holder and to suspend or revoke any license or certificate issued under the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia and this chapter in accordance with subdivision A 7 of § 54.1-201 and § 54.1-202 of the Code of Virginia and the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), where the licensee or certificate holder has been found to have violated or cooperated with others in violating any provision of Chapters 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), and 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, Chapter 10 (§ 55.1-1000 et seq.) of Title 55.1 of the Code of Virginia, or any regulation of the board.

B. Any licensee failing to comply with the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the ~~Real Estate Board~~ board in performing any acts covered by § 54.1-2100 of the Code of Virginia may be charged with a violation, regardless of whether those acts are in the licensee's personal capacity or in the licensee's capacity as a real estate licensee.

18VAC135-20-160. Place of business.

~~A. No place of business shall be in a residence unless it is separate and distinct from the living quarters of the residence with its own entrance and is accessible by the public.~~ B. A. Every principal broker ~~shall~~ must have the following readily available to the public in the primary place of business ~~the~~:

1. The firm license, ~~the~~

2. The principal broker license; ~~and~~

~~the~~ 3. The license of every salesperson and broker active with the firm.

B. Each branch office ~~shall~~ must have readily available to the public the branch office license and a roster of every salesperson or broker assigned to that branch office.

18VAC135-20-165. Duties of supervising broker.

~~Each place of business, each branch office, and each real estate team shall be supervised by a supervising broker. The supervising broker shall exercise reasonable and adequate supervision of the provision of real estate brokerage services by associate brokers and salespersons assigned to the branch office or real estate team. The supervising broker may designate another broker to assist in administering the provisions required by this section, but such designation does not relieve the supervising broker of responsibility for the supervision of the acts of all licensees assigned to the branch office or real estate team. Factors to be considered in determining whether the supervision is reasonable and adequate include the following~~ In addition to the duties of supervising brokers set forth in § 54.1-2110.1 of the Code of Virginia, supervising brokers must:

1. The availability of the supervising broker to all licensees under the supervision of the broker to review and approve all documents, including leases, contracts affecting the firm's clients, brokerage agreements, and advertising;

2. The availability of training and written procedures and policies that provide, without limitation, clear guidance in the following areas:

a. Proper handling of escrow deposits;

b. Compliance with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management;

c. Advertising;

- ~~d. Negotiating and drafting of contracts, leases, and brokerage agreements;~~
 - ~~e. Use of unlicensed individuals;~~
 - ~~f. Agency or independent contractor relationships;~~
 - ~~g. Distribution of information on new or changed statutory or regulatory requirements;~~
 - ~~h. Disclosure of matters relating to the condition of the property; and~~
 - ~~i. Such other matters as necessary to assure the competence of licensees to comply with this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.~~
- ~~3. The availability of the supervising broker in a~~ 1. Provide timely manner to supervise the management supervision of the brokerage services;
- ~~4. The supervising broker ensures the brokerage services are carried out competently and in accordance with the provisions of this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia;~~
- ~~5. The supervising broker undertakes reasonable steps to ensure compliance by all licensees assigned to the branch office, including ensuring the licensees have an active, current license;~~
- ~~6. The supervising broker undertakes~~ 2. Undertake reasonable steps to ensure only licensees undertake activities requiring a license, including:
- ~~a. Show~~ Showing property;
 - ~~b. Hold~~ Holding an open house;
 - ~~c. Answer~~ Answering questions on listings, title, financing, closing, contracts, brokerage agreements, and legal documents;
 - ~~d. Discuss, explain, interpret, or negotiate~~ Discussing, explaining, interpreting, or negotiating a contract, listing, lease agreement, or property management agreement with anyone outside the firm; and
 - ~~e. Negotiate or agree~~ Negotiating or agreeing to any commission, commission split, management fee, or referral fee.
- ~~7. The supervising broker shall provide~~ 3. Provide adequate supervision over the all unlicensed employees or assistants under the supervision of a broker as they individuals or entities associated with the firm or the firm's licensees. Such unlicensed individuals or entities may perform the following permitted activities:
- ~~a. Perform~~ Performing general clerical duties, including answering the phones, responding by electronic media, and providing information shown on the listing;
 - ~~b. Submit~~ Submitting listings and changes to MLS;
 - ~~c. Follow~~ Following up on loan commitments after contracts have been ratified;
 - ~~d. Have~~ Having keys made for listings;
 - ~~e. Compute~~ Computing commission checks;
 - ~~f. Place~~ Placing signs on properties;
 - ~~g. Act~~ Acting as a courier service;
 - ~~h. Schedule~~ Scheduling appointments;
 - ~~i. Record and deposit earnest money deposits, security deposits, and advance rents~~ Recording and depositing escrow funds;
 - ~~j. Prepare~~ Preparing contract forms for approval of the licensee and supervising broker;
 - ~~k. Prepare~~ Preparing promotional materials and advertisements for approval of the licensee and supervising broker;
 - ~~l. Assemble~~ Assembling closing documents;
 - ~~m. Obtain~~ Obtaining required public information from governmental entities;
 - ~~n. Monitor~~ Monitoring license and personnel files;
 - ~~o. Order~~ Ordering routine repairs as directed by licensee;
 - ~~p. Receive compensation for their work at a predetermined rate that is not contingent upon the occurrence of a real estate transaction; and~~
 - ~~q. Perform~~ p. Performing any other activities undertaken in the regular course of business for which a license is not required.
- ~~8. If a supervising broker is located more than 50 miles from the place of business or the branch office and there are licensees who regularly conduct business assigned to the branch office or at the place of business, the supervising broker must certify in writing on a quarterly basis on a form provided by the board that the supervising broker complied with the requirements of this section;~~
- ~~9. The supervising broker must maintain the records required in this section for three years. The records must be furnished to the board's agent upon request;~~
- ~~10. The supervising broker ensures that affiliated real estate teams or business entities are operating in accordance with the provisions of this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia; and~~
- ~~11. The supervising broker ensures that all brokerage agreements include the name and contact information of the supervising broker~~ 4. Respond in a timely manner to inquiries from the public, cooperating brokers, and licensees affiliated with the supervising broker's firm regarding existing or contemplated transactions.
- 18VAC135-20-170. Maintenance of licenses.**
- A. Name and address.
1. Salespersons and individual brokers ~~shall~~ must at all times keep the board informed of their current name and home address. Changes of name and address must be reported to

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the board in writing within 30 calendar days of such change. The board ~~shall~~ is not be responsible for the licensee's failure to receive notices, communications, and correspondence caused by the licensee's failure to promptly notify the board of any change of address.

~~2.~~ A licensee may use a professional name other than a legal name if that professional name is filed with the board prior to its use. ~~The~~ An individual may use a professional name ~~shall, which must~~ include the licensee's first or last name and ~~shall must~~ not include any titles.

~~2.~~ 3. Salespersons and brokers ~~shall~~ will be issued a license only to the place of business of the sole proprietorship or firm with which the salesperson or broker is active.

~~3.~~ 4. Principal brokers must at all times keep the board informed of their current firm ~~and, branch office, and~~ business entity name and addresses and changes of name and address must be reported to the board in writing within 30 calendar days of such change. A physical address is required. ~~A post office box will not be accepted.~~

B. Discharge or termination of active status.

1. When any salesperson or broker is discharged or in any way terminates ~~his~~ active status with a sole proprietorship or firm, it ~~shall be~~ is the duty of the sole proprietor or principal broker to ~~return the license to~~ notify the board ~~so that it is received with the licensee name, license number, and date of termination~~ within 10 calendar days of the date of termination or being notified of the status change. ~~The sole proprietor or principal broker shall indicate on the license the date of termination, and shall sign the license before returning it.~~

2. When any principal broker is discharged or in any way terminates ~~his~~ active status with a firm, it ~~shall be~~ is the duty of the firm to notify the board ~~and return the license to the board within three business days of termination or being notified of the status change. The firm shall indicate on the~~ with the licensee name, license the number, and date of termination, ~~and shall sign the license before returning it within 10 calendar days of the date of termination.~~ See § 54.1-2109 of the Code of Virginia for termination relating to the death or disability of the principal broker.

C. When a firm or business entity is no longer authorized to conduct business in the Commonwealth, the board has the authority to terminate that firm or business entity's license until such time as the firm or business entity provides evidence that it is again authorized to conduct business in the Commonwealth.

18VAC135-20-180. Maintenance and management of escrow accounts. (Repealed.)

A. Maintenance of escrow accounts.

~~1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more federally insured separate escrow accounts in a federally insured depository into which all down payments, earnest money deposits, money received upon final settlement, application deposits as defined by § 55.1-1200 of the Code of Virginia, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's client or expended on behalf of the client, or other escrow funds received by the broker or his associates on behalf of his client or any other person shall be deposited unless all principals to the transaction have agreed otherwise in writing. The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship. The principal broker shall be held responsible for these accounts, including having signatory authority on these accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks, and bank statements shall be labeled "escrow" and the accounts shall be designated as "escrow" accounts with the financial institution where such accounts are established.~~

~~2. Funds to be deposited in the escrow account may include moneys that shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. Funds in an escrow account shall not be paid directly to the licensees of the firm. The fact that an escrow account contains money that may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by subdivision C 2 of this section, 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 and the firm.~~

~~3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by subdivision C 2 of this section.~~

~~4. Lease transactions: application deposits. Any application deposit as defined by § 55.1-1200 of the Code of Virginia paid by a prospective tenant for the purpose of being considered as a tenant for a dwelling unit to a licensee acting on behalf of a landlord client shall be placed in escrow by the end of the fifth business banking day following approval of the rental application by the landlord unless all principals to the lease transaction have agreed otherwise in writing.~~

B. Disbursement of funds from escrow accounts.

1. a. ~~Purchase transactions. Upon the ratification of a contract, an earnest money deposit received by the principal broker or supervising broker or his associates that is to be held in the firm's escrow account shall be placed in such escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the principals to the transaction, and shall remain in that account until the transaction has been consummated or terminated. If a principal broker or supervising broker, or an agent of such principal broker or supervising broker, receives an earnest money deposit that will not be held in the firm's escrow account, the principal broker or supervising broker shall ensure that the earnest money deposit is delivered to the escrow agent named in the contract by the end of the fifth business banking day following receipt of the deposit, unless otherwise agreed to in writing by the principals to the transaction. In the event that the transaction is not consummated, the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in a written agreement as to their disposition, upon which the funds shall be returned to the agreed upon principal as provided in such written agreement; (ii) a court of competent jurisdiction orders such disbursement of the funds; (iii) the funds are successfully interpleaded into a court of competent jurisdiction pursuant to this section; or (iv) the broker releases the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract that established the earnest money deposit. At the option of a broker, written notice may be sent by the broker that release of such funds shall be made unless a written protest is received from the principal who is not receiving the funds by such broker within 15 calendar days of the date of such notice. Notice of a disbursement shall be given to the parties to the transaction in accordance with the contract, but if the contract does not specify a method of delivery, one of the following methods complies with this section: (i) hand delivery; (ii) United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing; (iii) electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or (iv) overnight delivery using a commercial service or the United States Postal Service. Except as provided in the clear and explicit terms of the contract, no broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. A broker who complies with this section shall be immune from liability to any of the parties to the contract.~~

A principal broker or supervising broker holding escrow funds for a principal to the transaction may seek to have a court of competent jurisdiction take custody of disputed or unclaimed escrow funds via an interpleader action pursuant to § 16.1-77 of the Code of Virginia.

If a principal broker, supervising broker, or an agent of such licensee is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the principal broker, supervising broker, or agent shall have the right to file an interpleader action pursuant to § 16.1-77 of the Code of Virginia and otherwise comply with the provisions of § 54.1-2108.1 of the Code of Virginia.

If a single family residential dwelling unit is foreclosed upon, and at the date of the foreclosure sale there is a real estate purchase contract to buy such property and such contract provides that the earnest money deposit held in escrow by a firm or sole proprietorship shall be paid to a principal to the contract in the event of a termination of the real estate purchase contract, the foreclosure shall be deemed a termination of the real estate purchase contract, and the principal broker, supervising broker, or agent of the licensee may, absent any default on the part of the purchaser, disburse the earnest money deposit to the purchaser pursuant to such provisions of the real estate purchase contract without further consent from or notice to the principals.

b. ~~Lease transactions: security deposits. Any security deposit held by a firm or sole proprietorship shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction. Each such security deposit shall be treated in accordance with the security deposit provisions of the Virginia Residential Landlord and Tenant Act, Chapter 12 (§ 55.1-1200 et seq.) of Title 55.1 of the Code of Virginia, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant. If a single family residential dwelling unit is foreclosed upon and there is a tenant in the dwelling unit on the date of the foreclosure sale and the landlord is holding a security deposit of the tenant, the landlord shall handle the security deposit in accordance with applicable law, which requires the holder of the landlord's interest in the dwelling unit at the time of termination of tenancy to return any security deposit and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his successors in interest. Nothing in this section shall be construed to prevent the landlord from making lawful~~

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deductions from the security deposit in accordance with applicable law.

~~c. Lease transactions: rent or escrow fund advances. Unless otherwise agreed in writing by all principals to the transaction, all rent and other money paid to the licensee in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, regardless of when received, and remain in that account until paid in accordance with the terms of the lease and the property management agreement, as applicable, except prepaid rent, which shall be treated in accordance with the prepaid rent provision of the Virginia Residential Landlord and Tenant Act, Chapter 12 (§ 55.1-1200 et seq.) of Title 55.1 of the Code of Virginia.~~

~~d. Lease transactions: rent payments. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon and the rent is paid to a licensee acting on behalf of the landlord pursuant to a properly executed property management agreement, the licensee may collect the rent in accordance with § 54.1-2108.1 A 4 of the Code of Virginia.~~

~~2. a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.~~

~~b. Lease transactions. Unless otherwise agreed in writing by the principals to the lease or property management agreement, as applicable, a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission except in accordance with the terms of the lease or the property management agreement, as applicable. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant. Except in the event of a foreclosure, if a licensee elects to terminate the property management agreement with the landlord, the licensee may transfer any funds held in escrow on behalf of the landlord in accordance with § 54.1-2108.1 B 5 of the Code of Virginia. If a single family residential dwelling unit is foreclosed upon, and at the date of the foreclosure sale there is a written property management agreement between a licensee and a landlord, the property management agreement shall continue in accordance with § 54.1-2108.1 A 5 of the Code of Virginia.~~

~~3. 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.~~

~~4. A licensee shall not disburse or cause to be disbursed moneys from an escrow or property management escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.~~

~~5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction (e.g., fees for appraisal, insurance, credit report) shall not be deducted from a deposit or down payment.~~

~~C. Actions including improper maintenance of escrow funds include:~~

~~1. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease without acknowledging its acceptance in the agreement;~~

~~2. Commingling the funds of any person by a principal or supervising broker or his employees or associates or any licensee with his own funds, or those of his corporation, firm, or association;~~

~~3. Failure to deposit escrow funds in an account designated to receive only such funds as required by subdivision A 1 of this section;~~

~~4. Failure to have sufficient balances in an escrow account at all times for all funds that are designated to be held by the firm or sole proprietorship as required by this chapter; and~~

~~5. Failing as principal broker to report to the board within three business days instances where the principal broker reasonably believes the improper conduct of a licensee, independent contractor, or employee has caused noncompliance with this section.~~

18VAC135-20-181. Maintenance and management of escrow accounts.

A. Maintenance of escrow accounts.

1. General escrow account requirements. If money is to be held in escrow, each firm or sole proprietorship must maintain one or more federally insured escrow accounts into which all funds received in connection with a real estate transaction must be deposited.

a. The escrow account must be in the name by which the firm or sole proprietorship is licensed.

b. The principal broker will be held responsible for these accounts, including having signatory authority on these accounts.

c. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts.

d. All such accounts, checks and bank statements must be labeled "escrow" and the accounts must be designated as "escrow" accounts with the financial institution where such accounts are established.

e. The balance in the escrow accounts must be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship.

2. Escrow deposits.

a. All down payments, earnest money deposits, money received upon final settlement, application deposits, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's client or any other person must be deposited into an escrow account, in accordance with relevant law, unless all principals to the transaction have agreed otherwise in writing.

b. Funds to be deposited in the escrow account may include moneys that will ultimately belong to the licensee in the escrow account, provided such money is separately identified in the escrow account records and paid to the firm from the escrow account when funds become due to the licensee. Funds in an escrow account must not be paid directly to the licensees of the firm.

c. The fact that an escrow account contains money that may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by subdivision D 2 of this section, provided that there are periodic withdrawals of the 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 which belong to the licensee and the firm.

B. Handling and disbursement of funds from escrow accounts.

1. Purchase transactions.

a. Upon the ratification of a contract, an earnest money deposit received by the principal broker or supervising broker or the broker's associates must be deposited, handled, and disbursed in accordance with § 54.1-2108.2 of the Code of Virginia.

b. Unless otherwise agreed in writing by all principals to the transaction, a licensee will not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.

2. Lease transactions:

a. Any application deposit, security deposit, rent, or other money paid to the licensee acting on behalf of a landlord client in connection with the lease must be deposited in an escrow account in accordance with § 54.1-2108.1 of the Code of Virginia.

b. Security deposits must be treated in accordance with the security deposit provisions of the Virginia Residential Landlord and Tenant Act, Chapter 12 (§ 55.1-1200 et seq.) of Title 55.1 of the Code of Virginia, unless exempted

therefrom, in which case the terms of the lease or other applicable law will control.

c. Prepaid rent must be treated in accordance with the prepaid rent provisions of the Virginia Residential Landlord and Tenant Act, Chapter 12 (§ 55.1-1200 et seq.) of Title 55.1 of the Code of Virginia.

d. Escrow funds must remain in an escrow account until disbursed in accordance with the terms of the lease, the property management agreement, or the applicable statutory provisions.

e. Unless otherwise agreed in writing by the principals to the lease or property management agreement, as applicable, a licensee will not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission except in accordance with the terms of the lease or the property management agreement, as applicable.

f. Except in the event of a foreclosure, if a licensee elects to terminate the property management agreement with the landlord, the licensee may transfer any funds held in escrow on behalf of the landlord in accordance with § 54.1-2108.1 B 5 of the Code of Virginia.

3. On funds placed in an account bearing interest, written disclosure in the contract of purchase or lease at the time of contract or lease writing must be made to the principals to the transaction regarding the disbursement of interest.

4. A licensee 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.

5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction (e.g., fees for appraisal, insurance, credit report) must not be deducted from a deposit or down payment.

C. Escrow and foreclosure.

1. Purchase transactions. If a principal broker or supervising broker is holding escrow funds for the owner of real property and such property is foreclosed upon, the principal broker or supervising broker must comply with the provisions of §§ 54.1-2108.1 A 1 and A 2 of the Code of Virginia.

2. Lease transactions.

a. If a single-family residential dwelling unit is foreclosed upon and there is a tenant in the dwelling unit on the date of the foreclosure sale and the landlord is holding a security deposit of the tenant, the landlord must handle the security deposit in accordance with § 54.1-2108.1 A 3 of the Code of Virginia.

b. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon and the rent is paid to a licensee acting on behalf of the

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landlord pursuant to a properly executed property management agreement, the licensee may collect the rent in accordance with § 54.1-2108.1 A 4 of the Code of Virginia.

c. If a single-family residential dwelling unit is foreclosed upon, and at the date of the foreclosure sale there is a written property management agreement between a licensee and a landlord, the property management agreement must continue in accordance with § 54.1-2108.1 A 5 of the Code of Virginia.

D. Improper maintenance of escrow funds includes:

1. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease without acknowledging its acceptance in the agreement;

2. Commingling the funds of any person by a principal or supervising broker or the broker's employees or associates or any licensee with the broker's own funds, or those of the broker's corporation, firm, or association. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, will constitute commingling;

3. Failing to deposit escrow funds in an account designated to receive only such funds as required by subdivision A 1 of this section; and

4. Failing to have sufficient balances in an escrow account at all times for all funds that are designated to be held by the firm or sole proprietorship as required by this chapter.

18VAC135-20-185. Maintenance and management of financial records.

~~A. A complete record of~~ The principal broker must maintain financial records regarding any real estate transactions conducted under the authority of the principal broker's Virginia license shall be maintained in the principal broker's place of business, or in a designated branch office. When the principal broker's office is located outside of Virginia and the firm has a branch office in Virginia, a copy of these records shall be maintained in the Virginia office. Such records must be readily accessible from the broker's place of business. These ~~The records shall show, in addition to any other requirements of the regulations, the following information must contain:~~

~~from~~ 1. From ~~whom money was received;~~

~~the~~ 2. The ~~date of receipt;~~

~~the~~ 3. The ~~place of deposit;~~

~~the~~ 4. The ~~date of deposit; and, after the transaction has been completed, the~~

5. The ~~final disposition of the funds; and~~

6. Any other information required in this chapter.

When a principal broker's office is located outside of Virginia and the firm has a branch office in Virginia, a copy of these records must be readily accessible in the Virginia office.

B. The principal broker ~~shall~~ must maintain a bookkeeping or recordkeeping system ~~which shall that~~ must accurately and clearly disclose full compliance with the requirements outlined in this section. Accounting records ~~which that~~ are in sufficient detail to provide necessary information to determine such compliance ~~shall~~ must be maintained.

~~C. Actions constituting improper recordkeeping by a~~ A principal broker or supervising broker ~~include~~ must maintain and retain the following records:

~~1. Failing to retain~~ Each ~~brokerage agreement must be retained for a period of three years from the date of execution, each brokerage agreement, each disclosure and consent to dual agency or dual representation, and each disclosure and consent to designated agency or designated representation must be retained for three years from the date of execution. Each disclosure of a brokerage relationship to an unrepresented party shall be retained for three years from the date provided to the party;~~

~~2. Failing to retain for a period of three years from the date of closing or from ratification, if the~~ All ~~documents pertaining to a transaction fails to close, including, a complete and legible copy of each executed contract of sale, any executed release from contract, any executed lease agreement, any executed property management agreement, and each settlement statement related to a real estate transaction, and unrepresented party in disclosure in the broker's control or possession unless prohibited by law;~~ Such records must be retained for three years from the date of closing or from ratification if the transaction fails to close.

~~3. Failing to maintain a~~ A ~~complete and accurate record of such receipts and their disbursements for moneys received on behalf of others. Such records must be retained for a period of three years from the date of the closing or termination of the sales transaction or termination of a lease or conclusion of the licensee's involvement in the lease; and~~

~~4. Failing to maintain any records required by this section for three years.~~

18VAC135-20-190. Advertising by licensees.

~~A. Definitions. The following definitions apply unless a different meaning is plainly required by the context:~~

~~"Advertising" means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication to consumers for any purpose related to licensed real estate activity.~~

~~"Contact information" means telephone number or web address.~~

"Disclosure" in the context of electronic media advertising means (i) advertising by the firm that contains the firm's licensed name and the city and state in which the firm's main office or branch office is located or (ii) advertising by an affiliated licensee that contains the licensee's name, the name of the firm with which the licensee is active, and the city and state in which the licensee's place of business is located, and this disclosure shall be viewable on the main page or no more than one click away from the main page. "Disclosure" in the context of all other advertising means (i) advertising by the firm that contains the firm's licensed name or (ii) advertising by an affiliated licensee that contains the licensee's name and the name of the firm with which the licensee is active.

"Viewable page" means a page that may or may not scroll beyond the borders of the screen and includes the use of framed pages.

~~B. A.~~ All advertising must be under the direct supervision of the principal broker or supervising broker, in the name of the firm and, when applicable, comply with the disclosure required by § 54.1-2138.1 of the Code of Virginia. The firm's licensed name must be clearly and legibly displayed on all advertising.

~~C. Electronic media advertising.~~

~~1. Any electronic media advertising undertaken for the purpose of any licensed activity is subject to the provisions of this chapter.~~

~~2. All electronic media advertising that can be viewed or experienced as a separate unit (i.e., email messages and web pages) must contain disclosure that shall be viewable on the main page or is no more than one click away from the main page.~~

~~3. All electronic media listings advertised must be kept current and consistent as follows:~~

~~a. Electronic media listing information must be consistent with the property description and actual status of the listing. The licensee shall update in a timely manner material changes to the listing status authorized by the seller or property description when the licensee controls the electronic media site.~~

~~b. The licensee shall make timely written requests for updates reflecting material changes to the listing status or property descriptions when a third party electronic media listing service controls the website displaying the listing information.~~

~~D. Other advertising.~~

~~1. For sale and for lease signs placed on the property shall include but not be limited to the firm's name and the firm's primary or branch office telephone number.~~

~~2. Business cards shall include but not be limited to the licensee's name, the firm name, and contact information.~~

~~E. The following activities shall be prohibited:~~

~~1. Implying that property listed by a licensee's firm and advertised by the firm or licensee is for sale, exchange, rent or lease by the owner or by an unlicensed person;~~

~~2. Failing to include a notice in all advertising that the owner is a real estate licensee if the licensee owns or has any ownership interest in the property advertised;~~

~~3. Failing to include the firm's licensed name on any sign displayed outside each place of business;~~

~~4. Failing to obtain the written consent of the seller, landlord, optionor or licensor prior to advertising a specific identifiable property; and~~

~~5. Failing to identify the type of services offered when advertising by general description a property not listed by the party making the advertisement~~ B. Advertising disclosure.

1. All advertising by a firm or affiliated licensee must contain a clear, legible, and conspicuous advertising disclosure, which must include (i) the firm's name and (ii) the office contact information. The office contact information and any additional required information will be specified by the principal or supervising broker in the firm's written policies.

2. All advertising by an affiliated licensee must be done under the policies of a principal or supervising broker.

3. Any property information provided in any advertising must be consistent with the property condition and the property's current contract status.

4. All advertising must be updated in a timely manner whenever there is a material change to the listing status or property descriptions. If a third party controls the advertising, a licensee must make a written request in a timely manner for changes to be made.

18VAC135-20-220. Disclosure of brokerage relationships.

A. Purchase transactions.

~~1. Unless disclosure has been previously made by a licensee, a A licensee shall must disclose whom the licensee represents~~ to an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by another licensee and with whom the licensee has substantive discussions about a specific property ~~or properties, the person whom the licensee represents pursuant to a brokerage agreement, as that term is defined in § 54.1-2130 pursuant to § 54.1-2138 A~~ of the Code of Virginia.

~~2. Except as otherwise provided in subdivision 3 of this subsection, such disclosure shall must be made in writing at the earliest practical time, but in no event later than the time specific real estate assistance is first provided. Any disclosure complying with the provisions of § 54.1-2138 A~~

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of the Code of Virginia ~~shall~~ will be deemed in compliance with this disclosure requirement.

3. A licensee acting as a dual or designated agent or as a dual or designated representative ~~shall~~ must obtain the written consent of all clients to the transaction at the earliest practical time. Such consent ~~shall~~ will be presumed to have been given by a client who signs a disclosure complying with the provisions of §§ 54.1-2139, 54.1-2139.01, and 54.1-2139.1 of the Code of Virginia. Such disclosure ~~shall~~ must be given to, and consent obtained from, (i) the buyer not later than the time an offer to purchase is presented to the licensee who will present the offer to the listing agent or seller, and (ii) the seller not later than the time the offer to purchase is presented to the seller.

4. Any disclosure required by this subsection may be given in combination with other disclosures or information, but, if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box or as otherwise provided by § 54.1-2138 of the Code of Virginia.

B. Lease transactions.

1. Unless disclosure has been previously made by a licensee, a licensee ~~shall~~ must disclose to an actual or prospective landlord or tenant who is not the client of the licensee and who is not represented by another licensee, that the licensee has a brokerage relationship with another party ~~or parties~~ to the transaction. Such disclosure ~~shall~~ must be in writing and included in the application for lease or the lease itself, whichever occurs first. If the terms of the lease do not provide for such disclosure, the disclosure ~~shall~~ must be made in writing not later than the signing of the lease.

2. This disclosure requirement ~~shall~~ will not apply to lessors or lessees in single or multi-family residential units for lease terms of less than two months.

18VAC135-20-225. Audits.

~~A. Procedures for voluntary compliance, self audit, or third-party audit; broker immunity.~~

~~1. A principal broker or supervising broker may conduct, or may have another person conduct, an audit of the practices, policies, and procedures of his firm or sole proprietorship in accordance with § 54.1-2111.1 of the Code of Virginia. The methods and findings of the audit shall be documented as described in this subsection.~~

~~2. A principal broker or supervising broker shall notify the board in writing within 30 days following the conclusion of a self audit, or within 30 days from the receipt of the final report of a third party audit, of any matter he believes to constitute noncompliance with the provisions of Real Estate Board regulations or law. The principal broker or supervising broker shall also submit (i) a statement that such noncompliance has been remediated or (ii) a plan to correct~~

~~such noncompliance within 90 days. Failure to comply with these requirements may result in loss of immunity from regulatory enforcement action.~~

~~3. A principal broker or supervising broker shall sign and date any report made pursuant to subdivision 2 of this subsection. Such report, properly submitted, shall provide immunity from enforcement against the principal broker or supervising broker by the board for the matters reported therein.~~

~~4. Immunity from enforcement action provided by this section shall not apply if the noncompliance with provisions of Real Estate Board regulations or law by the principal broker or supervising broker was intentional or was the result of gross negligence by the principal broker or supervising broker.~~

~~5. Immunity from enforcement action provided by this section shall apply only to the principal broker and supervising broker who conduct an audit and submit a voluntary compliance plan in accordance with this section and shall not extend to any other broker or salesperson who may not be in compliance with Real Estate Board regulations or law.~~

~~6. Failure to complete the voluntary compliance program within 90 days from the date of plan submission shall result in the loss of immunity from regulatory enforcement action. Repeated instances of a violation found as a result of an audit that was subject to the voluntary compliance program may be deemed by the board to constitute a failure to complete the prior voluntary compliance program.~~

~~B. A. Procedures for mandatory audit.~~

1. A principal broker or supervising broker ~~shall~~ must conduct or have a third party conduct an audit ~~at least once during each license term in accordance with § 54.1-2106.2 of the Code of Virginia~~ within 90 days prior to the expiration of the firm license. Such audit ~~shall~~ must be documented on a form developed by the board.

2. In conducting an audit of practices, policies, and procedures of the firm or sole proprietorship, the principal broker or supervising broker or a third party ~~shall~~ must examine and document all matters regarding the compliance by the firm or sole proprietorship with law and regulation regarding:

- a. Proper handling of escrow deposits and maintenance of a complete record of financial transactions;
- b. Compliance with federal and state fair housing laws and regulations if the firm or sole proprietorship engages in residential brokerage, residential leasing, or residential property management;
- c. Advertising in all forms and media;
- d. Negotiation and drafting of contracts, leases, and brokerage agreements;

- e. Use of unlicensed individuals;
- f. Agency or independent contractor relationships;
- g. Distribution of information on new or changed statutory or regulatory requirements;
- h. Proper documentation of required disclosures; and
- i. Such other matters as necessary to ~~assure~~ ensure the competence of licensees to comply with this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

3. If at the conclusion of a mandatory audit the principal broker or supervising broker or third party believes there is noncompliance with the provisions of ~~the Real Estate Board~~ board regulations or law, the principal broker or supervising broker may ~~avail himself of~~ use the procedures for voluntary compliance described in subsection ~~A~~ B of this section.

~~Upon request by any investigator, or by another agent of the board, a broker shall cooperate in the provision of records and documents pursuant to 18VAC135-20-240 within 10 days of receipt of the request, and for other requests by the board and its agents pursuant to 18VAC135-20-250, within 21 days of receipt.~~ B. Procedures for voluntary compliance, self-audit, or third-party audit; broker immunity.

1. A broker will have immunity from board discipline for matters self-reported when the following conditions are met:

- a. A principal broker or supervising broker has conducted, or had another person conduct, an audit of the practices, policies, and procedures of the firm or sole proprietorship in accordance with § 54.1-2111.1 of the Code of Virginia.
- b. The principal broker or supervising broker has signed the report conducted in accordance with this subsection.
- c. A principal broker or supervising broker notifies the board in writing within 30 days following the conclusion of a self-audit, or within 30 days from the receipt of the final report of a third-party audit, of any matter the principal broker or supervising broker believes to constitute noncompliance with the provisions of board regulations or law and submits (i) a statement that such noncompliance has been remediated or (ii) a plan to correct such noncompliance within 90 days.

2. Immunity from enforcement action provided by this section will not apply if the noncompliance with provisions of board regulations or law by the principal broker or supervising broker was intentional or was the result of gross negligence by the principal broker or supervising broker.

3. Immunity from enforcement action provided by this section will apply only to the principal broker and supervising broker who conducts an audit and submits a voluntary compliance plan in accordance with this section and will not extend to any other broker or salesperson who may not be in compliance with board regulations or law.

4. Failure to complete the voluntary compliance program within 90 days from the date of plan submission will result in the loss of immunity from regulatory enforcement action. Repeated instances of a violation found as a result of a subsequent audit that was subject to the voluntary compliance program may be deemed by the board to constitute a failure to complete the prior voluntary compliance program.

18VAC135-20-240. Provision of ~~records~~ information to the board.

A. Unless otherwise specified by the board, or as set forth in § 54.1-2108 of the Code of Virginia, a licensee of the ~~Real Estate Board~~ board must produce to the board or any of its ~~the board's~~ the board's agents within 10 days of the request evidence of signature cards or bank records, any document, book, or record concerning any real estate transaction in which the licensee was involved, or for which the licensee is required to maintain records for inspection and copying by the board or ~~its~~ the board's agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

B. A licensee must respond to any other inquiry by the board or the board's agents within 21 days.

18VAC135-20-250. Response to any inquiry of the board. ~~(Repealed.)~~

~~A licensee must respond to an inquiry by the board, other than requested under 18VAC135-20-240, or its agents within 21 days.~~

18VAC135-20-260. Prohibited acts.

The following are prohibited acts:

- 1. ~~Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining~~ Obtaining or attempting to obtain, renew, reinstate, or maintain a license or certification by false or fraudulent representation;
- 2. Holding more than one license as a real estate broker or salesperson in Virginia, except as provided in this chapter;
- 3. ~~As a currently licensed real estate salesperson, sitting for the licensing examination for a salesperson's license;~~
- 4. ~~As a currently licensed real estate broker, sitting for a real estate licensing examination;~~
- 5. ~~3.~~ Signing an experience verification form without direct supervision or actual knowledge of the applicant's activities as defined in § 54.1-2100 of the Code of Virginia or unreasonably refusing to sign an experience verification form;
- 6. ~~4.~~ Having been convicted or found guilty regardless of the manner of adjudication in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, non-marijuana drug distribution, or ~~physical injury~~

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~~battery~~, or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions ~~shall~~ will be subject to the requirements of § 54.1-204 of the Code of Virginia. ~~Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision;~~

~~7. 5.~~ Failing to inform the board in writing within 30 days of ~~pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any convictions as stated described~~ in subdivision ~~6~~ 4 of this section;

~~8. 6.~~ Having ~~had a license as a real estate broker or real estate salesperson~~ a professional or occupational license that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction;

~~9. 7.~~ Failing to inform the board in writing within 30 days of a disciplinary action as ~~stated~~ described in subdivision ~~8~~ 6 of this section;

~~10. 8.~~ Having been found in a court or an administrative body of competent jurisdiction to have violated the Virginia Fair Housing Act, the Fair Housing Laws of any jurisdiction of the United States, including Title VIII of the Civil Rights Act of 1968 (82 Stat. 73) or the Civil Rights Act of 1866 (14 Stat. 27), there being no appeal therefrom or the time for appeal having elapsed;

9. Knowingly providing false, misleading, or incomplete information to an inquiry by the board or any of its agents;

10. Violating, inducing another to violate, cooperating with another to violate, or combining or conspiring with or acting as agent, partner, or associate for another to violate any of the provisions of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.) or 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, or any of the regulations of the board;

~~11. Actions constituting failing~~ Failing to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public, ~~including which includes~~ the following:

- a. A principal broker or supervising broker failing to ensure proper supervision and accountability over the firm's day-to-day financial dealings, escrow account, and daily operations;
- b. A broker failing to disburse funds from an escrow account according to the regulations or failing to properly retain documents relating to the basis for disbursal;
- c. A broker failing to ensure the licensees for whom the broker has oversight responsibility hold active licenses while practicing real estate;
- ~~d. A broker failing to provide accurate and timely reports to the board about a licensee's compliance with the board's laws and regulations;~~

~~e. d.~~ A broker failing to have signatory authority on all accounts;

~~f. e.~~ A broker failing to account for or remit any moneys coming into ~~a licensee's~~ the broker's possession that belong to another;

~~g. f.~~ A licensee failing to submit to the broker in a timely manner, all ~~earnest money deposits~~ escrow money, contracts, listing brokerage and other representation agreements, deeds of lease, or leasing agreements, disclosures, and any other documents for which the broker has oversight responsibility;

~~h. g.~~ A licensee ~~negotiating leases for a performing regulated activities for any third party through an unlicensed firm or without a principal broker, except for entities in which the licensee has an ownership interest, outside the licensee's brokerage firm or sole proprietorship;~~

~~i. h.~~ A licensee operating an unlicensed firm or acting as a principal broker;

~~j. i.~~ A licensee practicing real estate with an inactive or expired license;

~~k. j.~~ A licensee knowingly providing the broker with an earnest money deposit check from an account with insufficient funds;

~~l. k.~~ A licensee ~~allowing unsupervised~~ providing access to a ~~home property~~ without the owner's authorization; ~~m. A licensee failing to inform the broker of a transaction; and~~

~~n. l.~~ A licensee submitting unauthorized altered copies of a contract to the broker; and

~~12. Actions constituting engaging~~ Engaging in improper, fraudulent, or dishonest conduct, ~~including which includes~~ the following:

- a. A licensee attempting to divert commission from the firm or sole proprietorship and direct payment to a licensee or an unlicensed individual who is not a party to the transaction;
- b. A licensee fabricating or altering any document with the intent to mislead;
- c. A licensee signing any documents on a client's behalf without first obtaining ~~a client's~~ the proper written permission or legal authorization to sign ~~said~~ the documents on the client's behalf;
- d. A licensee making an ~~earnest money~~ escrow deposit payable to ~~himself~~ the licensee or negotiating the check without written authority;
- e. A licensee knowingly misrepresenting ownership of a property;
- f. A licensee submitting copies of the same earnest money deposit check for inclusion with multiple offers;

g. A licensee entering into agreements to be compensated for real estate services ~~while the licensee's~~ without an active license is inactive;

h. A licensee representing in offers that the licensee received ~~the~~ an earnest money deposit when the licensee has not received such deposit or knows the ~~check~~ payment is worthless; ~~and~~

i. A licensee misrepresenting who is holding ~~the earnest money~~ an escrow deposit; ~~and~~

j. A licensee sitting for an examination for a license the licensee already obtained or taking an examination on behalf of another.

18VAC135-20-270. Conflict of interest.

Actions constituting a conflict of interest include:

1. Being active with a real estate broker other than the licensee's principal broker, without the written consent of the principal broker; ~~and~~
2. Acting for more than one client in a transaction governed by the provisions of §§ 54.1-2139, 54.1-2139.01, and 54.1-2139.1 of the Code of Virginia without first obtaining the written consent of all clients; ~~and~~ 3. ~~Performing regulated activities as a standard agent, limited service agent, or independent contractor for any client outside the licensee's brokerage firm(s) or sole proprietorship(s).~~

18VAC135-20-280. ~~Improper brokerage commission financial transactions and dealings.~~

~~Actions resulting in an improper brokerage commission~~ A. ~~Improper financial transactions and dealings include:~~

1. Offering to pay ~~or~~, paying a transaction-based fee, fees, or ~~other~~ providing valuable consideration to any person not licensed in this or any jurisdiction for services that require a real estate license;
2. Accepting a commission, fee, compensation, or other valuable consideration, as a real estate salesperson or associate broker, for any licensed real estate services activity from any person or entity except the licensee's principal broker or supervising broker at the time ~~of the transaction~~ licensed real estate activity was performed without the prior written consent of the licensee's principal broker;
3. Receiving financial benefit from the use of any information about the property, the ~~transaction~~ licensed real estate activity, or the parties to the transaction, when the information is gained as a result of the performance of ~~acts specified in Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia~~ licensed real estate activity without the prior written consent of the licensee's principal broker, the clients, and, when applicable, the parties to the transaction;
4. ~~Receiving financial benefit from any person other than the licensee's principal broker at the time of the transaction, for the performance of any of the acts specified in Chapter 21~~

~~(§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia without the prior written consent of the licensee's principal broker;~~

~~5.~~ 4. Receiving financial benefit or other valuable consideration for any work or service related to a transaction without the prior written acknowledgment of the person paying for such work or service; and

~~6.~~ 5. Making a listing contract or lease which provides for a "net" return to the ~~seller/lessor~~ seller or lessor, leaving the licensee free to sell or lease the property at any price ~~he~~ the licensee can obtain in excess of the "net" price named by the ~~seller/lessor~~ seller or lessor.

B. Actions constituting improper dealing include offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized representative, or on any terms other than those authorized by the owner or the owner's authorized representative.

18VAC135-20-290. ~~Improper dealing. (Repealed.)~~

~~Actions constituting improper dealing include:~~

1. ~~Offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized representative, or on any terms other than those authorized by the owner or the owner's authorized representative;~~
2. ~~Placing a sign on any property without the consent of the owner of the property or the owner's authorized representative; and~~
3. ~~Causing any advertisement for sale, rent, or lease to appear in any format or medium without including in the advertisement the name of the firm or sole proprietorship.~~

18VAC135-20-300. ~~Misrepresentation/omission~~ Misrepresentation or omission.

~~Actions constituting misrepresentation or omission, or both, include:~~

1. Using "bait and switch" tactics by advertising or offering real property for sale or rent with the intent not to sell or rent at the price or terms advertised, unless the advertisement or offer clearly states that the property advertised is limited in specific quantity or for a specified time period and the licensee did in fact have at least that quantity for sale or rent at that price or terms at the time of advertising, including listing status and condition of property;
2. ~~Failure by~~ Failing as a licensee representing a seller or landlord as a standard agent to disclose in a timely manner to a prospective purchaser or tenant all material adverse facts pertaining to the physical condition of the property ~~which~~ that are actually known by the licensee;
3. Failing as a licensee to tender promptly to the ~~buyer and seller~~ client or unrepresented party every written offer, every

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written counteroffer, and every written rejection to purchase, option, or lease obtained on the property involved;

~~4. Failure by Failing as a licensee acting as an agent to disclose in a timely manner to the licensee's client all material facts related to the property or concerning the transaction when the failure to so disclose would constitute failure by the licensee to exercise ordinary care as defined in the brokerage agreement;~~

~~5. Notwithstanding the provisions of subdivision 4 of this section, a licensee acting as a dual representative shall not disclose Failing to provide in a timely manner to all principals to the transaction written notice of any material changes to the transaction;~~

6. Disclosing to one client represented in the dual representation confidential information relating to the transaction obtained during the representation of another client in the same dual representation unless otherwise provided by law when acting as a dual agent or dual representative;

~~6- 7. Failing to include the complete terms and conditions of the real estate transaction, including but not limited to any lease, property management agreement, or offer to purchase;~~

~~7- 8. Failing to include in any application, lease, or offer to purchase identification of all those holding any deposits;~~

~~8- 9. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon:~~

a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments, or loans;

b. Changes in terms or extensions of time for any of the items listed in ~~this subdivision~~ § 9 a of this section whether by renewal, deferment of action, or other means without the prior written consent of the principals to the transaction;

c. Acceptance, release, or substitution of security for any of the items listed in subdivision 8 subdivision 9 a of this section without the prior written consent of the principals to the transaction;

~~9- 10. Knowingly making any material misrepresentation; and~~

~~10- 11. Making a false promise through agents, salespersons, advertising, or other means.~~

18VAC135-20-310. Improper delivery of instruments.

Actions constituting improper delivery of instruments include:

1. Failing to make prompt delivery to each principal to a transaction, complete and legible copies of any written disclosures required by §§ 54.1-2138, 54.1-2139, 54.1-

2139.01, and 54.1-2139.1 of the Code of Virginia, listings, lease, offers to purchase, counteroffers, addenda and ratified agreements, and other documentation required by the agreement;

~~2. Failing to provide in a timely manner to all principals to the transaction written notice of any material changes to the transaction;~~

~~3- 2. Failing to deliver to the seller and buyer, at the time a real estate transaction is completed, a complete and accurate statement of receipts and disbursements of moneys received by the licensee, duly signed and certified by the principal or supervising broker or his the broker's authorized agent; provided, however, if the transaction is closed by a settlement agent other than the licensee or his the licensee's broker, and if the disbursement of moneys received by the licensee is disclosed on the applicable settlement statement, the licensee shall will not be required to provide the separate statement of receipts and disbursements; and~~

~~4- 3. Refusing or failing without just cause to surrender to the rightful owner, upon demand, any document or instrument which that the licensee possesses.~~

18VAC135-20-340. Effect of disciplinary action on subordinate licensees.

Action by the board resulting in the revocation, suspension, or denial of renewal of the license of any principal broker or sole proprietor ~~shall will~~ automatically result in an order that the licenses of any and all individuals active with the affected firm be returned to the board until such time as ~~they the licenses~~ are reissued upon the written request of a sole proprietor or principal broker pursuant to 18VAC135-20-170 B.

18VAC135-20-345. Effect of disciplinary action on certificates, approvals, and concurrent licenses.

The board ~~shall will~~ suspend, revoke or deny renewal of existing concurrent broker licenses when the board suspends, revokes, or denies renewal of another broker's license held by the same individual. The board will suspend, revoke, or deny renewal of existing instructor certificates and instructor approval when the board suspends, revokes, or denies renewal of a license held by the same individual.

18VAC135-20-350. Definitions. (Repealed.)

~~The following words and terms when used in this part, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:~~

~~"Accredited university, college, community college, or other school or educational institution," as used in § 54.1-2105 B 1-a of the Code of Virginia, means those accredited institutions of higher learning approved by the Virginia Council of Higher Education or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the~~

~~American Association of Collegiate Registrars and Admissions Officers.~~

~~"Class hour/clock hour" means 50 minutes.~~

~~"Equivalent course" means any course encompassing the basic educational curriculum of Virginia courses and approved by the board.~~

~~"Proprietary school" means (i) a privately owned school, (ii) a real estate professional association, or (iii) a related entity, which is not under the authority of the Department of Education, but approved by the Real Estate Board to teach real estate courses.~~

~~"Provider" means an accredited university, college, community college or high school offering adult distributive education courses, or a proprietary school.~~

18VAC135-20-360. Proprietary school standards, instructor qualifications and course requirements **Certification of proprietary schools.**

~~A. Every applicant to the Real Estate Board board for a proprietary school certificate shall must meet the standards provided in subsection A of § 54.1-2105.02 of the Code of Virginia by submitting a CPA-certified (i) letter attesting to the applicant's net worth or (ii) a balance sheet or financial statement certified to be accurate by the applicant. Such applicant shall must show a minimum net worth of \$2,000.~~

~~B. Every applicant to the Real Estate Board for certification as an instructor for prelicense education must meet two of the qualifications outlined in subdivisions 1 through 6 of this subsection:~~

- ~~1. A baccalaureate degree, an active Virginia real estate broker's license, and two consecutive years of discipline free active real estate experience immediately prior to application;~~
- ~~2. An active Virginia real estate broker's license and five consecutive years of discipline free active real estate experience immediately prior to application;~~
- ~~3. A professional designation such as, but not limited to, Accredited Land Consultant (ALC), Certified Residential Specialist (CRS), Certified Commercial Investment Member (CCIM), Certified Property Manager (CPM), Certified Residential Broker (CRB), Counselor Real Estate (CRE), Member Appraisal Institute (MAI), Society Industrial Office Realtors (SIOR), Senior Residential Appraiser (SRA), or Senior Real Estate Property Appraiser (SRPA);~~
- ~~4. A fully designated membership of the Real Estate Educators Association holding the Designated Real Estate Instructor (DREI) designation;~~
- ~~5. Possession of a valid teaching credential or certificate issued by the Commonwealth of Virginia or any other state with qualifications that are equal to or exceed Virginia~~

~~teacher qualifications, or at least five years of teaching experience in an accredited public, private, or parochial school or an accredited junior college, college, or university; and~~

~~6. An attorney member of the Virginia State Bar who is engaged in the field of real estate related law.~~

~~7. The board shall also consider evaluations from previous education courses the applicant has instructed and recommendations of course providers, coordinators, administrators, and institutions that have employed the applicant.~~

~~8. The board may waive the requirements of subdivisions 1 through 6 of this subsection upon review of proof of experience in related fields of real estate. The board has discretion to deny an applicant who has been the subject of a disciplinary action.~~

~~C. Every applicant to the Real Estate Board for approval as an instructor for continuing education and post license education shall have expertise in a specific field of real estate with at least three years of active experience and will teach only in the area of the applicant's expertise. Such applicants will be required to furnish proof of expertise, possibly including educational transcripts, professional certificates, letters of reference (a maximum of three), a resume, or any other type of documentation that will verify the applicant's expertise.~~

~~D. Prelicense courses must be acceptable to the board, be taught by a certified prelicense instructor, and are required to have a monitored, final written examination. Online distance learning courses must include a timer requiring licensees to be actively engaged online learning course content for at least 50 minutes to receive one hour of credit. Those schools which propose to offer prelicensing courses (Principles and Practices of Real Estate, Real Estate Brokerage, Real Estate Finance, Real Estate Law or Real Estate Appraisal, etc.) must submit a request, in writing, to the board prior to offering the courses and supply the following information:~~

- ~~1. Course content. All Principles and Practices of Real Estate courses must include the 25 topic areas specified in 18VAC135-20-400. All requests to offer broker courses must include a course syllabus acceptable to the board;~~
- ~~2. Name of the course's text and any research materials used for study assignments;~~
- ~~3. Description of any research assignments;~~
- ~~4. Copies of test or quizzes;~~
- ~~5. Information explaining how the "Principles" course will require 60 hours of study, or how each broker related course will require 45 hours of study, in compliance with § 54.1-2105 of the Code of Virginia; and~~

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6. Information about recordkeeping for the type of course delivery.

E. Providers of continuing education and post license education courses shall submit all subjects to the board for approval prior to initially offering the course. Correspondence and other distance learning courses offered by an approved provider must include appropriate testing procedures to verify completion of the course, including requiring licensees who complete correspondence or other distance learning courses to file a notarized affidavit certifying compliance with the course requirements with the education provider or with the licensee's own records. Online distance learning courses must include a timer requiring licensees to be actively engaged online learning course content for at least 50 minutes to receive one hour of credit. The board shall approve courses and the number of hours approved for each course based on the relevance of the subject to the performance of the duties set forth in § 54.1-2100 of the Code of Virginia.

F. Approval of prelicense, continuing education, and post license education courses shall expire on December 31 three years from the year in which the approval was issued, as indicated on the approval document.

G. All schools must establish and maintain a record for each student. The record shall include: the student's name and address, the course name and clock hours attended, the course syllabus or outline, the name 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. Schools must maintain all student and class records for a minimum of five years.

H. All schools must provide each student with a certificate of course completion or other documentation that the student may use as proof of course completion. Such documentation shall contain the student's name, school name, course name, course approval number, course completion date, hours of credit completed, and a statement that the course is "Approved by the Real Estate Board."

I. All providers of continuing education or post license education courses shall electronically transmit course completion data to the board in an approved format within five business days of the completion of each individual course. The transmittal will include each student's name, license number, or social security number; the date of successful completion of the course; the school's code; and the board's code.

18VAC135-20-361. Certification of instructors.

A. Every applicant to the board for certification as an instructor for prelicense education must meet two of the qualifications outlined in subdivisions 1 through 7 of this subsection:

	<u>Prerequisite Credential</u>	<u>Educa- tion</u>	<u>Experience</u>
1.	<u>Active real estate broker license</u>	<u>Baccal- aureate degree or higher</u>	<u>Two consecutive years of active real estate experience immediately prior to application.</u>
2.	<u>Active real estate broker license</u>	<u>N/A</u>	<u>Five consecutive years of active real estate experience immediately prior to application.</u>
3.	<u>A professional designation that has been approved by the board.</u>	<u>N/A</u>	<u>N/A</u>
4.	<u>Fully designated membership of the Real Estate Educators Association holding the Designated Real Estate Instructor (DREI) designation.</u>	<u>N/A</u>	<u>N/A</u>
5.	<u>Valid teaching credential issued by the Commonwealth of Virginia, or any other state with qualifications that are equal to or exceed Virginia teacher qualifications.</u>	<u>N/A</u>	<u>N/A</u>
6.	<u>N/A</u>	<u>N/A</u>	<u>At least five years of teaching experience in the real estate field or at an accredited university, college, community college, or other school or educational institution, or their equivalent.</u>
7.	<u>Attorney member of the Virginia State Bar who is engaged in the field of real estate- related law.</u>	<u>N/A</u>	<u>N/A</u>

The board may waive the requirements of subdivisions 1 through 7 of subsection A upon review of proof of substantially equivalent qualifications.

B. Every applicant to the board for certification as an instructor for continuing education and post-license education must have expertise in a specific field of real estate with at least three years of active experience in that field in the five years immediately preceding the date of application and must teach only in the area of such applicant's expertise. Such applicants must furnish proof of expertise.

C. The board has discretion to deny an applicant who has been the subject of a disciplinary action.

18VAC135-20-362. Approval of courses.

A. Prelicense courses must be acceptable to the board, be taught by a certified prelicense instructor, and are required to have a monitored, final written assessment. All courses offered by an approved provider must include a mechanism designed to ensure reasonably that licensees are actively engaged for each class hour. Schools applying for approval to offer prelicense education courses must submit an application on a form prescribed by the board and gain approval by the board prior to initially offering the course and supply the following information:

1. Course syllabus:

a. All Principles and Practices of Real Estate courses must include the topic areas specified in 18VAC135-20-400.

b. All requests to offer broker courses must include a course syllabus acceptable to the board.

2. Name of the course text and any research materials used for study assignments;

3. Description of any research assignments;

4. Copies of proficiency assessments, tests, or quizzes; and

5. Information about recordkeeping for the type of course delivery.

B. Continuing education and post-license education course requirements.

1. Schools applying for approval to teach continuing education and post-license education courses must submit an application on a form prescribed by the board and gain approval by the board prior to initially offering the course.

2. All courses offered by an approved provider must include a mechanism designed to ensure reasonable that licensees are actively engaged for each class hour.

3. Correspondence and other distance learning courses offered by an approved provider must include appropriate testing procedures to verify completion of the course, including requiring licensees who complete correspondence or other distance learning courses to file a notarized affidavit

certifying compliance with the course requirements with the education provider or with the licensee's own records.

4. The board will approve courses and the number of hours approved for each course based on the relevance of the subject to the performance of the duties set forth in § 54.1-2100 of the Code of Virginia.

5. Course content must be specific to the current laws and regulations of Virginia where applicable.

C. Approval of prelicense, continuing education, and post-license education courses, as well as post-license and continuing education instructors, will expire three years from the last day of the month in which the approval was granted by the board.

D. All schools must establish and maintain a record for each student. The record must include:

1. The student's name and address;

2. The course name and clock hours attended;

3. The course syllabus or outline;

4. The name of the instructor;

5. The date of successful completion; and

6. The board's course code.

Records must be available for inspection during normal business hours by authorized representatives of the board. Schools must maintain all student and class records for a minimum of five years.

E. All schools must provide each student with a certificate of course completion or other documentation that the student may use as proof of course completion. Such documentation must contain:

1. The student's name;

2. School name;

3. Course name;

4. Course approval number;

5. Course completion date;

6. Hours of credit completed; and

7. A statement that the course is "Approved by the Real Estate Board."

F. All providers of prelicense, continuing education, or post-license education courses must electronically transmit course completion data to the board in an approved format and method within five business days of the completion of each individual course.

18VAC135-20-370. Fees. (Repealed.)

A. The application fee for an original certificate for a

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~~proprietary school shall be \$265.~~

~~B. The renewal fee for proprietary school certificates expiring every two years from the last day of the month in which they were issued shall be \$135.~~

~~C. If the requirements for renewal of a proprietary school certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date noted on the certificate, a reinstatement fee of \$205 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant. If the renewal requirements are not completed within 30 days of the expiration date noted on the proprietary school approval, the proprietary school shall no longer offer board-approved courses.~~

~~D. The application for an original prelicense education instructor certificate shall be \$265.~~

~~E. The renewal fee for a prelicense instructor certificate expiring every two years from the last day of the month in which it was issued shall be \$115.~~

~~F. If the requirements for renewal of an instructor certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date on the certificate, a reinstatement fee of \$170 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant.~~

~~G. The board in its discretion may deny renewal of a certificate for the same reasons it may deny initial approval.~~

18VAC135-20-380. Posting school certificate of approval and instructor certificates. (Repealed.)

~~Copies of school certificates of approval and instructor certificates, if applicable, must be available at the location a course is taught.~~

18VAC135-20-390. Withdrawal of approval.

The board may withdraw approval of any school, course or instructor for the following reasons:

1. The school, instructors, courses, or subjects no longer meet the standards established by the board.
2. The school or instructor solicits information from any person for the purpose of discovering past examination questions or questions ~~which~~ that may be used in future examinations.
3. The school or instructor distributes to any person copies of examination questions, or otherwise communicates to any person examination questions, without receiving the prior

written approval of the copyright owner to distribute or communicate those questions.

4. The school, through an agent or otherwise, advertises ~~its~~ the school's services in a fraudulent, deceptive, or misrepresentative manner.

5. Officials, instructors, or designees of the school sit for a real estate licensing examination for any purpose other than to obtain a license as a broker or salesperson.

6. A school or instructor fails to ensure the timely and accurate electronic transmission of course completion data.

18VAC135-20-400. Course content of real estate principles and practices.

The following ~~shall~~ must be included in the four-semester-hour or six-quarter-hour course ~~which shall not have less than~~. Such course must be at least 60 class hours:

1. Economy and social impact of real estate,
2. Real estate market and analysis,
3. Property rights,
4. Contracts,
5. Deeds,
6. Mortgages and deeds of trust,
7. Types of mortgages,
8. Leases,
9. Liens,
10. Home ownership,
11. Real property and title insurance,
12. Investment,
13. Taxes in real estate,
14. Real estate financing,
15. Brokerage agreements and agency contract responsibilities,
16. Real estate marketing,
17. Real property management,
18. Search, examination, and registration of title,
19. Title closing,
20. Appraisal of residential and income producing property,
21. Planning subdivision developments and condominiums,
22. Regulatory statutes,
23. Housing legislation,
24. Fair housing statutes, and
25. Real Estate Board regulations.

18VAC135-20-410. Broker courses.

A. Brokerage ~~shall~~ must be a required specific course with three semester hours or six quarter hours, but ~~not less than~~ at least 45 class hours, constituting a complete course.

B. "Related subjects," as referred to in § 54.1-2105 of the Code of Virginia, ~~shall~~ must be real estate related and ~~shall include, but are not limited to,~~ including courses in property management, land planning and land use, business law, real estate economics, and real estate investments.

C. No more than 45 class hours of broker-related courses ~~shall~~ will be accepted in lieu of specific broker courses set forth in § 54.1-2105 of the Code of Virginia.

~~D. Schools intending to offer equivalent broker courses must submit to the board for approval a copy of the syllabus of the particular course with a cover letter requesting approval.~~

VA.R. Doc. No. R24-7813; Filed August 6, 2025, 3:36 p.m.

**BOARD FOR PROFESSIONAL SOIL SCIENTISTS,
WETLAND PROFESSIONALS, AND GEOLOGISTS**

Final Regulation

Title of Regulation: **18VAC145-20. Professional Soil Scientists Regulations (amending 18VAC145-20-60, 18VAC145-20-91, 18VAC145-20-100, 18VAC145-20-120, 18VAC145-20-130, 18VAC145-20-140, 18VAC145-20-145, 18VAC145-20-160).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: October 1, 2025.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, fax (804) 527-4294, or email soilscientist@dpor.virginia.gov.

Summary:

The amendments (i) remove unnecessary provisions; (ii) extend the period for reinstatement of a license to two years; (iii) clarify provisions regarding failure to reinstate a license; (iv) remove a requirement that continuing education (CE) activity involving interaction with instructors be taught by instructors who are competent in the subject matter, either by education or experience; (v) revise provisions regarding the requirement for CE activity to have an assessment by the sponsor; and (vi) revise provisions regarding the computation of CE credit.

Changes to the proposed regulation include (i) allowing applicants to provide an email address instead of a mailing address and (ii) updating forms.

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.

18VAC145-20-60. General application requirements.

A. Applicants for licensure [~~shall~~ must] meet the requirements established in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

~~B. All applications and accompanying materials become the property of the board upon receipt by the board. The applicant must provide a current mailing [or email] address.~~

C. The board may make further inquiries and investigations with respect to ~~applicants'~~ an applicant's qualifications and documentation to confirm or amplify information supplied.

D. Applicants who do not meet the requirements of this chapter may be approved following consideration by the board in accordance with the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

18VAC145-20-91. Core course requirements.

~~A. At least 15 semester hours selected from the identified courses in this subsection~~ section or the equivalent are required for course work or a degree core to be considered a degree in a soil science curriculum or a related natural science degree.

Intro to Crop and Soil Environmental Sciences	Soil - Plant - Animal Interrelationships in Grasslands
Soil Evaluation	Aluminum Chemistry in the Soil System
Soils	Soil Physics or Physical Properties
Soils Lab	Soil Genesis/Classification
Man and Environment	Soil Fertility/Management
Soil Survey/Taxonomy	Soil Fertility/Management Lab
Soil Microbiology	Soil/Groundwater Pollution
Soil Resource Management	Soils for Waste Disposal
Soil Chemistry	Soil Microbiology Lab
Topics in Soil Genesis	Forest Soils/Hydrology
Soil Seminar	Clay Mineralogy
Special Studies (Soils Based)	Soil Interpretations
Field Studies (Soils Based)	Advanced Concepts in Soil Genesis
Soils and Land Use	Independent Studies (Soil Based)

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Soil Physical and Colloidal Chemistry	Soil Biochemistry
	Soil Geomorphology
Soil - Plant Relations	Soil Conservation

~~B. Applicants may petition the board to review the syllabus and other supporting documents of a course not listed in subsection A of this section for academic credit. The course must contain content that enhances applicants' knowledge in the study of soils. Applicants must demonstrate course equivalency in order to receive academic credit. Petitions to the board for such review must be made in writing.~~

18VAC145-20-100. Examination.

A. Applicants [~~shall be~~ are] required to pass all parts of the CSSE-prepared exam.

~~B. Applicants shall meet all other requirements established in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia in order to be granted board approval to sit for the exam.~~

~~C. B.~~ Completed applications must be received by the board no less than 60 days prior to the exam date or applicants may be deferred to the next exam administration.

~~D. C.~~ Applicants approved by the board [~~shall be~~ are] exam-eligible for a period of three years from the date of their initial board approval. Applicants who do not pass the exam at the end of the three-year period are no longer exam-eligible and must reapply as a new applicant.

~~E. To become exam-eligible again, applicants shall reapply to the board and meet all entry requirements current at the time of their reapplication. Upon approval by the board, applicants shall become exam-eligible for another period of three years.~~

~~F. D.~~ Board-approved applicants eligible for admission to both parts of the exam must first pass the Fundamentals in Soil Science exam before being admitted to the Professional Practices in Soil Science exam.

~~G. E.~~ Applicants will be notified by the board of whether they passed or failed the exam. The exam may not be reviewed by applicants. Exam scores are final and not subject to change.

18VAC145-20-120. Expiration.

Licenses issued under this chapter [~~shall~~ will] expire two years from the last day of the month in which ~~they were~~ the license was issued, ~~as indicated on the license.~~

18VAC145-20-130. Procedures for renewal.

A. The board ~~sends~~ will send a renewal notice to the license holder ~~at the last known address of record~~ at least 30 days prior to expiration of the license. Failure to receive this notice does not relieve the license holder from the requirement to renew the license. License holders [~~shall~~ must] keep the board

informed of their current mailing [or email] address. Changes of address [~~shall~~ must] be reported to the board in writing within 30 calendar days of the change.

B. In addition to the established fee, proof of satisfactory completion of continuing education (CE) [~~shall be~~ is] required to renew a license. Documentation submitted as proof of completion of CE must demonstrate that the CE meets the requirements established in 18VAC145-20-145.

C. If the renewal fee and proof of completion of CE are not received by the board within 30 days following the license expiration date, a late renewal fee of \$25 [~~shall~~ will] be required in addition to the regular renewal fee. Upon receipt of the requisite fee and proof of completion of CE, the license [~~shall~~ will] be renewed for an additional two years. A license that is not renewed within six months after its expiration is no longer eligible for renewal. The license may be reinstated pursuant to the requirements of 18VAC145-20-140.

D. The date the fee and documented proof of completion of CE are received by the board or its agent [~~shall~~ will] determine whether a late renewal fee, the reinstatement fee, or reapplication is required.

E. A license suspended by board order may not be renewed until the period of suspension has ended and all terms and conditions of the board's order have been met. Individuals renewing licenses within 30 days after the suspension is lifted will not be required to pay a late fee.

F. A revoked license may not be renewed. An individual whose license has been revoked [~~shall~~ must] file a new application and obtain board approval to recover licensure. Examination may not be waived.

18VAC145-20-140. Reinstatement.

A. If the renewal fee, late renewal fee, and documented proof of completion of CE are not received by the board within six months following the license expiration date, the license holder [~~shall~~ will] be required to pay the fee for reinstatement. The fee for reinstatement [~~shall include~~ includes] the regular renewal fee plus the reinstatement fee.

B. If the reinstatement fee and documented proof of completion of CE are not received by the board within ~~one year~~ two years following the license expiration date, the individual [~~shall~~ will] no longer be ~~considered a license holder~~ eligible for reinstatement. To become licensed again, the individual [~~shall~~ must] apply as a new applicant and meet all current education, experience, and examination requirements as established in this chapter.

18VAC145-20-145. Continuing education requirements.

A. Licensees [~~shall~~ must] complete eight ~~contact~~ hours of continuing education (CE) per year for renewal or reinstatement. CE [~~shall~~ must] be completed pursuant to the provisions of this section.

B. CE must be completed during the time prior to the renewal or reinstatement of a license and [~~shall~~ will] be valid for that renewal or reinstatement only.

C. CE activities completed by licensees may be accepted by the board, provided the activity:

1. Consists of content and subject matter directly related to the practice of soil science;
2. Has a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the practice of soil science and may be in areas related to business practices, including project management, risk management, and ethics, that have demonstrated relevance to the practice of soil science as defined in § 54.1-2200 of the Code of Virginia;
- ~~3. Is taught by instructors who are competent in the subject matter, either by education or experience, for those activities involving an interaction with an instructor;~~
- ~~4. 3.~~ Contains an assessment by the sponsor at the conclusion of the self-directed activity ~~that verifies that the licensee has successfully achieved the purpose and objective for any self-directed activity;~~ and
- ~~5. 4.~~ Results in documentation that verifies the licensee's successful completion of the activity.

D. Computation of credit.

1. Fifty contact minutes [~~shall~~ will] equal one hour of CE. For activities that consist of segments that are less than 50 minutes, those segments [~~shall~~ will] be totaled for computation of CE for that activity.
- ~~2. The number of hours required to successfully complete any CE activity must have been predetermined by the sponsor. A licensee shall not claim more credit for any CE activity than was predetermined by the sponsor at the time the activity was completed.~~
- ~~3. 2.~~ A licensee may not receive credit for any CE activity that was not completed in its entirety. No credit [~~shall~~ will] be given for partial completion of a CE activity.
- ~~4. 3.~~ A licensee applying for renewal or reinstatement [~~shall~~ will] not receive credit for completing a CE activity with the same content more than once during the time period prior to the renewal or reinstatement.

18VAC145-20-160. Professional conduct.

A licensed professional soil scientist:

1. [~~Shall~~ Must] not submit any false statements, make any misrepresentations, or fail to disclose any facts requested concerning any application for initial licensure, renewal, or reinstatement;
2. [~~Shall~~ Must] not engage in any fraud, deceit, or misrepresentation in advertising, ~~in~~ soliciting, or ~~in~~ providing professional services;

3. [~~Shall~~ Must] not knowingly sign, stamp, or seal any plans, drawings, blueprints, surveys, reports, specifications, maps, or other documents not prepared or reviewed and approved by ~~him~~ the licensed professional;

4. [~~Shall~~ Must] not knowingly represent a client or employer on a project on which ~~he~~ the licensed professional represents or has represented another client or employer without making full disclosure ~~thereof~~ of such representation;

5. [~~Shall~~ Must] express a professional opinion only when it is founded on adequate knowledge of established facts at issue and based on a background of technical competence in the subject matter;

6. [~~Shall~~ Must] not knowingly misrepresent factual information in expressing a professional opinion;

7. [~~Shall~~ Must] immediately notify the client or employer and the appropriate regulatory agency if ~~his professional~~ the judgment of the licensed professional is overruled and not adhered to when advising appropriate parties of any circumstances of a substantial threat to the public health, safety, or welfare; and

8. [~~Shall~~ Must] exercise reasonable care when rendering professional services and [~~shall~~ must] apply the technical knowledge, skill, and terminology ordinarily applied by practicing soil scientists.

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

[FORMS (18VAC145-20)

~~Professional Soil Scientist License Application, A439-3401LIC-v3 (rev. 8/2025)~~

[Professional Soil Scientist License Application, A439-3401LIC-v4 \(rev. 10/2025\)](#)

[Professional Soil Scientist Experience Log, A439-3401EXP-v1 \(rev. 9/2013\)](#)

~~Professional Soil Scientists License Renewal Form, A439-3401REN-v2 (rev. 8/2025)~~

[Professional Soil Scientists License Renewal Form, A439-3401REN-v3 \(rev. 10/2025\)](#)

[Professional Soil Scientists, Professional Wetland Delineator, and Geologists - Universal License Recognition \(ULR\) Application, A439-3401_02_28ULR-v2 \(rev. 8/2025\) \]](#)

VA.R. Doc. No. R24-7619; Filed July 30, 2025, 7:55 a.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

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

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

BOARD OF COUNSELING

BOARD OF DENTISTRY

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

BOARD OF HEALTH PROFESSIONS

DEPARTMENT OF HEALTH PROFESSIONS

BOARD OF LONG-TERM CARE ADMINISTRATORS

BOARD OF MEDICINE

BOARD OF NURSING

BOARD OF OPTOMETRY

BOARD OF PHARMACY

BOARD OF PHYSICAL THERAPY

BOARD OF PSYCHOLOGY

BOARD OF SOCIAL WORK

BOARD OF VETERINARY MEDICINE

Title of Document: [Virginia Freedom of Information Act Requests](#).

Public Comment Deadline: September 24, 2025.

Effective Date: September 25, 2025.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, fax (804) 915-0382, or email erin.barrett@dhp.virginia.gov.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

Title of Document: [Transit and Commuter Assistance Grant Application Manual](#).

Public Comment Deadline: September 24, 2025.

Effective Date: September 25, 2025.

Agency Contact: Andrew Wright, Director of Policy, Communications, and Legislative Affairs, Department of Rail and Public Transportation, 600 East Main Street, Suite 2102, Richmond, VA 23219, telephone (804) 241-0301, or email andrew.wright@drpt.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.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Titles of Documents: [Guidance Document Regarding CPE for Home Inspectors with the NRS Specialty.](#)

[Guidance Document Regarding Inspections of Specific Components of a Residential Building.](#)

[Home Inspector Applicant's Experience Verification of Inspections Completed.](#)

[Home Inspector Regulations; Meaning of Describe.](#)

[Meaning of "Direct Supervision" in 18VAC15-40-32 of the Home Inspector Licensing Regulations.](#)

[NRS Specialty for Inspections Conducted by a Home Inspector on Homes Under Construction.](#)

Public Comment Deadline: September 24, 2025.

Effective Date: October 1, 2025.

Agency Contact: Joseph Haughwout, Regulatory Affairs Manager, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8566, fax (804) 527-4403, or email joseph.haughwout@dpor.virginia.gov.

DEPARTMENT OF HEALTH PROFESSIONS

BOARD OF MEDICINE

Title of Document: [Mixing, Diluting, or Reconstituting of Drugs for Administration.](#)

Public Comment Deadline: September 24, 2025.

Effective Date: September 25, 2025.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, fax (804) 915-0382, or email erin.barrett@dhp.virginia.gov.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

Title of Document: [Transit Ridership Incentive Program Guidelines.](#)

Public Comment Deadline: September 24, 2025.

Effective Date: September 25, 2025.

Agency Contact: Andrew Wright, Director of Policy, Communications, and Legislative Affairs, Department of Rail and Public Transportation, 600 East Main Street, Suite 2102, Richmond, VA 23219, telephone (804) 241-0301, or email andrew.wright@drpt.virginia.gov.

GENERAL NOTICES

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Public Meeting and Opportunity for Public Review and Comment for the Mental Health and Substance Use Prevention, Treatment, and Recovery Services Block Grants

The Commonwealth of Virginia receives federal funds each year from the [Substance Abuse and Mental Health Services Administration \(SAMHSA\)](#) under the Community Mental Health Services Block Grant (MHBG) and the Substance Use Prevention, Treatment, and Recovery Services Block Grant (SUPTRSBG) to support the delivery of treatment and supports to adults with serious mental illness and children and youth with serious emotional disturbance (MHBG), and individuals with substance use disorders (SUPTRSBG).

The [Office of Community Operations](#) within the Office of Enterprise Management Solutions administers the block grants regulations and coordinates the applications. For Federal Fiscal Year (FFY) 2024, the Commonwealth was awarded \$24.7 million in MHBG funds and \$48 million in SUPTRSBG funds. For FFY 2025, the Commonwealth was awarded \$25.2 million in MHBG funds and \$47.6 million in SUPTRSBG funds. These funds support a wide variety of services provided by Virginia's community services boards and private providers.

As the recipient of these federal funds, DBHDS is required to send an annual plan and biennial application to SAMHSA. The Federal Fiscal Year 2026 to 2027 Combined Mental Health and Substance Use Prevention, Treatment, and Recovery Services Block Grants Application Draft for the Commonwealth has been posted at <https://dbhds.virginia.gov/wp-content/uploads/2024/10/2026-27-Combined-SAMHSA-MH-SUPTRS-Block-Grants-Application-Draft1.pdf>.

DBHDS invites review and comment from the public on the application during the federally mandated public comment period.

Public hearing: Thursday August 28, 2025, 11 a.m. to 1 p.m., Virginia Association-Community Services, 6641 West Broad Street, Suite 102, Richmond, VA 23230.

Final public comments regarding last year's application and the DBHDS response can be seen at <https://dbhds.virginia.gov/wp-content/uploads/2024/10/24-25-Combined-Mini-Application-Public-Comments-Final-10-15-24.pdf>.

For any written public comment or questions about the block grants or the application, please contact the Office of Community Operations at communityoperations@dbhds.virginia.gov or by postal mail at DBHDS, Office of Enterprise Management Solutions, P.O. Box 1797 Richmond, VA 23218-1797.

Contact Information: Susan Puglisi, Regulatory Research Specialist, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, fax (804) 371-6638, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Town of Lebanon

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for the Town of Lebanon for violations of the State Water Control Law and regulations in Russell County. 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 written comments from August 25, 2025, through September 24, 2025.

Contact Information: Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Proposed Enforcement Action for George's Chicken LLC

The Department of Environmental Quality (DEQ) is proposing an enforcement action for George's Chicken LLC for violations of State Water Control Law and regulations in Shenandoah County, 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 written comments from August 25, 2025, to September 24, 2025.

Contact Information: Francesca Wright, Enforcement Specialist, Department of Environmental Quality, 4411 Early Road, Rockingham, VA 22801, or email vro.enf@deq.virginia.gov.

Proposed Enforcement Action for Page County School Board

The Department of Environmental Quality (DEQ) is proposing an enforcement action for Page County School Board for violations of State Water Control Law and regulations at Page County High School and Middle School sewage treatment plant in Page County, 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 written comments from August 25, 2025, to September 24, 2025.

Contact Information: Francesca Wright, Enforcement Specialist, Department of Environmental Quality, 4411 Early Road, Rockingham, VA 22801, or email vro.enf@deq.virginia.gov.

Proposed Enforcement Action for Reese Real Estate Hillsville LLC

The Department of Environmental Quality (DEQ) is proposing an enforcement action for Reese Real Estate Hillsville LLC for violations of the State Water Control Law in Carroll County, Virginia. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept written comments from August 25, 2025, through September 24, 2025.

Contact Information: Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Public Meeting and Opportunity for Public Comment for a Cleanup Plan for Deep Run, Dover Creek, and Upham Brook Watersheds

Purpose of Notice: The Department of Environmental Quality (DEQ) seeks public comment on the development of a cleanup study, also known as a total maximum daily load (TMDL) report, for Deep Run, Dover Creek, and Upham Brook Watersheds in Henrico County, Goochland County, and the City of Richmond. These streams are listed as impaired since monitoring data does not meet Virginia's water quality standards for aquatic life (benthics). 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. A component of a cleanup study is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A14 of the Code of Virginia for adoption of the WLA into the Water Quality Management Planning Regulation (9VAC25-720) after completion of the study. The adoption of the WLA may require new or additional requirements for entities holding a Virginia Pollutant Discharge Elimination System (VPDES) permit in these watersheds.

A study has been completed for Deep Run, Dover Creek, and Upham Brook Watersheds to identify pollutant sources and recommend reductions to address benthic aquatic life impairments. At the meeting, DEQ will provide an overview of the draft report and present updated sediment and phosphorus load allocations since the last public meeting that was held in May of 2025. Citizens are invited to provide comments on the study.

Cleanup Study Location: The cleanup study addresses the following impaired stream segments:

The Upham Brook stream segment, located in Henrico County and the City of Richmond, is 12.15 miles in length, begins at the headwaters, and continues to the confluence with the Chickahominy River.

The North Run stream segment, located in Henrico County, is 7.90 miles in length, begins at the headwaters, and continues to the confluence with the Upham Brook.

The Jordans Branch stream segment, located in Henrico County and the City of Richmond, is 2.19 miles in length, begins at the headwaters, and continues to the confluence with Upham Brook.

The Deep Run stream segment, located in Henrico County, is 4.16 miles in length, begins at the headwaters, and continues to the pond at river mile 1.47.

The Stony Run stream segment, located in Henrico County, is 2.36 miles in length, begins at the headwaters to the extent of backwater at the pond, and continues from the dam of the pond downstream to the mouth at Deep Run.

The Stony Run unnamed tributary stream segment, located in Henrico County, is 1.27 miles in length, begins at the headwaters, and continues to the mouth at Stony Run.

The Dover Creek stream segment, located in Goochland County, is 4.76 miles in length, begins at the headwaters, and continues to the upstream limit of Dover Lake.

TMDL Community Engagement Meeting: TMDL community engagement meetings to assist in development of this cleanup study were convened on July 10, 2023, February 29, 2024, and February 21, 2025.

Public Meeting: A public meeting on the development of the cleanup study will be held at Department of Environmental Quality, Piedmont Regional Office Training Room, 4949-A Cox Rd, Glen Allen, VA 23060, on August 26, 2025, at 2:30 p.m.

In the event of inclement weather, the meeting will be held August 27, 2025, at the same time and location stated.

Public Comment Period: August 26, 2025, to September 25, 2025.

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.

The contact for public comments, document requests, and additional information is provided at the end of this notice.

The public may review the cleanup study at the following website address under the heading James River Tributaries-Henrico/Goochland/City of Richmond: <https://www.deq.virginia.gov/our-programs/water/water-quality/tmdl-development/tmdls-under-development>.

Contact Information: Denise Moyer, Total Maximum Daily Load Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 712-9538, or email denise.moyer@deq.virginia.gov.

General Notices

Notice of Release of the Final 2024 §§ 305(b)/303(d) Water Quality Assessment Integrated Report

The Virginia Department of Environmental Quality (DEQ) will release the Final 2024 §§ 305(b)/303(d) Water Quality Assessment Integrated Report on August 25, 2025.

The Integrated Report combines the § 305(b) Water Quality Assessment and the § 303(d) Report on Impaired Waters. The draft report was available for public comment April 22, 2024, through May 22, 2024. Comments were received from the public and several water quality organizations across the state. The U.S. Environmental Protection Agency approved the final report on July 28, 2025.

The final report, public comment-response document, and GIS data will be available for download on the website after August 25 at <https://www.deq.virginia.gov/our-programs/water/water-quality/assessments/integrated-report>.

Questions regarding the report can be directed to the contact listed.

Contact Information: Sandra Mueller, Office of Water Monitoring and Assessment, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1388, or email sandra.mueller@deq.virginia.gov.

Ampliform LLC Notice of Intent for a Small Renewable Energy Project (Solar) - Permit by Rule - Dinwiddie County

Ampliform LLC has provided the Department of Environmental Quality (DEQ) a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project (solar) in Dinwiddie County, pursuant to 9VAC15-60. The Lew Jones Solar Project will be located at 13597 Lew Jones Road, DeWitt, Virginia at a geographic information system (GIS) centroid of Latitude 37.0378586, Longitude -77.6653713. The proposed project is a 20-megawatt alternating current photovoltaic ground-mounted solar facility comprised of approximately 43,900 solar modules. The project area is approximately 307.5 acres with a disturbance zone of 246.9 acres.

Contact Information: Amber Foster, Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 774-8474, or email amber.foster@deq.virginia.gov.

Seven Bridges Solar LLC Withdrawal of Notice of Intent for a Small Renewable Energy Project (Solar) - Permit by Rule - Mecklenburg County

Seven Bridges Solar LLC has withdrawn its notice of intent for the 116-megawatt Seven Bridges project proposed in Mecklenburg County. The original notice was published in the Virginia Register on December 23, 2019.

Contact Information: Amber Foster, Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111

East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 774-8474, or email amber.foster@deq.virginia.gov.

VSF Solar 1 LLC Withdrawal of Notice of Intent for a Small Renewable Energy Project (Solar) - Permit by Rule - Westmoreland County

VSF Solar 1 LLC has withdrawn its notice of intent for VSF Solar 1, LLC, DEQ number RE0000085, a 20-megawatt project proposed in Westmoreland County. The original notice was posted in the Virginia Register on October 1, 2108.

Contact Information: Susan Tripp, Small Renewable Energy Permit by Rule Program, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 664-3470, or email susan.tripp@deq.virginia.gov.

VSF Solar 2 LLC Withdrawal of Notice of Intent for a Small Renewable Energy Project (Solar) - Permit by Rule - Westmoreland County

VSF Solar 2 LLC has withdrawn its notice of intent for VSF Solar 2, LLC, DEQ number RE0000099, an 11-megawatt project proposed in Westmoreland County. The original notice was posted in the Virginia Register on December 24, 2018.

Contact Information: Susan Tripp, Small Renewable Energy Permit by Rule Program, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 664-3470, or email susan.tripp@deq.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

BOARD FOR CONTRACTORS

Title of Regulation: **18VAC50-22. Board for Contractors Regulations.**

Publication: 41:25 VA.R. 2686-2700; July 28, 2025.

Correction to Final Regulation:

Page 2694, 18VAC50-22-100,

Table Row 10, Column 3, delete \$110, insert \$125

Table Row 11, Column 3, delete \$110, insert \$125

Table Row 12, Column 3, delete \$110, insert \$125

VA.R. Doc. No. R23-7412; Filed August 1, 2025, 7:47 a.m.

