



# VIRGINIA

## REGISTER OF REGULATIONS

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September 11, 2023

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Virginia Code Commission

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

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

## FAST-TRACK RULEMAKING PROCESS

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

## EMERGENCY REGULATIONS

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

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

## STATEMENT

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

## CITATION TO THE VIRGINIA REGISTER

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

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

**Members of the Virginia Code Commission:** John S. Edwards, Chair; James A. Leftwich, Jr., Vice-Chair; Ward L. Armstrong; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Christopher R. Nolen; Steven Popps; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade; Wren M. Williams.

**Staff of the Virginia Register:** Holly Trice, Registrar of Regulations; Anne Bloomsburg, Assistant Registrar; Nikki Clemons, Regulations Analyst; Rhonda Dyer, Publications Assistant.

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## September 2023 through October 2024

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
40:3	September 6, 2023	September 25, 2023
40:4	September 20, 2023	October 9, 2023
40:5	October 4, 2023	October 23, 2023
40:6	October 18, 2023	November 6, 2023
40:7	November 1, 2023	November 20, 2023
40:8	November 14, 2023 ( <b>Tuesday</b> )	December 4, 2023
40:9	November 29, 2023	December 18, 2023
40:10	December 13, 2023	January 1, 2024
40:11	December 27, 2023	January 15, 2024
40:12	January 10, 2024	January 29, 2024
40:13	January 24, 2024	February 12, 2024
40:14	February 7, 2024	February 26, 2024
40:15	February 21, 2024	March 11, 2024
40:16	March 6, 2024	March 25, 2024
40:17	March 20, 2024	April 8, 2024
40:18	April 3, 2024	April 22, 2024
40:19	April 17, 2024	May 6, 2024
40:20	May 1, 2024	May 20, 2024
40:21	May 15, 2024	June 3, 2024
40:22	May 29, 2024	June 17, 2024
40:23	June 12, 2024	July 1, 2024
40:24	June 26, 2024	July 15, 2024
40:25	July 10, 2024	July 29, 2024
40:26	July 24, 2024	August 12, 2024
41:1	August 7, 2024	August 26, 2024
41:2	August 21, 2024	September 9, 2024
41:3	September 4, 2024	September 23, 2024
41:4	September 18, 2024	October 7, 2024

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHYSICAL THERAPY

#### Agency Decision

**Title of Regulation: 18VAC112-20. Regulations Governing the Practice of Physical Therapy.**

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

**Name of Petitioner: Joseph Gianfortoni.**

**Nature of Petitioner's Request: The petitioner requests that the Board of Physical Therapy amend the regulation to define "invasive procedure." The petitioner additionally requests that the board amend the regulation to define the "practice of pelvic floor therapy" as a noninvasive procedure.**

**Agency Decision: Request denied**

**Statement of Reason for Decision: The board considered this petition at its August 10, 2023, meeting. The board decided to take no action on the petition but to refer this matter to the board's regulatory committee to consider potential future action.**

**Agency Contact: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Henrico, VA, 23233, telephone (804) 367-4674, or email [ptboard@dhp.virginia.gov](mailto:ptboard@dhp.virginia.gov).**

VA.R. Doc. No. PFR23-28; Filed August 10, 2023, 11:48 a.m.

### BOARD OF SOCIAL WORK

#### Initial Agency Notice

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

**Statutory Authority: §§ 54.1-2400 and 54.1-3708 of the Code of Virginia.**

**Name of Petitioner: Erin Tomlinson.**

**Nature of Petitioner's Request: The petitioner requests that the Board of Social Work amend 18VAC140-20-105 B 1 d to include Eye Movement Desensitization and Reprocessing International Association and American Psychological Association approved trainings as approved continuing education.**

**Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on September 11, 2023. The petition will also be published on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) to receive public comment, which opens September 11, 2023, and closes October 11, 2023. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public**

comment. Currently, that meeting is scheduled for November 3, 2023. The petitioner will be notified of the board's decision after that meeting.

**Public Comment Deadline: October 11, 2023.**

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

VA.R. Doc. No. PFR24-09; Filed August 11, 2023, 2:58 p.m.

### BOARD OF VETERINARY MEDICINE

#### Initial Agency Notice

**Title of Regulation: 18VAC150-20. Regulations Governing the Practice of Veterinary Medicine.**

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

**Name of Petitioner: Gerald Blackburn.**

**Nature of Petitioner's Request: The petitioner requests that the Board of Veterinary Medicine amend subdivision 2 of 18VAC150-20-120 to require documentation of one year of the last four in active practice for licensure by endorsement as a veterinarian.**

**Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on September 11, 2023. The petition will also be published on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) to receive public comment, which opens September 11, 2023, and closes October 2, 2023. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. Currently, that meeting is scheduled for October 26, 2023. The petitioner will be notified of the board's decision after that meeting.**

**Public Comment Deadline: October 2, 2023.**

**Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Henrico, VA, 23233, telephone (804) 597-4130, or email [leslie.knachel@dhp.virginia.gov](mailto:leslie.knachel@dhp.virginia.gov).**

VA.R. Doc. No. PFR24-08; Filed August 11, 2023, 2:38 p.m.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 1. ADMINISTRATION

### DEPARTMENT OF GENERAL SERVICES

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of General Services conducted a periodic review and a small business impact review of **1VAC30-41, Regulation for the Certification of Laboratories Analyzing Drinking Water**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated May 30, 2023, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare and is clearly written and easily understandable. This regulation satisfies the provisions of the law and legally binding state and federal requirements and is effective in meeting its goals. The regulation therefore is being retained without amendment.

1VAC30-41 became effective on May 1, 2014. This is the second periodic review of 1VAC30-41. The regulation continues to be needed to meet the requirements of federal and state law and regulations concerning the certification of laboratories analyzing drinking water samples. Drinking water laboratories that analyze drinking water samples for compliance purposes under federal and state law must be certified to do so under federal law. No complaints or comments have been received concerning the content of the regulation or its complexity. The regulation is written clearly and sets out the federal and state requirements for certifying laboratories analyzing drinking water. The regulation does not overlap, duplicate, or conflict with federal or state laws or regulations.

Contact Information: Rhonda Bishton, Office Manager and Executive Assistant, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, email [rhonda.bishton@dgs.virginia.gov](mailto:rhonda.bishton@dgs.virginia.gov).

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-91, Facility and Aboveground Storage Tank (AST) Regulation**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated May 8, 2023, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare and is clearly written and easily understandable. The regulation protects the environment and public health and safety from discharges of oil by providing procedures and requirements for registering tanks, developing facility and tank vessel oil discharge contingency plans, and establishing pollution prevention standards. The regulation incorporates standards recommended by the National Fire Protection Association or other industry practices or standards. The industry practices and standards are technical in nature; however, the regulated community is familiar with the technical requirements and industry standards. The regulation continues to be needed and is being retained without changes.

This regulation is required by § 62.1-44.34:15.1 of the Code of Virginia. No public comments were received during the public comment period. There is no direct mandate for aboveground storage tank regulations in federal law; however, federal regulations (e.g., 40 CFR Part 112 (Oil Pollution Prevention) and 29 CFR 1910.106 (Occupational Safety and Health Regulations)) and industry standards (e.g., API 653 and API 570) contain a number of requirements related to AST construction and operation. Many of those federal requirements are similar in purpose or effect to the requirements envisioned by Virginia's Pollution Prevention Law and Oil Discharge Contingency Plan mandates. Every attempt has been made to make the requirements of the state's aboveground storage tank regulations consistent with requirements already contained in those federal regulations and industry standards. This regulation was last reviewed in 2022.

Contact Information: Renee T. Hooper, Tank Regulatory Programs Manager, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1352, email [renee.hooper@deq.virginia.gov](mailto:renee.hooper@deq.virginia.gov).

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-101, Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Regulation**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated May 15, 2023, to support this decision.

This regulation continues to be needed to protect public health, safety, and welfare since it requires operators of tank vessels transporting or transferring oil as cargo upon state waters to develop contingency plans to address spills of oil. The regulation is clearly written and easily understandable. The regulation is being retained without changes. No comments were received during the periodic review.

This is not a state specific requirement, and vessels are required to develop these plans to meet federal requirements found in



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# Periodic Reviews and Small Business Impact Reviews

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the Oil Pollution Control Act of 1990. Virginia's regulation has been written to minimize the regulatory burden on the regulated community by maintaining consistency with the requirements of federal regulations. By complying with specific provisions of the Oil Pollution Control Act of 1990, a vessel operator is complying with Virginia's regulation, and no additional action is required by the vessel operator.

This regulation was last amended in 2022. The regulation remains consistent with federal laws and regulation and state statute.

Contact Information: Renee T. Hooper, Tank Regulatory Programs Manager, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1352, email [renee.hooper@deq.virginia.gov](mailto:renee.hooper@deq.virginia.gov).

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

#### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **18VAC30-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare 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 September 11, 2023, and ends October 11, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4130, email [audbd@dhp.virginia.gov](mailto:audbd@dhp.virginia.gov).

## BOARD OF SOCIAL WORK

### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **18VAC140-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare 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 September 11, 2023, and ends October 2, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

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

### BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

#### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **18VAC155-11, Public Participation Guidelines**, and **18VAC155-20, Waste Management Facility Operators Regulations**. The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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# Periodic Reviews and Small Business Impact Reviews

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Public comment period begins September 11, 2023, and ends October 2, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Marjorie King, Executive Director, Board for Waste Management Facility Operators, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8511, email [wastemgt@dpor.virginia.gov](mailto:wastemgt@dpor.virginia.gov).

include any language that prescribes limitations or requirements on small businesses.

Contact Information: Mark Golden, TANF Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 840-8370, email [mark.golden@dss.virginia.gov](mailto:mark.golden@dss.virginia.gov).

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-295, Temporary Assistance for Needy Families (TANF)**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated August 16, 2023, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare because it provides a vital safety net for vulnerable citizens of the Commonwealth who are eligible for Temporary Assistance for Needy Families (TANF). The regulation is clearly written and easily understandable. Based on a thorough review of the regulation and the fact that no comments were received, the agency recommends that the regulation be retained as is without making any changes.

The regulation is necessary to govern the TANF program. No public complaints or comments have been received about this regulation. The regulation is concise and understandable. The regulation does not overlap or duplicate any other federal or state laws or regulations. The regulation was last reviewed in 2019 and subsequently amended in 2020. There are no changes in technology or other factors since that time that impact this regulation. The regulation has no impact on small businesses as it does not include any language that prescribes limitations or requirements on small businesses.

Contact Information: Mark Golden, TANF Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 840-8730, email [mark.golden@dss.virginia.gov](mailto:mark.golden@dss.virginia.gov).

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-400, Funding Limitations for the Refugee Resettlement Program**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated August 7, 2023, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare of newly arrived refugees who are eligible for temporary cash and medical assistance while becoming self-sufficient in their new communities. The regulation is brief, clearly written, and easily understandable.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-35, Virginia Independence Program**, and determined that this regulation should be amended. The board is publishing its report of findings dated August 16, 2023, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare because it provides the framework for public assistance for the citizens of the Commonwealth who are eligible for Temporary Assistance for Needy Families (TANF). The regulation is clearly written and easily understandable. Despite the fact that no comments were received during the public comment period, the agency is recommending that the regulation be amended based on a thorough review of the regulation.

Chapter 209 of the 2021 Acts of Assembly, Special Session I, amended the amount of the subsidy in the Full Employment Program (FEP), which must be reflected by amending 22VAC40-35-100. Chapter 298 of the 2022 Acts of Assembly added an additional exemption from participation in the Virginia Initiative for Education and Work (VIEW) program, which must be reflected by amending 22VAC40-35-80.

The regulation is necessary to govern the Virginia Independence Program. No public complaints or comments have been received about this regulation. The regulation is concise and understandable. The regulation does not overlap or duplicate any other federal or state laws or regulations. The regulation was last reviewed in 2018 and subsequently amended in 2020. There are no changes in technology or other factors since that time that impact this regulation. The regulation has no impact on small businesses as it does not



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## Periodic Reviews and Small Business Impact Reviews

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The agency will retain the regulation without making changes as there have been no changes to the federal law or regulation on which it is based. This regulation was promulgated in 1986 for the purpose of limiting refugee cash and medical assistance to the amount allotted annually by the United States Congress and is still needed. The regulation is only two sections, and it is not complex. It was last reviewed in 2019. This regulation has no impact on small businesses.

Contact Information: Seyoum Berhe, State Refugee Coordinator, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7927, email [seyoum.berhe@dss.virginia.gov](mailto:seyoum.berhe@dss.virginia.gov).

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-790, Sewage Collection and Treatment Regulations**. The purpose of the proposed action is to require reporting by wastewater utilities of all septic systems or other onsite sewage disposal systems taken off-line and connected to sewage collection systems. The goal of this new regulatory requirement is to ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer, which will assist with tracking the Commonwealth's progress toward water quality goals, including Chesapeake Bay watershed restoration goals.

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

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

Public Comment Deadline: October 11, 2023.

Agency Contact: Scott Van Der Hyde, Regulatory Analyst, Department of Environmental, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 659-1541, or email [scott.vanderhyde@deq.virginia.gov](mailto:scott.vanderhyde@deq.virginia.gov).

VA.R. Doc. No. R24-7661; Filed August 11, 2023, 9:04 a.m.

Statutory Authority: §§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Public Comment Deadline: October 11, 2023.

Agency Contact: Tanya Pettus, Administrator, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-1795, FAX (866) 350-5354, or email [waterwasteoper@dpor.virginia.gov](mailto:waterwasteoper@dpor.virginia.gov).

VA.R. Doc. No. R24-7558; Filed August 17, 2023, 8:48 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals intends to consider amending **18VAC160-30, Waterworks and Wastewater Works Operators Licensing Regulations**. The purpose of the proposed action is to undertake a general review of the regulation in accordance with the regulatory reduction goal of Executive Directive Number One (2022), including ensuring the regulation (i) complements current Virginia law and meets applicable federal requirements; (ii) is organized, clear, and understandable; (iii) provides minimal burdens on regulants while still protecting the public; and (iv) reflects current Department of Professional and Occupational Regulation procedures and policies.

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

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Proposed Regulation

**Title of Regulation:** **2VAC5-317. Regulations for the Enforcement of the Noxious Weeds Law (amending 2VAC5-317-20).**

**Statutory Authority:** § 3.2-802 of the Code of Virginia.

**Public Hearing Information:**

December 7, 2023 - 10 a.m. - Department of Agriculture and Consumer Services, Patrick Henry Building, East Reading Room, 1111 East Broad Street, Richmond, Virginia

**Public Comment Deadline:** December 8, 2023.

**Agency Contact:** David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, or email [david.gianino@vdacs.virginia.gov](mailto:david.gianino@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 with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code of Virginia. Section 3.2-802 of the Code of Virginia authorizes the board to establish by regulation those weeds deemed to be noxious weeds.

**Purpose:** The intent of the regulatory action is to slow the spread of noxious weeds established in Virginia and prevent the introduction of those listed weed species that are not known to occur in the Commonwealth. The proposed regulatory action is necessary to protect the Commonwealth's agricultural and natural resources from the detrimental impact of noxious weeds. Listed noxious weeds are nonnative invasive plants with very few or no natural predators or existing environmental conditions to control their rapid rate of growth. As a result, noxious weeds can grow rapidly and displace native plants. Additionally, the habitat of wildlife may be altered as these plants invariably change the ecosystem by out-competing and displacing native plants. As the spread of a noxious weed can lead to significant economic losses associated with eradication and control costs, this amendment also assists in protecting the economic welfare of citizens.

**Substance:** The proposed regulatory action adds 12 plant species deemed by the board to meet the definition of "noxious weed" to 2VAC5-317-20.

**Issues:** The 12 plant species recommended for listing as noxious weeds are all invasive plant species; they are highly adaptable to their environment, are copious seed producers, and have an ability to displace native plant species through aggressive and rapid growth. Controlling invasive plants is costly and long term once they become established. Adding these 12 plants provides an advantage to citizens, as the regulation will serve to prevent the introduction of noxious weeds to uninfested areas or slow the spread from areas that are currently infested. Movement of a listed noxious weed will require that citizens obtain a permit from the Department of Agriculture and Consumer Services (VDACS) to minimize the risk associated with moving a listed noxious weed. Through the issuance of this permit, VDACS will provide suggested best practices for the movement of the Tier 3 noxious weeds that will prevent the inadvertent spread of these plants. There are no disadvantages to the public or the Commonwealth as a result of this proposed regulatory action.

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

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

Summary of the Proposed Amendments to Regulation. The Board of Agricultural and Consumer Services (Board) proposes to add 12 plants to the noxious weeds list.

Background. Section 3.2-800 of the Code of Virginia defines "noxious weed" to mean any living plant, or part thereof, declared by the Board through regulations under this chapter to be detrimental to crops, surface waters, including lakes, or other desirable plants, livestock, land, or other property, or to be injurious to public health, the environment, or the economy, except when in-state production of such living plant, or part thereof, is commercially viable or such living plant is commercially propagated in Virginia.

Plants that are classified as noxious weeds are prohibited from moving into or within the state without a permit.<sup>2</sup> Noxious weeds are classified as either Tier 1, Tier 2, or Tier 3 noxious weeds. Tier 1 noxious weeds are not known to occur in Virginia and are therefore more easily eradicated. Tier 2 noxious weeds are present in the Commonwealth, for which successful eradication or suppression is feasible. Lastly, Tier 3 noxious weeds are present in the Commonwealth, for which successful eradication or suppression is not feasible, but whose spread may be slowed down by restrictions on their movement.<sup>3</sup>

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## Regulations

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Section 3.2-802 of the Code of Virginia requires the Virginia Department of Agriculture and Consumer Services (VDACS) Commissioner to establish an advisory committee to conduct a scientific risk assessment of plants that are proposed to be included on the noxious weeds list.<sup>4</sup> The last meeting of this committee was held in November 2022,<sup>5</sup> though the weeds that are being added in this current action were discussed at various advisory committee meetings between September 2019 and June 2021.<sup>6</sup> Accordingly, the Board is now proposing to add one species to the list of Tier 2 noxious weeds, *Trapa bispinosa*, Two-horned trapa. Additionally, the Board is also proposing to add 11 species to the list of Tier 3 noxious weeds: (i) *Alliaria petiolata*, Garlic mustard; (ii) *Dioscorea polystachya*, Chinese yam; (iii) *Elaeagnus umbellata*, Autumn olive; (iv) *Ficaria verna*, Lesser celandine; (v) *Lespedeza bicolor*, Bicolor lespedeza; (vi) *Lonicera maackii*, Amur honeysuckle; (vii) *Lonicera japonica*, Japanese honeysuckle; (viii) *Phragmites australis*, Common reed; (ix) *Pueraria montana*, Kudzu; (x) *Reynoutria japonica*, Japanese knotweed; and (xi) *Ulmus pumila*, Siberian elm. Only one comment was received following publication of the NOIRA stage; that commenter expressed general support for adding new weeds to the list.<sup>7</sup>

**Estimated Benefits and Costs.** VDACS reports that the 12 plant species recommended for listing as a noxious weed are all invasive plant species; they are highly adaptable to their environment, are copious seed producers, and have an ability to displace native plant species through aggressive and rapid growth.<sup>8</sup> Controlling invasive plants is costly and requires efforts over a long period of time once they become established. Adding these 12 plants to the noxious weeds list would serve to prevent their introduction to un-infested areas within the Commonwealth and slow the spread from areas that are currently infested.

Adding these 12 plants to the list would require anyone seeking to move these plants to first obtain a permit from VDACS.<sup>9</sup> There are no fees associated with the permit application. The permits for Tier 1 and Tier 2 noxious weeds require compliance with specific best management practices, such as double bagging plant parts that will be removed from a site. The permits for Tier 3 noxious weeds do not contain any requirements; they only suggest best management practices to prevent any inadvertent spread of these plants.

VDACS expects to absorb any costs associated with implementing the proposed changes. VDACS reports that their Office of Plant Industry Services (OPIS) communicates additions to the Noxious Weeds List by several means: via direct communication to the Virginia Nursery and Landscape Association; to VDACS-registered nursery growers and dealers via both a direct mailing and OPIS's 15 plant protection inspectors, who communicate directly with growers; through cooperative extension agents at Virginia Tech; through press releases; and on the VDACS webpage.

The noxious weeds list currently has 14 plants (three Tier 1, six Tier 2, five Tier 3) so adding 12 plants would almost double

the size of the list. Over the past five years, VDACS has issued a total of 10 permits. Hence, although an increase in the size of the list may increase the number of permit applications, the additional costs of processing permit applications may not be significant.

**Businesses and Other Entities Affected.** VDACS reports that permit requests are likely to come from private landowners, construction companies, farmers, landscapers, and university researchers or faculty.<sup>10</sup> The agency notes that the regulations do not require a landowner to remove those plant species from their property. In the past, the entities that have sought permits most routinely are either researchers at universities who want to confirm noxious weeds through identification of the plant at their lab, or construction contractors who request movement permits to remove the plants from a property prior to construction. The permits issued to construction contractors are issued for safe removal of the plants from the site to a landfill to ensure the plant is not spread during or after transport. VDACS reports that seven of the 10 permits issued in the last five years were for construction, two were for research, and one was for personal removal from an individual's property.<sup>11</sup>

The proposed changes would lead to an increase in the number of researchers, construction companies, individual landowners, or other entities seeking to move any of the 12 plants that would be added to the noxious weeds list. However, the majority of these new permits would be for Tier 3 weeds, since all but one of the new additions to the list are in Tier 3. Permits for Tier 3 weeds only contain suggested best management practices and do not have any enforceable requirements. The newly added Tier 2 noxious weed (*Trapa bispinosa*) is an aquatic weed found primarily in lakes and ponds. As such, it is unlikely that construction companies will need to remove this plant from construction sites or incur related costs unless the construction activities involve artificial or natural lakes or ponds that were infested with this plant.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>12</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Because some researchers, construction companies, individual landowners, or other entities may have to obtain a permit to move noxious weeds whereas previously no permit would have been required, and because some of those entities could incur additional costs to comply with the requirements for transporting the newly added Tier 2 noxious weed (*Trapa bispinosa*), an adverse impact is indicated. However, entities like landowners or construction companies would only incur these costs if they choose to move these plants. As mentioned previously, the regulation does not require landowners to clear noxious weeds from their property.

Small Businesses<sup>13</sup> Affected.<sup>14</sup>

Types and Estimated Number of Small Businesses Affected. VDACS does not have estimates for the number of small businesses that would be affected by the proposed changes. It is possible that some of the construction contractors mentioned previously are small businesses.

Costs and Other Effects. Some of these businesses would face some minimal administrative costs of applying for an obtaining a permit. Any small businesses that need to move *Trapa bispinosa* would also face some additional cost of implementing the Tier 2 permit requirements.

Alternative Method that Minimizes Adverse Impact. There are no known alternative methods that would prevent the spread of noxious weeds at lower cost to small businesses.

Localities<sup>15</sup> Affected.<sup>16</sup> The proposed amendments do not create costs for local governments.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments are intended to protect the economic value of private property by preventing and controlling the spread of noxious weeds. Real estate development costs do not appear to be affected.

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

<sup>2</sup>Chapter 123 of the 2023 Acts of Assembly creates an exemption to the definition of the verb move; except for bona fide agricultural purposes including the management, tilling, planting, or harvesting of agricultural products. See <https://leg1.state.va.us/cgi-bin/legp504.exe?231+ful+CHAP0153>.

<sup>3</sup>The VDACS website includes resources on identifying some of the noxious weeds. See <https://www.vdacs.virginia.gov/plant-industry-services-noxious-weeds.shtml>.

<sup>4</sup>See <https://law.lis.virginia.gov/vacode/title3.2/chapter8/section3.2-802/>.

<sup>5</sup>See <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=36887>.

<sup>6</sup>The minutes for these meetings are available on the Virginia Regulatory Town Hall at [https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\48\29696\Minutes\\_VDACS\\_29696\\_v1.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\48\29696\Minutes_VDACS_29696_v1.pdf) (September 30, 2019, committee meeting); [https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\48\31465\Minutes\\_VDACS\\_31465\\_v1.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\48\31465\Minutes_VDACS_31465_v1.pdf) (October 23, 2020, committee meeting); [https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\48\32314\Minutes\\_VDACS\\_32314\\_v3.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\48\32314\Minutes_VDACS_32314_v3.pdf) (April 22, 2021, committee meeting); and [https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\48\32630\Minutes\\_VDACS\\_32630\\_v1.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\48\32630\Minutes_VDACS_32630_v1.pdf) (June 29, 2021, committee meeting).

<sup>7</sup>See <https://townhall.virginia.gov/l/viewcomments.cfm?commentid=99895>.

<sup>8</sup>Agency Background Document (ABD), page 4. See [https://townhall.virginia.gov/l/GetFile.cfm?File=48\5747\9551\AgencyState\ment\\_VDACS\\_9551\\_v2.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=48\5747\9551\AgencyState\ment_VDACS_9551_v2.pdf).

<sup>9</sup>The form can be found at <https://www.vdacs.virginia.gov/pdf/noxious-weed-permit.pdf>.

<sup>10</sup>Email dated April 10, 2023.

<sup>11</sup>Email dated April 19, 2023.

<sup>12</sup>Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>13</sup>Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

<sup>14</sup>If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>15</sup>"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>16</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

#### Summary:

*The proposed amendments add 12 plant species to the current noxious weeds list - one to the list of Tier 2 noxious weeds and 11 to the list of Tier 3 noxious weeds.*

#### **2VAC5-317-20. Tier 1, Tier 2, and Tier 3 noxious weeds.**

A. The following plants are hereby declared Tier 1 noxious weeds:

1. *Salvinia molesta*, Giant salvinia.
2. *Solanum viarum*, Tropical soda apple.
3. *Heracleum mantegazzianum*, Giant hogweed.

B. The following plants are hereby declared Tier 2 noxious weeds:

1. *Imperata cylindrica*, Cogon grass.
2. *Lythrum salicaria*, Purple loosestrife.
3. *Ipomoea aquatica*, Water spinach.
4. *Vitex rotundifolia*, Beach vitex.
5. *Oplismenus hirtellus* spp. *undulatifolius*, Wavyleaf basketgrass.



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6. *Corydalis incisa*, Incised fumewort.

7. *Trapa bispinosa*, Two-horned trapa.

C. The following plants are hereby declared Tier 3 noxious weeds:

1. *Ailanthus altissima*, Tree of heaven.

2. *Ampelopsis brevipedunculata*, Porcelain berry.

3. *Celastrus orbiculatus*, Oriental bittersweet.

4. *Hydrilla verticillata*, Hydrilla.

5. *Persicaria perfoliata*, Mile-a-minute weed.

6. *Alliaria petiolata*, Garlic mustard.

7. *Dioscorea polystachya*, Chinese yam.

8. *Elaeagnus umbellata*, Autumn olive.

9. *Ficaria verna*, Lesser celandine.

10. *Lespedeza bicolor*, Bicolor lespedeza.

11. *Lonicera maackii*, Amur honeysuckle.

12. *Lonicera japonica*, Japanese honeysuckle.

13. *Phragmites australis*, Common reed.

14. *Pueraria montana*, Kudzu.

15. *Reynoutria japonica*, Japanese knotweed.

16. *Ulmus pumila*, Siberian elm.

VA.R. Doc. No. R21-6889; Filed August 18, 2023, 11:08 a.m.

## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### 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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

**Title of Regulation:** **12VAC5-431. Sanitary Regulations for Hotels.**

**Agency Contact:** Briana Bill, Environmental Health Coordinator, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 584-6340, email [briana.bill@vdh.virginia.gov](mailto:briana.bill@vdh.virginia.gov).

#### FORMS

[Application for a Hotel Plan Review, TER-H-1 \(eff. 7/2018\)](#)

[Application for a Hotel Operations Permit, TER-H-2 \(eff. 7/2018\)](#)

[Application for a Hotel Plan Review - Spanish, TER-H-4 \(eff. 8/2023\)](#)

[Application for a Hotel Operations Permit - Spanish, TER-H-3 \(eff. 8/2023\)](#)

VA.R. Doc. No. R24-7654; Filed August 14, 2023, 3:29 p.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

#### 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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

**Title of Regulation:** **18VAC65-20. Regulations Governing the Practice of Funeral Services.**

**Agency Contact:** Erin Barrett, Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

#### FORMS

[Checklist and Instructions for Funeral License \(rev. 3/2023\)](#)

[Funeral Service Licensee Reinstatement Application \(rev. 3/2023\)](#)

[Request for Verification of a Virginia Funeral License \(rev. 11/2019\)](#)

[Checklist and Instructions for Courtesy Card Application \(rev. 3/2023\)](#)

[Checklist and Instructions for Surface Transportation and Removal Service Registration Application \(rev. 3/2023\)](#)

~~[Checklist and Instructions for Crematory Registration Application \(rev. 1/2021\)](#)~~

[Crematory Registration Application \(rev. 8/2023\)](#)

[Checklist and Instructions for Continuing Education Providers \(rev. 3/2021\)](#)

[Instructions for Completing the Continuing Education Summary Form for the Virginia Board of Funeral Directors and Embalmers \(rev. 8/2016\)](#)

[Instructions for Continuing Education Providers Adding Additional Courses \(rev. 3/2021\)](#)

[Continuing Education \(CE\) Credit Form for Volunteer Practice \(rev. 7/2020\)](#)

[Continued Competency Activity and Assessment Form \(rev. 7/2012\)](#)

[Funeral Service New Establishment Application \(rev. 3/2023\)](#)

[Funeral Service Establishment/Branch Application \(rev. 3/2023\)](#)

[Funeral Service Branch Establishment Application \(rev. 3/2023\)](#)

[Funeral Service Establishment/Branch Change Application \(rev. 3/2023\)](#)

[Funeral Establishment or Branch Change of Manager Application \(rev. 3/2023\)](#)

[Request for Reinspection due to Structural Change to Preparation Room \(rev. 7/2020\)](#)

[Waiver of Full-Time Manager \(rev. 3/2023\)](#)

[Funeral Service Establishment Reinstatement Application \(rev. 3/2023\)](#)

[Courtesy Card Reinstatement Application \(rev. 3/2023\)](#)

[Surface Transportation and Removal Services Reinstatement Application \(rev. 3/2023\)](#)

[Presentation Request Form \(rev. 7/2020\)](#)

[Name/Address Change Form \(rev. 2/2016\)](#)

[Appendix I. General Price List \(rev. 10/2019\)](#)

[Appendix II. Casket Price List, Outer Burial Container Price List \(rev. 10/2019\)](#)

[Appendix III. Itemized Statement of Funeral Goods and Services Selected \(rev. 10/2019\)](#)

VA.R. Doc. No. R24-7664; Filed August 22, 2023, 11:25 a.m.

## BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

### Proposed Regulation

**Title of Regulation:** 18VAC80-20. Hearing Aid Specialists Regulations (amending 18VAC80-20-30, 18VAC80-20-40).

**Statutory Authority:** § 54.1-201 of the Code of Virginia.

### Public Hearing Information:

October 11, 2023 - 9:30 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Richmond, VA 23233

**Public Comment Deadline:** November 10, 2023.

**Agency Contact:** Kelley Smith, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email [hasopt@dpor.virginia.gov](mailto:hasopt@dpor.virginia.gov).

**Basis:** Section 54.1-201 of the Code of Virginia gives authority to the Board for Hearing Aid Specialists and Opticians to promulgate regulations.

**Purpose:** The Hearing Aid Specialist Training Committee spent several months analyzing the cause of the board's low pass rate on the hearing aid specialist exam. Much of the lower pass rate could be tied to individuals obtaining the training permit, then immediately signing up for the licensing exam. This enabled individuals to take the exam with as little as two months of training in the profession. In examining the data, the committee found a direct correlation between the lengths of training under the temporary permit and pass rates on the exam. Individuals with nine months of training or less had below a 30% pass rate and the pass rate for those with six months of training was below 20%. The board is extending the length of the apprenticeship to 18 months and imposing a minimum training length to address these concerns. In addition to addressing this flaw in the temporary permit training program, the board also wanted to allow individuals to utilize the newly created U.S. Department of Labor approved hearing aid dispensing apprenticeship program.

The amendments are essential for the public health, safety, and welfare because increasing the amount of minimum training required for individuals holding a temporary permit prior to taking the licensing examination will better ensure individuals are minimally competent to engage in the regulated activity. The amendments assure the public that individuals that are minimally trained to provide hearing aid services are the individuals providing services, versus individuals who may simply be gifted at exam taking and have not actually received enough training to become minimally competent.

**Substance:** The proposed amendments (i) add a requirement that temporary permit holders cannot take the licensing exam until they have six months of experience under the permit and add a new training option of registered apprenticeship and (ii) change the temporary permit length from 12 months to 18 months and add a requirement that sponsors cannot refer permit holders to the exam until the permit holder reaches six months of experience.

**Issues:** One primary advantage of this action is that individuals seeking to enter this profession have a new training option of registered apprenticeship. Registered apprenticeships offer several advantages over traditional training programs, including that registered apprenticeships are paid, on-the-job

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training, recognized by the federal government and transferable to any other state with a registered apprenticeship program. There is no disadvantage of this change, since this will merely be an additional option for individuals who desire it, not a requirement. Another advantage of this action is that individuals learning under a temporary permit will now receive a longer training period, including a minimum amount of training that will increase the likelihood of passing the licensing exam and successfully entering the profession. The disadvantage of this change to the temporary permit requirement is that individuals who may wish to have tested prior to six months will be prohibited from doing so. The pass rate for temporary permit holders at six months is around 20%, while less than six months drops about 10% for every three months less of experience. While one or two individuals per year may be able to pass the exam with less than six months of training, the vast majority will fail and incur a financial loss (exam fee) and the emotional toll of having failed a state licensing exam.

The advantages to the Commonwealth of the registered apprenticeship is that it will have decreased barriers to entry into the profession by providing additional qualifying methods and increasing the likelihood of success on the licensing exam. Additionally, the Department of Labor and Industry may see an increase in hearing aid specialist apprentices. There is no disadvantage to the Commonwealth.

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

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

**Summary of the Proposed Amendments to Regulation.** The Board for Hearing Aid Specialists and Opticians (Board) is proposing to (i) require a minimum of nine months of training in the profession prior to taking the hearing aid specialist exam, (ii) extend the duration of the temporary permit from 12 months to 18 months, and (iii) create an additional pathway to gain sufficient experience to qualify for licensure.

**Background.** A hearing aid specialist is a licensed professional who provides hearing aid solutions to customers with hearing loss. To do this, hearing aid specialists test the extent of a customer's hearing loss, then adapt and sell a hearing aid product to the consumer. Entry into this profession may start with a temporary permit from the Board until the temporary permit holder obtains proper training and passes the Board's hearing aid specialist examination (exam) to be issued a permanent license. In essence, a temporary permit is a permit to obtain training.

According to the Department of Professional and Occupational Regulation (DPOR), the Board has received complaints from temporary permit holders who are not able to pass the exam. In

addition, the Hearing Aid Specialist Training Committee analyzed the cause of the low pass rate on the exam. The committee found that much of the lower pass rates could be tied to individuals obtaining the training permit, then immediately signing up for the exam. This enabled individuals to take the exam with as little as two months of training in the profession. In examining the data, the committee found a direct correlation between the lengths of training under the temporary permit and pass rates on the exam. Individuals with nine months of training or less had below a 30% pass rate, and the pass rate for those with six months of training was below 20%. Consequently, the Board is proposing to impose a minimum training length of nine months and to extend the maximum length of the training to 18 months to address these concerns.

At the same time, the Board is also proposing to allow individuals to utilize the newly created U.S. Department of Labor approved hearing aid dispensing apprenticeship program.

**Estimated Benefits and Costs.** Currently, a temporary permit holder can take the exam within certain timeframes as soon as the temporary permit holder's licensed sponsor certifies that the requirements for the scope of training have been met. The timeframes are dictated by the duration of the temporary permit. A temporary permit is issued for a period of 12 months and may be extended once for not longer than six months. Extension beyond 12 months is possible only if the training is not certified to be complete by the sponsor. In other words, once the sponsor certifies that the individual is ready for the exam, there is the implicit assumption that the training is finished and there is no reason to extend the duration of the temporary permit. If the training has not been completed within 12 months, a six month extension is allowed. After a period of 18 months, an extension is no longer possible and the former temporary permit holder must sit for the licensure examination and pass within two years from the initial test date.

There are inherent incentives for the trainee as well as the sponsor to complete the training as soon as possible, take the exam, and become fully licensed. These include the benefit for the trainee of higher earning potential sooner than later, and the benefit for the sponsor of autonomous practice as soon as possible by the trainee. These incentives for taking the exam as soon as possible appear to be coupled by lack of significant repercussions other than the cost of taking the exam (exam fee,<sup>2</sup> time and travel) if the result is not favorable. The exam is offered four times a year, and the trainee is free to take as many exams as possible any time before two years from the initial test date. These incentives and lack of significant repercussions appear to have the unintended consequence of lower pass rates on the exam.

In order to address the unintended consequence of lower pass rates under the current regulatory framework, the Board proposes to introduce a minimum training period of nine months. A longer training period should help improve on average the preparedness of the trainees for unsupervised

practice. Also, given the direct correlation the committee found between pass rates and the duration of the training, an improvement in pass rates appears plausible. Improved pass rates would reduce potential financial loss to the trainees (e.g., exam fee) and the impact of having failed a state licensing exam. However, unless the correlation is perfect (i.e., a one to one relationship), which does not appear to be in this case, the possibility cannot be ruled out that there may be one or two<sup>3</sup> trainees who would have passed the exam before the proposed nine-month period but who would no longer be allowed to do so.

In addition, the extension of the temporary permit duration from 12 to 18 months would benefit trainees by eliminating the application procedure to extend the permit if needed. Also, a minimal reduction in staff workload may occur at DPOR due to the reduction in the number of temporary permit extension requests.

Finally, the Board proposes to allow a new pathway to full licensure in addition to the current temporary permit and college degree routes. One of the proposed changes would allow applicants to verify completion of the required training and experience by allowing submission of an apprenticeship completion form from the Virginia Department of Labor and Industry (DOLI) that reflects completion of a registered apprenticeship, including all required related instruction or an equivalent out-of-state registered apprenticeship. According to DPOR, registered apprenticeships offer several advantages over traditional training programs, including that they are paid on-the-job training, recognized by the federal government, and transferable to any other state with a registered apprenticeship program. Although there is no such apprenticeship program currently operating in Virginia, this change would reduce barriers to entry into this profession in Virginia when and if such a program is established or when and if DOLI starts issuing equivalency of out-of-state registered apprenticeships. This additional pathway to licensure would likely also promote such programs.

**Businesses and Other Entities Affected.** According to DPOR, there are approximately 70 applicants for licensure in a given year, the average number of annual applicants for the hearing aid temporary permits is 47, and it is anticipated that once the apprenticeship is implemented, there may be five to 10 registered apprentices every year. No applicants for a temporary permit appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>4</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the DPOR estimates that there would be one or two trainees that could have been able to pass the exam before the proposed minimum nine-month training period. Thus, an adverse impact is indicated on such trainees.

**Small Businesses<sup>5</sup> Affected.<sup>6</sup>**

**Types and Estimated Number of Small Businesses Affected.** According to DPOR most if not all sponsors of temporary permits are small businesses. As mentioned, 47 applications for temporary permits are received annually on average. Thus, approximately 47 small businesses may be affected. DPOR estimates only one or two trainees to be adversely affected. Thus, no more than one or two temporary permit sponsors are likely to be adversely affected.

**Costs and Other Effects.** As discussed, the proposed minimum duration for training is expected to result in longer training periods for trainees, which would also extend the training for sponsors as they can no longer certify the completion of the scope of training before the minimum of nine months proposed. The proposed changes would also eliminate the need to extend the training from 12 to 18 months, which in turn would eliminate the application for extension. An adverse impact on one or two trainees who could have passed the exam before the proposed nine-month period and consequently on their sponsors who are most likely to be small businesses is indicated.

**Alternative Method that Minimizes Adverse Impact.** There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

**Localities<sup>7</sup> Affected.<sup>8</sup>** The proposed amendments do not introduce costs for local governments and do not disproportionately affect any particular localities.

**Projected Impact on Employment.** The proposed changes may delay one or two trainees becoming fully licensed and may result in their being underemployed for a while.

**Effects on the Use and Value of Private Property.** The proposed elimination of temporary permit extension and the application costs associated with such application would reduce compliance costs while one or two temporary permit holders may be delayed in obtaining a full license increasing compliance costs. The net effect on compliance costs and therefore the effect on the asset values of sponsor businesses is not known.

The proposed amendments do not affect real estate development costs.

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

<sup>2</sup>The exam consists of two parts covering theory (\$260) and practice (\$90) which can be independently taken and passed at different times.

<sup>3</sup>Source: DPOR

<sup>4</sup>Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact

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on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>5</sup>Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

<sup>6</sup>If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>7</sup>"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>8</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

**Summary:**

*The proposed amendments (i) require a minimum of nine months of training in the profession prior to taking the hearing aid specialist exam; (ii) extend the duration of the temporary permit to 18 months; and (iii) create an additional pathway to gain sufficient experience to qualify for licensure.*

**18VAC80-20-30. Basic qualifications for licensure.**

A. Every applicant for a license shall provide information on ~~his~~ an application establishing that:

1. The applicant is at least 18 years of age.
2. The applicant has successfully completed high school or a high school equivalency course.
3. The applicant has training and experience that covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories, and services:
  - a. Basic physics of sound;
  - b. Basic maintenance and repair of hearing aids;
  - c. The anatomy and physiology of the ear;
  - d. Introduction to psychological aspects of hearing loss;
  - e. The function of hearing aids and amplification;
  - f. Visible disorders of the ear requiring medical referrals;

- g. Practical tests utilized for selection or modification of hearing aids;
- h. Pure tone audiometry, including air conduction, bone conduction, and related tests;
- i. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;
- j. Masking when indicated;
- k. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;
- l. Taking earmold impressions;
- m. Proper earmold selection;
- n. Adequate instruction in proper hearing aid orientation;
- o. Necessity of proper procedures in after-fitting checkup; and
- p. Availability of social service resources and other special resources for the hearing impaired.

4. The applicant has provided one of the following as verification of completion of training and experience as described in subdivision 3 of this subsection:

- a. A statement on a form provided by the board signed by the licensed sponsor certifying that the requirements have been met and that the applicant has completed at least six months of experience under the temporary permit; ~~or~~
- b. A certified true copy of a transcript of courses completed at an accredited college or university, or other notarized documentation of completion of the required experience and training; or
- c. An apprenticeship completion form from the Virginia Department of Labor and Industry reflecting completion of a registered apprenticeship, including all required related instruction, or an equivalent out-of-state registered apprenticeship.

5. The applicant has not been convicted or found guilty of any crime directly related to the practice of fitting or dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor marijuana convictions and misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. The applicant review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.



6. The applicant is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant must disclose if ~~he~~ the applicant has had a license as a hearing aid specialist that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant must also disclose whether ~~he~~ the applicant has been previously licensed in Virginia as a hearing aid specialist.

7. The applicant has disclosed ~~his~~ the applicant's physical address. A post office box is not acceptable.

8. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in Virginia.

9. The applicant has submitted the required application with the proper fee as referenced in 18VAC80-20-70 and signed, as part of the application, a statement that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

B. The board may make further inquiries and investigations with respect to the qualifications of the applicant or require a personal interview or both. The board may refuse initial licensure due to the applicant's failure to comply with entry requirements. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

**18VAC80-20-40. Temporary permit.**

A. Any individual may apply for a temporary permit, which is to be used solely for the purpose of gaining the training and experience required to become a licensed hearing aid specialist in Virginia. The licensed sponsor shall be identified on the application for a temporary permit, and the licensed sponsor shall comply strictly with the provisions of subdivisions B 1 and B 2 of this section.

1. A temporary permit shall be issued for a period of ~~12 months and may be extended once for not longer than six~~ 18 months. After a period of 18 months ~~an extension is no longer possible and~~, the former temporary permit holder shall sit for the examination in accordance with this section.

2. The board may, at its discretion, extend the temporary permit for a temporary permit holder who suffers serious personal illness or injury, or death in ~~his~~ the temporary permit holder's immediate family, or obligation of military service or service in the Peace Corps, or for other good cause of similar magnitude approved by the board. Documentation

of these circumstances must be received by the board no later than 12 months after the date of the expiration of the temporary permit or within six months of the completion of military or Peace Corps service, whichever is later.

B. Every applicant for a temporary permit shall provide information upon application establishing that:

1. The applicant for a temporary permit is at least 18 years of age.

2. The applicant for a temporary permit has successfully completed high school or a high school equivalency course.

3. The applicant has not been convicted or found guilty of any crime directly related to the practice of fitting or dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor marijuana convictions and misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. Review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

4. The applicant for a temporary permit is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant for a temporary permit must disclose if ~~he~~ the applicant has had a license as a hearing aid specialist that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application, the applicant for a temporary permit must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant for a temporary permit must also disclose whether ~~he~~ the applicant has been licensed previously in Virginia as a hearing aid specialist.

5. The applicant for a temporary permit has disclosed ~~his~~ the applicant's physical address. A post office box is not acceptable.

6. The applicant for a temporary permit has submitted the required application with the proper fee referenced in 18VAC80-20-70 and has signed, as part of the application, a statement that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

C. The licensed hearing aid specialist who agrees to sponsor the applicant for a temporary permit shall certify on the

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application that as sponsor, ~~he~~ the licensed hearing aid specialist:

1. Assumes full responsibility for the competence and proper conduct of the temporary permit holder with regard to all acts performed pursuant to the acquisition of training and experience in the fitting or dealing of hearing aids;
2. Will not assign the temporary permit holder to carry out independent field work without on-site direct supervision by the sponsor until the temporary permit holder is adequately trained for such activity;
3. Will personally provide and make available documentation, upon request by the board or its representative, showing the number of hours that direct supervision has occurred throughout the period of the temporary permit; ~~and~~
4. Will return the temporary permit to the department should the training program be discontinued for any reason; and
5. Will not refer the temporary permit holder for testing until they have completed at least six months of training under the permit.

D. The licensed sponsor shall provide training and shall ensure that the temporary permit holder under ~~his~~ the licensed sponsor's supervision gains experience that covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories, and services:

1. Basic physics of sound;
2. Basic maintenance and repair of hearing aids;
3. The anatomy and physiology of the ear;
4. Introduction to psychological aspects of hearing loss;
5. The function of hearing aids and amplification;
6. Visible disorders of the ear requiring medical referrals;
7. Practical tests utilized for selection or modification of hearing aids;
8. Pure tone audiometry, including air conduction, bone conduction, and related tests;
9. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;
10. Masking when indicated;
11. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;
12. Taking earmold impressions;
13. Proper earmold selection;
14. Adequate instruction in proper hearing aid orientation;

15. Necessity of proper procedures in after-fitting checkup; and

16. Availability of social service resources and other special resources for the hearing impaired.

E. The board may make further inquiries and investigations with respect to the qualifications of the applicant for a temporary permit or require a personal interview, or both.

F. All correspondence from the board to the temporary permit holder not otherwise exempt from disclosure, shall be addressed to both the temporary permit holder and the licensed sponsor and shall be sent to the business address of the licensed sponsor.

V.A.R. Doc. No. R22-6712; Filed August 10, 2023, 11:50 a.m.



## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Final Regulation

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

**Title of Regulation:** **22VAC40-80. General Procedures and Information for Licensure (amending 22VAC40-80-110).**

**Statutory Authority:** §§ 63.2-217, 63.2-1732, 63.2-1733, and 63.2-1734 of the Code of Virginia.

**Effective Date:** October 11, 2023.

**Agency Contact:** Sherri Williams, Licensing Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7141, FAX (804) 726-7132, or email [sherri.williams@dss.virginia.gov](mailto:sherri.williams@dss.virginia.gov).

**Summary:**

*Pursuant to Chapter 695 of the 2023 Acts of Assembly, the amendment increases the maximum period of time in which an applicant may operate an assisted living facility, adult day care center, or child welfare agency under a provisional license issued by the Commissioner of Social Services to 12 successive months.*

**22VAC40-80-110. Provisional license.**

When a regular license expires and the applicant is temporarily unable to comply with the requirements of the regulations, the department may issue a provisional license for

any period not to exceed ~~six~~ 12 months. A provisional license shall not be issued to a facility or agency immediately following a conditional license. At the conclusion of the provisional licensure period, the facility or agency must be in substantial compliance with licensing standards or be denied a license to continue operation.

VA.R. Doc. No. R24-7563; Filed August 23, 2023, 1:59 p.m.

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# GUIDANCE DOCUMENTS

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## PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

### VIRGINIA SOIL AND WATER CONSERVATION BOARD

Title of Document: [2024 Grant Manual for the Virginia Dam Safety, Flood Prevention and Protection Assistance Fund.](#)

Public Comment Deadline: October 11, 2023.

Effective Date: October 12, 2023.

Agency Contact: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4378, email [lisa.mcgee@dcr.virginia.gov](mailto:lisa.mcgee@dcr.virginia.gov).

### STATE BOARD OF EDUCATION

Title of Document: [Guidelines for Practice Year Two of the Early Childhood Unified Measurement and Improvement System.](#)

Public Comment Deadline: October 11, 2023.

Effective Date: October 12, 2023.

Agency Contact: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, email [jim.chapman@doe.virginia.gov](mailto:jim.chapman@doe.virginia.gov).

### DEPARTMENT OF TAXATION

Title of Document: [Guidelines for the Classification of Workers.](#)

Public Comment Deadline: October 11, 2023.

Effective Date: October 12, 2023.

Agency Contact: James Savage, Lead Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261, telephone (804) 371-2301, email [james.savage@tax.virginia.gov](mailto:james.savage@tax.virginia.gov).

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# GENERAL NOTICES

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## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### 2023 Annual Report on the Agricultural Stewardship Act Available for Review

The Commissioner of Agriculture and Consumer Services announces the availability of the annual report on the Agricultural Stewardship Act for the program year April 1, 2022, through March 31, 2023. Copies of this report can be obtained by contacting Nicolas Robichaud at 804-786-3538 or via email at [nicolas.robichaud@vdacs.virginia.gov](mailto:nicolas.robichaud@vdacs.virginia.gov). The report can also be obtained by accessing the Virginia Department of Agriculture and Consumer Services website at <http://www.vdacs.virginia.gov/conservation-and-environmental-agricultural-stewardship.shtml>. A written request may be sent to the address listed at the end of this notice. Copies of the report are available without charge.

Contact Information: Erin Williams, Senior Policy Analyst, Office of Policy, Planning, and Research, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone 804-786-7157, or email [erin.williams@vdacs.virginia.gov](mailto:erin.williams@vdacs.virginia.gov).

## DEPARTMENT OF ENERGY

### Public Comment Opportunity for the Bipartisan Infrastructure Law

The Virginia Department of Energy administers funding for the Bipartisan Infrastructure Law. The department will receive \$22.7M for the next 15 years. This increase in funding requires early planning for projects and opportunity for public comment. Some proposed opportunities for projects are identified in problem areas. Virginia Energy will be taking public comment on these proposed problem areas in person and via email at [bilcomments@energy.virginia.gov](mailto:bilcomments@energy.virginia.gov) through October 1, 2023.

The dates, times, and locations for the three in-person events happening across the Commonwealth are listed here. (Please note only the audio of these sessions will be recorded.)

August 14, 2023, 6:00 p.m. Mountain Empire Community College, Dalton Cantrell Hall, Rooms 242 and 243, 3441 Mountain Empire Road, Big Stone Gap VA 24219.

August 23, 2023, 6:00 p.m. Southwest Virginia Community College, Dellinger Hall, Room 118, 635 Community College Road, Cedar Bluff VA 24609.

August 29, 2023, 6:00 p.m. Chesterfield Technical Center, 13900 Hull Street, Midlothian VA 23112.

Contact Information: Michael Skiffington, Regulatory Coordinator, Department of Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, email [mike.skiffington@energy.virginia.gov](mailto:mike.skiffington@energy.virginia.gov).

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Tentative § 401 Water Quality Certification of Proposed Army Corps of Engineers Regional Permit 23-R-15 for Maintenance of Existing Drainage Ditches Available for Review and Public Comment

Summary: On July 31, 2023, the U.S. Army Corps of Engineers Norfolk District published a notice of proposed reissuance, with modifications, of the Norfolk District Regional Permit Regional Permit 15 (RP-15) and its general conditions. The current 2018 Regional Permit 15 (18-RP-15) expires September 5, 2023.

Purpose of this notice: The Virginia Department of Environmental Quality (DEQ) is giving notice of its tentative § 401 Water Quality Certification decision to conditionally certify the Norfolk District Regional Permit 2023 Regional Permit 15 (23-RP-15). While DEQ conditionally certified the 2018 version of this regional permit, this tentative conditional certification changes the specific conditions being applied to streamline review and permitting efforts for all relevant agencies given the limited scope of this proposed regional permit. This notice is requesting public comment beginning August 17, 2023.

How to comment: Comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 11:59 p.m. on September 15, 2023. Only those comments received within this period will be considered by DEQ. DEQ accepts written comments by the following methods: (1) hand-delivery to Virginia Department of Environmental Quality, Office of Wetlands and Stream Protection, 1111 East Main Street, Suite 1400, Richmond, Virginia 23219; (2) email to [vwppublicnotices@deq.virginia.gov](mailto:vwppublicnotices@deq.virginia.gov); or (3) postal mail to Virginia Department of Environmental Quality, Office of Wetlands and Stream Protection, P.O. Box 1105, Richmond, Virginia 23218.

For technical issues with comment submittal, contact Dave Davis, Office of Wetlands and Stream Protection, Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia 23218, telephone (804) 698-4105.

DEQ grants this conditional water quality certification (WQC) for the U.S. Army Corps of Engineers 23-RP-15 authorizing the maintenance of existing drainage ditches originally constructed in and previously authorized in navigable waters of the United States, effective by September 2023, pursuant to § 401 of the Clean Water Act of 1977 (33 USC § 1341); Title 62.1 of the Code of Virginia, including Chapter 3.1 (State Water Control Law); Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.); and Water Quality Standards (9VAC25-260 et seq.). This WQC applies to any activity in those waters of the United States and in all state



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surface waters in Virginia regulated pursuant to the laws and regulations of the Commonwealth.

DEQ finds that there is reasonable assurance that the discharge from activities authorized by this permit will comply with water quality requirements and will be conducted in a manner that will not violate applicable water quality standards, provided the permittee abides by all conditions and requirements contained in the 23-RP-15 and this WCQ as detailed in this notice:

WQC Condition 1: Application to DEQ shall be required for any proposed project that involves surface water withdrawals (9VAC25-210-300) or activities related to the withdrawal of surface water, including but not limited to all activities related to intakes, reservoirs, diversions, and water supply impoundments or dams, in accordance with Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and State Water Control Law. A DEQ Virginia Water Protection (VWP) permit program decision shall need to have been finalized prior to the project proponent conducting surface water withdrawal activities. If a DEQ VWP general permit coverage or individual permit is issued, it shall be based on all impacts of the proposed activities in or on surface waters pursuant to applicable permit regulations and State Water Control Law. Compensatory mitigation may be required for all permanent impacts. Other permits may be required from DEQ based on the proposed activities or impacts.

WQC Condition 2: Deviations from the original configuration or filled area shall not change the character, scope, or size of the original design or approved alternative design.

40 CFR 121.7(d)(2)(i): This condition is necessary in order to ensure that (i) any discharge authorized under the general license or permit will comply with water quality requirements; (ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and (iii) state water quality requirements are met, including the General Criteria in 9VAC25-260-20 that "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

40 CFR 121.7(d)(2)(ii): Article XI, Section 1 Constitution of Virginia; Title 62.1 of the Code of Virginia; State Water Control Law (§§ 62.1-44.2 through 62.1-44.34:28 of the Code of Virginia); Scenic River Act (§ 10.1-400 et seq. of the Code of Virginia); Dam Safety Act (§ 10.1-604 et seq. of the Code of Virginia); § 10.1-1408.5 of the Code of Virginia; Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia; §§ 62.1-7, 62.1-8, 62.1-10, 62.1-11, and 62.1-194 through 62.1-194.3 of the Code of Virginia; 9VAC25-31 et seq., 9VAC25-40 et seq., 9VAC25-210 et seq., 9VAC25-260 et seq., 9VAC25-380 et seq., 9VAC25-401 et seq., 9VAC25-410

et seq., 9VAC25-415 et seq., 9VAC25-630 et seq., 9VAC25-660 et seq., 9VAC25-690 et seq. as applicable, 9VAC25-720 et seq., 9VAC25-820 et seq., 9VAC25-830 et seq., 9VAC25-840 et seq., 9VAC25-870 et seq., 9VAC25-880 et seq., and 9VAC25-890 et seq.; 33 USC §§ 1251 et seq., 1313(d), 1315(b), 1317(a), 1341 et seq., 1344 et seq., and 1370; 33 CFR Part 332; 40 CFR 121 et seq. and 131 et seq.; and Public Law 95-217. Non-compliance with Title 62.1 of the Code of Virginia, including the State Water Control Law or applicable VWP Permit Program regulations, or otherwise violating Virginia state water quality standards, may result in civil penalties.

DEQ reserves its right to revise this WQC based on any future amendments to state or federal permits, laws, or regulations. DEQ's WQC neither replaces nor supersedes requirements set forth by other local, state, federal, and Tribal laws. DEQ's WQC does not eliminate the need to obtain additional permits, approvals, consultations, or authorizations as required by law before proposed activities may commence.

Contact Information: Dave Davis, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23219, telephone (804) 698-4105, email [vwppublicnotices@deq.virginia.gov](mailto:vwppublicnotices@deq.virginia.gov).

### **Public Meeting and Opportunity for Public Comment for a Cleanup Plan for Portions of the North Fork Rivanna River Watershed**

Purpose of Notice: The Department of Environmental Quality (DEQ) seeks public comment on the development of a cleanup plan for impaired waters, also known as an Implementation Plan (IP), for the North Fork Rivanna River watershed in Albemarle County and Greene County, Virginia. These streams are listed as impaired since monitoring data indicates that the waters do not meet Virginia's water quality standards for bacteria and aquatic life (benthic). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law requires DEQ to develop cleanup studies to address pollutants responsible for causing waters to be on Virginia's § 303(d) list of impaired waters. Once a cleanup study is developed, § 62.1-44.19:7 of the Code of Virginia outlines the requirements needed in a cleanup plan to address the pollutants contained in the study.

DEQ is developing a cleanup plan to identify the actions necessary to address the water quality impairment in the North Fork Rivanna River watershed. DEQ will introduce the community to the process used to develop the plan and invite the public to contribute to the plan by participating in IP community engagement meetings. Any person interested in participating should notify the DEQ contact person and provide the person's name, address, telephone number, email address, and the organization being represented (if any). The proposed cleanup plan will explain the pollutant reductions needed to meet the targets contained in both the benthic (2020)

and bacteria (2009) TMDL reports prepared for the watershed. The plan will also recommend a specific set of voluntary best management practices (BMPs) for agricultural lands, residential septic systems, pet waste, and urban practices to reduce both bacteria and sediment from entering area streams. It will also include associated costs and a timeline of the expected achievement of water quality objectives.

**Cleanup Plan Location:** The cleanup plan addresses the following impaired stream segments: Blue Run from the headwaters downstream to its confluence with Swift Run (8.72 mi) for failure to meet the general standard for aquatic life (benthic); Marsh Run from the headwaters downstream to its confluence with the North Fork Rivanna River (3.65 mi) for failure to support aquatic life; Preddy Creek is impaired for failing to support aquatic life and for exceedance in E. coli from the headwaters downstream to its confluence with the North Fork Rivanna River (7.48 mi); Preddy Creek North Branch is impaired from the headwaters downstream to its confluence with Preddy Creek (6.24 mi) for failing to support aquatic life and for exceedance in E. coli; Quarter Creek is impaired for 1.58 miles of its length from the damn outfall at Jonquil Road downstream to its confluence with Swift Run for failing to support aquatic life; the North Fork Rivanna River is listed as impaired for a total length of 7.33 miles from the confluence of the Lynch River downstream to the Rivanna Water and Sewer Authority North Fork Rivanna River public water intake for failing to meet aquatic life use; the North Fork Rivanna River is also listed as impaired for an exceedance in E. coli for 3.98 miles from the public water intake to the confluence of the Rivanna River; Standardsville Run and its tributaries are listed as impaired for failure to meet standards for aquatic life from the headwaters downstream to the confluence with Blue Run (5.71 mi); Swift Run is impaired for failing to support aquatic life and for exceedance in E. coli for 1.91 miles from its confluence with Welsh Run downstream to its confluence with the North Fork Rivanna River; and the unnamed tributary to Flat Branch is impaired from its headwaters downstream to its confluence with Flat Branch (2.03 mi) for failing to support aquatic life.

**Public Meeting:** PVCC Eugene Giuseppe Center, 222 Main Street, Standardsville, Virginia 22973 on September 20, 2023, at 6:00 p.m. In the event of inclement weather, the meeting will be held on September 27, 2023, at the same time and location.

**Public Comment Period:** September 20, 2023, to October 20, 2023.

**How to Comment:** DEQ accepts written comments by email, fax, or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization being represented (if any), mailing addresses, and telephone numbers of the commenter or requester.

For public comments, document requests, and additional information, contact the staff member listed at the end of this notice. Throughout the development process, information

about this plan will be posted at <https://www.deq.virginia.gov/our-programs/water/water-quality/implementation/implementation-plans-under-development>.

**Contact Information:** Madison Whitehurst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, Virginia 23219, telephone (804) 489-8796, FAX (804) 698-4178, or email [madison.whitehurst@deq.virginia.gov](mailto:madison.whitehurst@deq.virginia.gov).

## Proposed Enforcement Action for Shenandoah County

The Department of Environmental Quality (DEQ) is proposing an enforcement action for Shenandoah County for violations of State Water Control Law and regulations in Shenandoah County, Virginia. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. The DEQ contact will accept written comments from September 11, 2023, to October 20, 2023.

**Contact Information:** Francesca Wright, Enforcement Specialist, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX 804-698-4178, or email [francesca.wright@deq.virginia.gov](mailto:francesca.wright@deq.virginia.gov).

## Proposed Enforcement Action for Southern Development Group Inc.

The Department of Environmental Quality (DEQ) is proposing an enforcement action for Southern Development Group Inc. for violations of State Water Control Law and regulations in Fluvanna County, Virginia. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. The DEQ contact will accept written comments from September 11, 2023, to October 20, 2023.

**Contact Information:** Francesca Wright, Enforcement Specialist, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX 804-698-4178, or email [francesca.wright@deq.virginia.gov](mailto:francesca.wright@deq.virginia.gov).

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing

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## General Notices

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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.