



VIRGINIA

REGISTER OF REGULATIONS

VOL. 42 ISS. 11

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

January 12, 2026

TABLE OF CONTENTS

Register Information Page	1361
Publication Schedule and Deadlines	1362
Petitions for Rulemaking	1363
Periodic Reviews and Small Business Impact Reviews	1366
Notices of Intended Regulatory Action	1367
Regulations	1368
2VAC5-425. Vapor Pressure Requirements for Gasoline Ethanol Blends (Fast-Track)	1368
6VAC35-20. Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (Fast-Track)	1370
8VAC20-23. Licensure Regulations for School Personnel (Final)	1372
8VAC20-150. Management of the Student's Scholastic Record in the Public Schools of Virginia (Fast-Track)	1373
8VAC20-720. Regulations Governing Local School Boards and School Divisions (Fast-Track)	1373
8VAC20-250. Regulations Governing the Testing of Sight and Hearing of Pupils (Fast-Track)	1374
8VAC20-690. Regulations for Scoliosis Screening Program (Fast-Track)	1374
8VAC20-720. Regulations Governing Local School Boards and School Divisions (Fast-Track)	1374
8VAC20-543. Regulations Governing the Review and Approval of Education Programs in Virginia (Final)	1377
8VAC20-650. Regulations Governing the Determination of Critical Teacher Shortage Areas (Fast-Track)	1390
9VAC20-60. Virginia Hazardous Waste Management Regulations (Final)	1392
9VAC20-81. Solid Waste Management Regulations (Action Withdrawn)	1392
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 (Final)	1393
9VAC25-115. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities (Forms)	1393
9VAC25-120. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges from Groundwater Remediation of Contaminated Sites, Dewatering Activities of Contaminated Sites, and Hydrostatic Tests (Final)	1393
9VAC25-151. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (Final)	1393
9VAC25-190. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining (Final)	1393
9VAC25-192. Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (Final)	1393
9VAC25-193. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Concrete Products Facilities (Final)	1393
9VAC25-194. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities (Final)	1393
9VAC25-196. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less (Final)	1393
9VAC25-630. Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management (Final)	1393
9VAC25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (Final)	1393

Virginia Code Commission

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

THE VIRGINIA REGISTER INFORMATION PAGE

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 (Final).....	1393
9VAC25-680. Virginia Water Protection General Permit for Linear Transportation Projects (Final)	1393
9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (Final).....	1393
9VAC25-800. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters (Final)	1393
9VAC25-820. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (Final)	1393
9VAC25-860. Virginia Pollutant Discharge Elimination System General Permit Regulation for Potable Water Treatment Plants (Final).....	1393
9VAC25-880. General VPDES Permit for Discharges of Stormwater from Construction Activities (Final)	1393
9VAC25-890. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s) (Final)	1393
9VAC25-115. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities (Forms)	1394
9VAC25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (Final)	1394
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 (Final).....	1403
9VAC25-680. Virginia Water Protection General Permit for Linear Transportation Projects (Final)	1416
9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (Final).....	1429
12VAC30-10. State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (Final)	1443
12VAC30-20. Administration of Medical Assistance Services (Final)	1443
12VAC30-40. Eligibility Conditions and Requirements (Final).....	1443
12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (Final)	1443
12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (Final).....	1443
12VAC30-110. Eligibility and Appeals (Final)	1443
12VAC30-130. Amount, Duration and Scope of Selected Services (Final)	1443
13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (Final).....	1456
Guidance Documents	1470
General Notices	1473
Errata	1475

THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

Members of the Virginia Code Commission: **Marcus B. Simon, Chair; Russet W. Perry, Vice Chair; Katrina E. Callsen; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Michael Mullin; Christopher R. Nolen; Steven 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>).

January 2026 through February 2027

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
43:4	September 16, 2026	October 5, 2026
43:5	September 30, 2026	October 19, 2026
43:6	October 14, 2026	November 2, 2026
43:7	October 28, 2026	November 16, 2026
43:8	November 11, 2026	November 30, 2026
43:9	November 25, 2026	December 14, 2026
43:10	December 9, 2026	December 28, 2026
43:11	December 23, 2026	January 11, 2027
43:12	January 6, 2027	January 25, 2027
43:13	January 20, 2027	February 8, 2027

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Agency Decision

Title of Regulation: 2VAC5-685. Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act.

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Name of Petitioner: Virginia Pest Management Association.

Nature of Petitioner's Request: The petitioner requests that the Board of Agriculture and Consumer Services promulgate regulations that (i) create a new category or subcategory of pesticide certification for commercial applicators who conduct public health pest control measures in non-public applications and (ii) adjust training and examination requirements between this new category or subcategory and the area-wide applications made or directed by public agencies in support of area-wide public health pest control objectives to best reflect the unique applications intended and expected pursuant to each such category or subcategory.

Agency Decision: Request granted.

Statement of Reason for Decision: The board has voted to grant the petitioner's request for rulemaking because creating a separate category for mosquito applications in non-public settings will increase the number of applicators who are properly trained and certified for this particular type of application and remove unnecessary exam material and training.

Agency Contact: Kevin Schmidt, Board Secretary, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Suite 219, Richmond, VA 23219, telephone (804) 786-1346, or email kevin.schmidt@vdacs.virginia.gov.

VA.R. Doc. No. PFR26-18; Filed September 25, 2025, 10:39 a.m.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Agency Decision

Title of Regulation: 12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services.

Statutory Authority: §§ 37.2-203 and 37.2-400 of the Code of Virginia.

Name of Petitioner: R.C. Carter.

Nature of Petitioner's Request: The petitioner requests that the State Board of Behavioral Health and Developmental Services amend 12VAC35-105-1840 C 3 to allow crisis stabilization units to base nursing coverage on an individualized services plan driven, two-tier nursing model.

According to the petitioner: This amendment will align the Department of Behavioral Health and Developmental Services (DBHDS) regulations with Department of Medical Assistance Services (DMAS) standards, which base nursing coverage on the initial nursing assessment and ISP, and will help ensure that crisis stabilization services remain both safe and financially sustainable across the Commonwealth.

Nursing Requirement and Financial Impact Analysis: Under the DMAS Comprehensive Crisis Services Manual (Appendix G), crisis stabilization units must provide in-person nursing services 24 hours a day, seven days a week when required by the initial nursing assessment and individualized service plan (ISP). However, a detailed financial review demonstrates that meeting this standard for every client, regardless of actual clinical need, creates unavoidable deficits when all required professionals are considered.

A registered nurse (RN) or licensed practical nurse (LPN) paid between \$35 and \$40 per hour costs about \$840 to \$960 per day, or \$4,200 to \$4,800 over a five-day stay. In addition, a qualified mental health professional (QMHP) at roughly \$20 per hour adds about \$160 per day (\$800 per five days); a certified substance abuse counselor (CSAC) at \$25 per hour adds \$200 per day (\$1,000 per five days); and a licensed mental health professional (LMHP) at \$30 per hour adds \$240 per day (\$1,200 per five days). Together, these staff drive a combined direct cost of roughly \$1,440 per day (or \$7,200 over five days) before any employer burden such as payroll taxes, overtime differentials, benefits, workers' compensation, or professional liability insurance is applied.

When compared with the fixed DMAS reimbursement of \$847.04 per day (about \$4,235 for five days), even the most conservative scenario falls short. For example, an RN at \$30 per hour yields a narrow daily surplus of about \$127 before fringe costs. But at more realistic market wages, which are around \$40 per hour in line with Bureau of Labor Statistics data, the nursing expense alone creates a daily loss of more than \$112, or about \$41,230 annually per client. Once the required QMHP, CSAC, and LMHP staffing is included, the gap widens dramatically. With modest employer overhead (approximately 30% for taxes, benefits, and insurance), the daily cost climbs toward \$1,875, producing a loss of over \$1,000 per day, or \$5,000 for each five-day admission.

This analysis confirms three critical points. First, the true breakeven wage for 24 hours per day, seven days per week nursing is approximately \$35.29 per hour, and even at that rate, sustainability disappears when employer costs and additional staff are added. Second, the DMAS reimbursement structure

Petitions for Rulemaking

cannot absorb market-based wages and required professional coverage. Third, aligning staffing with the results of the initial nursing assessment and each client's ISP, as DMAS already permits, is the only way to preserve both safety and financial viability.

In summary, when all required professionals, that is, RN/LPN, QMHP, CSAC, and LMHP, are included, the actual cost of a single five-day crisis stabilization stay far exceeds DMAS reimbursement. Without regulatory flexibility to implement an ISP-driven, two-tier nursing model, providers face unavoidable and continuing losses, placing essential crisis services and timely access to care at risk throughout the Commonwealth.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on December 10, 2025, the State Board of Behavioral Health and Developmental Services voted to take no action on the petition because 12VAC35-105-1840 is already aligned with Medicaid standards. The licensing regulations are not more stringent than DMAS policy regarding 24-hour a day, seven-days per week, in-person, onsite nursing coverage for crisis stabilization units.

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, or email susan.puglisi@dbhds.virginia.gov.

VA.R. Doc. No. PFR26-16; Filed September 26, 2025, 3:52 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Initial Agency Notice

Title of Regulation: **18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology.**

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

Name of Petitioner: American Academy of Audiology.

Nature of Petitioner's Request: The petitioner requests that the Board of Audiology and Speech-Language Pathology amend 18VAC30-21-60 A to include American Board of Audiology certification as an accepted pathway for audiologists applying for licensure in Virginia.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on January 12, 2026. The petition will also be published on the Virginia Regulatory Town Hall to receive

public comment, which opens January 12, 2026, and closes February 11, 2026. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. That meeting is currently scheduled for April 21, 2026. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: February 11, 2026.

Agency Contact: Kelli Moss, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4132, or email kelli.moss@dhp.virginia.gov.

VA.R. Doc. No. PFR26-17; Filed December 17, 2025, 8:29 a.m.

Agency Decision

Title of Regulation: **18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology.**

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

Name of Petitioner: Melanie-Joy Dorn.

Nature of Petitioner's Request: The petitioner requests the Board of Audiology and Speech-Language Pathology eliminate 18VAC30-21-60 A 2 c, which was part of a recently created pathway to licensure in Virginia that was made as part of the board's regulatory reduction goal of reducing requirements to obtain a license in Virginia. This pathway became effective in February 2025 and allows an applicant to qualify for licensure without holding a certificate of clinical competence from the American Speech-Language-Hearing Association.

Agency Decision: Request denied.

Statement of Reason for Decision: At its December 9, 2025, meeting, the board voted to take no action on the petition as the board believes that the requirements contained in 18VAC30-21-60 A are appropriate and necessary for licensure.

Agency Contact: Kelli Moss, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4132, or email kelli.moss@dhp.virginia.gov.

VA.R. Doc. No. PFR25-15; Filed June 17, 2025, 2:08 p.m.

BOARD OF DENTISTRY

Initial Agency Notice

Title of Regulation: **18VAC60-21. Regulations Governing the Practice of Dentistry.**

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

Name of Petitioner: Alayna Smiley, MD, DMD.

Nature of Petitioner's Request: The petitioner requests that the Board of Dentistry amend 18VAC60-21-350 and 1860-21-370

to exempt oral and maxillofacial surgeons who perform non-surgical cosmetic procedures from (i) the requirement for American Board of Oral and Maxillofacial Surgery board eligibility or certification and (ii) the requirement to hold active hospital privileges.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on January 12, 2026. The petition will also be published on the Virginia Regulatory Town Hall to receive public comment, which opens January 12, 2026, and closes February 11, 2026. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment, currently scheduled for March 6, 2026. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: February 11, 2026.

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

VA.R. Doc. No. PFR26-14; Filed December 09, 2025, 12:51 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **16VAC15-11, Public Participation Guidelines; 16VAC15-21, Maximum Garnishment Amounts; 16VAC15-30, Virginia Rules and Regulations Declaring Hazardous Occupations; 16VAC15-40, Virginia Hours of Work for Minors; and 16VAC15-50, Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards.** Each review will be guided by the principles in Executive Order 19 (2022). The purpose of these reviews is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to the regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins January 12, 2026, and ends February 2, 2026.

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

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

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

18VAC110-21, Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians. Each review will be guided by the principles in Executive Order 19 (2022). The purpose of these reviews is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to the regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins January 12, 2026, and ends February 2, 2026.

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

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

Contact Information: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4456, or email caroline.juran@dhp.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **18VAC110-20, Regulations Governing the Practice of Pharmacy** and

NOTICES OF INTENDED REGULATORY ACTION

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Agriculture and Consumer Services intends to consider amending **2VAC5-20, Standards for Classification of Real Estate As Devoted to Agricultural Use and to Horticultural Use under the Virginia Land Use Assessment Law**. The purpose of the proposed action is to respond to comments received during a periodic review of the regulation that concluded in October 2025. Amendments being considered by the Commissioner of Agriculture and Consumer Services include (i) determining whether tree or timber production incidental to other farm operations on real estate may be considered real estate devoted to agricultural use and (ii) clarifying which documents may be useful for demonstrating that a parcel of real estate meets the standards for devotion to agricultural use. The Land Use Assessment Law (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia authorizes localities that adopt a land-use plan to adopt an ordinance to provide for the use value assessment and taxation of real estate classified in § 58.1-3230 of the Code of Virginia, which establishes four special classifications of real estate, including real estate devoted to agricultural use and real estate devoted to horticultural use. The definitions of both real estate devoted to agricultural use and real estate devoted to horticultural use require the commissioner prescribe uniform standards for the classification of such real estate.

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

Statutory Authority: Section 58.1-3230 of the Code of Virginia

Public Comment Deadline: February 11, 2026.

Agency Contact: Kevin Schmidt, Director, Office of Policy, Planning, and Research, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1346, FAX (804) 371-7679, TDD (800) 828-1120, or email kevin.schmidt@vdacs.virginia.gov.

VA.R. Doc. No. R26-8560; Filed December 12, 2025, 12:33 p.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 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Fast-Track Regulation

Title of Regulation: 2VAC5-425. Vapor Pressure Requirements for Gasoline Ethanol Blends (amending 2VAC5-425-10, 2VAC5-425-20).

Statutory Authority: §§ 59.1-153 and 59.1-156 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 11, 2026.

Effective Date: February 26, 2026.

Agency Contact: Anthony Ramsey, Program Manager, Office of Weights and Measures, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1274, fax (804) 786-1571, or email anthony.ramsey@vdacs.virginia.gov.

Basis: Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services as a policy board. Section 59.1-153 of the Code of Virginia provides that the Commissioner of Agriculture and Consumer Services shall follow the specifications for the inspection and testing of motor fuel or lubricating oil established by ASTM International and incorporated into the ASTM specifications for motor fuels. Section 59.1-156 of the Code of Virginia further provides that the board may make all necessary rules and regulations for the inspection and testing of motor fuel and lubricating oil.

Purpose: Virginia utilizes the Colonial gasoline pipeline, which originates in Texas and ends in New Jersey. This regulatory action proposes to update the regulation to reference current ASTM standards, which are used by refineries. This regulation will protect the welfare of Virginia's citizens and businesses by ensuring that the gasoline in the Colonial pipeline can continue to flow into and through Virginia.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the amendments update the documents incorporated by reference to the most recent version of these documents, thereby incorporating changes developed and adopted by ASTM International through a national voluntary consensus process, in which industry participated.

Substance: The amendments update the documents incorporated by reference to the current versions of ASTM 4806 and ASTM 4814 and all references to those documents throughout the regulation.

Issues: This action is advantageous to the public, the regulated industry, and the Commonwealth because the changes will align the regulatory requirements with national standards, ensuring uniformity for industry and preventing the need to create a boutique fuel for distribution in Virginia, which would likely increase gasoline prices for the public. There are no disadvantages to the public, the regulated industry, 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 Board of Agriculture and Consumer Services (board) proposes to update the regulation to refer to newer versions of national testing and vapor pressure standards for gasoline ethanol blends.

Background. This regulation establishes testing and vapor pressure requirements for refineries transporting motor fuel through the Colonial gasoline pipeline, which originates in Texas and ends in New Jersey. The standards for gasoline ethanol blends are established by adopting the standards developed by the National Conference on Weights and Measures (NCWM). More specifically, the current regulation includes two documents incorporated by reference (DIBR), which were published in 2016: (i) ASTM D4806-16a titled Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel and (ii) ASTM D4814-16a titled Standard Specification for Automotive Spark-Ignition Engine Fuel. Per the regulations of the Virginia Code Commission, the material in a DIBR "becomes the text of the regulation and an enforceable part of the regulation" (1VAC7-10-140). According to the Virginia Department of Agriculture and Consumer Services (VDACS), NCWM has updated the standards in the DIBRs, which are reflected in newer versions of each DIBR: ASTM D4806-16a was updated with standards found in ASTM D4806-21a in 2021; and ASTM D4814-16a was updated with standards found in ASTM D4814-24a in 2024. The updated specifications have three main differences: they provide an additional test method for the detection of water in denatured fuel ethanol; remove an acidity test found to be flawed; and utilize more recent data to establish volatility classifications of gasoline for each state and month. Following the publication of the new standards, a stakeholder involved in development of new standards contacted VDACS to encourage Virginia to adopt these latest versions. In response to

this outreach, the Commissioner of VDACS issued a letter in 2024 informing the regulated community that Virginia would no longer enforce the standards found in the old versions of each DIBR (ASTM D4814-16a and ASTM D4806-16a) and would instead follow the latest specifications in order to prevent the need for refineries to re-adjust the composition of gasoline released. In this regulatory action, the board proposes to update the regulation with the newer standards by revising the version of each DIBR.

Estimated Benefits and Costs. It appears that the commissioner used enforcement discretion to allow compliance with a new test methodology for detection of water, and to no longer require compliance with an outdated test for acidity in gasoline ethanol blends. Furthermore, the commissioner's discretion to allow compliance with newer volatility classifications for each month appears to have avoided the need for refineries to create a boutique fuel for distribution in Virginia, which would have likely increased gasoline prices for Virginia consumers. Because the changes in standards have been allowed in practice to be consistent with national standards since 2024 under the commissioner's enforcement discretion, no significant economic impact is expected upon promulgation of the proposed amendments to this regulation.

Businesses and Other Entities Affected. The proposed standards apply to refineries using the Colonial pipeline. According to VDACS, no Virginia refinery uses this pipeline. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.² An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.³ The proposal would update the regulation to incorporate standards already allowed in practice. Thus, no adverse impact is indicated.

Small Businesses⁴ Affected.⁵ The proposed amendments do not appear to adversely affect small businesses.

Localities⁶ Affected.⁷ The proposed amendments do not introduce costs for localities, nor do they disproportionately affect any locality more than others.

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

Effects on the Use and Value of Private Property. No impact on the use and value of private property or on real estate development costs is expected when the proposed amendments are promulgated.

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 Department of Agriculture and Consumer Services (VDACS) concurs with the economic impact analysis prepared by the Department of Planning and Budget (DPB). DPB's analysis includes the following statement: "According to VDACS, no Virginia refinery uses the Colonial Pipeline." To clarify, no refineries operate in Virginia.

Summary:

The amendments update (i) documents incorporated by reference with current versions of ASTM 4806 and ASTM 4814, which establish specific requirements related to fuel vapor pressure for ethanol blended gasoline, and (ii) all references to those documents throughout the regulation.

2VAC5-425-10. Definitions.

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

"ASTM ~~D4806-16a~~ D4806-21a" means the Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel published by ASTM International in ~~February 2016~~ October 2021.

"ASTM ~~D4814-16a~~ D4814-24a" means the Standard Specification for Automotive Spark-Ignition Engine Fuel published by ASTM International in ~~February 2016~~ July 2024.

Regulations

"psi" means pounds per square inch.

"Volatility class A" means fuel with a vapor pressure and distillation designation of "A" set forth in Table 1 Vapor Pressure and Distillation Class Requirements of ASTM ~~D4814-16a~~ D4814-24a.

"Volatility class B" means fuel with a vapor pressure and distillation designation of "B" set forth in Table 1 Vapor Pressure and Distillation Class Requirements of ASTM ~~D4814-16a~~ D4814-24a.

"Volatility class C" means fuel with a vapor pressure and distillation designation of "C" set forth in Table 1 Vapor Pressure and Distillation Class Requirements of ASTM ~~D4814-16a~~ D4814-24a.

"Volatility class D" means fuel with a vapor pressure and distillation designation of "D" set forth in Table 1 Vapor Pressure and Distillation Class Requirements of ASTM ~~D4814-16a~~ D4814-24a.

"Volatility class E" means fuel with a vapor pressure and distillation designation of "E" set forth in Table 1 Vapor Pressure and Distillation Class Requirements of ASTM ~~D4814-16a~~ D4814-24a.

2VAC5-425-20. Vapor pressure requirements; exceptions.

When gasoline is blended with ethanol, the ethanol shall meet the requirements of ASTM ~~D4806-16a~~ D4806-21a and the blend shall meet the requirements of ASTM ~~D4814-16a~~ D4814-24a, with following permissible exceptions:

1. For blends containing nine to 10 volume percent ethanol, the maximum vapor pressure shall not exceed the ASTM ~~D4814-16a~~ D4814-24a limits by more than 1.0 psi during the period of June 1 through September 15.
2. For blends containing one or more volume percent ethanol for volatility class A, B, C, or D, the maximum vapor pressure shall not exceed ASTM ~~D4814-16a~~ D4814-24a limits by more than 1.0 psi during the period of September 16 through May 31.
3. For blends containing one or more volume percent ethanol for volatility class E, the maximum vapor pressure shall not exceed ASTM ~~D4814-16a~~ D4814-24a limits by more than 0.5 psi during the period of September 16 through May 31.

DOCUMENTS INCORPORATED BY REFERENCE (2VAC5-425)

Standard Specification for Automotive Spark-Ignition Engine Fuel, ASTM ~~D4814-16a~~, February 2016 ASTM D4814-24a, July 2024, ASTM International, P.O. Box C700, West Conshohocken, PA 19428, www.astm.org

Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel, ASTM ~~D4806-16a~~, February 2016 D4806-21a,

October 2021, ASTM International, P.O. Box C700, West Conshohocken, PA 19428, www.astm.org

VA.R. Doc. No. R26-8071; Filed December 12, 2025, 4:25 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Fast-Track Regulation

Title of Regulation: **6VAC35-20. Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (amending 6VAC35-20-61).**

Statutory Authority: §§ 16.1-233 and 66-10 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 11, 2026.

Effective Date: March 1, 2026.

Agency Contact: Kristen Peterson, Regulatory and Policy Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 773-0180, fax (804) 371-6497, or email kristen.peterson@djj.virginia.gov.

Basis: The Board of Juvenile Justice is authorized to promulgate and amend this regulation pursuant to its general authority at § 66-10 of the Code of Virginia, which directs the board to promulgate such regulation as may be necessary to carry out the provisions of Title 66 of the Code of Virginia. Section 16.1.309.10 of the Code of Virginia provides that if a detention home, group home, or other residential care facility for children in need of services or delinquent or alleged delinquent youth is established by a county, city, or any combination, such home or facility shall be subject to visitation, inspection, and regulation by the board and the board's agents.

Purpose: As set forth in various sections of the Administrative Process Act, regulations must be necessary for the protection of public health, safety, and welfare. The department believes the current self-audit process provides an additional measure for regulated entities to monitor progress and compliance between the department's formal certification audits. Additionally, if a self-audit uncovers a health, welfare, or safety violation, that information may be included in a certification audit report that gets routed to the department director and the board. Thus, the self-audit protects the health, safety, and welfare of citizens by providing an additional compliance check to ensure that regulatory provisions, particularly those impacting juvenile health and safety, are

followed and to alert departmental staff and other monitoring entities of any violations that might impact health, welfare, or safety. The department believes that compliance with the current internal, self-audit document is not essential to protect the public health, safety, or welfare. The current self-audit document is outdated and its incorporation into the regulation violates 1VAC7-10-140 D. Furthermore, the department's current forms are sufficient to ensure that the relevant facilities and programs are conducting self-audits.

Rationale for Using the Fast-Track Rulemaking Process: The department believes the continued incorporation of the document violates 1VAC7-10-140 D. Furthermore, this document no longer needs to be incorporated into the regulation because the department provides forms to regulated entities that address the process for self-audits. As such, the department believes this change will not be controversial and is appropriate for the fast-track rulemaking process.

Substance: The amendments eliminate the language requiring compliance with the self-audit document for facilities and programs and remove the document from the list of documents incorporated by reference into the chapter.

Issues: The department believes the amendments will benefit regulated entities. Amending the chapter will also assist the department in its efforts to achieve a reduction in its discretionary regulatory requirements. The department does not anticipate any disadvantages to the public or the Commonwealth resulting from the action.

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 Board of Juvenile Justice (board) proposes to remove an outdated and unnecessary guidance document than is incorporated by reference "Guidance Document: Self-Audits/Evaluations, September 2013," Department of Juvenile Justice and all references to the document incorporated by reference (DIBR) within the regulatory text. Per the regulations of the Virginia Code Commission, the material in a DIBR becomes the text of the regulation and an enforceable part of the regulation (1VAC7-10-140).

Background. This regulation sets out rules for monitoring, approval, and certification of juvenile justice programs and facilities which include state operated juvenile correctional centers, locally and regionally operated secure juvenile detention centers, juvenile group homes, shelter care facilities, transitional living programs, independent living programs, and state and locally operated court service units. Currently, the regulation requires programs and facilities to conduct an annual self-audit that accords with a document incorporated by reference (DIBR) titled Guidance Document: Self-Audits/Evaluations dated September 2013. According to the Department of Juvenile Justice (DJJ), this DIBR contains outdated requirements that no longer align with its expectations. Additionally, DJJ states that the

document is no longer necessary because its certification unit provides the requisite forms for programs and facilities to complete their self-audits. Finally, Executive Order 19 sets regulatory reduction goals. As a result, the board proposes to remove the DIBR from this regulation in order to reach its reduction goal.

Estimated Benefits and Costs. According to DJJ, the DIBR is outdated and unnecessary as the self-audit forms currently used by the agency provide the same information and guidance. DJJ further states that the removal of this DIBR would have no impact on current practices. Thus, no significant economic impact is expected.

Businesses and Other Entities Affected. This regulation applies to a single, state-operated juvenile correctional center; 24 locally and regionally operated secure juvenile detention centers; 16 juvenile group homes, shelter care facilities, transitional living programs, and independent living programs; 30 state-operated and two locally operated court service units. No program or facility would be disproportionately affected. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.² An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.³ The proposal would neither reduce benefits nor increase costs on programs and facilities. Thus, no adverse impact is indicated.

Small Businesses⁴ Affected.⁵ The proposed amendments do not adversely affect small businesses.

Localities⁶ Affected.⁷ The proposed amendment neither disproportionately affect any particular localities nor introduce costs for local governments.

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

Effects on the Use and Value of Private Property. No effect on the use and value of private property or on real estate development costs is expected.

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

² Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. 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

Regulations

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 Board of Juvenile Justice has reviewed the economic impact analysis prepared by the Department of Planning and Budget and agrees with the analysis.

Summary:

The amendments remove (i) a reference to a Department of Juvenile Justice document, Self-Audits/Evaluations, September 2013, in regulatory text and (ii) the document from incorporation by reference into the regulation because it is obsolete and IVAC7-1-60 D prohibits agencies from incorporating an agency's own document by reference unless that document is unique or highly unusual.

6VAC35-20-61. Self-audit of programs and facilities subject to certification audits.

A. All programs and facilities subject to certification audits shall, ~~in accordance with the department's Guidance Document: Self-Audits/Evaluations, September 2013, conduct, except in the year the program or facility is subject to a certification audit,~~ an annual self-audit for compliance with applicable regulatory requirements, except in the year the program or facility is subject to a certification audit.

B. The self-audit reports shall be made available during the certification audit.

DOCUMENTS INCORPORATED BY REFERENCE (6VAC35-20)

~~Guidance Document: Self-Audits/Evaluations, September 2013, Department of Juvenile Justice~~

No document is currently incorporated by reference into this regulation.

VA.R. Doc. No. R26-8485; Filed December 11, 2025, 3:55 p.m.



TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

Title of Regulation: **8VAC20-23. Licensure Regulations for School Personnel (adding 8VAC20-23-615).**

Statutory Authority: § 22.1-298.1 of the Code of Virginia.

Effective Date: February 11, 2026.

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

Summary:

The amendment establishes an add-on endorsement to teach economics and personal finance.

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.

8VAC20-23-615. Economics and personal finance (add-on endorsement).

Endorsement requirement. The candidates shall have:

1. Earned a baccalaureate degree from a regionally accredited college or university and hold a license (Collegiate Professional License, Postgraduate Professional License, or a Provisional License leading to a Collegiate Professional or Postgraduate Professional License) issued by the State Board of Education with a teaching endorsement; and

2. Completed an approved teacher preparation program in economics and personal finance (add-on endorsement); or completed the following requirements:

a. Six semester hours of economics or a non-college credit institute in economics. The non-college credit institute in economics must be a minimum of 45 clock hours and offered by a Virginia school division or a regionally accredited college or university. The institute must include the economics content set forth in the Virginia Standards of Learning for economics and personal finance and be approved by the Department of Education; and

b. Three semester hours of personal finance or a non-college credit institute in finance. The non-college credit institution in finance must be a minimum of 45 clock hours and offered by a Virginia school division or a regionally accredited college or university. The institute must include the personal finance content set forth in the Standards of Learning for economics and personal finance and be approved by the Department of Education.

VA.R. Doc. No. R19-5855; Filed December 15, 2025, 2:12 p.m.

Fast-Track Regulation

Titles of Regulations: **8VAC20-150. Management of the Student's Scholastic Record in the Public Schools of Virginia (repealing 8VAC20-150-10, 8VAC20-150-20, 8VAC20-150-30).**

8VAC20-720. Regulations Governing Local School Boards and School Divisions (amending 8VAC20-720-10; adding 8VAC20-720-220).

Statutory Authority: §§ 22.1-16 and 22.1-289 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 11, 2026.

Effective Date: February 26, 2026.

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

Basis: Section 22.1-16 of the Code of Virginia authorizes the State Board of Education to adopt bylaws for its own government and promulgate regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1 of the Code of Virginia. Section 22.1-288.2 of the Code of Virginia references a disciplinary record as defined in board regulations.

Purpose: This action is essential to protect the health, safety, or welfare of citizens because it streamlines regulations and reduces the number of distinct regulatory chapters subject to a periodic review while maintaining board policy and eliminates overly broad regulatory requirements.

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 does not change underlying policy, but instead moves the underlying regulatory requirements of 8VAC20-150 into a new section of 8VAC20-720 in an abbreviated form.

Substance: Following a periodic review, the amendments repeal 8VAC20-150 and relocate the relevant references to 8VAC20-720 without changing practice or policy.

Issues: The primary advantage to the public and the Commonwealth is that the board's regulatory catalog will be streamlined and easier to navigate, with regulatory requirements affecting local school boards and school divisions housed in the same chapter. There are no 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. Following a periodic review,² the State Board of Education (board) proposes to repeal 8VAC20-150 and move some of the underlying requirements in to 8VAC20-720.

Background. According to the Department of Education (DOE), after a periodic review of regulations to streamline its regulatory catalog, the board determined that 8VAC20-150 does not need to be an independent chapter because the majority of the chapter is a reference to federal law. The board proposes to move references to the relevant state and federal laws in 8VAC20-150 into 8VAC20-720. According to DOE, the proposed changes would mainly repeal unnecessary language in 8VAC20-150 and relocate the relevant references to 8VAC20-720 without causing any change in practice or policy.

Estimated Benefits and Costs. Because the proposed changes are editorial in nature and would not introduce any new requirements or remove any existing requirements, no significant economic impact is expected other than clarifying the regulatory text for the readers of the regulation.

Businesses and Other Entities Affected. Although the proposed changes would not directly affect any entity, according to DOE, the regulation applies to 132 school divisions in the Commonwealth with a total enrollment of approximately 1.3 million as of the 2024-2025 school year. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.³ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁴ The proposal would mainly clarify regulatory language and therefore is not expected to adversely affect any entity.

Small Businesses⁵ Affected.⁶ The proposed amendments do not adversely affect small businesses.

Localities⁷ Affected.⁸ The proposed regulatory amendments do not introduce costs for localities, nor do they affect any locality more than others.

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

Effects on the Use and Value of Private Property. No effects on the use and value of private property or on real estate development costs are expected.

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

² <https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=2555>.

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

Regulations

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 Education thanks the Department of Planning and Budget for its thorough economic impact analysis.

Summary:

The amendments repeal Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150) and (i) move the definition of "disciplinary record" into 8VAC20-720-10 and (ii) replace the requirements previously codified in 8VAC20-150 with an extensive list of cross-references to statutes where the requirements for the management of scholastic records of all students can be found.

8VAC20-720-10. Definitions.

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

"Disciplinary record" means a record that is directly related to a student and any disciplinary action taken against that student for violation of school rules or policies occurring on school property or at school-sponsored events.

"Excused absence" means an absence of an entire assigned instructional school day with a reason acceptable to the school administration that is provided by the parent. If circumstances permit, the parent should provide the school administration with the reason for the nonattendance prior to the absence. Examples of an excused absence may include the following reasons: funeral, illness (including mental health and substance

abuse illnesses), injury, legal obligations, medical procedures, suspensions, religious observances, and military obligation. Suspended students continue to remain under the provisions of compulsory school attendance as described in § 22.1-254 of the Code of Virginia. An absence from school attendance resulting from a suspension shall be recorded in compliance with this section for the period of the suspension.

"Instructional school day" means the length of a regularly scheduled school day for an individual student.

"Textbooks" means print or electronic media for student use that serve as the primary curriculum basis for grade-level subject or course.

"Truancy" means the act of accruing one or more unexcused absences.

"Unexcused absence" means an absence where (i) the student misses a scheduled instructional school day in its entirety and (ii) no indication has been received by school personnel within five days of the absence that the student's parent is aware and supports the absence, or the parent provides a reason for the absence that is unacceptable to the school administration. The school administration may change an unexcused absence to an excused absence when it determines that the parent has provided an acceptable reason meeting criteria for the student's absence or there are extenuating circumstances.

8VAC20-720-220. Management of the student's scholastic record in the public schools of Virginia.

Local education agencies shall manage the scholastic records of all students in compliance with applicable law, including the Family Educational Rights and Privacy Act of 1974 (20 USC § 1232g, 34 CFR 99); the Individuals with Disabilities Education Act (20 USC §§ 1400-1485, 34 CFR 300); and §§ 2.2-3800 through 2.2-3809, 16.1-260, 16.1-305.1, 16.1-305.2, 22.1-3.1, 22.1-270, 22.1-271.2, 22.1-287, 22.1-287.01, 22.1-287.1, 22.1-288, 22.1-288.2, 22.1-289, 32.1-36.1, and 42.1-76 through 42.1-90.1 of the Code of Virginia.

V.A.R. Doc. No. R25-8228; Filed December 15, 2025, 2:09 p.m.

Fast-Track Regulation

Titles of Regulations: 8VAC20-250. Regulations Governing the Testing of Sight and Hearing of Pupils (repealing 8VAC20-250-10).

8VAC20-690. Regulations for Scoliosis Screening Program (repealing 8VAC20-690-10, 8VAC20-690-20, 8VAC20-690-30, 8VAC20-690-40, 8VAC20-690-50).

8VAC20-720. Regulations Governing Local School Boards and School Divisions (adding 8VAC20-720-40).

Statutory Authority: §§ 22.1-16, 22.1-273, and 22.1-273.1 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 11, 2026.

Effective Date: February 26, 2026.

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

Basis: Section 22.1-16 of the Code of Virginia authorizes the State Board of Education to adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1 of the Code of Virginia. Section 22.1-273 of the Code of Virginia specifically requires that the board promulgate regulations that provide for the testing of vision and hearing of students within the criteria described in the statute. Section 22.1-273.1 of the Code of Virginia requires that the board promulgate regulations for the implementation of scoliosis screenings in the Commonwealth's public schools.

Purpose: This action is essential to protect the health, safety, or welfare of citizens because it condenses distinct chapters that are relevant to the same end users into one section within 8VAC20-720, which will better enable regulated parties to find and refer back to relevant subject matter.

Rationale for Using Fast-Track Rulemaking Process: This action is expecting to be noncontroversial and therefore appropriate for the fast-track rulemaking process because it does not change the underlying requirements of the repealed chapters, but instead moves the requirements to a new section.

Substance: The amendments repeal Regulations Governing the Testing of Sight and Hearing of Pupils (8VAC20-250) and Regulations for Scoliosis Screening Program (8VAC20-690) and add the underlying requirements of both chapters to a new section of Regulations Governing Local School Boards and School Divisions (8VAC20-720).

Issues: The primary advantages to the public and Commonwealth are that language used by similar or the same parties will be situated together and there will be fewer distinct chapters in the board's regulatory catalogue. There are no disadvantages to the public or 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 Board of Education (board) proposes to repeal the Regulations Governing the Testing of Sight and Hearing of Pupils (8VAC20-250) and Regulations for Scoliosis Screening Program (8VAC20-690) and add their contents to a new section in Regulations Governing Local School Boards and School Divisions (8VAC20-720).

Background. Regulations Governing the Testing of Sight and Hearing of Pupils consists of one section, 8VAC20-250-10, that is entitled "Testing of sight and hearing; monitoring." The text in its

entirety is as follows: The principal of each public elementary and secondary school shall cause the vision and hearing of students enrolled in (i) kindergarten, (ii) grade two or three, (iii) grade seven, and (iv) grade 10 to be screened subject to the conditions and exceptions as established in § 22.1-273 of the Code of Virginia. The vision and hearing screen of students shall be scheduled within the first 60 administrative working days of the school year. Whenever a student is found to have any defect of vision or hearing or a disease of the eyes or ears, the principal shall notify the parent or guardian in writing of such defect or disease. This screening of students will be monitored through the department's annual data collection process. Regulations for Scoliosis Screening Program has the following five sections: 8VAC20-690-10, 8VAC20-690-20, 8VAC20-690-30, 8VAC20-690-40, and 8VAC20-690-50. In the Regulations Governing Local School Boards and School Divisions, the board proposes a new section 8VAC20-720-40 to be titled "Health screening programs." All of the text currently in the Regulations Governing the Testing of Sight and Hearing of Pupils and Regulations for Scoliosis Screening Program would be placed in 8VAC20-720-40.

Estimated Benefits and Costs. Moving the contents of 8VAC20-250 and 8VAC20-690 into 8VAC20-720 has no impact on requirements. It is potentially moderately beneficial if there are future readers of Regulations Governing Local School Boards and School Divisions (8VAC20-720) who become aware of the provisions currently within 8VAC20-250 and 8VAC20-690 who otherwise would not have been aware.

Businesses and Other Entities Affected. The requirements pertain to the 131 school divisions in the Commonwealth and their staff, students and parents of students. Some readers of regulations may also be 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 As the proposal neither increases cost nor reduces benefit, no adverse impact is indicated.

Small Businesses⁴ Affected.⁵ The proposal does not adversely affect small businesses.

Localities⁶ Affected.⁷ The proposal neither disproportionately affects particular localities nor affects costs for local governments.

Projected Impact on Employment. The proposal does not affect employment.

Effects on the Use and Value of Private Property. The proposal affects neither the use and value of private property nor costs related to the development of real estate.

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.

Regulations

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 State Board of Education thanks the Department of Planning and Budget for its thorough economic impact analysis.

Summary:

The amendments (i) repeal Regulations Governing the Testing of Sight and Hearing of Pupils (8VAC20-250) and Regulations for Scoliosis Screening Program (8VAC20-690) and (ii) add the underlying requirements of both chapters to a new section of Regulations Governing Local School Boards and School Divisions (8VAC20-720).

8VAC20-720-40. Health screening programs.

A. Testing of sight and hearing; monitoring. The principal of each public elementary and secondary school shall cause the vision and hearing of students enrolled in (i) kindergarten, (ii) grade two or three, (iii) grade seven, and (iv) grade 10 to be screened subject to the conditions and exceptions as established in § 22.1-273 of the Code of Virginia. The vision and hearing screen of students shall be scheduled within the first 60 administrative working days of the school year. Whenever a student is found to have any defect of vision or hearing or a disease of the eyes or ears, the principal shall notify the parent or guardian in writing of such defect or

disease. This screening of students will be monitored through the department's annual data collection process

B. Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

"Forward bend test" means a procedure to assess the possible presence of abnormal spinal curvature.

"Scoliometer" means a device for measuring the amount of abnormal curvature in the spine.

"Scoliosis" means a lateral or sideways curvature of the spine, generally associated with the rotation of the spine and rib cage.

"Scoliosis screening" means a postural screening process of assessment and evaluation used to identify students with spinal deviations at an early stage of development and to refer students for a medical evaluation. Early detection and intervention may prevent further structural deformity and resulting secondary problems.

C. Scoliosis screening program.

1. Each school board shall implement a scoliosis program that shall consist of the provision of parent educational information on scoliosis for students in grades five through 10 or the implementation of a program of regular screening for scoliosis for students in grades five through 10. School boards shall not impose a fee for any scoliosis program implemented.

2. School boards shall not be required to screen students in grades five through 10 who have been admitted for the first time to a public school and who have been tested for scoliosis as part of the comprehensive physical examination required by § 22.1-270 of the Code of Virginia or those students whose parents have indicated their preference that their children not participate in scoliosis screening.

3. Each school board shall review and adhere to the federal Family Educational Rights and Privacy Act (20 USC § 1232g; 34 CFR Part 99) and the Protection of Pupil Rights Act (20 USC § 1232h; 34 CFR Part 98) in the development and implementation of a regular scoliosis screening program.

D. Parent educational information.

1. School boards implementing a scoliosis program consisting of the provision of parent educational information on scoliosis shall provide such information to the parents of students in grades five through 10 within 60 business days after the opening of school each year.

2. Parent educational information on scoliosis shall include (i) a definition of scoliosis, (ii) a description of how scoliosis is identified, (iii) a statement describing why it is important to screen for the condition, (iv) a description of the types of

screening procedures, (v) a description of potential treatments for the condition, and (vi) information on where screening may be obtained.

E. Regular scoliosis screening.

1. School boards implementing a scoliosis program of regularly screening students in grades five through 10 shall provide written notice to parents a minimum of 10 business days prior to screening.

2. The written notice shall contain (i) information indicating when the screening will occur, (ii) the purpose of screening that shall include the parent educational information described in subsection D of this section, (iii) a procedure for notifying parents of students who are identified as having a possible spinal curvature, and (iv) a procedure for parents to opt out of the screening.

3. School boards implementing a scoliosis program of regular screening shall screen each student in selected grades five through 10 a minimum of two times during the six-year period, except for those students entering the school division for the first time during the grade 10 year, who shall be screened once.

4. Parent educational information as required by subsection D of this section shall be provided to parents of students in selected grades five through 10 who are not screened.

F. Training required for personnel and volunteers.

1. School boards implementing a scoliosis program of regular screening shall provide training for school personnel and volunteers who may conduct the screening. School boards may seek volunteers from among professional health care providers to provide training, to perform screenings, or both. School boards using volunteers shall comply with all requirements of the Family Educational Rights and Privacy Act (20 USC § 1232g; 34 CFR Part 99) and the Protection of Pupil Rights Act (20 USC § 1232h; 34 CFR Part 98) in maintaining the confidentiality of student records.

2. Training of school personnel and volunteers shall be conducted by qualified licensed medical practitioners. Practitioners may use various training methods, including in-person training, video instruction, or review of a training manual.

3. Practitioners shall provide training in medically accepted scoliosis screening procedures, including the use of the forward bend test or use of a scoliometer, to school personnel and volunteers.

VA.R. Doc. No. R26-8412; Filed December 15, 2025; 2:10 p.m.

Final Regulation

Title of Regulation: **8VAC20-543. Regulations Governing the Review and Approval of Education Programs in Virginia (amending 8VAC20-543-90; adding 8VAC20-543-275 through 8VAC20-543-279).**

Statutory Authority: §§ 22.1-16 and 22.1-298.2 of the Code of Virginia.

Effective Date: February 11, 2026.

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

Summary:

The amendments (i) establish dual language endorsements and an economics and personal finance add-on endorsement and (ii) prescribe how teachers will qualify for the endorsements. Changes to the proposed regulation include removing the modifying phrase "or their successor standards" from where it follows "Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds" as documents cannot be prospectively incorporated pursuant to IVAC7-10-140 C.

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.

8VAC20-543-90. Professional studies requirements for early/primary education, elementary education, dual language, and middle education.

Professional studies requirements for early/primary education, elementary education, dual language, and middle education:

1. Human development and learning (birth through adolescence).
 - a. Skills in this area shall contribute to an understanding of the physical, social, emotional, speech and language, and intellectual development of children and the ability to use this understanding in guiding learning experiences and relating meaningfully to students.
 - b. The interaction of children with individual differences, including economic, social, racial, ethnic, religious, physical, and cognitive differences, should be incorporated to include skills contributing to an understanding of developmental disabilities and developmental issues related, but not limited to, low socioeconomic status; attention deficit disorders; developmental disorders; gifted education, including the use of multiple criteria to identify gifted students; substance abuse; trauma, including child abuse, and

Regulations

neglect and other adverse childhood experiences; and family disruptions.

2. Curriculum and instruction.

a. Early/primary education preK-3 or elementary education preK-6 curriculum and instruction.

(1) Skills in this area shall contribute to an understanding of the principles of learning; the application of skills in discipline-specific methodology; varied and effective methods of communication with and among students; selection and use of materials, including media and contemporary technologies; and selection, development, and use of appropriate curricula, methodologies, and materials that support and enhance student learning and reflect the research on unique, age-appropriate, and culturally relevant curriculum and pedagogy.

(2) Understanding of the principles of online learning and online instructional strategies and the application of skills to deliver online instruction shall be included.

(3) Instructional practices that are sensitive to culturally and linguistically diverse learners, including English learners, gifted and talented students, and students with disabilities; and appropriate for the level of endorsement (preK-3 or preK-6) sought shall be included.

(4) Teaching methods shall be tailored to promote student engagement and student academic progress and effective preparation for the Virginia Standards of Learning assessments.

(5) Study in (i) methods of improving communication between schools and families; (ii) communicating with families regarding social and instructional needs of children; (iii) ways of increasing family engagement in student learning at home and in school; (iv) the Virginia Standards of Learning; ~~and~~; (v) English Language Development standards (WIDA); and (vi) Virginia Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [, or their successor standards,] prepared by the department's Virginia Department of Education's Office of Humanities and Early Childhood shall be included.

(6) Early childhood educators must understand the role of families in child development and in relation to teaching educational skills.

(7) Early childhood educators must understand the role of the informal and play-mediated settings for promoting student skills and development and must demonstrate knowledge and skill in interacting in such situations to promote specific learning outcomes as reflected in Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~, or their successor standards~~].

(8) Demonstrated proficiency in the use of educational technology for instruction shall be included. Study in child abuse recognition and intervention in accordance with

curriculum guidelines developed by the State Board of Education in consultation with the Virginia Department of Social Services and training or certification in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators must be included.

(9) Pre-student teaching experiences (field experiences) should be evident within these skills.

b. Dual language preK-6 curriculum and instruction.

(1) Skills in this area shall contribute to an understanding of the principles of learning; dual language acquisition; theories of second language acquisition; the application of skills in discipline-specific methodology; varied and effective methods of communication with and among students; selection and use of materials, including media and contemporary technologies; and selection, development, and use of appropriate curricula, methodologies, and materials that support and enhance student learning and reflect the research on unique, age-appropriate, and culturally relevant curriculum and pedagogy.

(2) Understanding of the principles of online learning and online instructional strategies and the application of skills to deliver online instruction shall be included.

(3) Instructional practices that are sensitive to culturally and linguistically diverse learners, including English learners, gifted and talented students, and students with disabilities, and appropriate for the preK-3 or preK-6 endorsement shall be included.

(4) Teaching methods shall be tailored to promote student engagement and student academic progress and effective preparation for the Virginia Standards of Learning assessments.

(5) Study in (i) methods of improving communication between schools and families; (ii) communicating with families regarding social and instructional needs of children; (iii) ways of increasing family engagement in student learning at home and in school; (iv) the Virginia Standards of Learning; and (v) Virginia Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [, or their successor standards,] prepared by the Virginia Department of Education's Office of Early Childhood shall be included.

(6) Early childhood educators shall understand the role of families in child development and in relation to teaching educational skills.

(7) Early childhood educators shall understand the role of the informal and play-mediated settings for promoting students' skills and development and shall demonstrate knowledge and skill in interacting in such situations to promote specific learning outcomes as reflected in Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~, or their successor standards~~].

(8) Demonstrated proficiency in the use of educational technology for instruction shall be required.

(9) Pre-student teaching experiences (field experiences) should be evident within these skills.

~~b. c.~~ Middle education ~~6-8~~ six to eight curriculum and instruction.

(1) Skills in this area shall contribute to an understanding of the principles of learning; the application of skills in discipline-specific methodology; effective communication with and among students; selection and use of materials, including media and contemporary technologies; and evaluation of pupil performance.

(2) Understanding of the principles of online learning and online instructional strategies and the application of skills to deliver online instruction shall be included.

(3) Instructional practices that are sensitive to culturally and linguistically diverse learners, including English learners, gifted and talented students, and students with disabilities, and are appropriate for the middle education endorsement shall be included.

(4) Teaching methods shall be tailored to promote student engagement and student academic progress and effective preparation for the Virginia Standards of Learning assessments.

(5) Study in methods of improving communication between schools and families, ways of increasing family engagement in student learning at home and in school, and the Virginia Standards of Learning shall be included.

(6) Demonstrated proficiency in the use of educational technology for instruction shall be included. Study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Virginia Board of Education in consultation with the Virginia Department of Social Services and training or certification in emergency first aid cardiopulmonary resuscitation and the use of automatic external defibrillators shall be included.

(7) Pre-student teaching experiences (field experiences) should be evident within these skills.

3. Classroom and behavior management. Skills in this area shall contribute to an understanding and application of research-based classroom and behavior management techniques, classroom community building, positive behavior supports, and individual interventions, including techniques that promote emotional well-being and teach and maintain behavioral conduct and skills consistent with norms, standards, and rules of the educational environment. This area shall address diverse approaches based upon culturally responsive behavioral, cognitive, affective, social, and ecological theory and practice. Approaches should support professionally appropriate practices that promote positive redirection of behavior, development of social skills, and development of self-discipline. Knowledge and an understanding of various school crisis management and

safety plans and the demonstrated ability to create a safe, orderly classroom environment shall be included. The link between classroom management and student age must be understood and demonstrated in techniques used in the classroom.

4. Assessment of and for learning.

a. Skills in this area shall be designed to develop an understanding and application of creating, selecting, and implementing valid and reliable classroom-based assessments of student learning, including formative and summative assessments. Assessments designed and adapted to meet the needs of diverse learners shall be addressed.

b. Analytical skills necessary to inform ongoing planning and instruction, as well as to understand and help students understand their own progress and growth shall be included.

c. Skills also include the ability to understand the relationships among assessment, instruction, and monitoring student progress to include student performance measures in grading practices; the ability to interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards-based environment; and the ability to analyze assessment data to make decisions about how to improve instruction and student performance.

d. Understanding of state assessment programs and accountability systems, including assessments used for student achievement goal setting as related to teacher evaluation and determining student academic progress must be included.

e. Knowledge of legal and ethical aspects and skills for developing familiarity with assessments used in preK-12 education (including diagnostic, college admission exams, industry certifications, and placement assessments).

5. Foundations of education and the teaching profession.

a. Skills in this area shall be designed to develop an understanding of the historical, philosophical, and sociological foundations underlying the role, development, and organization of public education in the United States.

b. Attention must be given to the legal status of teachers and students, including federal and state laws and regulations; school as an organization and culture; and contemporary issues and current trends in education, including the impact of technology on education. Local, state, and federal governance of schools, including the roles of teachers and schools in communities, shall be included.

c. Professionalism and ethical standards, as well as personal integrity shall be addressed.

Regulations

d. Knowledge and understanding of Virginia's Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers shall be included.

6. Language and ~~Literacy~~ literacy.

a. Early/primary education preK-3 and elementary education preK-6 language acquisition and reading and writing. Skills listed for these endorsement areas represent the minimum competencies that a beginning teacher must be able to demonstrate. These skills are not intended to limit the scope of a beginning teacher's program. Additional knowledge and skills that add to a beginning teacher's competencies to deliver instruction and improve student achievement should be included as part of a quality learning experience. Skills listed for these endorsement areas must include science-based reading research and evidence-based literacy instruction. As required by the Virginia Literacy Act, students must demonstrate mastery of understanding science-based reading research and evidence-based literacy instruction.

(1) ~~Language acquisition:~~ Skills in ~~this area~~ language acquisition shall be designed to impart a thorough understanding of the Virginia English Standards of Learning, as well as the complex nature of language acquisition as a precursor to literacy. Language acquisition shall follow the typical development of linguistic competence in the areas of phonetics, semantics, syntax, morphology, phonology, and pragmatics.

(2) ~~Reading and writing:~~ Skills in ~~this area~~ reading and writing shall be designed to impart a thorough understanding of the Virginia English Standards of Learning, as well as the reciprocal nature of reading and writing. Reading shall include phonemic and other phonological awareness, concept of print, phonics, fluency, vocabulary development, and comprehension strategies. Writing shall include writing strategies and conventions as supporting the composing and written expression and usage and mechanics domains. Additional skills shall include proficiency in understanding the stages of spelling development, and the writing process, as well as the ability to foster appreciation of a variety of literary and information texts and independent reading.

b. Dual language (English) preK-6 language acquisition and reading and writing. Skills listed for these endorsement areas represent the minimum competencies that a beginning teacher shall be able to demonstrate. These skills are not intended to limit the scope of a beginning teacher's program. Additional knowledge and skills that add to a beginning teacher's competencies to deliver instruction and improve student achievement should be included as part of a quality learning experience.

(1) Skills in language acquisition shall be designed to impart a thorough understanding of the Virginia English Standards of Learning, as well as the complex nature of language acquisition as a precursor to literacy. Language

acquisition shall follow the typical development of linguistic competence in the areas of phonetics, semantics, syntax, morphology, phonology, and pragmatics.

(2) Skills in literacy development (reading and writing) shall be designed to impart a thorough understanding of strategies for integration of content, literacy, and language development, researched-based strategies for differentiating instruction for language development; and language and cognitive support or scaffolding bases on the various strategies of the language and literacy acquisition process. Skills in this area shall be designed to impart a thorough understanding of the Virginia English Standards of Learning, as well as the reciprocal nature of reading and writing. Reading shall include phonemic and other phonological awareness, concept of print, phonics, fluency, vocabulary development, and comprehension strategies. Writing shall include writing strategies and conventions as supporting composing and written expression and usage and mechanics domains. Additional skills shall include proficiency in understanding the stages of spelling development and the writing process, as well as the ability to foster appreciation of a variety of fiction and nonfiction texts and independent reading.

c. Dual language (target language) preK-6 language acquisition and bilingual literacy development. Skills listed for these endorsement areas represent the minimum competencies that a beginning teacher shall be able to demonstrate. These skills are not intended to limit the scope of a beginning teacher's program. Additional knowledge and skills that add to a beginning teacher's competencies to deliver instruction and improve student achievement should be included as part of a quality learning experience.

(1) Skills in language acquisition shall be designed to impart a thorough understanding of the Virginia English Standards of Learning, as well as the complex nature of language acquisition as a precursor to literacy. Language acquisition shall follow the typical development of linguistic competence in the areas of phonetics, semantics, syntax, morphology, phonology, and pragmatics.

(2) Skills in bilingual literacy development shall be designed to impart a thorough understanding of strategies for integration of content, literacy, and language development, researched-based strategies for differentiating instruction for dual language; and language and cognitive support or scaffolding bases on the various strategies of the second language acquisition process. Reading shall include phonemic and other phonological awareness, concept of print, phonics, fluency, vocabulary development, and comprehension strategies. Writing shall include writing strategies and conventions as supporting composing and written expression and usage and mechanics domains. Additional skills shall include proficiency in understanding the stages of spelling

development and the writing process, as well as the ability to foster appreciation of a variety of fiction and nonfiction texts and independent reading.

d. Middle education - language acquisition and reading development and literacy in the content areas.

(1) Language acquisition and reading development: Skills in this area language acquisition and reading development shall be designed to impart a thorough understanding of the complex nature of language acquisition and reading, to include phonemic and other phonological awareness, phonics, fluency, vocabulary development, and comprehension strategies for adolescent learners. Additional skills shall include proficiency in writing strategies, as well as the ability to foster appreciation of a variety of literary and information texts and independent reading for adolescent learners.

(2) Literacy in the content areas: Skills in this area literacy in the content areas shall be designed to impart an understanding of vocabulary development and comprehension skills in areas of English, mathematics, science, history and social science, and other content areas. Strategies include teaching students how to ask effective questions, summarize and retell both verbally and in writing, and to listen effectively. Teaching strategies include literal, interpretive, critical, and evaluative comprehension, as well as the ability to foster appreciation of a variety of literary and informational texts and independent reading for adolescent readers.

7. Supervised clinical experiences. The supervised clinical experiences shall be continuous and systematic and comprised of early field experiences with a minimum of 10 weeks of successful full-time student teaching in the endorsement area sought under the supervision of a cooperating teacher with demonstrated effectiveness in the classroom. The summative supervised student teaching experience shall include at least 150 clock hours spent in direct teaching at the level of endorsement in a public or accredited nonpublic school. One year of successful full-time teaching experience in the endorsement area in any public school or accredited nonpublic school may be accepted in lieu of the supervised student teaching experience. A fully licensed, experienced teacher shall be available in the school building to assist a beginning teacher employed through the alternate route.

8VAC20-543-275. Dual language (English) endorsement preK-6.

The programs in dual language (English) preK-6 shall ensure that the candidate has demonstrated the following competencies. National standards in dual language are to be addressed in the program.

1. Methods.

a. Understanding of the needed knowledge, skills, dispositions, and processes to support learners in achievement of Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~, or their successor standards,~~] and the Virginia Standards of Learning in English, mathematics, history and social science, science, and computer technology;

b. Understanding of current research on the brain, its role in learning, and implications for instruction;

c. The ability to integrate English, mathematics, science, health, history and social sciences, art, music, drama, movement, and technology in learning experiences;

d. The use of differentiated instruction and flexible groupings to meet the needs of learners at different stages of development, abilities, and achievement;

e. The use of appropriate methods, including those in visual and performing arts, to help learners develop knowledge and basic skills, sustain intellectual curiosity, and problem-solve;

f. The ability to utilize effective classroom and behavior management skills through methods that build responsibility and self-discipline promote self-regulation, and maintain a positive learning environment;

g. The ability to modify and manage learning environments and experiences to meet the individual needs of children, including children with disabilities, gifted children, children who are English learners, and children with diverse cultural needs;

h. The ability to use formal and informal assessments to diagnose needs, plan and modify instruction, and record student progress;

i. A commitment to professional growth and development through reflection, collaboration, and continuous learning;

j. The ability to analyze, evaluate, and apply quantitative and qualitative research;

k. Understanding of the Virginia Standards of Learning for Computer Technology and the ability to use technology as a tool for teaching, learning, research, and communication; and

l. The ability to adapt task and interactions to maximize language development, conceptual understanding, and skill competence within each child's zone of proximal development.

2. Knowledge and skills.

a. Reading and English. Understanding of the content, knowledge, skills, and processes for teaching Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~, or their successor standards,~~] and the Virginia Standards of Learning for English, including communication (speaking, listening, and media literacy), reading, writing, and research and

Regulations

how these standards provide the core for teaching English in elementary.

(1) Assessment and diagnostic teaching. The individual shall:

(a) Be proficient in the use of both formal and informal assessment as screening diagnostic, and progress monitoring measures for the components of reading: phonemic awareness, letter recognition, decoding, fluency, vocabulary, reading level, and comprehension; and

(b) Be proficient in the ability to use diagnostic data to inform instruction for acceleration, intervention, remediation, and differentiation.

(2) Communication: speaking, listening, and media literacy. The individual shall:

(a) Be proficient in the knowledge, skills, and processes necessary for teaching communication, such as speaking, listening, and media literacy;

(b) Be proficient in developing students' phonological awareness skills;

(c) Demonstrate the ability to teach students to identify the characteristics of and apply critical thinking to media messages and to facilitate students' proficiency in using various forms of media to collaborate and communicate;

(d) Demonstrate effective strategies for facilitating the learning of standard English by speakers of other languages and dialects; and

(e) Demonstrate the ability to promote creative thinking and expression, such as through storytelling, drama, choral, and oral reading.

(3) Reading and literature. The individual shall:

(a) Be proficient in explicit and systematic phonics instruction, including an understanding of sound and symbol relationships, syllables, phonemes, morphemes, word analysis, and decoding skills;

(b) Be proficient in strategies to increase vocabulary and concept development;

(c) Be proficient in the structure of the English language, including an understanding of syntax and semantics;

(d) Be proficient in reading comprehension strategies for both fiction and nonfiction text, including questioning, predicting, inferencing, summarizing, clarifying, evaluating, and making connections;

(e) Demonstrate the ability to support students to read with fluency, accuracy, and meaningful expression (prosody);

(f) Demonstrate the ability to develop comprehension skills in all content areas;

(g) Demonstrate the ability to foster appreciation of a variety of literature;

(h) Understand the importance of promoting independent reading by selecting fiction and nonfiction texts of appropriate yet engaging topics and reading levels; and

(i) Demonstrate effective strategies for teaching students to view, interpret, analyze, and represent information and concepts in visual form with or without the spoken or written word.

(4) Writing. The individual shall:

(a) Be proficient in the knowledge, skills, and processes necessary for teaching writing, including the domains of composing and written expression, usage and mechanics and the writing process of planning, drafting, revising, editing, and publishing;

(b) Understand the stages of spelling development, promoting the generalization of spelling study to writing, and be proficient in systematic spelling instruction, including awareness of the purpose and limitations of "invented spelling";

(c) Demonstrate the ability to teach students to write cohesively for a variety of purposes and to provide instruction on the writing process: planning, drafting, revising, editing, and publishing in the narrative, descriptive, persuasive, and explanative modes; and

(d) Demonstrate the ability to facilitate student research and related skills such as accessing information, evaluating the validity of sources, citing sources, and synthesizing information.

(5) Technology. The individual shall demonstrate the ability to guide students in their use of technology for both process and product as they work with reading, writing, and research.

b. Mathematics.

(1) Understanding of the mathematics relevant to the content identified in Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~, or their successor standards,~~] and the Virginia Standards of Learning and how the standards provide the foundation for teaching mathematics in grades preK-6. Experiences with practical applications and the use of appropriate technology and concrete materials should be used within the following content:

(a) Number systems and their structure, basic operations, and properties;

(b) Elementary number theory, ratio, proportion, and percent;

(c) Algebra: fundamental idea of equality; operations with monomials and polynomials; algebraic fractions; linear and quadratic equations and inequalities and linear systems of equations and inequalities; radicals and exponents; arithmetic and geometric sequences and series; algebraic and trigonometric functions; and

transformations among graphical, tabular, and symbolic forms of functions;

(d) Geometry: geometric figures, their properties, relationships, and the Pythagorean Theorem; deductive and inductive reasoning; perimeter, area, and surface area of two-dimensional and three-dimensional figures; coordinate and transformational geometry; and constructions; and

(e) Probability and statistics: permutations and combinations; experimental and theoretical probability; data collection and graphical representations, including box-and-whisker plots; data analysis and interpretation for predictions; measures of center, spread of data, variability, range, and normal distribution.

(2) Understanding of the sequential nature of mathematics and vertical progression of mathematical standards.

(3) Understanding of the multiple representations of mathematical concepts and procedures.

(4) Understanding of and the ability to use the five processes of reasoning mathematically, solving problems, communicating mathematics effectively, making mathematical connections, and using mathematical models and representations at different levels of complexity.

(5) Understanding of the contributions of different cultures toward the development of mathematics and the role of mathematics in culture and society.

(6) Understanding of the appropriate use of calculators and technology in the teaching and learning of mathematics, including virtual manipulatives.

(7) Understanding of and the ability to use strategies to teach mathematics to diverse learners.

c. History and social sciences.

(1) Understanding of the knowledge, skills, and processes of history and the social sciences disciplines as defined in Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~or their successor standards.~~] and the Virginia Standards of Learning and how the standards provide the necessary foundation for teaching history and social sciences, including in:

(a) History.

(i) The contributions of ancient civilizations to modern social and political institutions;

(ii) Major events in Virginia history from 1607 to the present;

(iii) Key individuals, documents, and events in United States history; and

(iv) The evolution of America's constitutional republic and its ideas, institutions, and practices.

(b) Geography.

(i) The use of maps and other geographic representations, tools, and technologies to acquire, process, and report information;

(ii) The relationship between human activity and the physical environment in the community and the world; and

(iii) Physical processes that shape the surface of the earth.

(c) Civics.

(i) The privileges and responsibilities of good citizenship and the importance of the rule of law for the protection of individual rights;

(ii) The process of making laws in the United States and the fundamental ideals and principles of a republican form of government;

(iii) The understanding that Americans are a people of diverse ethnic origins, customs, and traditions who are united by basic principles of a republican form of government and a common identity as Americans; and

(iv) Local government and civics instruction specific to Virginia.

(d) Economics.

(i) The basic economic principles that underlie the United States market economy;

(ii) The role of the individual and how economic decisions are made in the market place; and

(iii) The role of government in the structure of the United States economy.

(2) Understanding of the nature of history and social sciences and how the study of the disciplines assists students in developing historical thinking, geographical analysis, economic decision-making, and responsible citizenship by:

(a) Using artifacts and primary and secondary sources to understand events in history;

(b) Using geographic skills to explain the interaction of people, places, and events to support an understanding of events in history;

(c) Using charts, graphs, and pictures to determine characteristics of people, places, and events in history;

(d) Asking appropriate questions and summarizing points to answer a question;

(e) Comparing and contrasting people, places, and events in history;

(f) Recognizing direct cause and effect relationships in history;

(g) Explaining connections across time and place;

(h) Using a decision-making model to identify costs and benefits of a specific choice made;

(i) Practicing good citizenship skills and respect for rules and laws, and participating in classroom activities; and

Regulations

(j) Developing fluency in content vocabulary and comprehension of verbal, written, and visual sources.

d. Science.

(1) Understanding of the knowledge, skills, and practices of the four core science disciplines of Earth science, biology, chemistry, and physics as defined in Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~or their successor standards~~] and the Virginia Science Standards of Learning and how these standards provide a sound foundation for teaching science in the elementary grades.

(2) Understanding of the nature of science and scientific inquiry, including the following:

(a) Function of research design and experimentation;

(b) Role and nature of the theory in explaining and predicting events and phenomena;

(c) Practices required to provide empirical answers to research questions, including data collection and analysis, modeling, argumentation with evidence, and constructing explanations;

(d) Reliability of scientific knowledge and its constant scrutiny and refinement;

(e) Self-checking mechanisms used by science to increase objectivity, including peer review; and

(f) Assumptions, influencing conditions, and limits of empirical knowledge.

(3) Understanding of the knowledge, skills, and practices for conducting an active elementary science program including the ability to:

(a) Design instruction reflecting the goals of the Virginia Science Standards of Learning;

(b) Implement classroom, field, and laboratory safety rules and procedures and ensure that students take appropriate safety precautions;

(c) Conduct research projects and experiments, including applications of the design process and technology;

(d) Conduct systematic field investigations using the school grounds, the community, and regional resources;

(e) Organize key science content, skills, and practices into meaningful units of instruction that actively engage students in learning;

(f) Design instruction to meet the needs of diverse learners using a variety of techniques;

(g) Evaluate instructional materials, technologies, and teaching practices;

(h) Conduct formative and summative assessments of student learning;

(i) Incorporate instructional technology to enhance student performance in science; and

(j) Ensure student competence in science.

(4) Understanding of the content, skills, and practices of the four core science areas, including Earth sciences, biology, chemistry, and physics supporting the teaching of preK-6 science as defined by the Virginia Science Standards of Learning and equivalent course work reflecting each of the four core science areas.

(5) Understanding of the core scientific disciplines of Earth science, biology, chemistry, and physics to ensure:

(a) The placement of the four core scientific disciplines in an appropriate interdisciplinary context;

(b) The ability to teach the skills, practices, and crosscutting concepts common to the natural and physical sciences;

(c) The application of key science principles to solve practical problems; and

(d) A "systems" understanding of the natural world.

(6) Understanding of the contributions and significance of science including:

(a) The social, cultural, and economic significance of science;

(b) The relationship of science to mathematics, the design process, and technology; and

(c) The historical development of scientific concepts and scientific reasoning.

8VAC20-543-276. Dual language (English) preK-6 (add-on endorsement).

A. The dual language (English) preK-6 endorsement is to teach dual language (English). Individuals who hold a valid Virginia teaching license with an elementary education endorsement may teach in dual language (English) in the corresponding grade levels noted on the license (such as early/primary education preK-3 or elementary education preK-6). Even though individuals holding a valid Virginia teaching license with an elementary education endorsement in the assigned dual language (English) assignment do not need the dual language (English) preK-6 add-on endorsement, the endorsement recognizes the candidate's additional preparation in dual language (English) preparation.

B. The program in dual language (English) preK-6 add-on endorsement shall ensure that the candidate holds a baccalaureate degree from a regionally accredited college or university and an active teaching license with an elementary education endorsement issued by the State Board of Education and has demonstrated the following competencies and completed a 45-clock-hour practicum in dual language (English) from a regionally accredited college or university. One year of successful, full-time teaching experience in a public school or accredited nonpublic school in dual language (English) may be accepted in lieu of the practicum.

1. Skills in this area shall contribute to an understanding of the principles of learning; dual language acquisition;

theories of second language acquisition; the application of skills in discipline-specific methodology; varied and effective methods of communication with and among students; selection and use of materials, including media and contemporary technologies; and selection, development, and use of appropriate curricula, methodologies, and materials that support and enhance student learning and reflect the research on unique, age-appropriate, and culturally relevant curriculum and pedagogy.

2. Understanding of the principles of online learning and online instructional strategies and the application of skills to deliver online instruction shall be included.

3. Instructional practices that are sensitive to culturally and linguistically diverse learners, including English learners, gifted and talented students, and students with disabilities, and appropriate for the preK-3 or preK-6 endorsement shall be included.

4. Teaching methods shall be tailored to promote student engagement and student academic progress and effective preparation for the Virginia Standards of Learning assessments.

5. Study in (i) methods of improving communication between schools and families; (ii) communicating with families regarding social and instructional needs of children; (iii) ways of increasing family engagement in student learning at home and in school; (iv) the Virginia Standards of Learning; (v) English Language Development Standards (WIDA); and (vi) Virginia Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~or their successor standards~~] prepared by the Virginia Department of Education's Office of Early Childhood shall be included.

6. Early childhood educators shall understand the role of families in child development and in relation to teaching educational skills.

7. Early childhood educators shall understand the role of the informal and play-mediated settings for promoting students' skills and development and shall demonstrate knowledge and skill in interacting in such situations to promote specific learning outcomes as reflected in Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~or their successor standards~~].

8. Demonstrated proficiency in the use of educational technology for instruction shall be required.

8VAC20-543-277. Dual language (target language) endorsement preK-6.

A. The programs in dual language (target language) preK-6 shall ensure that the candidate has demonstrated the following competencies. National standards in dual language are to be addressed in the program.

B. Individuals must have demonstrated proficiency in the world language by completing a major in the target language; or 12 semester hours in the target language above the intermediate level that must include composition, literature, and conversation; or a qualifying score on a foreign language assessment in the target language as prescribed by the State Board of Education.

1. Methods.

a. Understanding of the needed knowledge, skills, dispositions, and processes to support learners in achievement of Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~or their successor standards~~] and the Virginia Standards of Learning in English, mathematics, history and social science, science, and computer technology;

b. Understanding of current research on the brain, its role in learning, and implications for instruction;

c. The ability to integrate English, mathematics, science, health, history and social sciences, art, music, drama, movement, and technology in learning experiences;

d. The use of differentiated instruction and flexible groupings to meet the needs of learners at different stages of development, abilities, and achievement;

e. The use of appropriate methods, including those in visual and performing arts, to help learners develop knowledge and basic skills, sustain intellectual curiosity, and problem-solve;

f. The ability to utilize effective classroom and behavior management skills through methods that build responsibility and self-discipline promote self-regulation, and maintain a positive learning environment;

g. The ability to modify and manage learning environments and experiences to meet the individual needs of children, including children with disabilities, gifted children, children who are English learners, and children with diverse cultural needs;

h. The ability to use formal and informal assessments to diagnose needs, plan and modify instruction, and record student progress;

i. A commitment to professional growth and development through reflection, collaboration, and continuous learning;

j. The ability to analyze, evaluate, and apply quantitative and qualitative research;

k. Understanding of the Virginia Standards of Learning for Computer Technology and the ability to use technology as a tool for teaching, learning, research, and communication; and

l. The ability to adapt task and interactions to maximize language development, conceptual understanding, and skill competence within each child's zone of proximal development.

Regulations

2. Knowledge and skills.

a. Reading and English. Understanding of the content, knowledge, skills, and processes for teaching Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~, or their successor standards,~~] and the Virginia Standards of Learning for English, including communication (speaking, listening, and media literacy), reading, writing, and research and how these standards provide the core for teaching English in elementary .

(1) Assessment and diagnostic teaching. The individual shall:

(a) Be proficient in the use of both formal and informal assessment as screening diagnostic and progress monitoring measures for the components of reading: phonemic awareness, letter recognition, decoding, fluency, vocabulary, reading level, and comprehension; and

(b) Be proficient in the ability to use diagnostic data to inform instruction for acceleration, intervention, remediation, and differentiation.

(2) Communication: speaking, listening, and media literacy. The individual shall:

(a) Be proficient in the knowledge, skills, and processes necessary for teaching communication, such as speaking, listening, and media literacy;

(b) Be proficient in developing students' phonological awareness skills;

(c) Demonstrate the ability to teach students to identify the characteristics of and apply critical thinking to media messages and to facilitate students' proficiency in using various forms of media to collaborate and communicate;

(d) Demonstrate effective strategies for facilitating the learning of standard English by speakers of other languages and dialects; and

(e) Demonstrate the ability to promote creative thinking and expression, such as through storytelling, drama, choral, and oral reading.

(3) Reading and literature. The individual shall:

(a) Be proficient in explicit and systematic phonics instruction, including an understanding of sound and symbol relationships, syllables, phonemes, morphemes, word analysis, and decoding skills;

(b) Be proficient in strategies to increase vocabulary and concept development;

(c) Be proficient in the structure of the English language, including an understanding of syntax and semantics;

(d) Be proficient in reading comprehension strategies for both fiction and nonfiction text, including questioning, predicting, inferencing, summarizing, clarifying, evaluating, and making connections;

(e) Demonstrate the ability to support students to read with fluency, accuracy, and meaningful expression (prosody);

(f) Demonstrate the ability to develop comprehension skills in all content areas;

(g) Demonstrate the ability to foster appreciation of a variety of literature;

(h) Understand the importance of promoting independent reading by selecting fiction and nonfiction texts of appropriate yet engaging topics and reading levels; and

(i) Demonstrate effective strategies for teaching students to view, interpret, analyze, and represent information and concepts in visual form with or without the spoken or written word.

(4) Writing. The individual shall:

(a) Be proficient in the knowledge, skills, and processes necessary for teaching writing, including the domains of composing and written expression, usage and mechanics and the writing process of planning, drafting, revising, editing, and publishing;

(b) Understand the stages of spelling development, promoting the generalization of spelling study to writing, and be proficient in systematic spelling instruction, including awareness of the purpose and limitations of "invented spelling";

(c) Demonstrate the ability to teach students to write cohesively for a variety of purposes and to provide instruction on the writing process: planning, drafting, revising, editing, and publishing in the narrative, descriptive, persuasive, and explanative modes; and

(d) Demonstrate the ability to facilitate student research and related skills, such as accessing information, evaluating the validity of sources, citing sources, and synthesizing information.

(5) Technology. The individual shall demonstrate the ability to guide students in their use of technology for both process and product as they work with reading, writing, and research.

b. Mathematics.

(1) Understanding of the mathematics relevant to the content identified in Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~, or their successor standards,~~] and the Virginia Standards of Learning and how the standards provide the foundation for teaching mathematics in grades preK-6. Experiences with practical applications and the use of appropriate technology and concrete materials should be used within the following content:

(a) Number systems and their structure, basic operations, and properties;

(b) Elementary number theory, ratio, proportion, and percent;

(c) Algebra: fundamental idea of equality; operations with monomials and polynomials; algebraic fractions; linear and quadratic equations and inequalities and linear systems of equations and inequalities; radicals and exponents; arithmetic and geometric sequences and series; algebraic and trigonometric functions; and transformations among graphical, tabular, and symbolic forms of functions;

(d) Geometry: geometric figures, their properties, relationships, and the Pythagorean Theorem; deductive and inductive reasoning; perimeter, area, and surface area of two-dimensional and three-dimensional figures; coordinate and transformational geometry; and constructions; and

(e) Probability and statistics: permutations and combinations; experimental and theoretical probability; data collection and graphical representations including box-and-whisker plots; data analysis and interpretation for predictions; and measures of center, spread of data, variability, range, and normal distribution.

(2) Understanding of the sequential nature of mathematics and vertical progression of mathematical standards.

(3) Understanding of the multiple representations of mathematical concepts and procedures.

(4) Understanding of and the ability to use the five processes of reasoning mathematically, solving problems, communicating mathematics effectively, making mathematical connections, and using mathematical models and representations at different levels of complexity.

(5) Understanding of the contributions of different cultures toward the development of mathematics and the role of mathematics in culture and society.

(6) Understanding of the appropriate use of calculators and technology in the teaching and learning of mathematics, including virtual manipulatives.

(7) Understanding of and the ability to use strategies to teach mathematics to diverse learners.

c. History and social sciences.

(1) Understanding of the knowledge, skills, and processes of history and the social sciences disciplines as defined in Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~or their successor standards.~~] and the Virginia Standards of Learning and how the standards provide the necessary foundation for teaching history and social sciences, including in:

(a) History.

(i) The contributions of ancient civilizations to modern social and political institutions;

(ii) Major events in Virginia history from 1607 to the present;

(iii) Key individuals, documents, and events in United States history; and

(iv) The evolution of America's constitutional republic and its ideas, institutions, and practices.

(b) Geography.

(i) The use of maps and other geographic representations, tools, and technologies to acquire, process, and report information;

(ii) The relationship between human activity and the physical environment in the community and the world; and

(iii) Physical processes that shape the surface of the earth.

(c) Civics.

(i) The privileges and responsibilities of good citizenship and the importance of the rule of law for the protection of individual rights;

(ii) The process of making laws in the United States and the fundamental ideals and principles of a republican form of government;

(iii) The understanding that Americans are a people of diverse ethnic origins, customs, and traditions, who are united by basic principles of a republican form of government and a common identity as Americans; and

(iv) Local government and civics instruction specific to Virginia.

(d) Economics.

(i) The basic economic principles that underlie the United States market economy;

(ii) The role of the individual and how economic decisions are made in the market place; and

(iii) The role of government in the structure of the United States economy.

(2) Understanding of the nature of history and social sciences and how the study of the disciplines assists students in developing historical thinking, geographical analysis, economic decision-making, and responsible citizenship by:

(a) Using artifacts and primary and secondary sources to understand events in history;

(b) Using geographic skills to explain the interaction of people, places, and events to support an understanding of events in history;

(c) Using charts, graphs, and pictures to determine characteristics of people, places, and events in history;

(d) Asking appropriate questions and summarizing points to answer a question;

(e) Comparing and contrasting people, places, and events in history;

(f) Recognizing direct cause and effect relationships in history;

Regulations

- (g) Explaining connections across time and place;
- (h) Using a decision-making model to identify costs and benefits of a specific choice made;
- (i) Practicing good citizenship skills and respect for rules and laws, and participating in classroom activities; and
- (j) Developing fluency in content vocabulary and comprehension of verbal, written, and visual sources.

d. Science.

(1) Understanding of the knowledge, skills, and practices of the four core science disciplines of Earth science, biology, chemistry, and physics as defined in Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~, or their successor standards,~~] and the Virginia Science Standards of Learning and how these standards provide a sound foundation for teaching science in the elementary grades.

(2) Understanding of the nature of science and scientific inquiry, including the following:

- (a) Function of research design and experimentation;
 - (b) Role and nature of the theory in explaining and predicting events and phenomena;
 - (c) Practices required to provide empirical answers to research questions, including data collection and analysis, modeling, argumentation with evidence, and constructing explanations;
 - (d) Reliability of scientific knowledge and its constant scrutiny and refinement;
 - (e) Self-checking mechanisms used by science to increase objectivity, including peer review; and
 - (f) Assumptions, influencing conditions, and limits of empirical knowledge.
- (3) Understanding of the knowledge, skills, and practices for conducting an active elementary science program including the ability to:
- (a) Design instruction reflecting the goals of the Virginia Science Standards of Learning;
 - (b) Implement classroom, field, and laboratory safety rules and procedures and ensure that students take appropriate safety precautions;
 - (c) Conduct research projects and experiments, including applications of the design process and technology;
 - (d) Conduct systematic field investigations using the school grounds, the community, and regional resources;
 - (e) Organize key science content, skills, and practices into meaningful units of instruction that actively engage students in learning;
 - (f) Design instruction to meet the needs of diverse learners using a variety of techniques;
 - (g) Evaluate instructional materials, technologies, and teaching practices;

(h) Conduct formative and summative assessments of student learning;

(i) Incorporate instructional technology to enhance student performance in science; and

(j) Ensure student competence in science.

(4) Understanding of the content, skills, and practices of the four core science areas, including Earth sciences, biology, chemistry, and physics supporting the teaching of preK-6 science as defined by the Virginia Science Standards of Learning and equivalent course work reflecting each of the four core science areas.

(5) Understanding of the core scientific disciplines of Earth science, biology, chemistry, and physics to ensure:

(a) The placement of the four core scientific disciplines in an appropriate interdisciplinary context;

(b) The ability to teach the skills, practices, and crosscutting concepts common to the natural and physical sciences;

(c) The application of key science principles to solve practical problems; and

(d) A "systems" understanding of the natural world.

(6) Understanding of the contributions and significance of science including:

(a) The social, cultural, and economic significance of science;

(b) The relationship of science to mathematics, the design process, and technology; and

(c) The historical development of scientific concepts and scientific reasoning.

8VAC20-543-278. Dual language (target language) preK-6 (add-on endorsement).

A. The dual language (target language) preK-6 add-on endorsement is to teach dual language in a World Language other than English. The target language will be noted on the endorsement.

B. The program in dual language (target language) preK-6 add-on endorsement shall ensure that the candidate holds a baccalaureate degree from a regionally accredited college or university and an active teaching license with an endorsement in a target language issued by the State Board of Education and has demonstrated the following competencies and completed a 45-clock-hour practicum in dual language (target language) from a regionally accredited college or university. One year of successful, full-time teaching experience in a public school or accredited nonpublic school in dual language (target language) may be accepted in lieu of the practicum.

1. Skills in this area shall contribute to an understanding of the principles of learning; dual language acquisition; theories of second language acquisition; the application of skills in discipline-specific methodology; varied and

effective methods of communication with and among students; selection and use of materials, including media and contemporary technologies; and selection, development, and use of appropriate curricula, methodologies, and materials that support and enhance student learning and reflect the research on unique, age-appropriate, and culturally relevant curriculum and pedagogy.

2. Understanding of the principles of online learning and online instructional strategies and the application of skills to deliver online instruction shall be included.

3. Instructional practices that are sensitive to culturally and linguistically diverse learners, including English learners, gifted and talented students, and students with disabilities, and appropriate for the preK-3 or preK-6 endorsement shall be included.

4. Teaching methods shall be tailored to promote student engagement and student academic progress and effective preparation for the Virginia Standards of Learning assessments.

5. Study in (i) methods of improving communication between schools and families; (ii) communicating with families regarding social and instructional needs of children; (iii) ways of increasing family engagement in student learning at home and in school; (iv) the Virginia Standards of Learning; (v) English Language Development Standards (WIDA); and (vi) Virginia Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~or their successor standards~~] prepared by the Virginia Department of Education's Office of Early Childhood shall be included.

6. Early childhood educators shall understand the role of families in child development and in relation to teaching educational skills.

7. Early childhood educators shall understand the role of the informal and play-mediated settings for promoting students' skills and development and shall demonstrate knowledge and skill in interacting in such situations to promote specific learning outcomes as reflected in Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds [~~or their successor standards~~].

8. Demonstrated proficiency in the use of educational technology for instruction shall be required.

C. The candidate must pass the rigorous elementary education assessment prescribed by the State Board of Education or completed the following coursework:

1. Mathematics - nine semester hours in mathematics that must include methods of teaching elementary mathematics;

2. Laboratory sciences (in two science disciplines) - nine semester hours that must include methods of teaching elementary science;

3. History and Social Sciences: United States history - three semester hours; geography, economics, or United States or comparative government - three semester hours; and methods of teaching elementary history and social sciences - three semester hours.

8VAC20-543-279. Economics and personal finance (add-on endorsement).

The program in economics and personal finance shall ensure that the candidate holds an active license (Collegiate Professional License, Postgraduate Professional License, or a Provisional License leading to a Collegiate Professional or Postgraduate Professional License) with a teaching endorsement or endorsements issued by the State Board of Education and has demonstrated the following competencies:

1. Understanding and demonstration of the required knowledge, skills, and processes to support learners in achievement of the Economics and Personal Finance Virginia Standards of Learning, including:

a. Integration of economic concepts and structures, including how consumers, businesses, and governments face scarcity of resources and make trade-offs and incur opportunity costs;

b. Role of producers and consumers in a market economy including response to incentives, the role of entrepreneurs, and how costs and revenues affect profit and supply;

c. The price system;

d. Factors that affect income;

e. Nation's economic goals, including full employment, stable prices, and economic growth;

f. Nation's financial system;

g. Monetary and fiscal policy;

h. Role of government in a market economy;

i. Global economy including trade and comparative advantage;

j. Consumer skills;

k. Planning for living and leisure expenses;

l. Banking transactions;

m. Credit and loan functions;

n. Role of insurance in risk management;

o. Income earning, taxes, and reporting;

p. Personal financial planning;

q. Investment and savings planning; and

r. Financing postsecondary education (including the Free Application for Federal Student Aid (FAFSA); and

2. Understanding and knowledge of teaching in an online or blended learning environment.

VA.R. Doc. No. R20-6234; Filed December 15, 2025, 2:42 p.m.

Regulations

Fast-Track Regulation

Title of Regulation: **8VAC20-650. Regulations Governing the Determination of Critical Teacher Shortage Areas (amending 8VAC20-650-10, 8VAC20-650-20, 8VAC20-650-30).**

Statutory Authority: §§ 22.1-16 and 22.1-290.01 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 11, 2026.

Effective Date: February 26, 2026.

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

Basis: Section 22.1-16 of the Code of Virginia the State Board of Education to adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1 of the Code of Virginia. Section 22.1-290 of the Code of Virginia authorizes the board to provide for the awarding of teaching scholarship loans to students attending nonprofit institutions of higher education in the Commonwealth. Section 22.1-290.01 of the Code of Virginia requires the board to establish, in regulation, criteria for determining critical teacher shortage areas for awarding scholarships. Section 22.1-290.2 of the Code of Virginia requires each school board to report to the Department of Education annually the number and type of teacher, other instructional personnel, and support staff vacancies in the school division.

Purpose: This action is essential to protect the health, safety, and welfare of citizens because it ensures that the board's regulations remain in alignment with the Code of Virginia.

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 regulation to statute.

Substance: The amendments (i) update language to reflect a change to a 10-year renewable license; (ii) add language requiring each school board to report to the Department of Education annually the number and type of teacher, other instructional personnel, and support staff vacancies in the school division; and (iii) update language regarding Virginia Teaching Scholarship Loan Program eligibility to match § 22.1-290.01 C of the Code of Virginia.

Issues: The primary advantage to the public and the Commonwealth is that the regulation will accurately reflect the statute. There are no 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 Board of Education (board) proposes several amendments to conform the regulation to the Code of Virginia.

Background. 8VAC20-650-10 currently states in subdivision 3, "To obtain information about the differences in the supply and demand among Virginia school divisions, the survey will require, but will not be limited to, the following data: c. Number of teachers employed without a regular five-year renewable license for their teaching assignment;" Chapters 748 and 749 of the 2018 Acts of Assembly changed the term of the renewable teacher license from five years to 10 years. Thus, the board proposes to update the reference in 8VAC20-650-10 from five-year to 10-year. Chapter 674 of the 2020 Acts of Assembly required in part that school boards submit annual reports to the Department of Education that describe the number and type of vacancies for teachers, other instructional personnel, and support staff. The board proposes to state the same in 8VAC20-650-20 of the regulation. 8VAC20-650-30 currently states in part, "The Virginia Teaching Scholarship Loan Program shall consist of scholarships awarded annually to teacher candidates, including graduate students and paraprofessionals from Virginia school divisions at a regionally accredited public or private four-year institution of higher education in the Commonwealth, who..." Section 22.1-290.01 C of the Code of Virginia states in part, "Program shall consist of scholarships awarded annually to teacher candidates, including graduate students and paraprofessionals from Virginia school divisions at an accredited baccalaureate private institution of higher education in the Commonwealth or baccalaureate public institution of higher education in the Commonwealth, who..." The board proposes to amend the text in 8VAC20-650-30 to match the text in the Code of Virginia.

Estimated Benefits and Costs. When regulations and the Code conflict, the Code presides. Consequently, the proposed amendments to the regulation do not alter requirements in practice. The amendments may be beneficial in that readers of the regulation may be better informed concerning the requirements that apply.

Businesses and Other Entities Affected. The requirements pertain to the 131 school divisions in Virginia and the 36 approved education programs at colleges and universities in the Commonwealth. 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 As the proposal neither increases cost nor reduces benefit, no adverse impact is indicated.

Small Businesses⁴ Affected.⁵ The proposed amendments do not adversely affect small businesses.

Localities⁶ Affected.⁷ The proposal neither disproportionately affects particular localities nor affects costs for local governments.

Projected Impact on Employment. The proposal does not affect employment.

Effects on the Use and Value of Private Property. The proposal affects neither the use and value of private property nor costs related to the development of real estate.

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 State Board of Education thanks the Department of Planning and Budget for its thorough economic impact analysis.

Summary:

The amendments align the regulation to recent updates to the Code of Virginia. Specifically, the action (i) updates language to reflect a change to a 10-year renewable license; (ii) adds language requiring each school board to report to the Department of Education annually the number and type of teacher, other instructional personnel, and support staff vacancies in the school division; and (iii) updates language regarding Virginia Teaching Scholarship Loan Program eligibility to match § 22.1-290.01 C of the Code of Virginia.

8VAC20-650-10. Survey of local school divisions.

~~Beginning in school year 2001-2002, to~~ To obtain the data necessary for establishing critical teacher shortage areas, an annual survey of instructional personnel and administrative personnel licensed by the State Board of Education shall be conducted as follows:

1. The Department of Education (department) shall be responsible for the administration of the annual survey and shall:

a. Distribute to each local school division an annual survey of instructional and administrative personnel for the purpose of determining critical teacher shortages. The department may distribute the survey through electronic means; and

b. Post the results of the survey in a manner that will permit access by local school divisions, approved teacher preparation programs, other state agencies, and the public through an electronic process.

2. Each local school division shall be required to submit a completed survey within the timeframe established by the department. If the survey is distributed through electronic means, then the survey shall be completed and submitted to the department through electronic means as identified by the department.

3. To obtain information about the differences in the supply and demand among Virginia school divisions, the survey will require, but will not be limited to, the following data:

a. Number of teaching positions by subject area;

b. Number of teaching positions by endorsement (teaching) area; number of teaching positions not filled by endorsement area; and number of teaching positions filled without the appropriate teaching endorsement;

c. Number of teachers employed without a regular ~~five-year~~ 10-year renewable license for their teaching assignment; and

d. Number of teaching position vacancies for which a school division receives three or fewer qualified candidates (licensed or eligible for a license).

8VAC20-650-20. Establishing critical shortage areas.

A. Each school board shall report to the Department of Education annually the number and type of teacher, other instructional personnel, and support staff vacancies in the school division.

B. Utilize the data collected through the annual survey to establish critical teacher shortage areas as follows:

1. Shortages by subject matter will be designated from the top 10 academic disciplines identified as having shortages through the superintendent's annual survey of school divisions.

2. In addition to the top 10 academic disciplines identified statewide, school divisions may designate a subject area as having a shortage if the school division receives three or fewer qualified candidates (licensed or eligible for a license) for any teaching vacancy for that subject area.

3. Any Virginia school division, including rural or urban school divisions, where 10% of the teachers are not fully licensed for their teaching assignment may be designated as a geographic critical shortage area.

B. C. For the purpose of administering the Virginia Teaching Scholarship Loan Program, an individual may meet the teaching obligation, regardless of teaching discipline, by agreeing to teach in a school with a high concentration (50% or more) of students eligible for free or reduced lunch.

8VAC20-650-30. Virginia Teaching Scholarship Loan Program requirements and selection procedures.

A. Annually, the teacher preparation institutions in Virginia that have approved teacher preparation programs shall be invited to nominate individuals to receive loans through the Virginia Teaching Scholarship Loan Program subject to available appropriations pursuant to § 22.1-290.01 of the Code of Virginia.

B. The Virginia Teaching Scholarship Loan Program shall consist of scholarships awarded annually to teacher candidates, including graduate students and paraprofessionals from Virginia school divisions at an accredited ~~public or baccalaureate private four-year~~ institution of higher education in the Commonwealth or baccalaureate public institution of higher education in the Commonwealth who (i) are enrolled full time or part time in an approved teacher education program or are participants in another approved teacher education program; (ii) have maintained a cumulative grade point average of at least 2.7 on a 4.0 scale or its equivalent; and (iii) are nominated for such scholarship by the institution where they are enrolled. In addition, the candidates must meet one or more of the following criteria: (a) be enrolled in a program leading to an endorsement in a critical shortage area as established by the State Board of Education; (b) be a male teacher candidate in an elementary or middle school education program; (c) be a minority teacher candidate enrolled in any teacher endorsement area; or (d) be a student in an approved teacher education program leading to an endorsement in career and technical education.

C. A selection panel appointed by the Superintendent of Public Instruction may be convened if the number of Teacher Education Program recommendations for scholarships exceed the appropriations. The panel shall select recipients for the teaching scholarship loan from the eligible applicants. Efforts should be made to have an appropriate distribution of scholarships among the identified critical teacher shortage areas.

VA.R. Doc. No. R26-8394; Filed December 15, 2025, 2:12 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

REGISTRAR'S NOTICE: Pursuant to 1VAC7-10-60, the Registrar of Regulations is amending one regulation of the Virginia Waste Management Board to update a telephone number in the Virginia Administrative Code.

Title of Regulation: **9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-490).**

Effective Date: January 12, 2026.

Agency Contact: Jill Hrynciw, Policy Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 929-6559, or email jill.hrynciw@deq.virginia.gov.

Summary:

Pursuant to 1VAC7-10-60, the telephone number for the Virginia Department of Emergency Management 24-hour emergency reporting line in Virginia Waste Management Board regulation text is updated.

VA.R. Doc. No. R26-8559; Filed December 11, 2025, 2:41 p.m.

Action Withdrawn

Titles of Regulations: **9VAC20-81. Solid Waste Management Regulations (amending 9VAC20-81-10, 9VAC20-81-25, 9VAC20-81-35, 9VAC20-81-40, 9VAC20-81-90, 9VAC20-81-95, 9VAC20-81-100, 9VAC20-81-120 through 9VAC20-81-397, 9VAC20-81-410, 9VAC20-81-450, 9VAC20-81-460, 9VAC20-81-470, 9VAC20-81-485, 9VAC20-81-490, 9VAC20-81-530, 9VAC20-81-570, 9VAC20-81-600, 9VAC20-81-620, 9VAC20-81-660; adding 9VAC20-81-98).**

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

The Virginia Waste Management Board has WITHDRAWN the regulatory action for **9VAC20-81, Solid Waste Management Regulations**, which was published as a Proposed Regulation in [38:13 VA.R. 1703-1822 February 14, 2022](#). The purpose of the proposed action, Amendment 9, was to update and clarify provisions for setback, siting, operation, and monitoring requirements for landfills; update open burn exemptions; promote composting; and improve closure cost estimates. On December 9, 2025, the board voted to withdraw this action.

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

VA.R. Doc. No. R21-6661; Filed December 9, 2025, 2:53 p.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: Pursuant to 1VAC7-10-60, the Registrar of Regulations is amending several regulations of the State Water Control Board to update a telephone number and one regulation to update an Internet address in the Virginia Administrative Code.

Titles of Regulations: **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 9VAC25-110-80).**

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

9VAC25-120. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges from Groundwater Remediation of Contaminated Sites, Dewatering Activities of Contaminated Sites, and Hydrostatic Tests (amending 9VAC25-120-80).

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

9VAC25-190. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining (amending 9VAC25-190-70).

9VAC25-192. Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (amending 9VAC25-192-70).

9VAC25-193. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Concrete Products Facilities (amending 9VAC25-193-70).

9VAC25-194. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities (amending 9VAC25-194-70).

9VAC25-196. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less (amending 9VAC25-196-70).

9VAC25-630. Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management (amending 9VAC25-630-50).

9VAC25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (amending 9VAC25-660-100).

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 9VAC25-670-100).

9VAC25-680. Virginia Water Protection General Permit for Linear Transportation Projects (amending 9VAC25-680-100).

9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (amending 9VAC25-690-100).

9VAC25-800. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters (amending 9VAC25-800-60).

9VAC25-820. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (amending 9VAC25-820-70).

9VAC25-860. Virginia Pollutant Discharge Elimination System General Permit Regulation for Potable Water Treatment Plants (amending 9VAC25-860-70).

9VAC25-880. General VPDES Permit for Discharges of Stormwater from Construction Activities (amending 9VAC25-880-70).

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

Effective Date: January 12, 2026.

Agency Contact: Melissa Porterfield, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, or email melissa.porterfield@deq.virginia.gov.

Summary:

Pursuant to 1VAC7-10-60, (i) the telephone number for the Virginia Department of Emergency Management 24-hour emergency reporting line is updated in several State Water Control Board regulations and (ii) additionally, in 9VAC25-151-70, the Internet address for the Virginia Stormwater Best Management Practices (BMP) Clearinghouse is updated.

VA.R. Doc. No. R26-8549; Filed December 11, 2025; 2:39 p.m.

Regulations

Forms

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

Title of Regulation: **9VAC25-115. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities.**

Agency Contact: Morgan Emanuel, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 494-9635, or email morgan.emanuel@deq.virginia.gov.

FORMS (9VAC25-115)

~~Change of Ownership Agreement Form (rev. 4/2019)~~

[Change of Ownership Agreement Form \(rev. 12/2025\)](#)

[Department of Environmental Quality Water Division Permit Application Fee Form, Form 5 \(rev. 10/2018\)](#)

~~Registration Statement for the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Seafood Processing Facilities (rev. 7/2021)~~

~~Virginia DEQ No Exposure Certification for Exclusion from VPDES Industrial Activity Stormwater Permitting, Form SW-NEC (rev. 9/2020)~~

[Registration Statement for the General Virginia Pollutant Discharge Elimination System \(VPDES\) Permit for Seafood Processing Facilities \(rev. 12/2025\)](#)

[Virginia DEQ No Exposure Certification for Exclusion from VPDES Industrial Activity Stormwater Permitting, Form SW-NEC \(rev. 12/2024\)](#)

[Notice of Termination Form \(rev. 12/2025\)](#)

VA.R. Doc. No. R26-8389; Filed December 18, 2025, 2:12 p.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: **9VAC25-660. 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.

Effective Date: August 2, 2026.

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 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 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

Regulations

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 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.

Regulations

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.

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.

Regulations

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 804-750-8845.

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;
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

Regulations

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 \(rev. 10/2018\)](#)

[Joint Permit Application \(JPA\)-State Specific Information \(rev. 11/2024\)](#)

~~Virginia Department of Transportation, Inter Agency Coordination Meeting Joint Permit Application (eff. 6/2008)~~

[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 (9VAC25-660)

~~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](#)

V.A.R. Doc. No. R25-8056; Filed December 16, 2025, 8:42 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: **9VAC25-670. 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.

Effective Date: August 2, 2026.

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 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

Regulations

~~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 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

Regulations

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.

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.~~

Regulations

~~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. 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.

Regulations

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 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 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

Regulations

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 804-750-8845.

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 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

Regulations

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 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 \(rev. 10/2018\)](#)

[Joint Permit Application \(JPA\)-State Specific Information \(rev. 11/2024\)](#)

~~Virginia Department of Transportation, Inter Agency Coordination Meeting Joint Permit Application (eff. 6/2008)~~

[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 December 16, 2025, 8:53 a.m.

Regulations

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: 9VAC25-680. 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.

Effective Date: August 2, 2026.

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 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 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

Regulations

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 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 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 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

Regulations

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.

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.

Regulations

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 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

Regulations

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 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.

(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 804-750-8845.

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.

Regulations

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 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.

Regulations

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 \(rev. 10/2018\)](#)

[Joint Permit Application \(JPA\)-State Specific Information \(rev. 11/2024\)](#)

~~Virginia Department of Transportation, Inter-Agency Coordination Meeting Joint Permit Application (eff. 6/2008)~~

[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](#)

V.A.R. Doc. No. R25-8058; Filed December 16, 2025, 8:59 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: 9VAC25-690. 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.

Effective Date: August 2, 2026.

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 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

Regulations

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 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, 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~~

Regulations

~~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 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

Regulations

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.

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

Regulations

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 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 6 of the permit.

Regulations

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 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 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~~ 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 804-750-8845.

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:

Regulations

"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 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

Regulations

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 \(rev. 10/2018\)](#)

[Joint Permit Application \(JPA\)-State Specific Information \(rev. 11/2024\)](#)

~~Virginia Department of Transportation, Inter Agency Coordination Meeting Joint Permit Application (eff. 6/2008)~~

[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](#)

[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 December 16, 2025, 9:04 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The department will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **12VAC30-10. State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-150, 12VAC30-10-500, 12VAC30-10-580, 12VAC30-10-631, 12VAC30-10-790).**

12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-100, 12VAC30-20-260, 12VAC30-20-270).

12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-110, 12VAC30-40-320).

12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-240).

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-30, 12VAC30-60-145, 12VAC30-60-340).

12VAC30-110. Eligibility and Appeals (amending 12VAC30-110-720, 12VAC30-110-1380, 12VAC30-110-1390).

12VAC30-130. Amount, Duration and Scope of Selected Services (amending 12VAC30-130-600, 12VAC30-130-610, 12VAC30-130-1000).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: February 11, 2026.

Agency Contact: Syreeta Stewart, Regulations and Guidance Documents Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3863, fax (804) 786-1680, TDD (800) 343-0634, or email syreeta.stewart@dmass.virginia.gov.

Summary:

The amendments (i) replace the term "mentally retarded" with either "individuals with developmental disabilities" or, when required to match federal regulations, the more narrow term "individuals with intellectual disabilities"; (ii) replace references to the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) with references to the Department of Behavioral Health and Developmental Services (DBHDS); and (iii) make technical amendments.

12VAC30-10-150. Amount, duration, and scope of services: Medically needy.

A. This State Plan covers the medically needy. The services described in this section and in Part II (12VAC30-50-40 et seq.) of 12VAC30-50 are provided. Services for the medically needy include:

1. If services in an institution for mental diseases (42 CFR 440.140 and 440.160) or an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities (or both) are provided to any medically needy group, then each medically needy group is provided either the services listed in § 1905(a)(1) through (5) and (17) of the Act, or seven of the services listed in § 1902(a)(1) through (20). The services are provided as defined in 42 CFR 440, Subpart A and in §§ 1902, 1905, and 1915 of the Act.

Subdivision 1 of this subsection is applicable with respect to nurse-midwife services under § 1902(a)(17).

2. Prenatal care and delivery services for pregnant women.

3. Pregnancy-related, including family planning services, and postpartum services for a 60-day period (beginning on the day the pregnancy ends) and any remaining days in the month in which the sixtieth day falls are provided to women who, while pregnant, were eligible for, applied for, and received medical assistance on the day the pregnancy ends.

4. Services for any other medical condition that may complicate the pregnancy (other than pregnancy-related and postpartum services) are provided to pregnant women.

Regulations

5. Ambulatory services as defined in 12VAC30-50-40 for recipients ~~under age younger than 18 years of age~~ and recipients entitled to institutional services.

6. Home health services to recipients entitled to nursing facility services as indicated in 12VAC30-10-220.

7. Services for the medically needy do not include services in an institution for mental diseases for individuals ~~over age older than 65 years of age~~.

8. Services for the medically needy do not include services in an intermediate care facility for ~~the mentally-retarded individuals with intellectual disabilities~~.

9. Services for the medically needy do not include inpatient psychiatric services for individuals ~~under age younger than 21 years of age~~, other than those covered under early and periodic screening, diagnosis, and treatment (at 12VAC30-50-130).

10. Services for the medically needy do not include respiratory care services provided to ventilator dependent individuals. See 12VAC30-10-300.

11. Home and community care for functionally disabled elderly individuals is not covered.

12. Program of All-Inclusive Care for the Elderly (PACE) services as described and limited in Supplement 6 to Attachment 3.1-A (12VAC30-50-320, 12VAC30-50-321, 12VAC30-50-325, and 12VAC30-50-328) are covered.

B. Part II (12VAC30-50-40 et seq.) of 12VAC30-50 identifies services provided to each covered group of the medically needy. (Note: Other programs to be offered to medically needy beneficiaries would specify all limitations on the amount, duration, and scope of those services. As PACE provides services to the frail elderly population without such limitation, this is not applicable for this program. In addition, other programs to be offered to medically needy beneficiaries would also list the additional coverage that is in excess of established service limits for pregnancy-related services for conditions that may complicate the pregnancy. As PACE is for the frail elderly population, this also is not applicable for this program.)

12VAC30-10-500. Relations with standard-setting and survey agencies.

A. The State agency utilized by the Secretary to determine qualification of institutions and suppliers of services to participate in Medicare is responsible for establishing and maintaining health standards for private or public institutions (exclusive of Christian Science sanatoria) that provide services to Medicaid recipients. This agency is the Department of Health.

B. The State ~~authority(ies)~~ authorities responsible for establishing and maintaining standards, other than those relating to health, for public or private institutions that provide

services to Medicaid recipients ~~is (are):~~ Department of Behavioral Health and Developmental Services, ~~Department of Mental Health and Mental Retardation~~, State Corporation Commission, Office of State Fire Marshall.

C. 12VAC30-20-100 describes the standards specified in ~~paragraphs subsections A and B above, of this section~~ that are kept on file and made available to the Health Care Financing Administration on request.

D. The Virginia Department of Health (agency), which is the ~~State~~ agency responsible for licensing health institutions, determines if institutions and agencies meet the requirements for participation in the Medicaid program. The requirements in 42 CFR 431.610(e), (f), and (g) are met.

12VAC30-10-580. Payment for services.

A. Medicaid agency meets the requirements of 42 CFR 447, Subpart C, and § 1902(a)(13) and 1923 of the Act with respect to payment for inpatient hospital services.

Chapter 70, (12VAC30-70-10 et seq.) describes the methods and standards used to determine rates for payment for inpatient hospital services.

Inappropriate level of care days are not covered.

B. In addition to the services specified in ~~paragraphs subsections A, D, K, L, and M of this section~~, the Medicaid agency meets the following requirements:

1. Section 1902(a)(13)(E) of the Act regarding payment for services furnished by federally qualified health centers (FQHCs) under § 1905(a)(2)(C) of the Act. The agency meets the requirements of § 6303 of the State Medicaid Manual (HFCA-Pub. 45-6) regarding payment for FQHC services. Chapter 80, (12VAC30-80-10 et seq.) describes the method of payment and how the agency determines the reasonable costs of the services (~~for example e.g.,~~ cost reports, cost or budget reviews, or sample surveys).

2. Sections 1902(a)(13)(E) and 1926 of the Act, and 42 CFR 447, Subpart D, with respect to payment for all other types of ambulatory services provided by rural health clinics under the plan.

Chapter 80, (12VAC30-80-10 et seq.) describes the methods and standards used for the payment of each of these services except for inpatient hospital, nursing facility services, and services in intermediate care facilities for ~~the mentally-retarded individuals with intellectual disabilities~~ that are described in other attachments.

12VAC30-80-170 describes the general methods and standards used for establishing payment for Medicare Part A and B deductible/coinsurance.

C. Payment is made to reserve a bed during a recipient's temporary absence from an inpatient facility, as described in 12VAC30-20-170.

D. 1. The Medicaid agency meets the requirements of 42 CFR 447, Subpart C, with respect to payments for skilled nursing and intermediate care facility services.

12VAC30-90-10 describes the methods and standards used to determine rates for payment for skilled nursing and intermediate care facility services.

2. The Medicaid agency does not provide payment for skilled nursing facility services to a swing-bed hospital.

3. The Medicaid agency does not provide payment for intermediate care facility services to a swing-bed hospital.

4. Subdivision 1 of this subsection is applicable with respect to intermediate care facility services; such services are provided under this plan.

E. The Medicaid agency meets all requirements of 42 CFR 447.45 for timely payment of claims.

12VAC30-20-180 specifies, for each type of service, the definition of a claim for purposes of meeting these requirements.

F. The Medicaid agency limits participation to providers who meet the requirements of 42 CFR 447.15.

No provider participating under this plan may deny services to any individual eligible under the plan on account of the individual's inability to pay a cost sharing amount imposed by the plan in accordance with 42 CFR 431.55(g) and 447.53. This service guarantee does not apply to an individual who is able to pay, nor does an individual's inability to pay eliminate ~~his or her~~ the individual's liability for the cost sharing change.

G. The Medicaid agency assures appropriate audit of records when payment is based on costs of services or on a fee plus cost of materials.

H. The Medicaid agency meets the requirements of 42 CFR 447.203 for documentation and availability of payment rates.

I. The Medicaid agency's payments are sufficient to enlist enough providers so that services under the plan are available to recipients at least to the extent that those services are available to the general population.

J. The Medicaid agency meets the requirements of 42 CFR 447.205 for public notice of any changes in statewide method or standards for setting payment rates.

K. The Medicaid agency meets the requirements of § 1903(v) of the Act with respect to payment for medical assistance furnished to qualified aliens who entered the United States on or after August 22, 1996, who are not eligible for Medicaid for five years after their entry and nonqualified aliens, including illegal aliens and legal nonimmigrants who are otherwise eligible. Payment is made only for care and services that are necessary for the treatment of an emergency condition, as defined in § 1903(v) of the Act.

L. The Medicaid agency meets the requirements of § 1903(i)(14) of the Act with respect to payment for physician services furnished to children under 21 years of age and pregnant women. Payment for the physician services furnished by a physician to a child or pregnant woman is made only to physicians who meet one of the requirements listed under this section of the Act.

M. Medicaid reimbursement for administration of vaccines under the Pediatric Immunization Program.

A provider may impose a charge for the administration of a qualified pediatric vaccine as stated in § 1928(c)(2)(C)(ii) of the Act. Within this overall provision, Medicaid reimbursement to providers will be administered as follows:

1. The state sets a payment rate below the level of the regional maximum established by the Department of Health and Human Services Secretary.

The state pays \$11 per vaccine administration.

2. Medicaid beneficiary access to immunizations is assured through the following methodology:

The Commonwealth will demonstrate access to such services by the Commonwealth's fee per vaccine administration being higher than that of a major insurance company.

12VAC30-10-631. Standards for payment for nursing facility and intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities services.

With respect to nursing facilities and intermediate care facilities for ~~the mentally retarded~~ individuals with intellectual disabilities, all applicable requirements of 42 CFR Part 442, Subparts B and C are met.

12VAC30-10-790. Preadmission screening and annual resident review in nursing facilities.

A. The Medicaid agency has in effect a written agreement with the ~~State~~ state mental health and ~~mental retardation~~ intellectual disability authorities that meet the requirements of 42 CFR 431.621(c).

B. The ~~State~~ state operates a preadmission screening and annual resident review program that meets the requirements of 42 CFR 483.100-138.

C. The ~~State~~ state does not claim as "medical assistance under the State Plan" the cost of services to individuals who should receive preadmission screening or annual resident review until such individuals are screened or reviewed.

D. With the exception of NF services furnished to certain NF residents defined in 42 CFR 483.118(c)(1), the ~~State~~ state does not claim as "medical assistance under the State ~~plan~~ Plan" the cost of NF services to individuals who are found not to require NF services.

Regulations

E. 12VAC30-20-260 specifies the ~~State's~~ state's definition of specialized services.

F. Except for residents identified in 42 CFR 483.118(c)(1), the ~~State~~ state mental health authority makes categorical determinations that individuals with certain mental conditions or levels of severity of mental illness would normally require specialized services of such an intensity that a specialized services program could not be delivered by the ~~State~~ state in most, if not all, NFs and that a more appropriate placement should be utilized.

G. The ~~State~~ state describes an categorical determinations it applies in 12VAC30-20-270.

12VAC30-20-100. Standards governing general and special hospitals and convalescent and nursing homes.

~~The Title 32 of the Code of Virginia, Title 32,~~ authorizes the State Board of Health to adopt and promulgate reasonable rules and regulations as to standards of health to be maintained and such other matters as will promote the safety and ~~insure~~ ensure proper attention and service to and care of patients and inmates of private or public hospitals and institutions.

Rules and ~~Regulations Governing General and Special Hospitals and Convalescent and Nursing Homes~~ regulations governing general and special hospitals and convalescent and nursing homes in Virginia are published by the Virginia Department of Health under the above legal authority. Only facilities ~~which that~~ that meet the standards and requirements of these ~~Rules~~ rules and ~~Regulations~~ regulations are licensed for operation within the Commonwealth of Virginia. Compliance is evaluated from scheduled and non-scheduled personal visits to each facility by a highly qualified specially designated staff element (Bureau of Medical and Nursing Facilities) Division of Licensure Certification of the Virginia Department of Health. Rules and ~~Regulations~~ regulations are available for review upon request.

Intermediate care facilities in mental institutions are licensed by the ~~State~~ Department of ~~Mental Behavioral Health and Mental Retardation~~ Developmental Services as a condition for certification as an ICF facility by the Department of Health's Bureau of Medical and Nursing Facilities.

Mental ~~Hospitals~~ hospitals and ~~Institutions~~ institutions for ~~Mentally Retarded~~ individuals with intellectual disabilities, which render hospital or skilled nursing home services, are licensed by the ~~State~~ Department of ~~Mental Behavioral Health and Mental Retardation~~ Developmental Services and are certified for the Title XVIII Program by the Virginia Department of Health's Bureau of Medical and Nursing Facilities.

Descriptions of standards utilized for licensing and certifying these institutions, published in official, bound form are available for review upon request.

12VAC30-20-260. Definition of specialized services.

The Department of Medical Assistance Services (DMAS) shall define specialized services for the purposes of preadmission screening and annual resident review as follows. The Department of ~~Mental Behavioral Health, Mental Retardation and Substance Abuse~~ Developmental Services shall ensure the provision of services when they are provided by a non-Medicaid-enrolled provider or when the services are not covered by Medicaid.

- a. Partial hospitalization;
- b. Transportation to Medicaid-covered services or specialized services necessary to treat conditions of mental illness or ~~mental retardation~~ intellectual disabilities;
- c. Day health and rehabilitation;
- d. Psychosocial rehabilitation;
- e. Crisis intervention;
- f. Customized durable medical equipment, for residents without a patient pay, that would allow the resident to participate in specialized services;
- g. Behavior management interventions requiring ongoing consultation and monitoring by a licensed psychiatrist or psychologist;
- h. One-to-one supervision necessary for behavior management;
- i. Vision and hearing needs related to mental illness or ~~mental retardation~~ intellectual disabilities for persons ~~over~~ age older than 21 years of age;
- j. Dental needs resulting from mental illness or ~~mental retardation~~ intellectual disabilities sequela for persons ~~over~~ age older than 21 years of age;
- k. Habilitation;
- l. Supported employment for persons with mental illness or ~~mental retardation~~ intellectual disabilities;
- m. Case management services;
- n. Individual psychotherapy;
- o. Day treatment;
- p. Individual and group counseling; and
- q. Inpatient psychiatric care.

12VAC30-20-270. Categorical determinations.

1. A Level II evaluation shall be required for any applicant to a Medicaid-certified nursing facility who is determined, as a result of the Level I identification screening, to have a condition of mental illness or ~~mental retardation~~ intellectual disability as defined in 42 CFR 483.102.

2. If, however, the individual also meets one of the ~~following~~ categorical determinations in subdivision 3 of this section, a Level II evaluation is not required to be completed for that individual. These determinations may only be applied following the Level I review and only if existing data on the individual appear to be current and accurate and are sufficient to allow the evaluator readily to determine that the individual fits into the established category.

3. The categorical determinations are:

- a. ~~a~~ A terminal illness in which a physician has documented that life expectancy is less than six months; and
- b. ~~a~~ A severe physical illness, such as coma, functioning at brain stem level, or other conditions ~~which that~~ result in a level of impairment so severe that the individual could not be expected to benefit from active treatment. When this category is used, documentation must be available ~~which that~~ fully describes the severity of the condition.

12VAC30-40-110. Medicaid qualifying trusts.

In the case of a Medicaid qualifying trust described in § 1902(k)(2) of the Act, the amount from the trust that is deemed available to the individual who established the trust (or whose spouse established the trust) is the maximum amount that the ~~trustee(s)~~ trustee is permitted under the trust to distribute to the individual. This amount is deemed available to the individual, whether or not the distribution is actually made. This provision does not apply to any trust or initial trust decree established before April 7, 1986, solely for the benefit of ~~a mentally-retarded~~ an individual with an intellectual disability who resides in an intermediate care facility for ~~the mentally-retarded~~ mentally-retarded individuals with intellectual disabilities.

The policy for qualifying trusts ~~which that~~ is effective for trusts established or assets disposed of after August 10, 1993, is located in 12VAC30-40-300.

12VAC30-40-320. Consideration of Medicaid qualifying trust; undue hardship.

~~Condition or Requirement~~

A. The following criteria will be used to determine whether the agency will not count the funds in a trust as specified in 12VAC30-40-110, because it would work an undue hardship for categorically and medically needy individuals:

B. The Commonwealth does not, at the present time, recognize undue hardships in cases of qualifying trusts. ~~4.~~ In determining eligibility for Medicaid the maximum amount of payments permitted under the terms of a "Medicaid qualifying trust" to be distributed to the grantor, if the trustee exercised ~~his~~ discretion to the fullest extent possible, shall be considered available in determining the grantor's eligibility for Medicaid.

A "Medicaid qualifying trust" is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be

beneficiary of all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual.

C. The requirements of this section shall apply without regard to:

~~A.~~ 1. Whether or not the Medicaid qualifying trust is irrevocable or is established for purposes other than to enable a grantor to qualify for Medicaid; or

~~B.~~ 2. Whether or not the ~~trustee(s)~~ trustee exercises ~~his~~ discretion to distribute any payments to the individual.

D. This provision shall not apply to any trust or initial trust decree established prior to April 7, 1986, solely for the benefit of ~~a mentally-retarded~~ an individual with an intellectual disability who resides in an intermediate care facility for ~~the mentally-retarded~~ mentally-retarded individuals with intellectual disabilities.

12VAC30-50-240. Intermediate care services and intermediate care services for institutions for mental disease and ~~mental-retardation~~ intellectual disabilities.

A. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902 (a)(31)(A) of the Act, to be in need of such care are provided with no limitations.

B. Including such services in a public institution (or distinct part thereof) for ~~the mentally-retarded~~ individuals with developmental disabilities or persons with related conditions are provided with no limitations.

12VAC30-60-30. Utilization control: Long-stay acute care hospitals (nonmental hospitals).

A. Services for adults in long-stay acute care hospitals. The population to be served includes individuals requiring mechanical ventilation, ongoing intravenous medication or nutrition administration, comprehensive rehabilitative therapy services, and individuals with communicable diseases requiring universal or respiratory precautions.

1. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care hospital placement, and any additional information that justifies the need for intensive services. Physician certification must accompany the request. Periods of care not authorized by DMAS shall not be approved for payment.

2. These individuals must have long-term health conditions requiring close medical supervision, the need for 24-hour licensed nursing care, and the need for specialized services or equipment needs.

3. At a minimum, these individuals must require physician visits at least once weekly, licensed nursing services 24

Regulations

hours a day (a registered nurse whose sole responsibility is the designated unit must be on the nursing unit 24 hours a day on which the resident resides), and coordinated multidisciplinary team approach to meet needs that must include daily therapeutic leisure activities.

4. In addition, the individual must meet at least one of the following requirements:

a. Must require two out of three of the following rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of one hour each day; individual must demonstrate progress in overall rehabilitative plan of care on a monthly basis; ~~or~~

b. Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by a licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy; or

c. The individual must require at least one of the following special services:

(1) Ongoing administration of intravenous medications or nutrition (i.e., total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, ~~etc.~~);

(2) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only);

(3) Dialysis treatment that is provided on-unit (i.e., peritoneal dialysis);

(4) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(5) Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e., grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body); or

(6) Ongoing management of multiple unstable ostomies (a single ostomy does not constitute a requirement for special care) requiring frequent care (i.e., suctioning every hour; stabilization of feeding; stabilization of elimination, ~~etc.~~).

5. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the individuals' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

6. When the individual no longer meets long-stay acute care hospital criteria or requires services that the facility is unable to provide, then the individual must be discharged.

B. Services to pediatric/adolescent patients in long-stay acute care hospitals. The population to be served shall include children requiring mechanical ventilation, ongoing intravenous medication or nutrition administration, daily dependence on device-based respiratory or nutritional support (e.g., tracheostomy, gastrostomy, ~~etc.~~), comprehensive rehabilitative therapy services, and those children having communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as chicken pox, measles, and strep throat, ~~etc.~~) and with terminal illnesses.

1. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care, and any additional information that justifies the need for intensive services. Periods of care not authorized by DMAS shall not be approved for payment.

2. The child must have ongoing health conditions requiring close medical supervision, the need for 24-hour licensed nursing supervision, and the need for specialized services or equipment. The recipient must be ~~age 21~~ years of age or under younger.

3. The child must minimally require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is that nursing unit must be on the unit 24 hours a day on which the child is residing), and a coordinated multidisciplinary team approach to meet needs.

4. In addition, the child must meet one of the following requirements:

a. Must require two out of three of the following physical rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of 45 minutes per day; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis; ~~or~~

b. Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy, etc.; or

c. Must require at least one of the following special services:

(1) Ongoing administration of intravenous medications or nutrition (i.e., total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, ~~etc.~~);

(2) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only or isolation for normal childhood diseases such as measles, chicken pox, and strep throat, ~~etc.~~);

(3) Dialysis treatment that is provided within the facility (i.e., peritoneal dialysis);

- (4) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;
- (5) Extensive wound care requiring debridement, irrigation, packing, etc. more than two times a day (i.e., grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body);
- (6) Ostomy care requiring services by a licensed nurse; or
- (7) Services required for terminal care.

5. In addition, the long-stay acute care hospital must provide for the educational and habilitative needs of the child. These services must be age appropriate, must meet state educational requirements, and must be appropriate to the child's cognitive level. Services must also be individualized to meet the child's specific needs and must be provided in an organized manner that encourages the child's participation. Services may include, but are not limited to, school, active treatment for ~~mental retardation~~ developmental disabilities, habilitative therapies, social skills, and leisure activities. Therapeutic leisure activities must be provided daily.

6. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

7. When the resident no longer meets long-stay hospital criteria or requires services that the facility is unable to provide, the resident must be discharged.

12VAC30-60-145. ~~Mental—retardation~~ Developmental disability utilization criteria.

Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found in 12VAC30-50-95 through 12VAC30-50-310.

Appropriate use of case management services for ~~persons with mental retardation~~ individuals with developmental disabilities requires the following conditions to be met:

1. The individual must require case management as documented on the consumer service plan of care ~~which that~~ is developed based on appropriate assessment and supporting data. Authorization for case management services shall be initially obtained from ~~DMH/MRSAS~~ Department of Behavioral Health and Developmental Services (DBHDS) staff annually.
2. An active client shall be defined as an individual for whom there is a plan of care in effect ~~which that~~ requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others,

and other entities, including a minimum of one face-to-face contact within a 90-day period.

3. The plan of care shall address the individual's needs in all life areas with consideration of the individual's age, primary disability, level of functioning, and other relevant factors.

a. The plan of care shall be reviewed by the case manager every three months to ensure the identified needs are met and the required services are provided. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be given up to the last day of the fourth month following the month of the prior review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of the actual review.

b. The need for case management services shall be initially assessed and justified through the development of an annual consumer service plan.

4. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting the consumer service plan goals.

12VAC30-60-340. Pediatric and adolescent specialized care criteria.

~~§ 3-0~~ A. General description. The child must have ongoing health conditions requiring close medical supervision, 24 hours licensed nursing supervision, ~~AND~~ and specialized services or equipment. The recipient must be ~~age 21~~ years of age or under ~~younger~~.

~~§ 3-1~~ B. Targeted population.

~~A.~~ 1. Children requiring mechanical ventilation;

~~B.~~ 2. Children with communicable diseases requiring universal or respiratory precautions (e.g., excluding normal childhood diseases such as chicken pox, measles, strep throat, ~~etc.~~);

~~C.~~ 3. Children requiring ongoing intravenous medication or intravenous nutrition administration;

~~D.~~ 4. Children requiring daily dependence on device based respiratory or nutritional support (e.g., tracheostomy, gastrostomy, ~~etc.~~);

~~E.~~ 5. Children requiring comprehensive rehabilitative therapy service; and

~~F.~~ 6. Children with terminal illness.

~~§ 3-2~~ C. Criteria.

~~A.~~ 1. The child must require at a minimum:

~~1.~~ a. Physician visits at least once weekly (~~the~~ The initial physician visit must be made by the physician personally. Subsequent required physician visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.)

Regulations

2- b. Skilled nursing services 24 hours a day ~~(a.~~ A registered nurse must be on the nursing unit on which the child is residing, 24 hours a day, whose sole responsibility is that nursing unit).

3- c. Coordinated multidisciplinary team approach to meet needs.

4- d. The nursing facility must coordinate with appropriate state and local agencies for the educational and habilitative needs of the child. These services must be age appropriate and appropriate to the cognitive level of the child. Services must also be individualized to meet the specific needs of the child and must be provided in an organized and proactive manner. Services may include but are not limited to school, active treatment for ~~mental retardation~~ developmental disabilities, habilitative therapies, social skills, and leisure activities. The services must be provided for a total of 2 two hours per day, minimum.

~~B.~~ 2. In addition, the child must meet one of the following requirements:

1- a. Must require two out of three of the following rehabilitative services: Physical Therapy, Occupational Therapy, Speech-pathology services; therapy must be provided at a minimum of 6 six therapy sessions (minimum of 15 minutes per session) per day, 5 five days per week; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis; ~~or~~

2- b. Must require special equipment such as mechanical ventilators, respiratory therapy equipment ~~(that has to be supervised by licensed nurse or respiratory therapist);~~ monitoring device (respiratory or cardiac) kinetic therapy; ~~etc.;~~ or

3- c. Children that require at least one of the following special services:

~~a.~~ (1) Ongoing administration of intravenous medications of nutrition (i.e., TPN, antibiotic therapy, and narcotic administration, ~~etc.~~);

~~b.~~ (2) Special infection control precautions ~~(universal,~~ Universal or respiratory precaution; ~~this~~ does not include handwashing precautions only or isolation for normal childhood diseases, such as measles, chicken pox, and strep throat, ~~etc.~~);

~~c.~~ (3) Dialysis treatment that is provided within the facility (i.e., peritoneal dialysis);

~~d.~~ (4) Daily respiratory therapy treatments that must be provided by a skilled nurse or respiratory therapist;

~~e.~~ (5) Extensive wound care requiring debridement, irrigation, or packing, ~~etc.~~, more often than two times a day (i.e., grade IV decubiti; large surgical wounds that cannot be closed, second or third degree burns covering more than 10% of the body);

~~f.~~ (6) Ostomy care requiring services by a licensed nurse; or

~~g.~~ (7) Care for terminal illness.

12VAC30-110-720. Definitions.

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

"Acceptable medical evidence" means either (i) certification by a nursing home preadmission screening committee; or (ii) certification by the individual's attending physician.

"Actual monthly expenses" means the total of:

1. Rent or mortgage, including interest and principal;
2. Taxes and insurance;
3. Any maintenance charge for a condominium or cooperative; and
4. The utility standard deduction under the Food Stamp Program that would be appropriate to the number of persons living in the community spouse's household, if utilities are not included in the rent or maintenance charge.

"Applicable percent" means that percentage as defined in § 1924(d)(3)(B) of the Social Security Act.

"As soon as practicable" (as it relates to transfer of resources from the institutionalized spouse to the community spouse for the purpose of the community spouse resource allowance) means within 90 days from the date the local agency takes action to approve the institutionalized spouse's initial eligibility for medical assistance long-term care services when the institutionalized spouse agrees to transfer resources to the community spouse.

"At the beginning of the first continuous period of institutionalization" means the first calendar month of a continuous period of institutionalization in a medical institution or of receipt of a Medicaid community-based care waiver service or hospice.

"Community spouse" means a person who is married to an institutionalized spouse and is not ~~himself~~ an inpatient at a medical institution or nursing facility.

"Community spouse monthly income allowance" means an amount by which the minimum monthly maintenance needs allowance exceeds the amount of monthly income otherwise available to the community spouse.

"Community spouse resource allowance" means the amount of the resources in the institutionalized spouse's name that can be transferred to the community spouse to bring the resources in the community spouse's name up to the protected resource amount.

"Continuous period of institutionalization" means 30 consecutive days of institutional care in a medical institution or nursing facility, or 30 consecutive days of receipt of Medicaid waiver or hospice services, or 30 consecutive days of a combination of institutional care and waiver and hospice services. Continuity is broken only by 30 or more days absence from a medical institution or 30 or more days of nonreceipt of waiver services.

"Couple's countable resources" means all of the couple's nonexcluded resources regardless of state laws relating to community property or division of marital property. For purposes of determining the combined and separate resources of the institutionalized and community spouses when determining the institutionalized spouse's eligibility, the couple's home, contiguous property, household goods, and one automobile are excluded.

"Department" means the Department of Medical Assistance Services.

"Dependent child" means a child ~~under age~~ younger than 21 ~~years of age~~ and a child ~~age~~ 21 years ~~old of age~~ or older, of either spouse, who lives with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

"Dependent family member" means a parent, minor child, dependent child, or dependent sibling, including half brothers and half sisters and siblings gained through adoption, of either member of a couple who resides with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

"Exceptional circumstances resulting in significant financial duress" means circumstances other than those taken into account in establishing the spousal maintenance allowance for which the community spouse incurs expenses in amounts that ~~he~~ the community spouse cannot be expected to pay from the spousal maintenance allowance or from amounts held in the community spouse resource allowance.

"Excess shelter allowance" means the amount by which the actual monthly expense of maintaining the community spouse's residence plus the standard utility allowance exceeds the excess shelter standard.

"Excess shelter standard" means 30% of the monthly maintenance needs standard.

"Family member's income allowance" means an allowance for each dependent family member residing with the community spouse. The family member's income allowance is equal to ~~1/3~~ one-third of the amount by which the monthly maintenance needs standard exceeds the family member's income.

"Federal Poverty Level" or "FPL" means the annual Federal Poverty Level as computed by the Office of Management and Budget and published in the Federal Register.

"First continuous period of institutionalization" means the first day of the first month of the first continuous period of institutionalization, which began on or after September 30, 1989.

"Initial eligibility determination" means:

1. An eligibility determination made in conjunction with a medical assistance application filed during an individual's most recent continuous period of institutionalization; or
2. The initial redetermination of eligibility for a medical assistance eligible institutionalized spouse after being admitted to an institution or receiving medical assistance community-based care waiver services.

"Initial redetermination" means the first redetermination of eligibility for a medical assistance eligible spouse ~~which that~~ is regularly scheduled, or ~~which that~~ is made necessary by a change in the individual's circumstances.

"Institutionalized spouse" means an individual who is an inpatient at a medical institution, who is receiving medical assistance community-based care waiver services, or who has elected hospice services, and who is likely to remain in such facility or to receive waiver or hospice services for at least 30 consecutive days, and who has a spouse who is not in a medical institution or nursing facility.

"Likely to remain in an institution" means a reasonable expectation based on acceptable medical evidence that an individual will be in a medical institution or will receive medical assistance waiver or hospice services for 30 consecutive days, even if receipt of institutional care or waiver or hospice services actually terminates in less than 30 days. Individuals who have been screened and approved for medical assistance community-based waiver services or who have elected hospice services shall be considered likely to remain in an institution.

"Maximum monthly maintenance needs standard" is the upper limit, i.e., cap established under § 1924(d)(3)(C) of the Social Security Act.

"Maximum spousal resource standard" means the maximum amount of the couple's combined countable resources established for a community spouse to maintain himself in the community calculated in accordance with § 1924(f)(2)(A)(ii)(II) of the Social Security Act. This amount increases annually by the same percentage as the percentage increase in the Consumer Price Index for all urban consumers between September 1988 and the September before the calendar year involved as required in § 1924(g) of the Social Security Act.

Regulations

"Medical institution" or "nursing facility" means hospitals and nursing facilities, including an intermediate care facility for ~~the mentally retarded (ICF/MR)~~ individuals with intellectual disabilities (ICF/ID), consistent with the definitions of such institutions found in the Code of Federal Regulations at 42 CFR 435.1009, 42 CFR 435.1010, 42 CFR 440.40₂ and 42 CFR 440.150 and which are authorized under Virginia law to provide medical care.

"Minimum monthly maintenance needs allowance" means the monthly maintenance needs standard, plus an excess shelter allowance, if applicable, not to exceed the maximum monthly maintenance needs standard. The minimum monthly maintenance needs allowance is the amount to which a community spouse's income is compared in order to determine the community spouse's monthly income allowance.

"Minor" means a child ~~under age~~ younger than 21 years of age, of either spouse, who lives with the community spouse.

"Monthly maintenance needs standard" means an amount no less than 150% of 1/12 of the Federal Poverty Level for a family of two in effect on July 1 of each year.

"Other family members" means dependent children and dependent parents and siblings of either member of a couple who reside with the community spouse.

"Otherwise available income or resources" means income and resources ~~which that~~ are legally available to the community spouse and to which the community spouse has access and control.

"Promptly assess resources" means within 45 days of the request for resource assessment unless the delay is due to nonreceipt of documentation or verification, if required, from the applicant or from a third party.

"Protected period" means a period of time, not to exceed 90 days after an initial determination of medical assistance eligibility. During the protected period, the amount of the community spouse resource allowance will be excluded from the institutionalized spouse's countable resources if the institutionalized spouse expressly indicates his intention to transfer resources to the community spouse.

"Resource assessment" means a computation, completed by request or upon medical assistance application, of a couple's combined countable resources at the beginning of the first continuous period of institutionalization of the institutionalized spouse beginning on or after September 30, 1989.

"Resources" means real and personal property owned by a medical assistance applicant or his spouse. Resources do not include resources excluded under subsection (a) or (d) of § 1613 of the Social Security Act and resources that would be excluded under § 1613(a)(2)(A) but for the limitation on total value described in such section.

"Significant financial duress" means, but is not limited to, threatened loss of basic shelter, food, or medically necessary health care or the financial burden of caring for a disabled child, sibling, or other immediate relative.

"Spousal protected resource amount" means (at the time of medical assistance application as an institutionalized spouse) the greater of: (i) the spousal resource standard in effect at the time of application; (ii) the spousal share, not to exceed the maximum spousal resource standard in effect at the time of application; (iii) the amount actually transferred to the community spouse by the institutionalized spouse pursuant to a court spousal support order; or (iv) the amount of resources designated by a department hearing officer.

"Spousal resource standard" means the minimum amount of a couple's combined countable resources calculated in accordance with § 1924(f)(2)(A)(i) of the Social Security Act necessary for the community spouse to maintain himself in the community. The amount increases each calendar year after 1989 by the same percentage increase as in the Consumer Price Index as required by § 1924(g) of the Social Security Act.

"Spousal share" means ~~1/2~~ half of the couple's total countable resources at the beginning of the first continuous period of institutionalization as determined by a resource assessment.

"Spouse" means a person who is legally married to another person under Virginia law.

"State Plan" means the State Plan for Medical Assistance.

"Undue hardship" means that the provisions listed under 12VAC30-110-831 have been met. The absence of an undue hardship provision would result in the institutionalized spouse being ineligible for Medicaid payment of long-term care services and unable to purchase life-sustaining medical care.

"Waiver services" means medical assistance reimbursed home or community-based services covered under a § 1915(c) waiver approved by the Secretary of the ~~United States~~ U.S. Department of Health and Human Services.

12VAC30-110-1380. Authorized representative for individual age 18 years of age or older.

A. Patients in the Department of ~~Mental Behavioral Health, Mental Retardation and Substance Abuse~~ Developmental Services (DMHMRAS) (DBHDS) facilities may have applications submitted on their behalf by employees of the ~~DMHMRAS~~ DBHDS.

B. The authorized representative of an incapacitated individual shall be the individual's legally appointed guardian or conservator.

C. A competent individual may sign an application on ~~his~~ the individual's own behalf or may designate anyone to be his authorized representative to file a Medicaid application on ~~his~~ the individual's behalf. If a competent individual wants another person to file a Medicaid application for him, ~~he~~ the individual

must designate the authorized representative in a written statement that is signed by the individual applicant. The authorized representative statement is valid for the life of the Medicaid application or until the applicant changes or removes ~~his~~ the applicant's authorized representative. If the application is approved, the authorized representative statement is valid for any subsequent review and redetermination until the applicant's Medicaid eligibility is cancelled. If the applicant reapplies for Medicaid after Medicaid is ~~cancelled~~ cancelled, ~~he~~ the applicant must sign the application or provide a new authorized representative statement.

D. When an individual has given power-of-attorney to another person that includes the power to conduct the applicant's business affairs, the attorney-in-fact is considered the applicant's authorized representative.

E. For an individual who has not been determined by a court to be legally incapacitated, but who is reported to be mentally unable to sign his name or to make a mark, an application may be signed under the following circumstances:

1. When it is reported that an individual cannot sign the application and the individual does not have an attorney-in-fact, an authorized representative or a family substitute representative, the individual's inability to sign the application must be verified by a written statement from the individual's physician that the individual is mentally unable to sign and file a Medicaid application because of the individual's diagnosis or condition.

2. If the individual does not have an attorney-in-fact and has not signed a statement authorizing another person or organization to apply for Medicaid on ~~his~~ the individual's behalf, the applicant's spouse will be considered to be the individual's authorized representative. If the individual is not married or is estranged from ~~his~~ the individual's spouse or his spouse is unable to represent ~~him~~ the individual, the individual's authorized representative shall be a family substitute representative.

3. Treatment of an individual who is unable to sign and who has no authorized representative or family substitute representative:

- a. When motion to appoint a guardian or conservator has been filed with the court, but a final determination has not been ordered. When an individual's physician has verified that ~~he~~ the physician is unable to sign the Medicaid application and the individual has no legal representative, a determination of Medicaid eligibility shall not be completed until a guardian or conservator has been appointed. Any application filed on behalf of such individual shall be held in pending status until the appointment of a legal guardian or conservator. The eligibility worker shall mail the legal guardian or conservator a copy of the Medicaid application. The legal guardian or conservator shall have 10 working days after appointment to sign and return the Medicaid application

and documentation of the guardian or conservator's appointment. If the application has not been signed by the deadline, eligibility for Medicaid shall be denied.

- b. When motion to appoint a guardian or conservator has not been filed with the court. When a motion to appoint a guardian or conservator has not been filed with the court, the eligibility worker shall refer the individual to the Adult Protective Services unit in the local department of social services. The Medicaid application shall be held in pending status until the adult protective services investigation is complete. If the completed adult protective services investigation concludes that guardianship proceedings will not be initiated, the application must be signed by the applicant or the applicant must sign a statement designating an authorized representative. If after 10 working days the application is not signed, eligibility for Medicaid shall be denied.

12VAC30-110-1390. Authorized representative for children under younger than 18 years of age.

- A. Patients ~~under~~ younger than 18 years of age in facilities operated by the ~~DMHMR~~ DBHDS may have applications submitted by employees of the ~~DMHMR~~ DBHDS.

- B. A minor child ~~under~~ younger than 18 years of age who is a parent may apply for Medicaid for his own child.

- C. An authorized employee of the public or private child-placing agency that has custody of the child must sign the Medicaid application for a child ~~under~~ younger 18 years of age that is in foster care.

- D. A child applicant who is ~~under~~ younger 18 years of age is not legally able to sign a Medicaid application for himself unless ~~he~~ the child applicant is legally emancipated from ~~his~~ the child applicant's parents. If the child applicant is not legally emancipated, his parents shall sign the application on the child applicant's behalf. If the child applicant is married and the child applicant's spouse is 18 years of age or older, the spouse may sign the application on the child applicant's behalf. If the child applicant does not live with a parent or spouse who is 18 years of age or older, the adult who has legal custody or who is the legal guardian of the child applicant, or the caretaker relative with whom the child applicant lives must sign the application. A child applicant's parent, guardian, legal custodian, or caretaker relative may designate an authorized representative to complete a Medicaid application on behalf of the child applicant. The authorization must be in writing in accordance with 12VAC30-110-1380.

- E. If the child applicant has no adult guardian, adult caretaker relative, or legal custodian, then the caregiver for the child applicant is responsible for seeking custody or guardianship of the child applicant:

1. If a motion has been filed in court to appoint a guardian or seek legal custody of the child, the Medicaid application shall be held in a pending status. If verification is received

Regulations

within 10 working days that court action has been initiated, the application will be continued until the guardian is appointed or custody is awarded. When the guardian has been appointed or custody awarded, the eligibility worker must provide the Medicaid application to the guardian or custodian. The guardian or custodian must return the signed application and documentation of his appointment within 10 working days. If the application or documentation is not returned by either 10-day deadline, Medicaid eligibility shall be denied.

2. If guardianship or custody procedures have not been filed with the court, the eligibility worker must refer the child to the appropriate child welfare service worker. The application for Medicaid shall be held in a pending status until the service investigation is completed and any court proceedings are completed. If the court emancipates the child, the child must sign the application and return it to the eligibility worker within 10 working days. If a guardian is appointed or custody awarded, the eligibility worker must provide the Medicaid application to the guardian or custodian. The guardian or custodian must return the signed application and documentation of his appointment within 10 working days. If the application or documentation is not returned by the deadline, Medicaid eligibility shall be denied.

12VAC30-130-600. Definitions.

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

"DMAS" or "the department" means the Virginia Department of Medical Assistance Services.

"DMAS-225" means the Medicaid Communication form used for the provider and the DSS eligibility worker to report changes including requests for adjustments to the patient pay.

"DSS" means the local Department of Social Services.

"Facility" means a nursing facility, intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, or a long-stay acute care hospital enrolled in the Medicaid program.

"Medical necessity" means an item or service provided for the diagnosis or treatment of a patient's condition consistent with community standards of medical practice and in accordance with Medicaid policy.

"Preauthorization" means obtaining the approval necessary for receipt of a specified service from a specified provider for a specified recipient before the requested service is performed.

12VAC30-130-610. Purpose and scope.

The department's payment to nursing facilities, intermediate care facilities for ~~the mentally retarded~~ individuals with intellectual disabilities, and long-stay acute care hospitals shall

be reduced by the amount of the patient's income, less certain deductions (the patient pay amount) in conformance with 42 CFR 435 (rev. October 1, 1992). Amounts for medical or remedial care not subject to payment by a third party, including necessary medical or remedial care not covered under the State Plan for Medical Assistance (the Plan), shall be deducted during the calculation of patient pay amounts.

12VAC30-130-1000. Pharmacy services prior authorization.

A. Definitions. The following words and terms used in this part shall have the following meanings unless the context clearly indicates otherwise:

"Contractor" means an independent contractor that implements and administers, pursuant to its contract, the department's pharmacy prior authorization programs as set out in the Title XIX State Plan.

"Grandfather clause" means procedure by which selected therapeutic classes or drugs as designated by the P&T Committee may be automatically approved if the patient is currently and appropriately receiving the drug.

"Pharmacy and Therapeutics Committee," "P&T Committee," or "committee" means the committee formulated to review therapeutic classes, conduct clinical reviews of specific drugs, recommend additions or deletions to the preferred drug list, and perform other functions as required by the department. The Pharmacy and Therapeutics Committee shall be composed of eight to 12 members, including the Commissioner of the Department of ~~Mental Behavioral Health, Mental Retardation and Substance Abuse~~ Developmental Services, or ~~his~~ the commissioner's designee. Other members shall be selected or approved by the department. The membership shall include a ratio of physicians to pharmacists of 2:1. Physicians on the committee shall be licensed in Virginia, one of whom shall be a psychiatrist, and one of whom specializes in care for the aging. Pharmacists on the committee shall be licensed in Virginia, one of whom shall have clinical expertise in mental health drugs, and one of whom has clinical expertise in community-based mental health treatment.

B. DMAS shall operate, in conjunction with the Title XIX State Plan for Medical Assistance (12VAC30-50-210 et seq.), a program of prior authorization of pharmacy services. This program shall include, ~~but not necessarily be limited to~~, the use of a preferred drug list.

C. Medicaid Pharmacy and Therapeutics Committee.

1. The department shall utilize a Pharmacy and Therapeutics Committee to assist in the development and ongoing administration of the preferred drug list and other pharmacy program issues. The committee may adopt bylaws that set out its make up and functioning. A quorum for action of the committee shall consist of seven members.

2. Vacancies on the committee shall be filled in the same manner as original appointments. The department shall appoint individuals for the committee that assures a cross-section of the physician and pharmacy community.

3. Duties of the committee.

a. The committee shall receive and review clinical and pricing data related to the drug classes. The committee's medical and pharmacy experts shall make recommendations to DMAS regarding various aspects of the pharmacy program. For the PDL program, the committee shall select those drugs to be deemed preferred that are safe and clinically effective, as supported by available clinical data, and meet pricing standards.

b. Cost effectiveness or any pricing standard shall be considered only after a drug is determined to be safe and clinically effective. The committee shall recommend to the department:

(1) Which therapeutic classes of drugs should be subject to the preferred drug list program and prior authorization requirements;

(2) Specific drugs within each therapeutic class to be included on the preferred drug list;

(3) Appropriate exclusions for medications, including atypical anti-psychotics, used for the treatment of serious mental illnesses such as ~~bi-polar~~ bipolar disorders, schizophrenia, and depression;

(4) Appropriate exclusions for medications used for the treatment of certain brain disorders, cancer, and HIV-related conditions;

(5) Appropriate exclusions for therapeutic classes in which there is only one drug in the therapeutic class or there is very low utilization, or for which it is not cost effective to include in the preferred drug list program;

(6) Appropriate grandfather clauses when prior authorization would interfere with established complex drug regimens that have proven to be clinically effective;

(7) Other clinical criteria that may be included in the pharmacy program; and

(8) Guidance and recommendations regarding the department's pharmacy programs.

c. As the ~~United States~~ U.S. Food and Drug Administration (FDA) approves new drug products, the department shall ensure that the Pharmacy and Therapeutics Committee will evaluate the drug for clinical effectiveness and safety. Based on clinical information and pricing standards, the P&T Committee will determine if the drug will be included in the PDL or require prior authorization.

(1) If the new drug product falls within a drug class previously reviewed by the P&T Committee, until the review of the new legend drug is completed, it will be classified as nonpreferred, requiring prior authorization in

order to be dispensed. The new legend drug will be evaluated for inclusion in the PDL no later than at the next review of the drug class.

(2) If the new drug product does not fall within a drug class previously reviewed by the P&T Committee, the new drug shall be treated in the same manner as the other drugs in its class.

d. To the extent feasible, the P&T Committee shall review all drug classes included in the PDL at least every 12 months and may recommend additions to and deletions from the PDL.

D. Pharmacy contractor. The department may contract for pharmaceutical benefit management services to manage, implement, and administer the Medicaid pharmacy benefits preferred drug list, as directed, authorized, and as may be amended from time to time, by DMAS.

1. The department, as the sole Title XIX authority for the Commonwealth, shall retain final administrative authority over all pharmacy services.

2. The department shall not offer or pay directly or indirectly any material inducement, bonus, or other financial incentive to a program contractor based on the denial or administrative delay of medically appropriate prescription drug therapy, or on the decreased use of a particular drug or class of drugs, or a reduction in the proportion of beneficiaries who receive prescription drug therapy under the Medicaid program. Bonuses shall not be based on the percentage of cost savings generated under the benefit management of services.

E. Supplemental rebates. The department shall have the authority to seek supplemental rebates from drug manufacturers. The contract regarding supplemental rebates shall exist between the manufacturer and the Commonwealth. Rebate agreements between the Commonwealth and a pharmaceutical manufacturer shall be separate from the federal rebates and in compliance with federal law, §§ 1927(a)(1) and 1927(a)(4) of the Social Security Act. All rebates collected on behalf of the Commonwealth shall be collected for the sole benefit of the state share of costs. One hundred percent ~~(100%)~~ of the supplemental rebates collected on behalf of the state shall be remitted to the state. Supplemental drug rebates received by the Commonwealth in excess of those required under the national drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the national drug rebate agreement.

F. Appeals. The department shall provide an expedient reconsideration process and initiate and fully participate in the ~~DMAS'~~ DMAS appeal process pursuant to 12VAC30-110, Part I, Client Appeals, for providers and recipients.

G. Annual report. The department shall report to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees on an annual basis.

V.A.R. Doc. No. R26-8220; Filed December 11, 2025; 3:25 p.m.

TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Final Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is claiming an exemption from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4 of the Code of Virginia.

Title of Regulation: **13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-60).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: December 17, 2025.

Agency Contact: Fred Bryant, Chief Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5758, or email fred.bryant@virginiahousing.com.

Summary:

The amendments delete certain sponsor characteristic point incentives.

13VAC10-180-60. Review and selection of applications; reservation of credits.

A. The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors the executive director deems appropriate to best meet the housing needs of the Commonwealth.

B. An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) that is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as the executive director shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous, and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. a. The "qualified nonprofit organization" described in subdivision 1 of this subsection is to own (directly or

through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity;

b. The executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization;

c. The executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools as defined in subsection D of this section established by the executive director; and

d. The executive director of the authority shall have determined that no staff member, officer, or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

3. In making the determinations required by subdivisions 1 and 2 b, 2 c, and 2 d of this subsection, the executive director may apply such factors as the executive director deems relevant, including:

a. The past experience and anticipated future activities of the qualified nonprofit organization;

b. The sources and manner of funding of the qualified nonprofit organization;

c. The date of formation and expected life of the qualified nonprofit organization;

d. The number of paid staff members and volunteers of the qualified nonprofit organization;

e. The nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development;

f. The relationship of the staff, directors, or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis; and

g. The proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis.

The executive director may include in the application of the factors described in this subdivision 3 any other nonprofit organizations that, in the executive director's determination, are related (by shared directors, staff, or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the requirements of this subsection, a qualified nonprofit organization shall be treated as satisfying

such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

C. The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the requirements of this section have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the requirements of subsection B of this section.

D. The executive director may establish such pools (nonprofit pools) of credits as the executive director may deem appropriate to satisfy the requirements of this subsection. If any such nonprofit pools are so established, the executive director may rank the applications in each pool and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible in each pool described in this subsection (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as the executive director shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications for those nonprofit pools, and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round of application review and ranking, the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available in each nonprofit pool, the executive director may:

1. Leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent rounds;
2. Redistribute, to the extent permissible under the IRC, such unreserved credits to such other pools for which the executive director shall designate reservations in the full amount permissible under this section. Applications redistributed to other pools under this subdivision shall be referred to as "excess qualified applications"; or

3. Carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

No reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than \$950,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Applicants using Hope VI funds from U.S. Department of Housing and Urban Development (HUD) in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

E. The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (10 points)
2. Housing needs characteristics.
 - a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. Any principal intending to provide more than five such submissions for one or more total proposed developments must first schedule a meeting with authority staff, and authority staff may, for good cause to promote the goals and interests of the Commonwealth in the federal low-income housing tax credit program, request evidence of site control as a prerequisite to the authority sending the letter prescribed by this subdivision 2 for each respective proposed development. (minus 50 points for failure to make timely submission)
 - b. A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. Any such letter must also be accompanied by a legal opinion of the locality's attorney opining that the locality's opposition to the proposed development does not have a discriminatory

Regulations

intent or a discriminatory effect (as defined in 24 CFR 100.500(a)) that is not supported by a legally sufficient justification (as defined in 24 CFR 100.500(b)) in violation of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended) and the HUD implementing regulations. (minus 25 points)

c. Any proposed development that is to be located as follows:

(1) In a qualified census tract or federal targeted area, both as defined in the IRC, deemed under § 36-55.30:2 of the Code of Virginia to be designated as a revitalization area without adoption of a resolution (10 points);

(2) In any redevelopment area, conservation area, or rehabilitation area created or designated by the city or county pursuant to Chapter 1 (§ 36-1 et seq.) of Title 36 of the Code of Virginia and deemed under § 36-55.30:2 of the Code of Virginia to be designated as a revitalization area without adoption of a further resolution (10 points);

(3) In a revitalization area designated by resolution adopted pursuant to the terms of § 36-55.30:2 of the Code of Virginia (15 points);

(4) In a local housing rehabilitation zone created by an ordinance passed by the city, county, or town and deemed to meet the requirements of § 36-55.30:2 of the Code of Virginia pursuant to § 36-55.64 G of the Code of Virginia (15 points);

(5) In an opportunity zone designated by the Commonwealth pursuant to the Federal Tax Cuts and Jobs Act of 2017 (PL 115-97), and having a binding commitment of funding acceptable to the executive director pursuant to requirements as set forth on the application form, instructions, or other communication available to the public (15 points);

(6) In a locality that confirms, on a form prescribed by the authority, that the development as proposed to be constructed or rehabilitated will utilize new or existing housing as part of a community revitalization plan (15 points); or

(7) On land owned by federally recognized or Virginia-recognized Tribal Nations located within the present-day external boundaries of the Commonwealth (15 points). If the development is located in more than one such area, only the highest applicable points will be awarded, that is, points in this subdivision E 2 c are not cumulative.

d. Commitment by the applicant for any development without section 8 project-based assistance to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest

section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (5 points)

e. Any (i) funding source, as evidenced by a binding commitment or letter of intent, that is used to reduce the credit request; (ii) commitment to donate land or buildings or tap fee waivers from the local government; or (iii) commitment to donate land, including a below market-rate land lease, from an entity that is not a principal in the applicant (the donor being the grantee of a right of first refusal or purchase option with no ownership interest in the applicant shall not make the donor a principal in the applicant). Loans must be below market-rate (the one-year London Interbank Offered Rate (LIBOR) rate at the time of commitment) or cash-flow only to be eligible for points. Financing from the authority and market rate permanent financing sources are not eligible. (The amount of such funding, dollar value of local support, or value of donated land (including a below market rate land lease) will be determined by the executive director and divided by the total development cost. The applicant receives two points for each percentage point up to a maximum of 60 points.) The authority will confirm receipt of such subsidized funding prior to the issuance of IRS Form 8609.

f. Any development receiving new project-based subsidy from HUD or Rural Development. For each project-based voucher up to a maximum of 40 points when competing in either the New Construction or Northern Virginia pool only (5 points); provided, however, that any points awarded under this subdivision 2 f will reduce, in equal measure, the maximum 60 points awarded within subdivision 2 e of this subsection.

g. Any development receiving a real estate tax abatement on the increase in the value of the development. (5 points)

h. Any development subject to (i) HUD's section 8 or section 236 program or (ii) Rural Development's 515 program at the time of application (20 points), unless the applicant is or has any common interests with the current owner, directly or indirectly. The application will only qualify for these points if the applicant waives all rights to developer's fee on acquisition and any other fees associated with the acquisition of the development, unless permitted by the executive director for good cause.

i. Any proposed elderly or family development located in a census tract that has less than a 3.0% poverty rate based upon Census Bureau data (30 points); less than a 10% poverty rate based upon Census Bureau data (25 points); or less than a 12% poverty rate based upon Census Bureau data. (20 points)

j. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority. (15 points)

k. Any proposed new construction development, including adaptive reuse and rehabilitation that creates additional rental space, that is located in a pool identified by the authority as a pool with an increasing rent-burdened population, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool. (up to 20 points)

l. Any proposed development located within an area identified by the executive director as possessing either medium or high levels of economic development activity. In determining such areas, the executive director will evaluate economic data, such as per capita job creation data from the Virginia Economic Development Partnership, and annually publish a guidance document available to the public establishing such areas. (5 points)

3. Development characteristics.

a. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If a community or meeting room with a minimum of 749 square feet is provided. (5 points) Community rooms receiving points under this subdivision 3 a (1) (a) may not be used for commercial purposes. Provided that the cost of the community room is not included in eligible basis, the owner may conduct, or contract with a nonprofit provider to conduct, programs or classes for tenants and members of the community in the community room, so long as (i) tenants compose at least one-third of participants, with first preference given to tenants above the one-third minimum; (ii) no program or class may be offered more than five days per week; (iii) no individual program or class may last more than eight hours per day, and all programs and class sessions may not last more than 10 hours per day in the aggregate; (iv) cost of attendance of the program or class must be below market rate with no profit from the operation of the class or program being generated for the owner (owner may also collect an amount for reimbursement of supplies and clean-up costs); (v) the community room must be available for use by tenants when programs and classes are not offered, subject to reasonable "quiet hours" established by owner; and (vi) any owner offering programs or classes must provide an annual certification to the authority that it is in compliance with such requirements, with failure to comply with these requirements resulting in a 10-point penalty for three years from the date of such noncompliance for principals in the owner.

(b) If the exterior walls are constructed using brick or other similar low-maintenance material approved by the authority as indicated on the application form, instructions, or other communication available to the public covering up to 50% of the exterior walls of the

development. (20 points times the percentage of exterior walls covered by brick)

If the exterior walls are constructed using fiber cement board covering up to 50% of the exterior walls. (20 points times the percentage of exterior walls covered by fiber cement board)

Points for brick and fiber cement board are independent and can both be awarded.

For purposes of making such coverage calculation, the triangular gable end area, doors, windows, knee walls, columns, retaining walls, and any features that are not a part of the façade are excluded from the denominator. Community buildings are included in the foregoing coverage calculations.

(c) If the development is built in accordance with development design requirements established by the Virginia Department of Behavioral Health and Developmental Services. (10 points)

(d) If points are not awarded pursuant to subdivision 3 f of this section for optional certification, if each bathroom contains only WaterSense labeled toilets, faucets, and showerheads. (3 points)

(e) If each unit is provided with free individual high-speed Internet access. (15 points)

(f) If each full bathroom's bath fans are wired to the primary bathroom light with a delayed timer, or continuous exhaust by ERV/DOAS. (3 points) If each full bathroom's bath fans are equipped with a humidistat. (3 points)

(g) If all cooking surfaces are equipped with fire suppression features that meet the authority's requirements as indicated on the application form, instructions, or other communication available to the public. (2 points)

(h) For rehabilitations, if each unit is equipped with dedicated space, drain, and electrical hook-ups for permanently installed dehumidification systems (2 points). For rehabilitations and new construction, providing permanently installed dehumidification systems in each unit. (5 points)

(i) If each interior door is solid core. (3 points)

(j) If each unit has at least one USB charging port in the kitchen, living room, and all bedrooms. (1 point)

(k) If each kitchen has LED lighting in all fixtures that meets the authority's minimum design and construction standards (2 points)

(l) For new construction only, if each unit has a balcony or patio with a minimum depth of five feet clear from face of building and a size of at least 30 square feet. (4 points)

(m) If construction or rehabilitation of the development includes installation of a renewable energy electric system in accordance with the manufacturer's specifications and all applicable provisions of the National Electrical Code.

Regulations

Qualifying installations must have either been performed by a licensed electrician or have passed a final inspection performed by a licensed electrician. (10 points)

(n) For rehabilitations, if each unit is provided with the necessary infrastructure for high-speed Internet or broadband service. (5 points)

(2) The following points are available to applications electing to serve elderly tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all bathrooms have an independent or supplemental heat source. (1 point)

(c) If all entrance doors to each unit have two eye viewers, one at 42 inches and the other at standard height. (1 point)

(d) If each unit has a shelf or ledge outside the primary entry door in interior hallway. (2 points)

(3) The following points are available to all qualified applications:

a. If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

b. Any development in which 10% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits. (20 points)

c. Any development located within one-half mile of an existing commuter rail, light rail, or subway station or one-quarter mile of one or more public bus stops either existing or to be built in accordance with existing proffers. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for Northern Virginia or Tidewater Metropolitan Statistical Area (MSA), in which case, the development will receive 20 points if the development is ranked against other developments in such Northern Virginia or Tidewater MSA pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

d. Each development must meet the following baseline energy performance standard applicable to the development's construction category. For new construction, the development must meet all requirements for EPA Energy Star certification. For rehabilitation, the proposed renovation of the development must result in at least a 30% post-rehabilitation decrease on the Home Energy Rating System Index (HERS Index) or score an 80 or lower on the HERS Index. For adaptive reuse, the proposed development must score a 95 or lower on the

HERS Index. For mixed construction types, the applicable standard will apply to the development's various construction categories. The development's score on the HERS Index must be verified by a third-party, independent, nonaffiliated, certified Residential Energy Services Network (RESNET) home energy rater.

(1) Any development for which the applicant agrees to obtain (i) EarthCraft Gold or higher certification; (ii) U.S. Green Building Council LEED green-building certification; (iii) National Green Building Standard Certification of Silver or higher; or (iv) meet Enterprise Green Communities Criteria prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's RESNET rater is registered with a provider on the authority's approved RESNET provider list. (10 points, points in this subdivision d (1) are not cumulative)

(2) Additionally, points on future applications will be awarded to an applicant having a principal that is also a principal in a tax credit development in the Commonwealth meeting (i) the Zero Energy Ready Home Requirements as promulgated by the U.S. Department of Energy (DOE) and as evidenced by a DOE certificate or (ii) the Passive House Institute's Passive House standards as evidenced by a certificate from an accredited Passive House certifier. (10 points, points in this subdivision d (2) are cumulative)

The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving an additional 10 points under this subdivision d, provided, however, that any resulting increase in such development's eligible basis shall be limited to 10% of the development's eligible basis. Provided, however, the authority may remove such increase in the development's eligible basis if the authority determines that the development is financially feasible without such increase in basis.

e. If units are constructed to include the authority's universal design features, provided that the proposed development's architect is on the authority's list of universal design certified architects. (15 points if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

f. Any development in which the applicant proposes to produce less than 100 low-income housing units. (20 points for producing 50 low-income housing units or less, minus 0.4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

g. Any applicant for a development that, pursuant to a common plan of development, is part of a larger development located on the same or contiguous sites, financed in part by tax-exempt bonds. Combination developments seeking both 9.0% and 4.0% credits must clearly be presented as two separately financed deals, including separate equity pricing that would support each respective deal in the event the other were no longer present. While deals are required to be on the same or a contiguous site they must be clearly identifiable as separate. The units financed by tax-exempt bonds may not be interspersed throughout the development. Additionally, if co-located within the same building footprint, the property must identify separate entrances. All applicants seeking points in this category must arrange a meeting with authority staff at the authority's offices prior to the deadline for submission of the application in order to review both the 9.0% and the tax-exempt bond financed portion of the project. Any applicant failing to meet with authority staff in advance of applying will not be allowed to compete in the current competitive round as a combination development. (10 points if the aggregate number of units within the larger combined development totals more than 100 but fewer than 150 units and 30% or more of those units will be funded by tax-exempt bonds; 15 points if the aggregate number of units within the larger combined development totals at least 150 units and 30% of those units will be funded by tax-exempt bonds)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

~~a. Points shall be awarded on a sliding scale to applicants that enter into at least one contract for services provided by a business certified as women-owned, minority-owned, or service-disabled veteran-owned through the Commonwealth of Virginia's Small, Women-owned, and Minority-owned Business (SWaM) Certification Program; provided, however, that no points will be awarded for entering into contracts where a spousal relationship exists between any principal of the applicant and any principal of the service provider. The following services and roles qualify for points under this subdivision 5 a: (i) consulting services to complete the LIHTC application, (ii) ongoing development services through the placed-in-service date, (iii) general contractor, (iv) architect, (v) property manager, (vi) accounting services, or (vii) legal services. An applicant seeking points in this subdivision 5 a must provide in its application a certification, in a form to be developed by the executive~~

~~director, certifying that a contract for services has been executed between the applicant and the service provider, describing the scope of the services provided or to be provided, and certifying that no spousal relationship exists between any principal of the applicant and any principal of the service provider. The application must also include a copy of the service provider's certification from the Commonwealth of Virginia's SWaM Certification Program. (5 points for entering into one such contract; 7 points for entering into two such contracts; 10 points for entering into three or more such contracts)~~

~~b. Applicants with at least one principal having an ownership interest of at least 25% in the controlling general partner or managing member for the proposed development who is a socially disadvantaged individual. An applicant seeking points in this subdivision 5 b must provide in its application a certification in a form to be developed by the executive director, certifying that no spousal relationship exists between the socially disadvantaged principal and any other principal having an ownership interest in the development who is not also a socially disadvantaged principal. (30 points)~~

~~e. Applicants with at least one nonprofit principal that (i) either demonstrates that 51% or more of its board membership is held by socially disadvantaged individuals or demonstrates that its most senior full-time executive officer is a socially disadvantaged individual; (ii) has an express business purpose of serving socially or economically disadvantaged populations or both; and (iii) certifies that no spousal relationship exists between any executive officer or board member identified for the purpose of satisfying the requirements of this subsection and any other principal of the applicant who is not also a socially disadvantaged individual. (30 points) Applicants receiving points under subdivision 5 b of this subsection are ineligible for points in this subdivision 5 e.~~

~~d. For the purposes of subdivisions 5 b and 5 c of this subsection, socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control. There is a rebuttable presumption that the following individuals are socially disadvantaged: Black Americans, Hispanic Americans, Native Americans, and Asian Americans and Pacific Islanders. This provision shall be interpreted in accordance with 13 CFR 124.103.~~

~~e. a. Points shall be awarded on a sliding scale to applicants that enter into at least one contract for services provided by (i) a veteran-owned small business (VOSB) as certified by the U.S. Department of Veterans Affairs, Office of Small and Disadvantaged Business Utilization, or the U.S. Small Business Administration, or (ii) a business certified as service-disabled veteran-owned~~

Regulations

through the Commonwealth of Virginia's SWaM Certification Program; provided, however, that no points will be awarded for entering into contracts where a spousal relationship exists between any principal of the applicant and any principal of the service provider. The following services and roles qualify for points under this subdivision 5 e a: (a) consulting services to complete the LIHTC application, (b) ongoing development services through the placed-in-service date, (c) general contractor, (d) architect, (e) property manager, (f) accounting services, or (g) legal services. An applicant seeking points in this subdivision 5 e a must provide in its application a certification, in a form to be developed by the executive director, certifying that a contract for services has been executed between the applicant and the service provider, describing the scope of the services provided or to be provided, and certifying that no spousal relationship exists between any principal of the applicant and any principal of the service provider. The application must also include a copy of the service provider's certification issued by the applicable certifying entity listed within this subdivision 5 e a. (5 points for entering into one such contract; 7 points for entering into two such contracts; 10 points for entering into three or more such contracts)

f. b. Applicants with at least one principal having an ownership interest of at least 25% in the controlling general partner or managing member for the proposed development that is an individual with a VOSB certification, as described in subdivision 5 e a of this subsection. An applicant seeking points in this subdivision 5 f b must provide in its application a certification, in a form to be developed by the executive director, certifying that no spousal relationship exists between the principal with a VOSB certification and any other principal having an ownership interest in the development who does not also possess a VOSB certification. (30 points)

g. c. Applicants may receive negative points toward their application as follows:

(1) Any applicant that includes a principal that was a principal in a development at the time the authority inspected such development and discovered a life-threatening hazard under HUD's Uniform Physical Condition Standards and such hazard was not corrected in the timeframe established by the authority. (minus 50 points for a period of three years after the violation has been corrected)

(2) Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance had not corrected such noncompliance by the time a Form 8823 was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period

of three calendar years after the year the authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government, or governmental agency, in which case, no negative points will be assessed to the applicant, or 0 points, if the appropriate individual connected to the principal attend compliance training as recommended by the authority)

(3) Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the items not built or minus 50 points per requirement for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may elect to seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority. (minus 10 points a period of three years after the credits are returned to the authority)

(4) Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

(5) Any applicant that includes a principal that was a principal in a development for which the actual cost of construction (as certified in the Independent Auditor's Report with attached Certification of Sources and Uses that is submitted in connection with the Owner's Application for IRS Form 8609) exceeded the applicable cost limit by 5.0% or more (minus 50 points for a period of three calendar years after December 31 of the year the cost certification is complete; provided, however, if the board of commissioners determines that such overage was outside of the applicant's control based upon documented extenuating circumstances, no negative points will be assessed)

(6) Any applicant that includes a controlling general partner or managing member of the controlling general partner or managing member in the applicant that acted as a principal in a development receiving an allocation of credits from the authority where ~~(i) such principal met the requirements to be eligible for points under subdivision 5 a or 5 e of this subsection and~~ (ii) such principal made more than two requests for final inspection. (minus 5 points for two years)

6. Efficient use of resources. The percentage by which the total of the amount of credits per low-income housing unit

(the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (100 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount in this subdivision 6. For the purpose of calculating the points to be assigned pursuant to this subdivision 6, all credit amounts shall include any credits previously allocated to the development.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision 7 a may not receive points under subdivision 7 b of this subsection. (Up to 50 points, the product of (i) 100 multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus one point for each percentage point of such housing units in the proposed development that are further restricted to rents at or below 30% or 40% of the area median gross income up to an additional 10 points) If the applicant commits to providing housing units in the proposed development both rent-restricted to and occupied by households at or below 30% of the area median gross income and that are not subsidized by project-based rental assistance. (plus 1 point for each percentage point of such housing units in the proposed development, up to an additional 10 points)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision 7 b may not receive points under subdivision 7 a of this subsection. (Up to 25 points, the product of (i) 50 multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus one point for each percentage point of such housing units in the proposed development that are further restricted to rents at or below 30% or 40% of the area median gross income up to an additional 10 points. Points

for proposed developments in low-income jurisdictions shall be two times the points calculated in the preceding sentence, up to 50 points)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision 7 c may not receive bonus points under subdivision 7 d of this subsection. (40 points for a 10-year commitment beyond the 30-year extended use period or 70 points for a 20-year commitment beyond the 30-year extended use period)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70. Applicants receiving points under this subdivision 7 d may not receive bonus points under subdivision 7 c of this subsection. (60 points; plus five points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants)

e. Any development participating in the Rental Assistance Demonstration (RAD) program, or other conversion to project-based vouchers or project-based rental assistance approved by the authority, competing in the local housing authority pool will receive an additional 10 points. Applicants must show proof of a commitment to enter into housing assistance payment (CHAP) or a RAD conversion commitment (RCC).

f. Any applicant that commits in the application to submit any payments due the authority, including reservation fees and monitoring fees, by electronic payment. (5 points)

In calculating the points for subdivisions 7 a and 7 b of this subsection, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

Regulations

After points have been assigned to each application in the manner described in this subsection, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of 300 points (200 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits under this chapter) shall be rejected from further consideration under this chapter and shall not be eligible for any reservation or allocation of credits.

F. During its review of the submitted applications in all pools, the authority may conduct:

1. Its own analysis of the demand for the housing units to be produced by each applicant's proposed development. Notwithstanding any conclusion in the market study submitted with an application, if the authority determines that, based upon information from its own loan portfolio or its own market study, inadequate demand exists for the housing units to be produced by an applicant's proposed development, the authority may exclude and disregard the application for such proposed development.
2. A site visit to the applicant's proposed development. Notwithstanding any conclusion in any environmental site assessment submitted with an application, if the authority determines that the applicant's proposed development presents health or safety concerns for potential tenants of the development, the authority may exclude and disregard the application for such proposed development.

G. The executive director:

1. May exclude and disregard any application that the executive director determines is not submitted in good faith or that the executive director determines would not be financially feasible.
2. May determine that an application is substantially incomplete and ineligible for further review.
3. May also choose to allow for the immediate correction of minor and immaterial defects affecting mandatory items (but not points items) in an application. Should the executive director choose to allow correction, applicants will be given 48 hours from the time of notification to cure defects with the application. If the executive director allows an applicant to cure minor defects, that does not constitute approval or acceptance of the application and is not an assurance that the application, upon further review, will be deemed acceptable.

Examples of items that may be considered as "curable" include:

- a. If the applicant has failed to include a required document, the applicant may supply the document; provided, however, that the document existed on the application deadline date and, if the document is a legal

agreement or instrument, the document was legally effective on the application deadline date;

- b. If statements or items in the application are contradictory or mutually inconsistent, the applicant may present information resolving the contradiction or inconsistency; provided, however, that the information accurately reflects the state of affairs on the application deadline date;

- c. The applicant may provide any required signature that has been omitted, except for applications that the executive director deems to be substantially incomplete; and

- d. The applicant may cure any scrivener's error, missing or defective notarization, defective signature block, or defective legal name of an individual or entity.

4. Shall notify the applicant of any curable defects it discovers by telephone, and, simultaneously, in writing electronically (email). The applicant's corrective submission shall not be considered unless it is received by the executive director no later than 48 hours (excluding weekends and legal holidays) from the notification. If an applicant fails to respond to the notification of curable defects within the 48-hour cure period, or if an applicant's response fails to address the question asked, a negative conclusion shall be drawn. Failure to respond to an item in a cure notification will result in the denial of points in that category or the application may be deemed to not meet threshold. After the application deadline, telephone calls or other oral or written communications on behalf of a tax credit applicant (e.g., from a project's development team, elected representatives) other than information submitted pursuant to this subdivision shall not be accepted or considered before preliminary reservation awards have been announced.

5. Upon assignment of points to all of the applications, shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 50% of the next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked

application, or applications, meeting the requirements of the set-aside) over applications with more points.

H. The authority shall, in the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described in that pool, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision E 7 of this section. Each application so selected shall receive, in order based upon the number of such points, beginning with the application with the highest number of such points, a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision E 7 of this section and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described in the tied for points applications, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive in order of such selection by lot a reservation of credits.

I. The executive director:

1. For each application that may receive a reservation of credits, shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider:

- a. The sources and uses of the funds;
- b. The available federal, state, and local subsidies committed to the development;
- c. The total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development; and
- d. The percentage of the credit dollar amount used for development costs other than the costs of intermediaries.

2. Shall examine the development's costs, including developer's fees and other amounts in the application, for reasonableness, and if the executive director determines that such costs or other amounts are unreasonably high, the executive director shall reduce them to amounts that the executive director determines to be reasonable.

3. Shall review the applicant's projected rental income, operating expenses, and debt service for the credit period.

4. May establish such criteria and assumptions as the executive director shall deem reasonable for the purpose of making such determination, including:

- a. Criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development;
- b. Increases in the market value of the development and increases in operating expenses, rental income; and
- c. In the case of applications without firm financing commitments at fixed interest rates, debt service on the proposed mortgage loan.

5. May, if the executive director deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review, and establish any or all of the items described in this subsection as to the larger development in making such determination for the development.

J. Maximum developer fee calculations will be indicated on the application form, instructions, or other communication available to the public. Notwithstanding such calculations of developer fee, (i) no more than \$3 million developer fee may be included in the eligible basis of developments seeking 9.0% credits, (ii) no more than \$3 million developer fee may be included in the eligible basis of developments seeking 4.0% credits, unless at least 30% of the developer fee is deferred, (iii) no developer fee may exceed \$5 million, and (iv) no developer fee may exceed 15% of the development's total development cost, as determined by the authority.

K. The executive director:

1. Shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits in each pool and tier are reserved or all qualified applications in each pool and tier have received reservations at such time during each calendar year as the executive director shall designate. If there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.

2. May rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool.

3. May establish more than one round of review and ranking of applications and reservation of credits based on such rankings.

4. Shall designate the amount of credits to be made available for reservation within each pool during each such round. The

Regulations

amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

5. Shall deem any development seeking more credits than are available within a credit pool in which it competes as financially infeasible and ineligible for any reservation or allocation of credits from any pool.

6. If any credits remain in any pool after moving proposed developments and credits to another pool, may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development. The reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if the executive director determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated, or canceled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

7. In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, may:

- a. Leave such unreserved credits in such pools for reservation and allocation in any subsequent rounds;
- b. Redistribute such unreserved credits to such other pools as the executive director may designate;
- c. Supplement such unreserved credits in such pools with additional credits from the Commonwealth's annual state housing credit ceiling for the following year for reservation and allocation if in the reasonable discretion of the executive director, it serves the best interest of the plan;
- d. Carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year; or
- e. Move a development from the nonprofit or new construction pool to its appropriate geographic pool to

more fully or fully utilize the total amount of credits made available during such round.

L. 1. The total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (credit cap).

2. However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth in this section shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits.

3. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development. For purposes of this subsection, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments.

4. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits.

5. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date.

6. Substantial relationships shall include the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other):

- a. The persons are in the same immediate family (including a spouse, children, parents, grandparents,

grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household;

b. The entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity;

c. The entities are under the common control (e.g., the same person and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities);

d. The person is a general partner, member, or employee in the entity or is an owner (solely or together with any other related persons and entities) of 5.0% or more ownership interest in the entity;

e. The entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or

f. The person or entity is otherwise controlled, in whole or in part, by the other person or entity.

7. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that:

a. Such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted;

b. Such person or entity has no agreement or understanding relating to such application or the tax credits requested within the application; and

c. Such person or entity will not receive a financial benefit from the tax credits requested in the application.

8. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits.

9. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not

be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as the executive director shall determine to best serve the interests of the program.

10. Each applicant and each principal of the applicant shall make such certifications, shall disclose such facts, and shall submit such documents to the authority as the executive director may require to determine compliance with the credit cap. If an applicant or any principal of the applicant makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals of the applicant, and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described in this subsection) with the applicant or any principal of the applicant from submitting applications for credits for such period of time as the executive director shall determine.

M. The executive director:

1. Shall notify each applicant for such reservations of credits within a reasonable time after credits are reserved to any applications either:

a. Of the amount of credits reserved to such applicant's application by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director in the application, by the IRC, and by this chapter; or

b. That the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance with this section.

The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit developer fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director.

2. May reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years if credits are reserved to any applicants for developments that have also received an allocation of credits from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances

Regulations

shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

3. Shall make a written explanation available to the general public for any allocation of housing credit dollar amount that is not made in accordance with established priorities and selection criteria of the authority.

a. The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to ensure compliance with the binding commitment issued or to be issued to the applicant, the IRC, and this chapter.

b. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

4. May require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to ensure that the applicant will comply with all requirements under the IRC, this chapter, and the binding commitment (including any requirement to conform to all of the representations, commitments, and information contained in the application for which points were assigned pursuant to this section).

Upon satisfaction of all such requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

N. If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter, and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in subsection M of this section, nor to relieve the applicant from any other requirements for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided in subsection M of this section with respect to reservations.

O. The executive director may:

1. Require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as the executive director shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the

application, the binding commitment, and any contractual agreements between the applicant and the authority.

2. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development that were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment:

a. Terminate the reservation of such credits and draw on any good faith deposit; or

b. Substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development.

If, in lieu of or in addition to this determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, the executive director may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

3. Establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as the executive director shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant to such applications.

P. Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits as presented in the application shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment, and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect to such credits. If such changes are made without the prior written approval of the executive director, the executive director may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect to such credits, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or perform any combination of such remedies.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, the executive director may reserve, allocate or carry over, as

applicable, such credits in such manner as the executive director shall determine consistent with the requirements of the IRC and this chapter.

Q. The executive director may make a reservation of credits:

1. In an accessible supportive housing pool (ASH pool) to any applicant that proposes a nonelderly development that (i) will be assisted by a documented and binding form of rental assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for at least 15% of the units in the development; (iv) has budgeted for the ongoing provision of services; (v) maintains dedicated services staff; and (vi) has a principal with a demonstrated capacity for supportive housing evidenced by prior services funding contracts, a certification from a certifying body acceptable to the executive director or other preapproved source, and the applicant's completion on behalf of the principal of the authority's supportive housing certification form. ASH pool reservations made in any calendar year may be up to 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. If the ASH pool application deadline is simultaneous with the deadline for the other pools, the unsuccessful applicants in the ASH pool will also compete in the applicable geographic pool.

2. To developments having unique and innovative development concepts, such as innovative construction methods or materials; unique or innovative tenant services, tenant selection criteria, or eviction policies; or otherwise innovatively contributing to the authority's identified mission and goals. The applications for such credits must meet all the requirements of the IRC and threshold score. The authority shall also establish a review committee comprised of external real estate professionals, academic leaders, and other individuals knowledgeable of real estate development, design, construction, accessibility, energy efficiency, or management to assist the authority in determining and ranking the innovative nature of the development. Such reservations will be for credits from the next year's per capita credits and may not exceed 12.5% of the credits expected to be available for that following calendar year. Such reservations shall not be considered in the executive director's determination that no more than 50% of the next calendar year's per capita credits have been pre-reserved.

3. In a preservation pool to low-income housing tax credit developments seeking credit resyndication that are currently operating within an extended compliance period. Prior to

application, applicants must have completed more than 20 years of compliance under the existing extended use agreement issued in connection with the respective development's most recent credit allocation, and the credit investor or syndicator in place at the time of the allocation must have transferred all of its ownership interest in the development. Applicants awarded credits from this pool shall be subject to additional rent increase limits, as determined by the authority in the best interest of the plan, for a period of five years beginning on the first day of the new credit period. Preservation pool reservations made in any calendar year may be up to 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. Unsuccessful applicants in the preservation pool will also compete in the applicable geographic pool.

VA.R. Doc. No. R26-8463; Filed December 12, 2025, 8:58 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.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

Titles of Documents: [Education Services.](#)

[Low Vision Manual.](#)

[Orientation and Mobility.](#)

[Rehabilitation Teaching and Independent Living.](#)

[Rehabilitation Technology.](#)

Public Comment Deadline: February 11, 2026.

Effective Date: February 12, 2026.

Agency Contact: Rebecca Askew, Senior Policy Analyst, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, or email rebecca.askew@dbvi.virginia.gov.

CEMETERY BOARD

Title of Document: [Cemetery Board Application Criminal History Review Matrix.](#)

Public Comment Deadline: February 11, 2026.

Effective Date: February 12, 2026.

Agency Contact: Joe Haughwout, Regulatory Affairs Manager, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8566, or email joseph.haughwout@dpor.virginia.gov.

COMMON INTEREST COMMUNITY BOARD

Title of Document: [Procedure for Determination of Compliance with §§ 55.1-2220 and 55.1-2234 of the Code of Virginia.](#)

Public Comment Deadline: February 11, 2026.

Effective Date: February 12, 2026.

Agency Contact: Joe Haughwout, Regulatory Affairs Manager, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8566, or email joseph.haughwout@dpor.virginia.gov.

STATE BOARD OF HEALTH

Title of Document: [Swimming Pool and Hot Tub Enforcement Manual.](#)

Public Comment Deadline: February 11, 2026.

Effective Date: February 12, 2026.

Agency Contact: Briana Bill, Program Manager, Tourist Establishments and General Environmental Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23235, telephone (804) 584-6340, or email briana.bill@vdh.virginia.gov.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Title of Document: [Polygraph Examiner Application Criminal History Review Matrix](#).

Public Comment Deadline: February 11, 2026.

Effective Date: February 12, 2026.

Agency Contact: Joe Haughwout, Regulatory Affairs Manager, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8566, or email joseph.haughwout@dpor.virginia.gov.

REAL ESTATE APPRAISER BOARD

Title of Document: [Real Estate Appraiser Board Application Criminal History Review Matrix](#).

Public Comment Deadline: February 11, 2026.

Effective Date: February 12, 2026.

Agency Contact: Joe Haughwout, Regulatory Affairs Manager, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8566, or email joseph.haughwout@dpor.virginia.gov.

REAL ESTATE BOARD

Title of Document: [Real Estate Board Application Criminal History Review Matrix](#).

Public Comment Deadline: February 11, 2026.

Effective Date: February 12, 2026.

Agency Contact: Joe Haughwout, Regulatory Affairs Manager, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8566, or email joseph.haughwout@dpor.virginia.gov.

COMMONWEALTH TRANSPORTATION BOARD

Titles of Documents: [Land Development Inspection and Documentation Manual](#).

[Virginia Official State Transportation Map Policy and Procedures](#).

Public Comment Deadline: February 11, 2026.

Effective Date: February 12, 2026.

Agency Contact: Joshua Heslinga, Director, Governance and Legislative Affairs, Virginia Department of Transportation, 1221 East Broad Street, Richmond, VA 23219, telephone (804) 551-2902, or email joshua.heslinga@vdot.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 may have 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.

NORFOLK STATE UNIVERSITY

Titles of Documents: [Administrative and Professional Faculty Handbook](#).

[Board of Visitors Bylaws](#).

Guidance Documents

[NSU Graduate Catalog.](#)

[NSU Undergraduate Catalog.](#)

[Safety and Campus Security.](#)

[Teaching Faculty Handbook.](#)

[University Policy Library.](#)

Public Comment Deadline: February 11, 2026.

Effective Date: February 12, 2026.

Agency Contact: Tanya S. White, Vice President and Chief of Staff and Agency Regulatory Coordinator, Norfolk State University, 700 Park Avenue, Suite 520, Norfolk, VA 23504, telephone (757) 823-2886, or email tswwhite@nsu.edu.

COMMONWEALTH TRANSPORTATION BOARD

Titles of Documents: [Frequently Asked Questions - Land Use Permits.](#)

[Manual for the Procurement and Management of Professional Services.](#)

Public Comment Deadline: February 11, 2026.

Effective Date: February 12, 2026.

Agency Contact: Joshua Heslinga, Director, Governance and Legislative Affairs, Virginia Department of Transportation, 1221 East Broad Street, Richmond, VA 23219, telephone (804) 551-2902, or email joshua.heslinga@vdot.virginia.gov.

BOARD OF VETERINARY MEDICINE

Title of Document: [Process for Delegation of Informal Fact-Finding to an Agency Subordinate.](#)

Public Comment Deadline: February 11, 2026.

Effective Date: February 12, 2026.

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.

GENERAL NOTICES

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Bedford County School Board

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Bedford County School Board for violations of State Water Control Law and regulations and applicable permit at the Otter River Elementary School located in Bedford, Virginia. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/news-info/shortcuts/public-notices/enforcement-actions>. The DEQ contact will accept written comments from January 12, 2026, to February 12, 2026.

Contact Information: Joseph Heller, Enforcement Specialist, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, or email joseph.r.heller@deq.virginia.gov.

Proposed Enforcement Action for Town of Brookneal

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for the Town of Brookneal for violations of State Water Control Law and regulations and applicable permit at the Brookneal Staunton River lagoon located in Brookneal, Virginia. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/news-info/shortcuts/public-notices/enforcement-actions>. The DEQ contact will accept written comments from January 12, 2026, to February 12, 2026.

Contact Information: Joseph Heller, Enforcement Specialist, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, or email joseph.r.heller@deq.virginia.gov.

Proposed Enforcement Action for Buchanan County Public Service Authority

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Buchanan County Public Service Authority for violations of State Water Control Law and regulations and applicable permit at the Conaway wastewater treatment plant located in Big Rock, Virginia. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/news-info/shortcuts/public-notices/enforcement-actions>. The DEQ contact will accept written comments from January 12, 2026, to February 11, 2026.

Contact Information: Katherine Mann, Enforcement Specialist, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email katherine.mann@deq.virginia.gov.

Proposed Enforcement Action for the City of Martinsville

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for the City of Martinsville for violations of State Water Control Law and regulations and applicable permit at the Five Points facility located in Martinsville, Virginia. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/news-info/shortcuts/public-notices/enforcement-actions>. The DEQ contact will accept written comments from January 12, 2026, to February 11, 2026.

Contact Information: Michael Puckett, Enforcement Specialist, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, or email michael.puckett@deq.virginia.gov.

Proposed Enforcement Action for Skanska USA Building Inc.

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Skanska USA Building Inc. for violations of State Water Control Law and regulations and applicable permit at the William and Mary Randolph Complex facility located in Williamsburg, Virginia. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/news-info/shortcuts/public-notices/enforcement-actions>. The DEQ contact will accept written comments from January 12, 2026, to February 11, 2026.

Contact Information: Holly Shupe, Enforcement Specialist, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email holly.shupe@deq.virginia.gov.

STATE BOARD OF HEALTH

Planning and Design Fund Applications Being Accepted for 2026

The Virginia Department of Health (VDH) is pleased to announce Planning and Design Fund Applications for 2026. Applications are accepted year round.

Owners of community waterworks and nonprofit non-community waterworks with projects serving populations of 10,000 or fewer are eligible to apply for planning and design funds. Waterworks may submit up to three applications per funding cycle; however, only two applications per waterworks owner may be selected for funding. The maximum award per application is \$45,000 as a grant. Projects that address conditions at a waterworks that do not comply with the Waterworks Regulations (12VAC5-590) or Operation Permit and result in acute health risks receive the highest priority for funding, followed by noncompliance and chronic health risks, and then noncompliance and broader public health concerns.

General Notices

Applications and information materials are available at <https://www.vdh.virginia.gov/drinking-water/capacity-development/planning-and-design-fund/>.

Please direct questions, comments, and information to the contact listed.

Contact Information: Jarrett Talley, Training, Capacity Development, and Outreach Director, Virginia Department of Health, 109 Governor Street, Sixth Floor, Richmond, VA 23219, telephone (804) 317-0140, or email jarrett.talley@vdh.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Community Psychiatric Support and Treatment - Community/Home-Based Behavioral Health Service Available for Public Review

As part of Right Help, Right Now Medicaid Behavioral Health Services Redesign, the Department of Medical Assistance Services (DMAS) is seeking public review on a new behavioral health service, Community Psychiatric Support and Treatment (CPST) - Community/Home-Based. DMAS appreciates the comments received during public comment periods and is seeking public review on a revised draft CPST Community/Home-Based service description available at https://www.dmas.virginia.gov/media/et5j5ibs/dmas-community-psychiatric-support-and-treatment-cpst-draft_community-policy_12152025a.pdf. A revised version of CPST - School Setting will be posted at a later date. Additional information on the Right Help, Right Now Medicaid Behavioral Health Services Redesign is available on the DMAS website at <https://www.dmas.virginia.gov/providers/benefits-services-for-providers/behavioral-health/mecicaid-behavioral-health-services-redesign/>.

Contact Information: Syreeta Stewart, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3863, fax (804) 786-1680, TDD (800) 343-0634, or email syreeta.stewart@dmas.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Title of Regulation: **18VAC160-40 Onsite Sewage System
Professionals Licensing Regulations.**

Publication: 42:7 VA.R. 899-921; November 17, 2025.

Correction to Final Regulation:

Page 903, 18VAC160-40-80 B, line 2, after "~~one year~~" replace
"12 months" with "24 months"

VA.R. Doc. No. R23-7122; Filed December 15, 2025, 3:11 p.m.

