



VIRGINIA

REGISTER OF REGULATIONS

VOL. 40 ISS. 5

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

October 23, 2023

TABLE OF CONTENTS

Register Information Page	275
Publication Schedule and Deadlines	276
Periodic Reviews and Small Business Impact Reviews	277
Notices of Intended Regulatory Action	279
Regulations	280
4VAC10-30. Virginia State Forests Regulations (Action Withdrawn)	280
8VAC20-23. Licensure Regulations for School Personnel (Final)	280
8VAC20-81. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (Final)	287
8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (Final)	292
9VAC5-140. Regulation for Emissions Trading Programs (Action Withdrawn)	293
9VAC5-210. Regulation for Dispute Resolution (Final)	293
9VAC5-510. Nonmetallic Mineral Processing General Permit (Final)	293
9VAC15-50. Small Renewable Offshore Wind Energy Projects Permit Regulation (Action Withdrawn)	293
9VAC20-70. Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities (Final)	293
9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees (Final)	294
9VAC20-130. Solid Waste Planning and Recycling Regulations (Final)	294
9VAC20-170. Transportation of Solid and Medical Wastes on State Waters (Final)	294
11VAC10-60. Participants (Action Withdrawn)	319
12VAC5-408. Certificate of Quality Assurance of Managed Care Health Insurance Plan Licensees (Final)	319
12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (Emergency)	322
12VAC30-80. Methods and Standards for Establishing Payment Rate; Other Types of Care (Emergency)	322
18VAC110-20. Regulations Governing the Practice of Pharmacy (Emergency)	330
Guidance Documents	333
General Notices	334
Errata	336

Virginia Code Commission

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

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for \$263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Easton, MD and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

Members of the Virginia Code Commission: **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, Senior Regulations Analyst; Rhonda Dyer, Publications Assistant.**

PUBLICATION SCHEDULE AND DEADLINES

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

November 2023 through November 2024

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
40:6	October 18, 2023	November 6, 2023
40:7	November 1, 2023	November 20, 2023
40:8	November 14, 2023	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
41:5	October 2, 2024	October 21, 2024
41:6	October 16, 2024	November 4, 2024
41:7	October 30, 2024	November 18, 2024

*Filing deadlines are Wednesdays unless otherwise specified.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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 **9VAC25-580, Underground Storage Tanks: Technical Standards and Corrective Action Requirements**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated July 25, 2023, to support this decision.

The regulation is necessary to protect public health, safety, and welfare. This regulation contains technical standards that set forth compliance (i) requirements designed to prevent and reduce the number of releases of petroleum and hazardous substances from underground storage tanks (USTs), (ii) measures to quickly detect any releases from USTs, and (iii) measures to ensure cleanup of contamination from releases from USTs. This regulation is clearly written and easily understandable. The regulation is effective and is being retained as is without making changes. The regulation continues to be needed to protect human health and the environment.

Two comments were received during the public comment period for the periodic review. The Department of Environmental Quality's response is provided in the public comment forum of the Virginia Regulatory Town Hall.

The regulation is complex and technical in nature and is based on federal regulatory language. The regulation incorporates both federal requirements for USTs and state building code requirements for USTs. By maintaining consistency with the federal UST and state building code requirements, confusion within the regulated community is minimized.

This regulation was last amended in 2022 to accommodate a change in the statute transferring certain authorities from the State Water Control Board to the Department of Environmental Quality. The regulation is consistent with current federal requirements applicable to USTs. The regulation is written to be only as stringent as the federal UST requirements that sought to minimize where possible the economic impact of regulations on small businesses.

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, or email 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 **9VAC25-590,**

Petroleum Underground Storage Tank Financial Responsibility Requirements, and determined that this regulation should be retained as is. The board is publishing its report of findings dated July 1, 2023, to support this decision.

The regulation is necessary to protect public health, safety, and welfare. This regulation contains methods owners and operators may utilize to demonstrate financial assurance and includes the use of the Virginia Petroleum Storage Tank Fund. The regulation is clearly written and easily understandable. The regulation continues to be needed to protect the human health and the environment and is being retained without changes. No comments were received during the public comment period for the periodic review.

The regulation is complex and technical in nature due to the fact the regulation addresses financial assurance requirements for underground storage tanks (USTs) and the various mechanisms that may be used to demonstrate financial assurance. Virginia's regulation is similar to the federal regulation concerning the financial assurance mechanisms available to owners and operators; however, the state regulation provides an additional financial assurance mechanism not mentioned in the federal regulation and allows owners and operators the ability to use the Virginia Petroleum Storage Tank Fund to assist owners and operators with demonstrating financial assurance.

This regulation was last amended in 2022 to accommodate a statutory change. The regulation is consistent with current federal requirements applicable to USTs. The regulation, as currently written, minimizes the impact on small businesses, and Virginia's regulation is less obtrusive on small governments than the applicable federal regulation.

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, or email renee.hooper@deq.virginia.gov.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

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: **12VAC5-115, Virginia Immunization Information System**. 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

Periodic Reviews and Small Business Impact Reviews

regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins October 23, 2023, and ends November 13, 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: Karen Mask, Senior Policy Analyst, Office of Epidemiology, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 654-9351, or email karen.mask@vdh.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF LONG-TERM CARE ADMINISTRATORS

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: **18VAC95-11, 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 October 23, 2023, and ends November 13, 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: Corie Tillman Wolf, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Henrico, VA 23233-1463, telephone (804) 367-4595, or email corie.wolf@dhp.virginia.gov.

BOARD OF PHARMACY

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: **18VAC110-11, 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 October 23, 2023, and ends November 13, 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: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4456, or email caroline.juran@dhp.virginia.gov.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care Services, and 12VAC30-80, Methods and Standards for Establishing Payment Rate; Other Types of Care.** Pursuant to Items MM(1) and MM(2) of Chapter 1 of the 2023 Acts of Assembly, Special Session I, the purpose of the proposed action is to (i) adjust medical necessity criteria for Medicaid-funded private duty nursing services, including changes to services covered, provider qualifications, medical necessity criteria, and rates and rate methodologies for private duty nursing; and (ii) clarify that private duty nursing services are not covered unless an individual receives services under an Early and Periodic Screening, Diagnosis, and Treatment Services or a § 1915(c) Waiver.

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

Statutory Authority: § 32.1-325 of the Code of Virginia, 42 USC § 1396 et seq.

Public Comment Deadline: November 22, 2023.

Agency Contact: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, email meredith.lee@dmas.virginia.gov.

VA.R. Doc. No. R22-6862; Filed October 5, 2023, 2:47 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy.** The purpose of the proposed action is to conform the regulation to requirements of Chapter 628 of the 2022 Acts of Assembly related to work environments for pharmacy personnel that protect the health, safety, and welfare of patients. The proposed amendments will ensure (i) that the decisions of the pharmacist are not overridden by the pharmacy permit holder, including staffing decisions and the decision of whether pharmacy staff can safely provide vaccines at a given time; (ii) that pharmacy permit holders provide sufficient staffing levels to avoid interference with a pharmacist's ability to practice with reasonable

competence and safety; (iii) that a pharmacist and pharmacy personnel are provided with proper and functioning equipment; (iv) pharmacists and pharmacy staff are not burdened with external factors that may inhibit the ability to provide services to the public; (v) staff are properly trained to provide the services with which they are tasked; (vi) pharmacists are provided appropriate breaks while maintaining drug stock integrity and providing required consultation services to the public; (vii) ensure pharmacists are provided adequate time to perform professional duties; and (viii) the establishment of a reporting mechanism for staffing concerns.

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

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

Public Comment Deadline: November 22, 2023.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R24-7342; Filed September 29, 2023, 8:04 a.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

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 Professional Soil Scientists, Wetland Professionals, and Geologists intends to consider amending **18VAC145-30, Regulations Governing Certified Professional Wetland Delineators.** 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). The review will consider whether requirements ensure the regulation compliments current Virginia law and meets applicable federal requirements; is organized, clear, and understandable; provides minimal burdens on regulants while still protecting the public; and reflects current Department of Professional and Occupational Regulation procedures and policies. The board will consider any other changes determined to be necessary and appropriate.

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

Statutory Authority: §§ 54.1-201 and 54.1-2203 of the Code of Virginia.

Public Comment Deadline: November 22, 2023.

Agency Contact: Kathleen R. Nobsisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email soilscientist@dpor.virginia.gov.

VA.R. Doc. No. R24-7618; Filed September 26, 2023, 4:13 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF FORESTRY

Action Withdrawn

Title of Regulation: **4VAC10-30. Virginia State Forests Regulations.**

Statutory Authority: § 10.1-1101 of the Code of Virginia.

The Department of Forestry has WITHDRAWN the regulatory action for **4VAC10-30, Virginia State Forests Regulations**, which was published as a Notice of Intended Regulatory Action in [29:23 V.A.R. 2732 July 15, 2013](#), then published again in [29:26 V.A.R. 3668 August 26, 2013](#), to extend the public comment period. The purpose of the proposed action was to (i) ensure that the regulation represents the current uses of state forests, (ii) ensure a safe environment for the public, and (iii) provide a meaningful recreational experience for users, in concert with the normal operational business practices of the state forests. This action is being withdrawn because of the long amount of time that has elapsed since the Notice of Intended Regulatory Action was published, and the department is no longer pursuing this action.

Agency Contact: Amanda Davis, Policy Planning Manager III, Department of Forestry, 900 Natural Resources Drive, #800, Charlottesville, VA 22903, telephone (804) 664-7301, or email amanda.davis@dof.virginia.gov.

VA.R. Doc. No. R13-3756; Filed October 3, 2023, 3:42 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

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

Title of Regulation: **8VAC20-23. Licensure Regulations for School Personnel (amending 8VAC20-23-50, 8VAC20-23-720).**

Statutory Authority: §§ 22.1-298.1 and 22.1-299 of the Code of Virginia.

Effective Date: November 22, 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, or email jim.chapman@doe.virginia.gov.

Summary:

The amendments conform the regulation to the following legislation adopted during the 2023 Session of the General Assembly:

Chapter 748, which provides that when the State Board of Education extends a three-year provisional license issued to a teacher working in a school division, the teacher must have from the division superintendent (i) a recommendation for such extension and (ii) satisfactory performance evaluations for such teacher for each year during the original three-year provisional license that such teacher was actually employed and received a filed performance evaluation; and

Chapter 771, which allows if a court reverses the finding of abuse or neglect against a teacher who has had a founded complaint of child abuse or neglect and whose license the board has revoked and that individual applies for reinstatement, the board must consider and act upon the application for reinstatement within 90 days of submission.

8VAC20-23-50. Types of licenses; dating licenses.

A. The following types of licenses are available:

1. Provisional License. The Provisional License is a nonrenewable license valid for a period not to exceed three years issued to an individual who has allowable deficiencies for full licensure as set forth in this chapter. The Provisional License will be issued for a three-year validity period, with the exception of the Provisional (Career Switcher) License that will initially be issued for a one-year validity period and the Provisional Teach For America License issued for a two-year validity period. Individuals shall complete all requirements for licensure, including passing all licensure assessments, for a renewable license within the validity period of the Provisional License. The individual shall have a minimum of an earned baccalaureate degree from a regionally accredited college or university, with the

exception of those individuals seeking the Technical Professional License.

The Virginia Board of Education shall extend for at least one additional year, but for no more than two additional years, the three-year provisional license of a teacher upon receiving from the division superintendent (i) a recommendation for such extension and (ii) satisfactory performance evaluations for such teacher for each year during the original three-year provisional license that such teacher was actually employed and received a filed performance evaluation.

The Virginia Board of Education shall extend for at least one additional year, but for no more than two additional years, the three-year provisional license of a teacher employed at a ~~public school~~; an accredited ~~nonpublic~~ private elementary, middle, or high school; or a school for students with disabilities that is licensed pursuant to Chapter 16 (§ 22.1-319 et seq.) of Title 22.1 of the Code of Virginia upon receiving from the ~~division superintendent~~ or school administrator of such a school (i) a recommendation for such extension and (ii) satisfactory performance evaluations for such teacher for each year of the original three-year provisional license. If a teacher employed in the Commonwealth under a provisional license is activated or deployed for military service within a school year (July 1 through June 30), an additional year shall be added to the teacher's provisional license for each school year or portion thereof during which the teacher is activated or deployed. The additional year shall be granted the year following the return of the teacher from deployment or activation.

The Virginia Board of Education shall issue a license to an individual seeking initial licensure who has not completed professional assessments as prescribed by the board if such individual (i) holds a provisional license that will expire within three months; (ii) is employed by a school board; (iii) is recommended for licensure by the division superintendent; (iv) has attempted, unsuccessfully, to obtain a qualifying score on the professional assessments as prescribed by the Virginia Board of Education; (v) has received an evaluation rating of proficient or above on the performance standards for each year of the provisional license, and such evaluation was conducted in a manner consistent with the Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers, Principals, and Superintendents; and (vi) meets all other requirements for initial licensure.

2. Collegiate Professional License. The Collegiate Professional License is a 10-year, renewable license available to an individual who has satisfied all requirements for licensure, including an earned baccalaureate degree from a regionally accredited college or university and the professional teacher's assessments prescribed by the Virginia Board of Education.

3. Postgraduate Professional License. The Postgraduate Professional License is a 10-year, renewable license available to an individual who has qualified for the Collegiate Professional License and who holds an appropriate earned graduate degree from a regionally accredited college or university.

4. Technical Professional License. The Technical Professional License is a 10-year, renewable license available to a person who has graduated from a public or an accredited nonpublic high school or possesses a Virginia Board of Education-approved high school equivalency credential; has exhibited academic proficiency, skills in literacy and communication, technical competency, and successful occupational experience; has completed nine semester hours of specialized professional studies credit from a regionally accredited college or university; and has completed one year of successful, full-time teaching experience in a public school or accredited nonpublic school in the area of endorsement. The nine semester hours of professional studies coursework shall include three semester hours of human development and learning, three semester hours of curriculum and instruction, and three semester hours of applications of instructional technology or classroom and behavior management. Individuals who seek a Technical Professional License may substitute the successful completion of an intensive, job-embedded, three-year program of professional development submitted by a Virginia employing educational agency and preapproved by the Department of Education for the nine semester hours of professional studies required. The Technical Professional License is issued at the recommendation of a Virginia employing educational agency in the areas of career and technical education, educational technology, and military science. Individuals seeking an endorsement to teach military science shall have the appropriate credentials issued by the United States military. Individuals holding a Technical Professional License may teach a military science leadership class with either the appropriate credentials issued by the United States military or (for non-Junior Reserve Officers' Training Corps) a recommendation from a Virginia employing educational agency. The employing Virginia educational agency shall ensure the credentials issued by the United States military are active during the period the individual is teaching. In addition to demonstrating competency in the endorsement area sought, the individual shall:

- a. Hold a valid license issued by the appropriate Virginia board for those program areas requiring a license and a minimum of two years of successful experience at the journeyman level or an equivalent. The employing Virginia educational agency shall ensure that the valid license issued by the appropriate Virginia board for the occupational program area is active during the period the individual is teaching;

Regulations

- b. Have completed a registered apprenticeship program and two years of successful experience at the journeyman level or an equivalent level in the trade; or
- c. Have four years of successful work experience at the management or supervisory level or equivalent or have a combination of four years of training and successful work experience at the management or supervisory level or equivalent.

Individuals holding the Technical Professional License who seek the Collegiate Professional or Postgraduate Professional License shall meet the requirements of the respective licenses.

5. **School Manager License.** The School Manager License is a 10-year, renewable license intended to provide for the differentiation of administrative responsibilities in a school setting. A school manager is licensed to administer noninstructional responsibilities in an educational setting. A school manager is restricted from evaluating teachers, supervising instruction, developing and evaluating curriculum, and serving as a school's student disciplinarian. The license is available to a candidate who holds a baccalaureate degree from a regionally accredited college or university, has three years of successful managerial experience, and is recommended for the license by a Virginia school division superintendent.

6. **Pupil Personnel Services License.** The Pupil Personnel Services License is a 10-year, renewable license available to an individual who has earned an appropriate graduate degree from a regionally accredited college or university with an endorsement for school counselor, school psychologist, school social worker, or vocational evaluator. This license does not require teaching experience, unless otherwise outlined under the specific endorsement's requirements.

7. **Division Superintendent License.** The Division Superintendent License is a 10-year, renewable license available to an individual who has completed an earned master's degree from a regionally accredited college or university and meets the requirements specified in 8VAC20-23-630. The individual's name shall be listed on the Virginia Board of Education's list of eligible division superintendents.

8. **International Educator License.** The International Educator License provides a five-year cultural exchange opportunity for Virginia students and international teachers. The International Educator License is a professional teaching license issued for no more than five years to an exchange teacher with citizenship in a nation other than the United States of America who is employed as a teacher in a Virginia public or accredited nonpublic school. To be issued the five-year, nonrenewable International Educator License, an individual serving as a cultural exchange teacher in Virginia shall:

- a. Be employed by a Virginia public or an accredited nonpublic school;
- b. Hold non-United States citizenship and be a nonpermanent resident; and
- c. Meet the following requirements as verified by a state-approved, federally-designated Exchange Visitor Program (22 CFR Part 62):
 - (1) Be proficient in written and spoken English;
 - (2) Demonstrate competence in the appropriate academic subject area by meeting the credential requirements for a qualified teacher in the exchange country;
 - (3) Hold the United States equivalent of a baccalaureate degree or higher as determined by an approved credential evaluation agency; and
 - (4) Complete at least two years of successful full-time teaching experience that enables the educator to fulfill a similar assignment in ~~his~~ the educator's home country or is comparable to those requirements for Virginia teachers.

If an individual meets requirements of subdivisions 8 a, 8 b, 8 c (1), 8 c (2), and 8 c (3) of this subsection and has completed at least one year, but less than two years, of successful full-time teaching experience that would enable the educator to fulfill a similar assignment in ~~his~~ the educator's home country or is comparable to those requirements for Virginia teachers, the International Educator License will be issued for three years with an option to extend the nonrenewable International Educator License for the additional two years upon passing all teacher assessments prescribed by the Virginia Board of Education and a recommendation of the Virginia employing school division or accredited nonpublic school.

Individuals who have been issued an International Educator License who seek a 10-year, renewable license shall meet all licensure and endorsement requirements, including passing applicable assessments prescribed by the Virginia Board of Education.

9. **Online Teacher License.** The Online Teacher License is a 10-year, renewable license valid only for teaching online courses. Teachers who hold a five-year or 10-year renewable license issued by the Virginia Board of Education may teach online courses for which they are properly endorsed and do not need to seek this license.

- a. In order to be issued an Online Teacher License, the individual shall meet the requirements for an endorsement in a content (teaching) area and professional studies and achieve qualifying scores on professional teacher's assessments as prescribed by the Virginia Board of Education. In addition, the individual shall complete a three-semester-hour course in online instructional procedures.

Online instructional procedures: Three semester hours. Skills in this area shall contribute to an understanding of

the principles of online learning and online instructional strategies and the application of skills and the ability to use the Internet for teaching, learning, and management; design, deliver, and support instruction in an online environment; adapt strategies for a variety of course models, such as synchronous and asynchronous; select, adapt, and create rich multimedia for instruction; adapt individualized education program requirements to online course practices, as appropriate; use data to meet individual student's needs; and employ innovative teaching strategies in an online environment. Demonstrated proficiency of advanced skills in the following areas shall be addressed: use of communication technologies to interact with and engage students, parents, and mentors; use of education technologies; management of instructional activities in a technology-mediated environment; and nontraditional content delivery methods.

b. Online teaching experience is not acceptable to meet the full-time teaching experience for other license types, such as a Division Superintendent License, or for endorsements, such as for the reading specialist, school counselor, or administration and supervision endorsements. The Online Teacher License may be issued if requirements have been met as one of the following licenses to individuals teaching only online courses:

(1) Online Teacher (Postgraduate Professional) License - a 10-year, renewable license available to an individual who has qualified for the Online Teacher (Collegiate Professional) License and who holds an appropriate earned graduate degree from a regionally accredited college or university.

(2) Online Teacher (Collegiate Professional) License - a 10-year, renewable teaching license available to an individual who has satisfied all requirements for licensure, including an earned baccalaureate degree from a regionally accredited college or university, endorsement and professional studies requirements, and passed the professional teacher's assessments prescribed by the Virginia Board of Education, or

(3) Online Teacher (Technical Professional) License - a 10-year, renewable teaching license available to an individual who has graduated from a public or an accredited nonpublic high school or possesses a Virginia Board of Education-approved high school equivalency credential; has exhibited academic proficiency, technical competency, and occupational experience; and meets the requirements specified in subdivision 4 of this subsection. An individual seeking an Online Teacher (Technical Professional) License shall be recommended for the license by a Virginia public school, a Virginia accredited nonpublic school, or an accredited virtual school program.

c. A nonrenewable Online Teacher (Provisional) License may be issued for a period not to exceed three years to an

individual who has allowable deficiencies for full licensure as set forth in 8VAC20-23-90 B. The Online (Provisional) License will be issued for three years. The individual shall have a minimum of an earned baccalaureate degree from a regionally accredited college or university, with the exception of those individuals seeking the Technical Professional License. Individuals shall complete all requirements for a renewable Online Teacher License within the validity period of the license.

10. Teach For America License. The Teach For America License is a two-year provisional license.

a. This provisional license is available to any participant in Teach For America, a nationwide nonprofit organization focused on closing the achievement gaps between students in high-income and low-income areas, who submits an application and meets the following requirements:

(1) Holds, at minimum, a baccalaureate degree from a regionally accredited institution of higher education;

(2) Has met the requirements prescribed by the Virginia Board of Education for all endorsements sought or has met the qualifying scores on the content area assessment prescribed by the board for the endorsements sought;

(3) Possesses good moral character according to criteria developed by the Virginia Board of Education;

(4) Has been offered and has accepted placement in Teach For America;

(5) Has successfully completed preservice training and is participating in the professional development requirements of Teach For America, including teaching frameworks, curricula, lesson planning, instructional delivery, classroom management, assessment and evaluation of student progress, classroom diversity, and literacy development;

(6) Has an offer of employment from a local school board to teach in a public elementary or secondary school in the Commonwealth or a preschool program that receives state funds pursuant to subsection C of § 22.1-199.1 of the Code of Virginia; and

(7) Receives a recommendation from the employing school division for a Teach For America License in the endorsement area in which the individual seeks to be licensed.

b. In addition to the criteria set forth in subdivision 10 a of this subsection, any individual who seeks an endorsement in early childhood, early/primary, or elementary education shall either (i) agree to complete such coursework in the teaching of language and literacy as may be prescribed by the Virginia Board of Education pursuant to 8VAC20-23-130 during the first year of employment or (ii) achieve a passing score on a reading instructional assessment prescribed by the Virginia Board of Education.

Regulations

c. Teachers issued a Teach For America provisional license shall not be eligible for continuing contract status while employed under the authority of a Teach For America license and shall be subject to the probationary terms of employment specified in § 22.1-303 of the Code of Virginia.

d. The Virginia Board of Education may extend any Teach For America License for one additional year upon request of the employing school division, provided that no Teach For America License shall exceed a total of three years in length.

e. Notwithstanding any provision of law to the contrary, upon completion of at least two years of full-time teaching experience in a public elementary or secondary school in the Commonwealth or a preschool program that receives state funds pursuant to subsection C of § 22.1-199.1 of the Code of Virginia, an individual holding a Teach For America License shall be eligible to receive a renewable license if the individual has (i) achieved satisfactory scores on all professional teacher assessments required by the Virginia Board of Education and (ii) received satisfactory evaluations at the conclusion of each year of employment.

f. Notwithstanding any provision of law to the contrary, the Virginia Board of Education shall issue a Teach For America License to any individual who (i) has completed two years of successful teaching in the Teach For America program in another state, (ii) is not eligible to receive a renewable license, and (iii) meets the criteria set forth in subdivision 10 a of this subsection.

11. Career and Technical Education License. The Career and Technical Education License is a three-year license.

a. This license is available to qualified individuals to teach, either full time or part time, high school career and technical education courses in specific subject areas.

b. The three-year license is issued to teach high school career and technical education courses in a specific subject area to an individual who:

(1) Submits an application to the Virginia Board of Education, in the form prescribed by the Virginia Board of Education, that includes a recommendation for such a license from the local school board;

(2) Meets certain basic conditions for licensure as prescribed by the Virginia Board of Education;

(3) Meets one of the following requirements:

(a) Holds, at a minimum, a baccalaureate degree from a regionally accredited institution of higher education and has completed coursework in the career and technical education subject area in which the individual seeks to teach,

(b) Holds the required professional license in the specific career and technical education subject area in which the individual seeks to teach, where applicable, or

(c) Holds an industry certification credential, as that term is defined in § 22.1-298.1 of the Code of Virginia, in the specific career and technical education subject area in which the individual seeks to teach;

(4) Has at least four years of full-time work experience or its equivalent in the specific career and technical education subject area in which the individual seeks to teach; and

(5) If appropriate, has obtained qualifying scores on the communication and literacy professional teacher's assessment prescribed by the Virginia Board of Education.

c. The employing school board shall assign a mentor to supervise an individual issued a three-year license pursuant to this section during the individual's first two years of teaching.

d. Except as otherwise provided in subdivision A 11 e of this section, any individual issued a three-year license pursuant to this section may be granted subsequent three-year extensions of such license by the Virginia Board of Education upon recommendation of the local school board.

e. Any individual issued a three-year license pursuant to this section who completes (i) nine semester hours of specialized professional studies credit from a regionally accredited institution of higher education or (ii) an alternative course of professional studies proposed by the local school board and approved by the Virginia Department of Education shall be granted a three-year extension of such license by the board and may be granted subsequent three-year extensions of such license by the board upon recommendation of the local school board. Any such specialized professional studies credit or alternative course of professional studies may be completed through distance learning programs and shall include human growth and development; curriculum, instructional, and technology procedures; and classroom and behavior management.

f. No three-year license issued by the board pursuant to this section shall be deemed a provisional license or a renewable license, as those terms are defined in § 22.1-298.1 of the Code of Virginia.

g. Individuals issued a three-year license pursuant to this section shall not be eligible for continuing contract status while teaching under such license and shall be subject to the probationary terms of employment specified in § 22.1-303 of the Code of Virginia.

h. The provisions of this section and of Virginia Board of Education regulations governing the denial, suspension, cancellation, revocation, and reinstatement of licensure shall apply to three-year licenses.

12. One-Year High School License. The One-Year High School License is for individuals seeking licensure through an alternate route. The license is a renewable, one-year

license issued to teach in public high schools for individuals who:

- a. Received a graduate degree from a regionally accredited institution of higher education;
- b. Completed at least 30 credit hours of teaching experience as an instructor at a regionally accredited institution of higher education;
- c. Received qualifying scores on the professional teacher's assessments prescribed by the Virginia Board of Education, including the communication and literacy assessment and the content-area assessment for the endorsement sought; and

d. Met the following requirements:

(1) Complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Virginia Board of Education in consultation with the Department of Social Services that are relevant to the specific teacher licensure route; and

(2) Provide evidence of completion of certification or training in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators. The certification or training program shall be (i) based on the current national evidence-based emergency cardiovascular care guidelines for cardiopulmonary resuscitation and the use of an automated external defibrillator, such as a program developed by the American Heart Association or the American Red Cross and (ii) include hands-on practice of the skills necessary to perform cardiopulmonary resuscitation. The Virginia Board of Education shall provide a waiver for this requirement for any person with a disability whose disability prohibits such person from completing the certification or training.

The license may be renewed for one year by the submission of an application for renewal and verification from the division superintendent that the individual received a satisfactory performance evaluation.

13. Career and Technical Education or Dual Enrollment License. The Career and Technical Education or Dual Enrollment License is a three-year license to solely teach career and technical education courses or dual enrollment courses at public high schools in the Commonwealth issued to any individual who (i) is employed as an instructor by an institution of higher education that is accredited by a nationally recognized regional accreditation body, (ii) is teaching in the specific career and technical education or dual enrollment subject area at such institution in which the individual seeks to teach at a public school, and (iii) complies with the requirements set forth in subdivisions D 1 and D 3 of § 22.1-298.1 of the Code of Virginia. The Virginia Board of Education shall require any such instructor to maintain continuous employment in such position at the institution of higher education as a condition

of continued licensure. Subsections E and F of 8VAC20-23-40 shall expire on July 1, 2021, however, any license issued pursuant to this chapter prior to July 1, 2021, shall remain in effect for three years from the date the license was issued unless such license is revoked by the Virginia Board of Education.

B. All licenses will be effective from July 1 in the school year in which the application is made. An employing Virginia public school division, agency, or accredited nonpublic school is required to notify employees in writing at the time of employment of the need to meet appropriate assessment requirements for licensure.

8VAC20-23-720. Revocation.

A. A license issued by the Virginia Board of Education may be revoked for the following reasons:

- 1. Obtaining or attempting to obtain a license by fraudulent means or through misrepresentation of material facts;
- 2. Falsification of school records, documents, statistics, or reports;
- 3. Conviction of any felony;
- 4. Conviction of any misdemeanor involving moral turpitude;
- 5. Conviction of any misdemeanor involving a student or minor;
- 6. Conviction of any misdemeanor involving drugs (not alcohol);
- 7. Conduct with direct and detrimental effect on the health, welfare, discipline, or morale of a student or minor;
- 8. Misapplication of or failure to account for school funds or other school properties with which the licensee has been entrusted;
- 9. Acts related to secure mandatory tests as specified in subsection A of § 22.1-292.1 of the Code of Virginia;
- 10. Knowingly and willfully with the intent to compromise the outcome of an athletic competition procure, sell, or administer anabolic steroids or cause such drugs to be procured, sold, or administered to a student who is a member of a school athletic team, or fail to report the use of such drugs by a student to the school principal and division superintendent as required by clause (iii) of subsection A of § 22.1-279.3:1 of the Code of Virginia. Any person whose license is suspended or revoked by the board pursuant to this section shall be ineligible for three school years for employment in the public schools of the Commonwealth;
- 11. Revocation, suspension, surrender, cancellation, invalidation, or denial of, or other adverse action against, a teaching, administrator, pupil personnel services, or other education-related certificate or license by another state,

Regulations

territory, or country; or denial of an application for any such certificate or license;

12. Founded case of child abuse or neglect after all administrative appeals have been exhausted;

13. Notification of dismissal or resignation pursuant to subsection F of § 22.1-313 of the Code of Virginia; or

14. Other good and just cause in the best interest of the public schools of the Commonwealth of Virginia.

B. The Virginia Board of Education shall revoke the license of any person for whom it has received a notice of dismissal or resignation pursuant to subsection F of § 22.1-313 of the Code of Virginia and, in the case of a person who is the subject of a founded complaint of child abuse or neglect, after all rights to any administrative appeal provided by § 63.2-1526 of the Code of Virginia have been exhausted. In the case of a teacher who is the subject of a founded complaint of child abuse or neglect and whose license has been revoked pursuant to this subsection, in the event that a court reverses such finding of abuse or neglect and the individual submits to the department an application for the reinstatement of the individual's license as a teacher, the board shall consider and act upon such application no later than 90 days after the date of submission.

C. Procedures.

1. A complaint may be filed by anyone, but it shall be the duty of a division superintendent, principal, or other responsible school employee to file a complaint in any case in which he has knowledge that a basis for the revocation of a license exists, as set forth in subsection A of this section. The person making the complaint shall submit the complaint in writing to the appropriate division superintendent. If the subject of the complaint is the division superintendent, the person making the complaint may submit the complaint to the chair of the local school board.

2. Upon receipt of the complaint against the holder of a license, a division superintendent or his duly authorized representative shall conduct an immediate and thorough investigation of any complaint alleging that a license holder has engaged in conduct that may form the basis for the revocation of ~~his~~ the license holder's license. If, on the basis of such investigation, the division superintendent finds the complaint to be without merit, ~~he~~ the division superintendent shall so notify the complaining party ~~or parties~~ in writing and then close his file on the matter. This action shall be final unless the local school board, on its own motion, votes to proceed to a hearing on the complaint.

D. Petition for revocation. Upon completing an investigation, should the division superintendent or local school board conclude that there is reasonable cause to believe that the license holder has engaged in conduct that forms the basis for revocation of a license, the license holder shall be notified of the complaint by a written petition for revocation of a license

signed by the division superintendent. A copy of such petition shall be sent by certified mail, return receipt requested, to the license holder's last known address. The school board shall proceed to a hearing on such petition for revocation within 90 days of the mailing of a copy of the petition to the license holder, unless the license holder requests the cancellation of his license in accordance with this chapter; and the school board shall provide a copy of the investigative file and such petition for revocation to the Superintendent of Public Instruction at the time that the hearing is scheduled.

E. Form of petition. The petition for the revocation of a license shall set forth:

1. The name and last known address of the person against whom the petition is being filed;

2. The type of license and the license number held by the person against whom the petition is being filed;

3. The basis for revocation and the specific underlying alleged actions;

4. A statement of rights of the person against whom the petition is being filed. The statement of rights shall notify the person that any adverse action against a license, including revocation, will be reported to the division superintendents in Virginia and, through a national clearinghouse, to chief state school officers of the other states and territories of the United States. The statement also shall include notification to the person of the right to cancel the license if ~~he~~ the person chooses not to contest the allegations in the petition. The statement shall notify the individual that ~~he~~ the individual shall receive a notice of cancellation that will include the statement: "The license holder voluntarily returned the license in response to a petition for revocation." The individual also shall be notified that the cancellation of the license will be reported to division superintendents in Virginia and, through a national clearinghouse, to chief state school officers of the other states and territories of the United States; and

5. Any other pertinent information.

F. Filing of petition. The original petition shall be entered in the files of the local school board where the license holder is or was last employed.

G. Response to petition. The license holder shall present ~~his~~ the license holder's written answer to the petition, if any, within 14 days of delivery or attempted delivery of the petition as certified by the United States Postal Service.

1. If the license holder does not wish to contest the allegations in the petition, ~~he~~ the license holder may request cancellation of the license by submitting a written, signed statement requesting cancellation in response to a petition for revocation. The division superintendent shall forward the request for cancellation along with the petition for revocation to the Superintendent of Public Instruction within

14 days of receipt. The Superintendent of Public Instruction shall cancel the license and send a notice of cancellation to the person by certified mail within 14 days of receipt of the request for cancellation.

2. If the license holder files a written answer admitting or denying the allegations in the petition or fails to file a written answer within 14 days of delivery or attempted delivery of the petition, as certified by the United States Postal Service, the local school board shall proceed to a hearing as described in subsection D of this section and subdivision 3 of this subsection; and within 90 days of mailing the petition to the license holder and provide the Superintendent of Public Instruction a copy of the petition and investigative file at the time the local school board hearing is scheduled. The local school board shall provide a hearing at the time and place of its regular meeting or at such other reasonable time and place it may specify. The license holder or ~~his~~ the license holder's representative, if any, shall be given at least 14 days' notice of the hearing.

3. At the hearing, the local school board shall receive the recommendation of the division superintendent and then either deny the petition or recommend license revocation or suspension. A decision to deny the petition shall be final, except as specified in subsection H of this section, and the investigative file on the petition shall be closed and maintained as a separate file. Any record or material relating to the allegations in the petition shall be placed in the investigative file. Should the local school board recommend the revocation or suspension of a license, the division superintendent shall forward the recommendation, petition, and investigative file to the Superintendent of Public Instruction within 14 days.

H. Revocation on motion of the Virginia Board of Education. The Virginia Board of Education reserves the right to act directly to revoke a license when the Virginia Board of Education has reasonable cause to believe that subsection A of this section is applicable. The Superintendent of Public Instruction may send a petition for revocation to the license holder as provided by subsection E of this section. The license holder shall have the opportunity to present ~~his~~ the license holder's written answer, if any, to the petition within 14 days of delivery or attempted delivery of the petition, as certified by the United States Postal Service.

1. If the license holder does not wish to contest the allegations in the petition, ~~he~~ the license holder may request the cancellation of the license by submitting a written, signed statement requesting cancellation in response to a petition for revocation. The Superintendent of Public Instruction shall cancel the license and send a notice of cancellation to the person by certified mail within 14 day of receipt of the request for cancellation.

2. If the license holder files a written answer admitting the allegations in the petition or fails to file a written answer

within 14 days of delivery or attempted delivery of the petition, as certified by the United States Postal Service, the petition shall be forwarded to the Virginia Board of Education for action. No revocation will be ordered without the involved license holder being given the opportunity to appear at a hearing specified in 8VAC20-23-780 C.

3. If the license holder timely files ~~his~~ the license holder's written answer denying the allegations in the petition, the Superintendent of Public Instruction shall schedule a hearing with the investigative panel provided in 8VAC20-23-780 A. The license holder or ~~his~~ the license holder's representative, if any, shall be given at least 14 days' notice of the hearing. The investigative panel shall take action on the petition as specified in 8VAC20-23-780 A. No revocation will be ordered without the involved license holder being given the opportunity to appear at a hearing specified in 8VAC20-23-780 C.

I. Reinstatement of license. A license that has been revoked may be reinstated by the Virginia Board of Education after five years if the board is satisfied that reinstatement is in the best interest of the public schools of the Commonwealth of Virginia. The individual seeking reinstatement shall submit a written request and completed application to the board. Notification to all appropriate parties will be communicated in writing by the Virginia Department of Education.

VA.R. Doc. No. R24-7577; Filed September 28, 2023, 5:56 p.m.

Final Regulation

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

Title of Regulation: **8VAC20-81. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (amending 8VAC20-81-60, 8VAC20-81-70).**

Statutory Authority: §§ 22.1-16 and 22.1-214 of the Code of Virginia.

Effective Date: November 22, 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, or email jim.chapman@doe.virginia.gov.

Summary:

Pursuant to Chapter 4 of the 2023 Acts of Assembly, the amendments provide that local educational agencies may shorten the deadline of 65 business days from the date of receipt of referral for a reevaluation of a child to

Regulations

determine eligibility for special education and related services.

8VAC20-81-60. Referral for initial evaluation.

A. All children, aged two to 21, inclusive, whether enrolled in public school or not, who are suspected of having a disability, shall be referred to the special education administrator or designee, who shall initiate the process of determining eligibility for special education and related services.

1. Referrals may be made by any source including school staff, a ~~parent(s)~~ parent, the Virginia Department of Education, any other state agency, other individuals, or a school-based team in accordance with 8VAC20-81-50 D 5 b. (34 CFR 300.301(b))

2. The referring party shall inform the special education administrator or designee of why an evaluation is requested and efforts that have been made to address the concerns. The referral may be made in oral or written form.

3. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child suspected of having a disability, from a source other than the school-based team, the special education administrator or designee shall:

- a. Initiate the initial evaluation procedures under subsection B of this section;
- b. Refer the child to the school-based team to review and respond to the request under 8VAC20-81-50 D 3 b (2); or
- c. Deny the request, and provide prior written notice in accordance with 8VAC20-81-170.

B. Procedures for referral for initial evaluation.

1. The special education administrator, or designee, shall:

- a. Record the date the referral was received, reason for referral, and names of the person or agency making the referral;
- b. Implement procedures for maintaining the confidentiality of all data;
- c. Provide written notice and procedural safeguards to inform the ~~parent(s)~~ parents in the parents' native language or primary mode of communication, unless it is clearly not feasible to do so, about:
 - (1) The referral for evaluation;
 - (2) The purpose of the evaluation; and
 - (3) Parental rights with respect to evaluation and other procedural safeguards;
- d. Inform the ~~parent(s)~~ parents of the procedures for the determination of needed evaluation data and request any evaluation information the ~~parent(s)~~ parents may have on the child;

e. Secure informed consent from the ~~parent(s)~~ parents for the evaluation;

f. Ensure that all evaluations consist of procedures that:

(1) Gather relevant functional, developmental, and academic information about the child to determine if the child is a child with a disability; and

(2) Are sufficiently comprehensive to identify all of the child's special education and related services needs, and educational needs; and

g. Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days of the receipt of the referral by the special education administrator or designee, including if the special education administrator or designee routes the referral to the school-based committee for review and action. Local school divisions may shorten the deadline of 65 business days from the date of receipt of referral for an initial evaluation of a child to determine eligibility for special education and related services. The ~~time frame~~ timeframe shall not apply to the local school division if: (34 CFR 300.301(d) and (e))

(1) The ~~parent(s)~~ parent of the child repeatedly fails or refuses to produce the child for the evaluation; or

(2) If the child enrolls in a school served by the local school division after the required 65 business days has begun and prior to a determination by the child's previous local school division as to whether the child is a child with a disability. This exception only applies if the local school division is making sufficient progress to ensure a prompt completion of the evaluation, and the ~~parent(s)~~ parents and the local school division where the child is enrolled in school agree to a specific time when the evaluation will be completed.

h. The parent and eligibility group may agree in writing to extend the 65-day timeline to obtain additional data that cannot be obtained within the 65 business days. Local school divisions may shorten the deadline of 65 business days from the date of receipt of referral for an initial evaluation of a child to determine eligibility for special education and related services. (34 CFR 300.300(a), 34 CFR 300.309(c))

i. If the decision is to not evaluate, prior written notice, in accordance with 8VAC20-81-170, shall be given to the ~~parent(s)~~ parent, including the parent's right to appeal the decision through due process hearing procedures. (34 CFR 300.507)

2. Parental consent requirements. (34 CFR 300.300)

a. Parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.

b. Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.

c. The local school division shall make reasonable efforts to obtain parental consent for an initial evaluation to determine whether the child is a child with a disability.

d. For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the local school division is not required to obtain parental consent to determine whether the child is a child with a disability if:

- (1) Despite reasonable efforts to do so, the local school division cannot discover the whereabouts of the parent of the child;
- (2) The rights of the parents of the child have been terminated in accordance with Virginia law; or
- (3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with Virginia law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

The local school division shall then proceed with evaluating the child without finalizing the appointment of a surrogate parent.

e. If the parent does not provide consent for the initial evaluation, or fails to respond to a request to provide consent, the local school division may, but is not required to, use the dispute resolution options of mediation or due process to pursue the initial evaluation of the child. The local school division does not violate its obligation under child find or other free appropriate public education provisions if it declines to pursue the evaluation.

f. If a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the ~~parent(s)~~ parent at the parent's own expense, does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the local school division may not use mediation or due process to pursue the initial evaluation.

8VAC20-81-70. Evaluation and reevaluation.

A. Each local educational agency shall establish procedures for the evaluation and reevaluation of referrals of children in accordance with the provisions of this section. (34 CFR 300.122)

B. Determination of needed evaluation data for initial evaluation or reevaluation. (34 CFR 300.305 and 34 CFR 300.507)

1. Review of existing evaluation data. A group that is comprised of the same individuals as an IEP team and other qualified professionals, as appropriate, shall:

- a. Review existing evaluation data on the child, including:

(1) Evaluations and information provided by the ~~parent(s)~~ parents of the child;

(2) Current classroom-based, local, or state assessments and classroom-based observations; and

(3) Observations by teachers and related services providers; and

b. On the basis of that review and input from the child's ~~parent(s)~~ parents, identify what additional data, if any, are needed to determine:

- (1) Whether the child is, or continues to be, a child with a disability;
- (2) The present educational needs of the child;
- (3) The child's present level of academic achievement and related developmental needs;
- (4) Whether the child needs or continues to need special education and related services; and
- (5) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

2. Conduct of review. The group completing the review may conduct its review without a meeting. The local educational agency shall provide notice to ensure that the ~~parent(s)~~ parent has the opportunity to participate in the review. If there is a meeting, the local educational agency shall provide notice of the meeting early enough to ensure that the ~~parent(s)~~ parents will have an opportunity to participate. The notice shall meet the requirements of 8VAC20-81-110 E 2 a.

3. Need for additional data. The local educational agency shall administer tests and other evaluation materials as may be needed to produce the data identified in this subsection.

4. Requirements if additional data are not needed:

a. If the team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency shall provide the child's ~~parent(s)~~ parents with prior written notice, including information regarding:

- (1) The determination and the reasons for it; and
- (2) The right of the ~~parent(s)~~ parents to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

b. The local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a disability and to determine the child's educational needs, unless the child's ~~parent(s)~~ parent requests the evaluation for these specific purposes.

Regulations

- c. The child's ~~parent(s)~~ parent has the right to resolve a dispute through mediation or due process as described in this chapter.
 - d. This process shall be considered the evaluation if no additional data are needed.
5. If the team determines not to evaluate a child suspected of a disability, prior written notice, in accordance with 8VAC20-81-170, shall be given to the ~~parent(s)~~ parent, including the parent's rights to appeal the decision through due process proceedings.
- C. The local educational agency shall establish policies and procedures to ensure that the following requirements are met. (§ 22.1-214 of the Code of Virginia; 34 CFR 300.304 and 34 CFR 300.310)
1. Assessments and other evaluation materials used to assess a child under this chapter are:
 - a. Selected and administered so as not to be discriminatory on a racial or cultural basis;
 - b. Provided and administered in the child's native language and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
 - c. Used for the purposes for which the assessments or measures are valid and reliable; and
 - d. Administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of the assessments.
 2. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
 3. A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the ~~parent(s)~~ parents, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability and the content of the child's IEP.
 4. The assessment tools and strategies used provide relevant information that directly assists persons in determining the educational needs of the child.
 5. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) shall be included in the evaluation report.
 6. Any nonstandardized assessment administered by qualified personnel may be used to assist in determining whether the child is a child with a disability and the contents of the child's IEP.
 7. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
 8. Assessments are selected and administered so as to best ensure that if an assessment is administered to a child with impaired sensory, motor, or communication skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, motor, or communication skills (except where those skills are the factors that the test purports to measure).
 9. The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
 10. Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
 11. No single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.
 12. If the evaluation requires assessments in more than one area relating to the suspected disability, a group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability, shall complete the assessments.
 13. For a child suspected of having a specific learning disability, the evaluation shall include an observation of academic performance in the regular classroom by at least one team member other than the child's regular teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.
 14. Each child is assessed by a qualified professional in all areas relating to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and adaptive behavior. This may include educational, medical, sociocultural, psychological, or developmental assessments.
 - a. The hearing of each child suspected of having a disability shall be screened during the eligibility process prior to initial determination of eligibility for special education and related services.

b. A complete audiological assessment, including tests that will assess inner and middle ear functioning, shall be performed on each child who is hearing impaired or deaf or who fails two hearing screening tests.

D. The evaluation ~~report(s)~~ report shall be available to the ~~parent(s) parents~~ no later than two business days before the meeting to determine eligibility. (34 CFR 300.306(a)(2))

1. A written copy of the evaluation ~~report(s)~~ report shall be provided to the ~~parent(s) parents~~ prior to or at the meeting where the eligibility group reviews the evaluation ~~report(s)~~ report or immediately following the meeting, but no later than 10 days after the meeting.

2. The evaluation ~~report(s)~~ report shall be provided to the ~~parent(s) parent~~ at no cost.

E. Assessments of children with disabilities or suspected of having a disability who transfer from one local educational agency to another local educational agency in the same school year shall be coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 8VAC20-81-60 B 1 g, to ensure prompt completion of full evaluations. (34 CFR 300.304(c)(5))

F. Reevaluation.

1. A reevaluation shall be conducted: (34 CFR 300.303(a) and (b)(2))

a. If the local educational agency determines that the child's educational or related services needs, including improved academic achievement and functional performance, warrants a reevaluation;

b. If the child's ~~parent(s) parent~~ or teacher requests a reevaluation; or

c. At least once every three years, unless the parent and local educational agency agree that a reevaluation is unnecessary.

2. The local educational agency shall not conduct a reevaluation more than once a year unless the ~~parent(s) parent~~ and the local educational agency agree otherwise. If the local educational agency does not agree with the parent's request for a reevaluation, the local educational agency shall provide the ~~parent(s) parent~~ with prior written notice in accordance with 8VAC20-81-170. (34 CFR 300.303(b)(1))

3. The local educational agency shall conduct a reevaluation in accordance with the requirements of subsection B of this section. (34 CFR 300.305)

G. Parental consent for reevaluation. (34 CFR 300.300(c) and (d))

1. Informed parental consent is required before conducting any reevaluation of a child with a disability.

a. If the local educational agency can demonstrate that it has taken reasonable measures to obtain consent and the

child's ~~parent(s) parent~~ has failed to respond, the local educational agency shall proceed as if consent has been given by the ~~parent(s) parent~~. Reasonable measures include providing notice to the ~~parent(s) parents~~ in writing (or by telephone or in person with proper documentation).

b. If the ~~parent(s) parent~~ refuses consent, the local educational agency may continue to pursue those evaluations by using due process or mediation procedures. The local educational agency does not violate its obligation under this chapter if it declines to pursue the reevaluation.

2. Parental consent is not required before:

a. Review of existing data as part of an evaluation or reevaluation;

b. A teacher's or related service provider's observations or ongoing classroom evaluations; or

c. Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

3. If a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parents at ~~their~~ the parents' own expense, does not provide consent for reevaluation, or the ~~parent(s) parent~~ fails to respond to a request to provide consent, the local educational agency may not use mediation or due process to pursue the reevaluation. In this instance, the local school division is not required to consider the child as eligible for equitable services under the provisions of 8VAC20-81-150 for parentally placed students.

H. Timelines for reevaluations.

1. The reevaluation process, including eligibility determination, shall be initiated in sufficient time to complete the process prior to the third anniversary of the date eligibility was last determined.

2. If a reevaluation is conducted for purposes other than the child's triennial, the reevaluation process, including eligibility determination, shall be completed in 65 business days of the receipt of the referral by the special education administrator or designee for the evaluation. Local school divisions may shorten the deadline of 65 business days from the date of receipt of referral for a reevaluation of a child to determine eligibility for special education and related services.

3. The parent and eligibility group may agree in writing to extend the 65-day timeline to obtain additional data that cannot be obtained within the 65 business days. Local school divisions may shorten the deadline of 65 business days from the date of receipt of referral for a reevaluation of a child to determine eligibility for special education and related services.

Regulations

I. The local educational agency is not required to evaluate a child with a disability who graduates with a standard diploma or advanced studies diploma. Since graduation is a change in placement, the local educational agency is required to provide the parent with prior written notice in accordance with 8VAC20-81-170. (34 CFR 300.305(e)(2))

V.A.R. Doc. No. R24-7575; Filed September 28, 2023, 5:56 p.m.

Final Regulation

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

Title of Regulation: **8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (amending 8VAC20-131-420).**

Statutory Authority: §§ 22.1-16 and 22.1-253.13:3 of the Code of Virginia.

Effective Date: November 22, 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, or email jim.chapman@doe.virginia.gov.

Summary:

Pursuant to Chapter 7 of the 2023 Acts of Assembly, the amendments allow the State Board of Education to waive certain graduation requirements and award a high school diploma upon the request of the parent of any high school senior who died in good standing prior to graduation during the student's senior year.

8VAC20-131-420. Waivers and alternative accreditation plans.

A. Except as specified in this section, the board may grant, for a period of up to five years, a waiver of requirements of this chapter that are not mandated by state or federal law or designed to promote health or safety. The board may grant all or a portion of the request for a waiver and designate conditions as appropriate. Waivers of requirements in 8VAC20-131-30, 8VAC20-131-50, 8VAC20-131-51, 8VAC20-131-70, and 8VAC20-131-370 through 8VAC20-131-430 shall not be granted, and no waiver may be approved for a program that violates the Standards of Quality.

B. Waivers of some of the requirements of this chapter may be granted by the board based on submission of a request from the division superintendent and chairman of the local school board. The request shall include documentation of the justification and need for the waiver. In no event shall waivers

be granted to the requirements of Part III (8VAC20-131-30 et seq.) of this chapter except that the board may provide for the waiver of certain graduation requirements and the subsequent award of a high school diploma in 8VAC20-131-50 and 8VAC20-131-51 upon (i) the board's initiative ~~or~~; (ii) the request of a local school board ~~on a case-by-case basis~~; or (iii) upon the request of the parent of any high school senior who died in good standing prior to graduation during the student's senior year. Such waivers shall be granted only for good cause and shall be considered on a case-by-case basis. The board shall develop guidelines for implementing this chapter.

Any student with a disability whose Individualized Education Program (IEP) or 504 Plan documents that the student cannot successfully complete training in emergency first aid, cardiopulmonary resuscitation, or the use of automated external defibrillators, including hands-on practice of the skills necessary to perform cardiopulmonary resuscitation, as required for graduation in 8VAC20-31-50 B 2 and C 2 and 8VAC20-131-51 B 2 and C 2 shall be granted a waiver from this graduation requirement.

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

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

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

school with a Standard Diploma or an Advanced Studies Diploma must meet the requirements prescribed in 8VAC20-131-50 or 8VAC20-131-51.

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

VA.R. Doc. No. R24-7576; Filed September 28, 2023, 5:57 p.m.



TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Action Withdrawn

Title of Regulation: 9VAC5-140. Regulation for Emissions Trading Programs.

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia; Clean Air Act (42 USC § 7401 et seq.); 40 CFR Part 51.

The State Air Pollution Control Board has WITHDRAWN the regulatory action for **9VAC5-140, Regulation for Emissions Trading Programs**, which was published as a Notice of Intended Regulatory Action in [21:22 VA.R. 2990 July 11, 2005](#). The purpose of the proposed action was to establish requirements to reduce SO_x and NO_x emissions in order to eliminate their significant contribution to nonattainment or interference with maintenance of the national ambient air quality standards in downwind states and to protect Virginia's air quality and its natural resources. This action is being withdrawn because of the long amount of time that has elapsed since the last stage's publication, and the board is no longer pursuing this action.

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

VA.R. Doc. No. R05-558; Filed September 28, 2023, 12:10 p.m.

Final Regulation

REGISTRAR'S NOTICE: Pursuant to 1VAC7-10-60, the Registrar of Regulations is updating certain regulations of the State Air Pollution Control Board to remove an obsolete fax number in the Virginia Administrative Code.

Titles of Regulations: 9VAC5-210. Regulation for Dispute Resolution.

9VAC5-510. Nonmetallic Mineral Processing General Permit.

Effective Date: October 23, 2023.

Agency Contact: Rachael Harrell, Board Coordinator, Policy Division, Department of Environmental Quality, 1111 East Main St, Richmond VA 23219, telephone (804) 801-2932, or email rachael.harrell@deq.virginia.gov.

Summary:

Pursuant to 1VAC7-10-60, the fax number for the Department of Environmental Quality is removed from regulation text as it has been eliminated by the department.

VA.R. Doc. No. R24-7698; Filed September 28, 2023, 11:17 a.m.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Action Withdrawn

Title of Regulation: 9VAC15-50. Small Renewable Offshore Wind Energy Projects Permit Regulation.

Statutory Authority: § 10.1-1197.6 of the Code of Virginia.

The Department of Environmental Quality has WITHDRAWN the regulatory action for **9VAC15-50, Small Renewable Offshore Wind Energy Projects Permit Regulation**, which was published as a Notice of Intended Regulatory Action in [26:24 VA.R. 2783 August 2, 2010](#). The purpose of the proposed action was to establish a permit by rule for small offshore wind renewable energy projects. This action is being withdrawn because of the long amount of time that has elapsed since the last stage's publication, and the department is no longer pursuing this action.

Agency Contact: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

VA.R. Doc. No. R10-2505; Filed September 28, 2023, 12:07 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

REGISTRAR'S NOTICE: The Virginia Waste Management Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: 9VAC20-70. Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities (amending 9VAC20-70-10, 9VAC20-70-50, 9VAC20-70-70, 9VAC20-70-75, 9VAC20-70-90, 9VAC20-70-290).

Regulations

9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees (amending 9VAC20-90-10, 9VAC20-90-50, 9VAC20-90-70, 9VAC20-90-90, 9VAC20-90-110, 9VAC20-90-120).

9VAC20-130. Solid Waste Planning and Recycling Regulations (amending 9VAC20-130-10).

9VAC20-170. Transportation of Solid and Medical Wastes on State Waters (amending 9VAC20-170-10, 9VAC20-170-40).

Statutory Authority:

§§ 10.1-1402 and 10.1-1410 of the Code of Virginia (9VAC20-70-10, 9VAC20-70-50, 9VAC20-70-70, 9VAC20-70-75, 9VAC20-70-90).

§§ 10.1-1402 and 10.1-1410 of the Code of Virginia; §§ 1008(a)(3), 2002, and 4004(a) of the Resource Conservation and Recovery Act; 40 CFR Part 258 (9VAC20-70-290).

§ 10.1-1402 of the Code of Virginia (9VAC20-90-10, 9VAC20-90-50, 9VAC20-90-70, 9VAC20-90-90, 9VAC20-90-110, 9VAC20-90-120).

§§ 10.1-1402 and 10.1-1411 of the Code of Virginia; 42 USC § 6942(b), 40 CFR Parts 255 and 256 (9VAC20-130-10).

§§ 10.1-1402 and 10.1-1454.1 of the Code of Virginia (9VAC20-170-10, 9VAC20-170-40).

Effective Date: November 22, 2023.

Agency Contact: Priscilla F. Rohrer, Guidance and Regulation Coordinator, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 217-7074, or email priscilla.rohrer@deq.virginia.gov.

Summary:

The Regulated Medical Waste Management Regulations (9VAC20-121) became effective March 15, 2023. These technical amendments update citations to 9VAC20-121 in applicable waste management regulations.

9VAC20-70-10. Definitions.

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

"Abandoned facility" means any inactive solid waste management facility that has not met closure and post-closure care requirements.

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at the completion of closure activities required by the Solid Waste Management Regulations (9VAC20-81). Active life does not include the post-closure care monitoring period.

"Anniversary date" means the date of issuance of a financial mechanism.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Authority" means an authority created under the provisions of the Virginia Water and Waste Authorities Act, Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2 of the Code of Virginia, or, if any such authority shall be abolished, the board, body, or commission succeeding to the principal functions thereof or to whom the powers given by the Virginia Water and Waste Authorities Act to such authority shall be given by law.

"Board" means the Virginia Waste Management Board.

"Cash plus marketable securities" means all the cash plus marketable securities held on the last day of a fiscal year, excluding cash and marketable securities designed to satisfy past obligations such as pensions.

"Closed facility" means a solid waste management facility that has been properly secured in accordance with the requirements of the Solid Waste Management Regulations (9VAC20-81), the Regulated Medical Waste Management Regulations (~~9VAC20-120~~) (9VAC20-121), or the Transportation of Solid and Medical Wastes on State Waters Regulations (9VAC20-170). A closed facility may be undergoing post-closure care.

"Closure" means the act of securing a solid waste management facility pursuant to the requirements of this chapter and any other applicable solid waste management standards.

"Commercial transporter" means any person who transports for the purpose of commercial carriage of solid wastes or regulated medical wastes as cargo.

"Corrective action" means all actions necessary to mitigate the public health or environmental threat from a release to the environment of solid waste or constituents of solid waste from an operating, abandoned, or closed solid waste management facility and to restore the environmental conditions as required.

"Current annual inflation factor" means the annual inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business.

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current closure cost estimate" means the most recent of the estimates prepared in accordance with the requirements of 9VAC20-70-111.

"Current dollars" means the figure represented by the total of the cost estimate multiplied by the current annual inflation factor.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with the requirements of 9VAC20-70-112.

"Current year expenses for closure" means expenditures documented by the facility during the previous fiscal year for construction-related activities associated with closing the facility. Expenses for closure must be detailed and identified in an approved closure plan.

"Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

"Deficit" means total annual revenues less total annual expenditures.

"Department" means the Virginia Department of Environmental Quality.

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

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters.

"Facility" means any solid waste management facility unless the context clearly indicates otherwise. The term "facility" includes transfer stations.

"Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency, or establishment of the federal government including any government corporation and the Government Printing Office.

"Governmental unit" means any department, institution or commission of the Commonwealth and any public corporate instrumentality thereof, and any district, and shall include local governments.

"Groundwater" means any water, except capillary moisture or unsaturated zone moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this Commonwealth, whatever may be the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Hazardous waste" means a "hazardous waste" as defined by the Virginia Hazardous Waste Management Regulations (9VAC20-60).

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill as defined by the Solid Waste Management Regulations (9VAC20-81).

"Leachate" means a liquid that has passed through or emerged from solid waste and that contains soluble, suspended, or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation for disposal in an off-site facility is regulated as septage, and leachate discharged into a wastewater collection system is regulated as industrial wastewater.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Local government" means a county, city or town or any authority, commission, or district created by one or more counties, cities or towns.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"Operator" means the person responsible for the overall operation and site management of a solid waste management facility.

"Owner" means a person who owns a solid waste management facility or part of a solid waste management facility. For the purposes of this chapter, all individuals, corporations, companies, partnerships, societies or associations, and any federal agency or governmental unit of the Commonwealth having any title or interest in any solid waste management facility or the services or facilities to be rendered thereby shall be considered an owner.

"Parent corporation" means a corporation that directly owns at least 50% of the voting stock of the corporation that is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

"Permit" means the written permission of the director to own, operate, modify, or construct a solid waste management facility.

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

"Post-closure care" means the requirements placed upon an owner or operator of a solid waste disposal facility after closure to ensure environmental and public health and safety are protected for a specified number of years after closure.

"Receiving facility" means a facility, vessel or operation that receives solid wastes or regulated medical wastes transported,

Regulations

loaded or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial transporter. A receiving facility is considered as a solid waste management facility. A facility that receives solid waste from a ship, barge or other vessel and is regulated under § 10.1-1454.1 of the Code of Virginia shall be considered a transfer facility for purposes of this chapter.

"Regulated medical waste" means solid waste so defined by the Regulated Medical Waste Management Regulations (~~9VAC20-120~~) (9VAC20-121) as promulgated by the Virginia Waste Management Board.

"Sanitary landfill" means an engineered land burial facility for the disposal of solid waste which is so located, designed, constructed and operated to contain and isolate the solid waste so that it does not pose a substantial present or potential hazard to human health or the environment.

"Signature" means the name of a person written with his own hand.

"Site" means all land and structures, other appurtenances, and improvements thereon used for treating, storing, and disposing of solid waste. This term includes adjacent land within the property boundary used for utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

"Solid waste" means any of those materials defined as "solid waste" in the Virginia Waste Management Act and the Solid Waste Management Regulations (9VAC20-81).

"Solid waste disposal facility" means a solid waste management facility at which solid waste will remain after closure.

"Solid waste management facility (SWMF)" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Storage" means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.

"Substantial business relationship" means the extent of a business relationship necessary under applicable Virginia law to make a guarantee contract incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent and on-going business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the director.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

"Total expenditures" means all expenditures excluding capital outlays and debt repayment.

"Total revenue" means revenue from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed on behalf of a specific third party.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration or resource recovery.

"Treatment" means any method, technique, or process, including incineration or neutralization, designed to change the physical, chemical, or biological character or composition of any waste to neutralize it or render it less hazardous or nonhazardous, safer for transport, or more amenable to use, reuse, reclamation or recovery.

"Unit" means a discrete area of land used for the management of solid waste.

9VAC20-70-50. Applicability of chapter.

A. This chapter applies to all persons who own, operate, or allow the following permitted or unpermitted facilities to be operated on their property:

1. Solid waste treatment, transfer and disposal facilities regulated under the Virginia Solid Waste Management Regulations (9VAC20-81);
2. Vegetative waste management facilities regulated under the Solid Waste Management Regulations (9VAC20-81);
3. Medical waste treatment, transfer or disposal facilities regulated under the Regulated Medical Waste Management Regulations (~~9VAC20-120~~) (9VAC20-121); or
4. Receiving facilities as defined herein.

B. Exemptions.

1. Owners or operators of facilities who are federal or state government entities whose debts and liabilities are the debts or liabilities of the United States or the Commonwealth, are exempt from this chapter;
2. Owners and operators of facilities conditionally exempt under 9VAC20-81-95 of the Solid Waste Management Regulations are exempt from this chapter so long as they meet the conditions of the exemption;
3. Owners and operators of facilities that manage solely wastes excluded or conditionally exempt under 9VAC20-81-95 of the Solid Waste Management Regulations are exempt from this chapter;
4. Owners or operators of facilities conditionally exempt under ~~9VAC20-120-120~~ 9VAC20-121-90 D or 9VAC20-121-300 E or excluded under ~~9VAC20-120-130~~ 9VAC20-121-90 C of the Regulated Medical Waste Management

Regulations ~~(9VAC20-120)~~ (9VAC20-121) are exempt from this chapter;

5. Owners and operators of yard waste composting facilities exempt under 9VAC20-81-95 of the Solid Waste Management Regulations are exempt from this chapter; and

6. Owners and operators of hazardous waste management units regulated under the Virginia Hazardous Waste Management Regulations (9VAC20-60) are exempt from this chapter as far as such units are concerned.

C. Owners and operators of facilities or units that treat or dispose of wastes which are exempted from the Virginia Hazardous Waste Management Regulations (9VAC20-60) are subject to these regulations unless also exempted herein.

D. Facilities with separate ownership and operation. If separate, nonexempt persons own and operate a facility subject to this chapter, the owner and operator shall be jointly and severally liable for meeting the requirements of this chapter. If either the owner or operator is exempt, as provided in 9VAC20-70-50 B, then the other person shall be liable for meeting the requirements of this chapter. If both the owner and the operator are exempt, as provided in 9VAC20-70-50 B, then the requirements of this chapter are not applicable to that facility.

E. Exemptions for facilities owned and operated by local governments.

1. Closed facilities. Owners and operators of facilities who are local governmental entities or regional authorities that have completed closure by October 9, 1994, are exempt from all the requirements of this chapter, provided they:

- a. Have (i) disposed of less than 100 tons per day of solid waste during a representative period prior to October 9, 1993; (ii) disposed of less than 100 tons per day of solid waste each month between October 9, 1993, and April 9, 1994; (iii) ceased to accept solid waste prior to April 9, 1994; and (iv) whose units are not on the National Priority List as found in Appendix B to 40 CFR Part 300; or
- b. Have (i) disposed of more than 100 tons per day of solid waste prior to October 9, 1993, and (ii) ceased to accept solid waste prior to that date.

2. All other facilities. Owners and operators of facilities who are local governmental entities or regional authorities that are not exempt under subdivision 1 of this subsection are subject to the requirements of this chapter.

9VAC20-70-70. Suspensions and revocations.

The director may revoke, suspend, or amend any permit for cause as set in § 10.1-1409 of the Code of Virginia and as provided for in 9VAC20-81-570 and 9VAC20-81-600 of the Solid Waste Management Regulations, ~~9VAC20-120-790~~ 9VAC20-121-310 and ~~9VAC20-120-810~~ 9VAC20-121-320 of the Regulated Medical Waste Management Regulations, and

any other applicable regulations. Failure to provide or maintain adequate financial assurance in accordance with these regulations shall be a basis for revocation of such facility permit. Failure to provide or maintain adequate financial assurance in accordance with this chapter, taken with other relevant facts and circumstances, may be a basis for summary suspension of such facility permit pending a hearing to amend or revoke the permit, or to issue any other appropriate order.

9VAC20-70-75. Forfeitures.

Forfeiture of any financial obligation imposed pursuant to this chapter shall not relieve any owner or operator of a solid waste management facility from any obligations to comply with provisions of the Solid Waste Management Regulations (9VAC20-81) or the Regulated Medical Waste Management Regulations ~~(9VAC20-120)~~ (9VAC20-121), and any other applicable regulations or any other legal obligations for the consequences of abandonment of any facility.

9VAC20-70-90. Closure, post-closure care and corrective action requirements.

A. The owner or operator shall close his facility in a manner that minimizes the need for further maintenance; and controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or to the atmosphere. The owner or operator shall close his facility in accordance with all applicable regulations.

The closure standards applicable to the solid waste management facilities are described in 9VAC20-81-160, 9VAC20-81-360, and 9VAC20-81-370 of the Solid Waste Management Regulations. The closure requirements applicable to the regulated medical waste facilities are specified in ~~9VAC20-120-290~~ 9VAC20-121-290 of the Regulated Medical Waste Management Regulations.

B. Following closure of each solid waste disposal unit, the owner or operator shall conduct post-closure care in accordance with the requirements of 9VAC20-81-170 of the Solid Waste Management Regulations, as applicable.

C. The owner or operator shall institute a corrective action program when required to do so by 9VAC20-81-45 or 9VAC20-81-260 of the Solid Waste Management Regulations, as applicable.

D. During any re-examination of a determination of the amount of financial assurance required, the owner or operator of a landfill facility not closed in accordance with 9VAC20-81 shall demonstrate financial assurance by using one or more of the approved mechanisms listed in Article 4 (9VAC20-70-140 et seq.) of this part for the lesser of the following:

- 1. The amount requested by the director; or
- 2. The following default amounts:

Regulations

- a. \$200,000 per acre of fill for sanitary landfills; or
- b. \$150,000 per acre of fill for construction demolition debris landfills and industrial landfills.

9VAC20-70-290. Wording of financial mechanisms.

A. Wording of trust agreements.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (State) (corporation, partnership, association, proprietorship), the "Grantor," and (name of corporate trustee), a (State corporation) (national bank), the "Trustee."

Whereas, the Virginia Waste Management Board has established certain regulations applicable to the Grantor, requiring that the owner or operator of a (solid) (regulated medical) (yard) waste (transfer station) (receiving) (management) facility must provide assurance that funds will be available when needed for (closure, post-closure care, or corrective action) of the facility,

Whereas, the Grantor has elected to establish a trust to provide (all or part of) such financial assurance for the facility identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

A. The term "fiduciary" means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of this trust fund, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this trust fund.

B. The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

C. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facility and Cost Estimates. This Agreement pertains to facility(ies) and cost estimates identified on attached Schedule A.

(NOTE: On Schedule A, for each facility list, as applicable, the permit number, name, address, and the current closure, post-closure, corrective action cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.)

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Environmental Quality, Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as property consisting of cash or securities, which are acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund will be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments to discharge any liabilities of the Grantor established by the Commonwealth of Virginia's Department of Environmental Quality.

Section 4. Payment for (Closure, Post-Closure Care, or Corrective Action). The Trustee will make such payments from the Fund as the Department of Environmental Quality, Commonwealth of Virginia will direct, in writing, to provide for the payment of the costs of (closure, post-closure care, corrective action) of the facility covered by this Agreement. The Trustee will reimburse the Grantor or other persons as specified by the Department of Environmental Quality, Commonwealth of Virginia, from the Fund for (closure, post-closure care, corrective action) expenditures in such amounts as the Department of Environmental Quality will direct, in writing. In addition, the Trustee will refund to the Grantor such amounts as the Department of Environmental Quality specifies in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the fund will consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee will invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with investment guidelines and objectives communicated in writing to the Trustee from time to time by the Grantor, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee or any other fiduciary will discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of any enterprise of a like character and with like aims; except that:

- A. Securities or other obligations of the Grantor, or any other owner or operator of the facility, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), will not be acquired or held,

unless they are securities or other obligations of the federal or a state government;

B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

C. The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

A. To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate subject to all of the provisions thereof, to be commingled with the assets of other trusts participating herein. To the extent of the equitable share of the Fund in any such commingled trust, such commingled trust will be part of the Fund; and

B. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 80a-1 et seq., of one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustees may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

A. To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by private contract or at public auction. No person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other dispositions;

B. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

C. To register any securities held in the fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United State government, or any agency or instrumentality thereof with a Federal Reserve Bank, but the books and records of the

Trustee will at all times show that all such securities are part of the Fund;

D. To deposit any cash in the fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

E. To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund will be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee will be paid from the Fund.

Section 10. Annual Valuation. The Trustee will annually, at the end of the month coincident with or preceding the anniversary date of establishment of the Fund, furnish the Grantor and to the director of the Department of Environmental Quality, Commonwealth of Virginia, a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than 30 days prior to the date of the statement. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director of the Department of Environmental Quality, Commonwealth of Virginia will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee will be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of the appointment by the successor trustee, the Trustee will assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the grantor cannot or does not act in the event

Regulations

of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee and the date on which he assumes administration of the trust will be specified in writing and sent to the Grantor, the director of the Department of Environmental Quality, Commonwealth of Virginia, and the present trustees by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section will be paid as provided in Part IX.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee will be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the grantor may designate by amendment to Exhibit A. The Trustee will be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the Director of the Department of Environmental Quality, Commonwealth of Virginia, to the Trustee will be in writing, signed by the Director and the Trustee will act and will be fully protected in acting in accordance with such orders, requests and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Commonwealth of Virginia's Department of Environmental Quality hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or the Commonwealth of Virginia's Department of Environmental Quality, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee will notify the Grantor and the Director of the Department of Environmental Quality, Commonwealth of Virginia, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee is not required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director of the Department of Environmental Quality, Commonwealth of Virginia, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust will be irrevocable and will continue until terminated at the written agreement of the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director if the Grantor ceases to exist. Upon termination of the

Trust, all remaining trust property, less final trust administration expenses, will be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director of the Department of Environmental Quality, Commonwealth of Virginia, issued in accordance with this Agreement. The Trustee will be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement will be administered, construed and enforced according to the laws of the Commonwealth of Virginia.

Section 20. Interpretation. As used in the Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement will not affect the interpretation of the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 9VAC20-70-290 A of the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, as such regulations were constituted on the date shown immediately below.

(Signature of Grantor)

By: (Title) (Date)

Attest:

(Title) (Date)

(Seal)

(Signature of Trustee)

By

Attest:

(Title) (Date)

(Seal)

Certification of Acknowledgment:

COMMONWEALTH OF VIRGINIA

STATE OF _____

CITY/COUNTY OF _____

On this date, before me personally came (owner or operator) to me known, who being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

B. Wording of surety bond guaranteeing performance or payment.

(NOTE: instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

PERFORMANCE OR PAYMENT BOND

Date bond executed: _____

Effective date: _____

Principal: (legal name and business address) _____

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation") _____

State of incorporation: _____

Surety: (name and business address) _____

Name, address, permit number, if any, and (closure, post-closure care, or corrective action) cost estimate for the facility: _____

Penal sum of bond: \$ _____

Surety's bond number: _____

Know all men by these present, That we, the Principal and Surety hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, (hereinafter called the Department) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of each sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have a permit from the Department of Environmental Quality, Commonwealth of Virginia, in order to own or operate the (solid, regulated medical, yard) waste management facility identified above, and

Whereas, said Principal is required to provide financial assurance for (closure, post-closure care, corrective action) of the facility as a condition of the permit or an order issued by the department,

Now, therefore the conditions of this obligation are such that if the Principal shall faithfully perform (closure, post-closure care, corrective action), whenever required to do so, of the facility identified above in accordance with the order or the (closure, post-closure care, corrective action) plan submitted to receive said permit and other requirements of said permit as such plan and permit may be amended or renewed pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall faithfully perform (closure, post-closure care, corrective action) following an order to begin (closure, post-closure care, corrective action) issued by the Commonwealth of Virginia's Department of Environmental Quality or by a court, or following a notice of termination of the permit,

Or, if the Principal shall provide alternate financial assurance as specified in the Department's regulations and obtain the director's written approval of such assurance, within 90 days of the date notice of cancellation is received by the Director of the Department of Environmental Quality from the Surety, then this obligation will be null and void, otherwise it is to remain in full force and effect for the life of the management facility identified above.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of the requirements of the Department's regulations, the Surety must either perform (closure, post-closure care, corrective action) in accordance with the approved plan and other permit requirements or forfeit the (closure, post-closure care, corrective action) amount guaranteed for the facility to the Commonwealth of Virginia.

Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of an order to begin (closure, post-closure care, corrective action), the Surety must either perform (closure, post-closure care, corrective action) in accordance with the order or forfeit the amount of the (closure, post-closure care, corrective action) guaranteed for the facility to the Commonwealth of Virginia.

The Surety hereby waives notification of amendments to the (closure, post-closure care, corrective action) plans, orders, permit, applicable laws, statutes, rules, and regulations and agrees that such amendments shall in no way alleviate its obligation on this bond.

For purposes of this bond, (closure, post-closure care, corrective action) shall be deemed to have been completed

Regulations

when the Director of the Department of Environmental Quality, Commonwealth of Virginia, determines that the conditions of the approved plan have been met.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but the obligation of the Surety hereunder shall not exceed the amount of said penal sum unless the Director of the Department of Environmental Quality, Commonwealth of Virginia, should prevail in an action to enforce the terms of this bond. In this event, the Surety shall pay, in addition to the penal sum due under the terms of the bond, all interest accrued from the date the Director of the Department of Environmental Quality, Commonwealth of Virginia, first ordered the Surety to perform. The accrued interest shall be calculated at the judgment rate of interest pursuant to § 6.2-302 of the Code of Virginia.

The Surety may cancel the bond by sending written notice of cancellation to the owner or operator and to the Director of the Department of Environmental Quality, Commonwealth of Virginia, provided, however, that cancellation cannot occur (1) during the 120 days beginning on the date of receipt of the notice of cancellation by the director as shown on the signed return receipt; or (2) while an enforcement action is pending.

The Principal may terminate this bond by sending written notice to the Surety, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

In witness whereof, the Principal and Surety have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and I hereby certify that the wording of this surety bond is identical to the wording specified in 9VAC20-70-290 B of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

Principal

Signature(s): _____

Name(s) and Title(s): (typed) _____

Corporate Surety

Name and Address: _____

State of Incorporation: _____

Liability Limit: \$____

Signature(s): _____

Name(s) and Title(s): (typed) _____

Corporate Seal:

C. Wording of irrevocable standby letter of credit.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT

Director

Department of Environmental Quality

P.O. Box 1105

Richmond, Virginia 23218

Dear (Sir or Madam):

We hereby establish our Irrevocable Letter of Credit No..... in your favor at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (in words) U.S. dollars \$____, available upon presentation of

1. Your sight draft, bearing reference to this letter of credit No ____ together with
2. Your signed statement declaring that the amount of the draft is payable pursuant to regulations issued under the authority of the Department of Environmental Quality, Commonwealth of Virginia.

The following amounts are included in the amount of this letter of credit: (Insert the facility permit number, if any, name and address, and the closure, post-closure care, corrective action cost estimate, or portions thereof, for which financial assurance is demonstrated by this letter of credit.)

This letter of credit is effective as of (date) and will expire on (date at least one year later), but such expiration date will be automatically extended for a period of (at least one year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you and (owner or operator's name) by certified mail that we decide not to extend the Letter of Credit beyond the current expiration date. In the event you are so notified, unused portion of the credit will be available upon presentation of your sight draft for 120 days after the date of receipt by you as shown on the signed return receipt or while a compliance procedure is pending, whichever is later.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will pay to you the amount of the draft promptly and directly.

I hereby certify that I am authorized to execute this letter of credit on behalf of (issuing institution) and I hereby certify that the wording of this letter of credit is identical to the wording specified in 9VAC20-70-290 C of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

Attest:

(Print name and title of official of issuing institution) (Date)
(Signature) (Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," of "the Uniform Commercial Code.")

D. Assignment of certificate of deposit account.

City _____, 20__

FOR VALUE RECEIVED, the undersigned assigns all right, title and interest to the Virginia Department of Environmental Quality, Commonwealth of Virginia, and its successors and assigns the Virginia Department of Environmental Quality the principal amount of the instrument, including all monies deposited now or in the future to that instrument, indicated below:

() If checked here, this assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No.

This assignment is given as security to the Virginia Department of Environmental Quality in the amount of _____ Dollars (\$_____).

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the Virginia Department of Environmental Quality.

Additional Security. This assignment shall secure the payment of any financial obligation of the (name of owner/operator) to the Virginia Department of Environmental Quality for ("closure" "post closure care" "corrective action") at the (facility name and permit number) located (physical address)

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial assurance obligations of (name of owner/operator) to the Virginia Department of Environmental Quality for ("closure" "post closure care" "corrective action") at the (facility name and address). The undersigned authorizes the Virginia Department of Environmental Quality to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia Department of Environmental Quality's discretion to fund ("closure" "post closure care" "corrective action") at the (facility name) or in the event of (owner or operator's) failure to comply with the Virginia Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities, 9VAC20-70. The undersigned agrees that the Virginia Department of Environmental Quality

may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. (The undersigned) agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its Board of Directors the day and year above written.

SEAL

(Owner)

(print owner's name)

SEAL

(Owner)

(print owner's name)

THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the name(s) as shown on record as owner(s) of the Certificate of Deposit indicated above. The above assignment has been properly recorded by placing a hold in the amount of \$ _____ for the benefit of the Department of Environmental Quality.

() If checked here, the accrued interest on the Certificate of Deposit indicated above has been maintained to capitalize versus being mailed by check or transferred to a deposit account.

(Signature)

(Date)

(print name)

(Title)

E. Wording of certificate of insurance.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

CERTIFICATE OF INSURANCE

Name and Address of Insurer (herein called the "Insurer"): _____

Name and Address of Insured (herein called the "Insured"): _____

Regulations

Facilities Covered: (List for each facility: Permit number (if applicable), name, address and the amount of insurance for closure, post-closure care, or corrective action. (These amounts for all facilities covered shall total the face amount shown below.))

Face Amount: \$____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for (insert "closure," "post-closure care," "corrective action") for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 9VAC20-70-190 of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities ("Regulations") (9VAC20-70), as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Director, the Insurer agrees to furnish to the Director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 9VAC20-70-290 E of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Authorized signature for Insurer)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:

(Date)

F. Wording of letter from chief financial officer.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

Director

Department of Environmental Quality

P.O. Box 1105

Richmond, Virginia 23218

Dear (Sir, Madam):

I am the chief financial officer of (name and address of firm). This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in 9VAC20-70-200 of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70) ("Regulations").

(Fill out the following four paragraphs regarding solid waste, regulated medical waste, yard waste composting, hazardous waste, underground injection (regulated under the federal program in 40 CFR Part 144, or its equivalent in other states), petroleum underground storage (9VAC25-590), above ground storage facilities (9VAC25-640) and PCB storage (regulated under 40 CFR Part 761) facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its name, address, permit number, if any, and current closure, post-closure care, corrective action or any other environmental obligation cost estimates. Identify each cost estimate as to whether it is for closure, post-closure care, corrective action or other environmental obligation.)

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the corporate test specified in 9VAC20-70-200 or its equivalent in other applicable regulations. The current cost estimates covered by the test are shown for each facility:

2. This firm guarantees, through the corporate guarantee specified in 9VAC20-70-220, the financial assurance for the following facilities owned or operated by subsidiaries of this firm. The current cost estimates so guaranteed are shown for each facility:

3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a financial test. The current cost estimates covered by such a test are shown for each facility:

4. This firm is the owner or operator of the following waste management facilities for which financial assurance is not demonstrated through the financial test or any other financial assurance mechanism. The current cost estimates for the facilities which are not covered by such financial assurance are shown for each facility:

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

1) Sum of current closure, post-closure care, corrective action or other environmental obligations cost estimates (total of all cost estimates shown in the four paragraphs above.)		\$_____
---	--	---------

2) Tangible net worth*			\$ _____
3) Total assets located in the United States*			\$ _____
	YES	NO	
Line 2 exceeds line 1 by at least \$10 million?	_____	_____	
Line 3 exceeds line 1 by at least \$10 million?	_____	_____	

(Fill in Alternative I if the criteria of 9VAC20-70-200 1 a (1) are used. Fill in Alternative II if the criteria of 9VAC20-70-200 1 a (2) are used. Fill in Alternative III if the criteria of 9VAC20-70-200 1 a (3) are used.)

ALTERNATIVE I

Current bond rating of this firm's senior unsubordinated debt and name of rating service

Date of issuance of bond

Date of maturity of bond

ALTERNATIVE II			
4) Total liabilities* (if any portion of the closure, post-closure care, corrective action or other environmental obligations cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to line 5.)			\$ _____
5) Net worth*			\$ _____
Is line 4 divided by line 5 less than 1.5?	YES	NO	

ALTERNATIVE III			
6) Total liabilities*			\$ _____
7) The sum of net income plus depreciation, depletion, and amortization minus \$10 million*			\$ _____
Is line 7 divided by line 6 less than 0.1?	YES	NO	

I hereby certify that the wording of this letter is identical to the wording in 9VAC20-70-290 F of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

G. Wording of the local government letter from chief financial officer.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of (insert: name and address of local government owner or operator, or guarantor). This letter is in support of the use of the financial test to demonstrate financial responsibility for ("closure care" "post-closure care" "corrective action costs") arising from operating a solid waste management facility.

The following facilities are assured by this financial test: (List for each facility: the name and address of the facility, the permit number, the closure, post-closure and/or corrective action costs, whichever applicable, for each facility covered by this instrument).

This owner's or operator's financial statements were prepared in conformity with Generally Accepted Accounting Principles for governments and have been audited by ("an independent certified public accountant" "Auditor of Public Accounts"). The owner or operator has not received an adverse opinion or a disclaimer of opinion from ("an independent certified public accountant" "Auditor of Public Accounts") on its financial statements for the latest completed fiscal year.

This owner or operator is not currently in default on any outstanding general obligation bond. Any outstanding issues of general obligation, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

The fiscal year of this owner or operator ends on (month, day). The figures for the following items marked with the asterisk are derived from this owner's or operator's independently audited, year-end financial statements for the latest completed fiscal year ended (date).

(Please complete Alternative I or Alternative II.)

Regulations

(Fill in Alternative I if the criteria in 9VAC20-70-210 1 a (1) are used. Fill in Alternative II if the criteria of 9VAC20-70-210 1 a (2) are used.)

ALTERNATIVE I - BOND RATING TEST

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding general obligation bond issues that are being used by (name of local government owner or operator, or guarantor) to demonstrate financial responsibility are as follows: (complete table):

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency
_____	_____	_____	_____	_____
-	-	-	-	—
_____	_____	_____	_____	_____
-	-	-	-	—
_____	_____	_____	_____	_____
-	-	-	-	—
_____	_____	_____	_____	_____
-	-	-	-	—
_____	_____	_____	_____	_____
-	-	-	-	—

Any outstanding issues of general obligation bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A or BBB.

1) Sum of current closure, post-closure and corrective action cost estimates (total of all cost estimates listed above)	\$ _____
*2) Operating Deficit	
(a) latest completed fiscal year (insert year)	\$ _____
(b) previous fiscal year (insert year)	\$ _____
*3) Total Revenue	
(a) latest completed fiscal year (insert year)	\$ _____
(b) previous fiscal year (insert year)	\$ _____

4) Other self-insured environmental costs	
(a) Amount of aggregate underground injection control systems financial assurance insured by a financial test under 40 CFR 144.62	\$ _____
(b) Amount of annual underground storage tank aggregate coverage insured by a financial test under 40 CFR Part 280 and 9VAC25-590	\$ _____
(c) Amount of aggregate costs associated with PCB storage facilities insured by a financial test under 40 CFR Part 761	\$ _____
(d) Amount of annual aggregate hazardous waste financial assurance insured by a financial test under 40 CFR Parts 264 and 265 and 9VAC20-60	\$ _____
(e) Total of lines 4(a) through 4(d)	\$ _____
	YES NO
5) Is (line 2a / line 3a) < 0.05?	_____
6) Is (line 2b / line 3b) < 0.05?	_____
7) Is (line 1 + line 4e) <= (line 3a x 0.43)?	_____

ALTERNATIVE II - FINANCIAL RATIO TEST

1) Sum of current closure, post-closure and corrective action cost estimates	\$ _____
*2) Operating Deficit	
(a) latest completed fiscal year (insert year)	\$ _____
(b) previous fiscal year (insert year)	\$ _____

*3) Total Revenue		
(a) latest completed fiscal year (insert year)	\$ _____	
(b) previous fiscal year (insert year)	\$ _____	
4) Other self-insured environmental costs		
(a) Amount of aggregate underground injection control systems financial assurance insured by a financial test under 40 CFR 144.62	\$ _____	
(b) Amount of annual underground storage tank aggregate coverage insured by a financial test under 40 CFR Part 280 and 9VAC25-590	\$ _____	
(c) Amount of aggregate costs associated with PCB storage facilities insured by a financial test under 40 CFR Part 761	\$ _____	
(d) Amount of annual aggregate hazardous waste financial assurance insured by a financial test under 40 CFR Parts 264 and 265 and 9VAC20-60	\$ _____	
(e) Total of lines 4(a) through 4(d)	\$ _____	
*5) Cash plus marketable securities		\$ _____
*6) Total Expenditures		\$ _____
*7) Annual Debt Service		\$ _____
	YES	NO
8) Is (line 2a / line 3a) < 0.05?	_____	_____
9) Is (line 2b / line 3b) < 0.05?	_____	_____
10) Is (line 1 + line 4e) <= (line 3a x 0.43)?	_____	_____
11) Is (line 5 / line 6) >= 0.05?	_____	_____

I hereby certify that the wording of this letter is identical to the wording in 9VAC20-70-290 G of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Signature)

(Name of person signing)

(Title of person signing)

(Date)

H. Certification of funding.

CERTIFICATION OF FUNDING

I certify the following information details the current plan for funding closure and post closure at the solid waste management facilities listed below.

Facility Permit #	Source for funding closure and post closure	
Name of Locality or Corporation: _____		
Signature	Printed Name	Date
Title		

I. Wording of corporate guarantee.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

CORPORATE GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the state of (insert name of state), herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (business address), which is (one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation) of which guarantor is a subsidiary"; or "an entity with which the guarantor has a substantial business relationship, as defined in Part I of the Virginia Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70)") to the Virginia Department of Environmental Quality ("Department"), obligee, on behalf of our subsidiary (owner or operator) of (business address).

Recitals

1. Guarantor meets or exceeds the financial test criteria in 9VAC20-70-200 and agrees to comply with the reporting requirements for guarantors as specified in 9VAC20-70-220 of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities ("Regulations").

Regulations

2. (Owner or operator) owns or operates the following (solid, regulated medical, yard) waste management facility(ies) covered by this guarantee: (List for each facility: name, address, and permit number, if any. Indicate for each whether guarantee is for closure, post-closure care, corrective action or other environmental obligations.)

3. "Closure plans", "post-closure care plans" and "corrective action plans" as used below refer to the plans maintained as required by the Solid Waste Management Regulations (9VAC20-81), or the Regulated Medical Waste Management Regulations (~~9VAC20-120~~) (9VAC20-121).

4. For value received from (owner or operator), guarantor guarantees to the Department that in the event that (owner or operator) fails to perform (insert "closure," "post-closure care," or "corrective action") of the above facility(ies) in accordance with the closure or post-closure care plans and other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9VAC20-70-140 in the name of (owner or operator) in the amount of the current cost estimates.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the director by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure, post-closure or corrective action plan, amendment or modification of the permit, amendment or modification of the order, the extension or reduction of the time of performance of closure, post-closure, or corrective action or any other modification or alteration of an obligation of the owner or operator pursuant to the (Solid Waste Management Regulations or Regulated Medical

Waste Management Regulations or § 10.1-1454.1 of the Code of Virginia).

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable financial assurance requirements of Article 4 of Part III of the Regulations for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator:) Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the Department of Environmental Quality and to the (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains and the director approves, alternate (closure, post-closure, corrective action) coverage complying with the requirements of 9VAC20-70. (Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator:) Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the director and by (the owner or operator).

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the director within 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording in 9VAC20-70-290 I of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Name of guarantor)

Effective date: _____

(Authorized signature for guarantor) _____

(Name of person signing) _____

(Title of person signing) _____

Signature of witness or notary: _____

J. Wording of local government guarantee.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

LOCAL GOVERNMENT GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a local government created under the laws of the state of Virginia, herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (address), to the Virginia Department of Environmental Quality ("Department"), obligee.

Recitals

1. Guarantor meets or exceeds the financial test criteria in 9VAC20-70-210 and agrees to comply with the reporting requirements for guarantors as specified in 9VAC20-70-230 of the Financial Assurance Regulations for Solid Waste Disposal, Treatment and Transfer Facilities ("Regulations").
2. (Owner or operator) owns or operates the following (solid, regulated medical, yard) waste management facility(ies) covered by this guarantee: (List for each facility: name, address, and permit number, if any. Indicate for each whether guarantee is for closure, post-closure care, corrective action or other environmental obligations.)
3. "Closure plans" and "post-closure care plans" as used below refer to the plans maintained as required by the Solid Waste Management Regulations (9VAC20-81).
4. For value received from (owner or operator), guarantor guarantees to the Department that in the event that (owner or operator) fails to perform (insert "closure," "post-closure care," or "corrective action") of the above facility(ies) in accordance with the closure or post-closure care plans and other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9VAC20-70-150 in the name of (owner or operator) in the amount of the current cost estimates.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.
6. The guarantor agrees to notify the director by certified mail, of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.
7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from

continuing as a guarantor of closure, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in Article 4 of Part III of the Regulations in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, amendment or modification of the order, the extension or reduction of the time of performance of the closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to the Virginia (Solid Waste Management or Regulated Medical Waste Management) Regulations.

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable financial assurance requirements of Article 4 of Part III of the Regulations for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the Department of Environmental Quality and to the (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains and the director approves, alternate (closure, post-closure, corrective action,) coverage complying with the requirements of 9VAC20-70.

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the director with 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 9VAC20-70-290 J of the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Name of guarantor) _____

Effective date: _____

(Authorized signature for guarantor) _____

(Name of person signing) _____

(Title of person signing) _____

Signature of witness or notary: _____

Regulations

9VAC20-90-10. Definitions.

Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia defines words and terms that supplement those in this chapter. The Solid Waste Management Regulations, 9VAC20-81, and the Regulated Medical Waste Management Regulations, ~~9VAC20-120~~ 9VAC20-121, define additional words and terms that supplement those in the statute and this chapter. When the statute, as cited, and the solid waste management regulations, as cited, define a word or term differently, the definition of the statute is controlling. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Department" means the Virginia Department of Environmental Quality.

"Director" means the director of the Department of Environmental Quality.

"Operating" means actively managing solid waste, or conducting closure or post closure activities. A facility will begin operating on the date of the approval of the certificate to operate (CTO) or the approval of the permit-by-rule (PBR) as applicable. The facility will no longer be considered operating upon certification of completion of closure activities or in the case of a disposal facility upon release from post closure responsibility.

"Permit-by-rule" means provisions of the chapter stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Permitted facility" means a facility holding the written permission of the director to conduct solid waste management activities; this includes facilities operating under permit-by-rule.

9VAC20-90-50. Applicability of regulations.

A. These regulations apply to all persons operating or proposing to operate a permitted facility for the management of solid waste under the provisions of:

1. Part V (9VAC20-81-400 through 9VAC20-81-600) of the Solid Waste Management Regulations;
2. Part ~~X~~ (~~9VAC20-120-680 through 9VAC20-120-830~~) V (9VAC20-121-300 through 9VAC20-121-340) of the Regulated Medical Waste Management Regulations; or
3. Part V (9VAC20-85-170 through 9VAC20-85-180) of the Coal Combustion Byproduct Regulations.

The fees shall be assessed in accordance with Part III (9VAC20-90-70 through 9VAC20-90-120) of this chapter.

B. When the director finds it necessary to amend or modify any permit in accordance with § 10.1-1408.1 E or § 10.1-1409 of the Code of Virginia, 9VAC20-81-600 of the Solid Waste Management Regulations or Part ~~X~~ (~~9VAC20-120-680~~

~~through 9VAC20-120-830~~) V (9VAC20-121-300 through 9VAC20-121-340) of the Regulated Medical Waste Management Regulations, as applicable, the holder of that permit shall be assessed a fee in accordance with 9VAC20-90-90 even if the director has initiated the amendment or modification action.

C. When the director finds it necessary to revoke and reissue any permit in accordance with § 10.1-1408.1 E or § 10.1-1409 of the Code of Virginia, 9VAC20-81-570 B 1 of the Solid Waste Management Regulations, or Part ~~X~~ (~~9VAC20-120-680 through 9VAC20-120-830~~) V (9VAC20-121-300 through 9VAC20-121-340) of the Regulated Medical Waste Management Regulations, as applicable, the holder of that permit shall be assessed a fee in accordance with 9VAC20-90-80.

D. If the director finds it necessary either to revoke and reissue a permit in accordance with § 10.1-1408.1 E or § 10.1-1409 of the Code of Virginia, or 9VAC20-81-570 B 2 of the Solid Waste Management Regulations, the holder of that permit shall be assessed a fee in accordance with 9VAC20-90-100.

9VAC20-90-70. General.

A. Each application for a new permit, each application for a modification or amendment to a permit, and each revocation and issuance of a permit is a separate action and shall be assessed a separate fee. The amount of such fees is determined on the basis of this Part III (9VAC20-90-70 through 9VAC20-90-120).

B. Right of entry, inspection and audit. Upon presentation of appropriate credentials and upon consent of the owner or operator of the facility, the director of the Virginia Department of Environmental Quality or his designee, in addition to the routine inspection of the facility provided in 9VAC20-81-50 or ~~9VAC20-120-740~~ 9VAC20-121-320 shall have the right to enter, inspect, and audit the records of the facility consistent with § 10.1-1456 of the Code of Virginia. The director may designate rights of entry, inspection, and audit to any department personnel or contractors to the department. The owner or operator of the facility shall provide complete and timely access during business hours to all equipment and facility records. The director shall have the right to require an audit of the facility's records related to the payment of annual fees.

C. In addition to permit action fees listed in Tables 3.1-1, 3.1-2, and 3.1-3 of 9VAC20-90-120, the applicant for a permit action shall arrange for the newspaper publication and radio broadcast and bear the cost of the publication and broadcast if required. The department shall send notification to the applicant that the publication and broadcast are required, and the notification shall include the text of the notice, dates of publication and broadcast, and the acceptable newspapers and radio stations wherein the notice may be published. The

department shall also require the petitioner for a variance from any regulation to arrange for any newspaper publication and radio broadcast required under the Solid Waste Management Regulations (9VAC20-81) or the Regulated Medical Waste Management Regulations (~~9VAC20-120~~) (9VAC20-121) and to bear the cost of such publication and broadcast. The department may arrange for the newspaper publication and radio broadcast listed in this subsection and require the applicant to remit the cost of such publication and broadcast.

9VAC20-90-90. Applications for permit actions, amendment or modification.

A. General. Facility permits issued by the director are typically based on the modular concept to assure completeness and consistency of the documents. Each facility permit may consist of several modules dealing with the requirements addressing separate topics pertinent to the specific facility. The modules used in the solid and regulated medical waste program are:

1. The general permit conditions module (Module I) that contains the general conditions required for all solid or regulated medical waste facility permits and includes documents to be submitted prior to operation, documents that must be maintained at the facility, and a compliance schedule, if any.

2. The general facility requirements module (Module II) that contains the listing of wastes that the facility may accept or a list of wastes prohibited from acceptance, an analysis plan, security and site access information, inspection requirements, personnel training requirements, special standards based on particular location, a preparedness and prevention plan, a contingency plan, closure and post-closure cost estimates, and facility-specific financial assurance requirements.

3. The separate facility modules, one for each of the different type of facility provided for in Parts III and IV of the Solid Waste Management Regulations, containing design requirements (e.g., liners, leachate management systems, aeration systems, wastewater collection systems), specific operating requirements (e.g., compaction and cover requirements, equipment, monitoring), and recordkeeping requirements. The following modules have been developed:

- a. Module III—Sanitary landfills;
- b. Module IV—Construction/demolition/debris landfill;
- c. Module V—Industrial landfill;
- d. Module VI—Compost facility;
- e. Module VII—Transfer station;
- f. Module VIII—Materials recovery facility; and
- g. Module IX—Energy recovery and incineration facility.

4. All gas management plans submitted for review (Module III, IV, or V) will be assessed a fee as listed in Table 3.1-2 of 9VAC20-90-120.

5. The groundwater monitoring modules contain requirements for well location, installation, and construction, listing of monitoring parameters and constituents, sampling and analysis procedures, statistical procedures, data evaluation, recordkeeping and reporting, and special requirements when significant increases occur in monitoring parameters. Module X is designed specifically for Phase I or detection monitoring and Module XI for Phase II or assessment monitoring. If groundwater protection standards are being established for facilities without Modules X and XI, then both Modules X and XI will be issued for the major modification fee. However, for facilities with Module X already included in their permit, the major modification fee will be assessed to add Module XI.

6. The closure module (Module XII), included in all permits, contains requirements for actions during the active life of the facility (updating plan), during the closure process, and after the closure has been performed. Facilities required to submit a closure plan in accordance with §§ 10.1-1410.1 and 10.1-1410.2 A 1 of the Code of Virginia will be assessed a fee for Module XII as listed in Table 3.1-2 of 9VAC20-90-120.

7. The post-closure module (Module XIII), included in solid waste disposal facility permits, contains requirements during the post-closure period and for periodic updating of the post-closure plan. Facilities required to submit a post-closure plan in accordance with § 10.1-1410.2 of the Code of Virginia will be assessed a fee for Module XIII as listed in Table 3.1-2 of 9VAC20-90-120.

8. The schedule for compliance for corrective action (Module XIV) is used when facility groundwater monitoring results indicate groundwater protection standards have been statistically exceeded.

9. The leachate handling module (Module XV), included in solid waste disposal facility permits, contains requirements for storage, treatment and disposal of leachate generated by the facility.

10. The regulated medical waste storage or transfer module (Module XVI) and regulated medical waste treatment module (Module XVII) have been developed for facilities storing ~~and/or~~ transferring, or treating regulated medical waste.

B. Applicants for a modification or amendment of an existing permit will be assessed a fee associated with only those modules that will require changes. In situations where the modular concept is not employed (for example, changes incorporated directly into a nonmodular permit), fees will be assessed as appropriate for the requirements stipulated for modules in subsection A of this section had they been used.

C. Applicants for a modification or amendment or subject to revocation and reissuance of an existing permit will be assessed a separate public participation fee whenever the modification or amendment requires a public hearing.

Regulations

D. The fee schedules for major permit actions, amendments, or modifications are shown in Table 3.1-2 of 9VAC20-90-120.

E. In no case will the fee for a modification, amendment or revocation and reissuance of a permit be higher than that for a new facility of the same type.

9VAC20-90-110. Review of variance requests.

Applicants requesting variances from the Solid Waste Management Regulations (9VAC20-81), the Regulated Medical Waste Management Regulations (~~9VAC20-120~~) (9VAC20-121), or the Coal Combustion Byproduct Regulations (9VAC20-85) will be assessed a fee as shown in Table 3.1-3 of 9VAC20-90-120. All variance requests are subject to base fees. Additional fees are listed for reviews of specific types of variance requests and are to be submitted in addition to base fees. Variance requests are not subject to public participation fees listed in Table 3.1-2 of 9VAC20-90-120.

9VAC20-90-120. Permit application fee schedules.

TYPE OF FACILITY	FEE
All landfills:	
Part A application	\$4,180
Part B application	\$18,680
Incineration/Energy Recovery Facility	\$5,880
Transfer Station, Materials Recovery Facility, Regulated Medical Waste Storage or Transfer Facility, or Regulated Medical Waste Treatment Facility	\$4,310
Compost Facility	
Facilities Processing Category I Waste	\$6,850
Facilities Processing Waste Categories I, II, or III, or Categories III and Lower	\$10,550
Facilities Processing Waste Categories I, II, III, or IV, or Categories IV and Lower	\$12,670
Experimental Solid Waste Facility	\$2,090
Permit-by-rule Initial Review and Confirmation	\$390
Emergency Permit	\$2,310

TYPE OF PERMIT MODULE	FEE
Landfill Part A	\$4,180
General - Module I	\$390
Facility - Module II	\$1,310
Landfill - Module III, IV, or V	\$7,050
Design plan review	\$910
Liner design review	\$1,960
Leachate system review	\$1,310
Gas management plan review	\$1,700
Drainage plan review	\$910
Cover design review	\$1,830
Equipment	\$390
Compost facility - Module VI	\$3,660
Design plan review	\$650
Liner design review	\$1,310
Leachate system review	\$910
Drainage plan review	\$650
Equipment	\$390
Transfer station - Module VII	\$1,180
Material recovery facility - Module VIII	\$1,570
Waste supply analysis	\$650
Waste management areas	\$520
Wastewater management areas	\$390
Incinerator/Energy recovery facility - Module IX	\$3,000
Waste and residue storage	\$910
Operational requirements	\$1,570
Waste control procedures	\$520
Groundwater monitoring - Module X or XI	\$3,260
Well placement	\$1,310
Materials and specifications	\$390
Sampling plan	\$1,570
Closure - Module XII	\$390

Post-closure - Module XIII	\$390
Corrective action - Module XIV	\$3,000
Leachate handling Module XV	\$1,310
Regulated medical waste storage <u>or transfer</u> facility - Module XVI	\$390
Regulated medical waste treatment facility - Module XVII	\$390
Permit-by-rule Modification Review and Confirmation	\$390
Public participation (does not include costs of newspaper advertisements or radio broadcasts)	\$1,040

TABLE 3.1-3. VARIANCE REQUESTS.

TYPE OF VARIANCE	FEE
Base fee for all variances	\$390
Supplemental fees based on variance type	
Exemption from classification as a solid waste	\$520
Variance to permitting requirements	
Siting requirements	\$520
Facility design (other than alternate liner design)	\$520
Operational requirements	--
Groundwater monitoring (other than groundwater protection standards and location of monitoring system)	\$920
Closure requirements	--
Post-closure requirements	--
Groundwater Protection Standards	--
Alternate liner system design	\$1,570
Location of groundwater monitoring system	\$920

9VAC20-130-10. Definitions.

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

"Board" means the Virginia Waste Management Board.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes solid waste resulting from the operation of stores, markets, office buildings, restaurants, and shopping centers.

"Compost" means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

"Composting" means the manipulation of the natural process of decomposition of organic materials to increase the rate of decomposition.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos-containing material, any liquid, compressed gases, or semi-liquids and garbage are not construction wastes.

"Debris waste" means solid waste resulting from land clearing operations. Debris wastes include stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means solid waste produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality or his designee. For purposes of submissions to the director as specified in the Waste Management Act, submissions may be made to the department.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

"Facility" means solid waste management facility unless the context clearly indicates otherwise.

"Hazardous waste" means a "hazardous waste" as defined by the Virginia Hazardous Waste Management Regulations, 9VAC20-60.

"Incineration" means the controlled combustion of solid waste for disposal.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and

Regulations

miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Institutional waste" means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing homes, orphanages, and public or private schools. It can include regulated medical waste from health care facilities and research facilities that must be managed as a regulated medical waste.

"Integrated waste management plan" means a governmental plan that considers all elements of waste management during generation, collection, transportation, treatment, storage, disposal, and litter control and selects the appropriate methods of providing necessary control and services for effective and efficient management of all wastes. An "integrated waste management plan" must provide for source reduction, reuse and recycling within the jurisdiction and the proper funding and management of waste management programs.

"Jurisdiction" means a local governing body; city, county or town; or any independent entity, such as a federal or state agency, which join with local governing bodies to develop a waste management plan.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill (as these terms are defined in the Solid Waste Management Regulations (9VAC20-81)).

"Litter" means all waste material disposable packages or containers, but not including the wastes of the primary processes of mining, logging, farming, or manufacturing.

"Market" means interim or end destinations for the recyclable materials, including a materials recovery facility.

"Market conditions" means business and system related issues used to determine if materials can be targeted, collected, and delivered to an interim or end market in an efficient manner. Issues may include the cost of collection, storage and preparation or both; the cost of transportation; accessible volumes of materials targeted for recycling; market value of materials targeted for collection/recycling; and distance to viable markets.

"Materials recovery facility" means, for the purpose of this regulation, a facility for the collection, processing, and marketing of recyclable materials including metal, paper, plastics, and glass.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves, and other clean wood waste that has undergone size reduction by grinding, shredding, or chipping, and is distributed to the general public for landscaping purposes or other horticultural uses, except composting as defined and regulated under the Solid Waste Management Regulations (9VAC20-81).

"Municipal solid waste" or "MSW" means waste that is normally composed of residential, commercial, and institutional solid waste and residues derived from the combustion of these wastes.

"Nonmunicipal solid waste material" means waste that is not normally composed of residential, commercial, and institutional solid waste and residues derived from the combustion of these wastes.

"Permit" means the written permission of the director to own, operate, or construct a solid waste management facility.

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

"Principal recyclable materials" or "PRMs" means paper, metal, plastic, glass, commingled, yard waste, wood, textiles, tires, used oil, used oil filters, used antifreeze, batteries, electronics, or material as may be approved by the director. Commingled materials refers to single stream collections of recyclables where sorting is done at a materials recovery facility.

"Recycling" means the process of separating a given waste material from the waste stream and processing it so that it may be used again as a raw material for a product, which may or may not be similar to the original product. For the purpose of this chapter, recycling shall not include processes that only involve size reduction.

"Recycling residue" means the (i) nonmetallic substances, including plastic, rubber, and insulation, which remain after a shredder has separated for purposes of recycling the ferrous and nonferrous metal from a motor vehicle, appliance, or other discarded metallic item and (ii) organic waste remaining after removal of metals, glass, plastics, and paper that are to be recycled as part of a resource recovery process for municipal solid waste resulting in the production of a refuse derived fuel.

"Regional boundary" means the boundary defining an area of land that will be a unit for the purpose of developing a waste management plan and is established in accordance with 9VAC20-130-92 through 9VAC20-130-100.

"Regulated medical waste" means solid wastes so defined by the Regulated Medical Waste Management Regulations (~~9VAC20-120~~) (9VAC20-121) as promulgated by the Virginia Waste Management Board.

"Residential waste" means any waste material, including garbage, trash, and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas. Residential wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.

"Resource recovery system" means a solid waste management system that provides for collection, separation, recycling, and recovery of energy or solid wastes, including disposal of nonrecoverable waste residues.

"Reuse" means the process of separating a given solid waste material from the waste stream and using it, without processing or changing its form, other than size reduction, for the same or another end use.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste, which is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from very small quantity generators, construction demolition debris, and nonhazardous industrial solid waste.

"Site" means all land and structures, other appurtenances, and improvements on them used for treating, storing, and disposing of solid waste. This term includes adjacent land within the facility boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste. (Note: This term includes all sites whether they are planned and managed facilities or open dumps.)

"Sludge" means any solid, semisolid, or liquid waste generated from a public, municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility.

"Solid waste" means any of those materials defined as "solid waste" in the Solid Waste Management Regulations (9VAC20-81).

"Solid waste management plan" means a plan submitted by a solid waste planning unit in accordance with the requirements of this chapter.

"Solid waste planning unit" means each region or locality that submits a solid waste management plan.

"Solid waste management facility" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Source reduction" means any action that reduces or eliminates the generation of waste at the source, usually within a process. Source reduction measures include process modifications, feedstock substitutions, improvements in feedstock purity, improvements in housekeeping and management practices, increases in the efficiency of machinery, and recycling within a process. Source reduction minimizes the material that must be managed by waste disposal or nondisposal options by creating less waste. "Source reduction" is also called "waste prevention," "waste minimization," or "waste reduction."

"Source separation" means separation of recyclable materials by the waste generator of materials that are collected for use, reuse, reclamation, or recycling.

"Tons" means 2,000 pounds.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration, or resource recovery.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing activities and includes, but is not limited to, leaves, grass trimmings, and woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps. For more detail see the Solid Waste Management Regulations (9VAC20-81).

"Waste exchange" means any system to identify sources of wastes with potential for use, reuse, recycling, or reclamation and to facilitate its acquisition by persons who reuse, recycle, or reclaim it, with a provision for maintaining confidentiality of trade secrets.

"Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed six inches in diameter.

9VAC20-170-10. Definitions.

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

"Affiliated company" means (i) any company that directly or indirectly owns, controls, or holds, with power to vote, 10% or more of the outstanding voting securities of a pure captive insurer or (ii) any company of which 10% or more of the voting securities are directly or indirectly owned, controlled, or held, with power to vote, by a parent, subsidiary, or associated company.

"Anniversary date" means the date of issuance of a financial mechanism.

"Applicant" means any and all persons seeking or holding a permit required under this chapter.

"Associated company" means any company in the same corporate system with a pure captive insurer.

"Association captive insurer" means any insurer transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of the members of an insurance association.

"Beneficial use" means both instream and offstream uses of state waters. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat,

Regulations

maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.

"Board" means the Virginia Waste Management Board.

"Bodily injury" means the death or injury of any person incident to a waste deposit from a vessel, but not including any death, disablement, or injuries covered by workers' compensation, disability benefits or unemployment compensation law or other similar law. Bodily injury may include payment of medical, hospital, surgical, and funeral expenses arising out of the death or injury of any person. This term shall not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Captive insurer" means any pure captive insurer or any association captive insurer.

"Certificant" means an owner or operator who has been issued a Certificate of Financial Responsibility under this chapter.

"Certificate applicant" means an owner or operator who has applied for a Certificate of Financial Responsibility or for the renewal of a Certificate of Financial Responsibility under this chapter.

"Certificate of Financial Responsibility" or "certificate" means a Certificate of Financial Responsibility issued under Part VI (9VAC20-170-270 et seq.) of this chapter, unless otherwise indicated.

"Certified copy" means a legible copy certified as accurate by a notary public or other person authorized to take oaths in the United States.

"CFR" means Code of Federal Regulations.

"Charter by demise" means to hire for exclusive use through a lease.

"Closure" means the act of securing a solid waste management facility pursuant to the requirements of this chapter.

"Commercial transport" means transportation for the purposes of commercial carriage of solid wastes or regulated medical wastes as cargo.

"Commercial transporter" means any person who transports for the purposes of commercial carriage of solid wastes or regulated medical wastes as cargo.

"Construction demolition debris waste" or "CDD waste" means solid waste that is produced or generated during construction or destruction, remodeling, or repair of pavements, houses, commercial buildings, their foundations and other structures. Construction demolition debris wastes

include, but are not limited to lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not construction demolition debris wastes.

"Container" means any watertight structure that meets the provisions of this chapter.

"Containment and cleanup" means abatement, containment, removal and disposal of solid wastes or regulated medical wastes that have been deposited to state waters or adjoining shorelines, and the restoration of the environment to its existing state prior to a deposit of the wastes.

"Demise charterer" means a person with whom the owner of the vessel enters into a demise charter. The charterer takes over all possession and control of the vessel from the owner of the vessel and becomes subject to the duties and responsibilities of ownership. The charterer is also responsible for directing the operations of the vessel and providing the master and crew.

"Department" means the Virginia Department of Environmental Quality.

"Destination facility" means a facility that treats, disposes of, or recycles solid wastes or regulated medical wastes in accordance with applicable federal and state regulations.

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

"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the director, which includes:

1. The full name and business address of all key personnel;
2. The full name and business address of any entity, other than a natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of 5.0% or more;
3. A description of the business experience of all key personnel listed in the disclosure statement;
4. A listing of all permits or licenses required for the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;
5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal or local authority, within the past 10 years, that are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to

the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth that have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past 10 years in connection with the applicant's collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the director may require that reasonably relates to the qualifications and abilities of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Existing facility" means any receiving facility that is constructed prior to July 2, 2003.

"Generator" means any person, by site, whose act or process produces solid wastes or regulated medical wastes, or whose act first causes solid wastes or regulated medical wastes to become subject to this chapter.

"Insurance association" means any group of individuals, corporations, partnerships, associations, or governmental units or agencies whose members collectively own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurer.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also

includes any officer, director, partner of the applicant, or any holder of 5.0% or more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Leachate" means a liquid that has passed through or emerged from solid waste or regulated medical waste and contains soluble, suspended, or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an off-site facility is regulated as septage, and leachate discharged into a wastewater collection system is regulated as industrial wastewater.

"Load Line Certificate" means a certificate issued by the American Bureau of Shipping (ABS) or other similarly qualified organizations authorized by the Secretary of Transportation (U.S. Department of Transportation) to the owner of the vessel, in accordance with 46 USC Chapter 51.

"Manifest" means the shipping document originated and signed by the generator in accordance with the provisions of this chapter. For transportation of regulated medical wastes, the hazardous materials shipping paper requirements under 49 CFR Part 172 Subpart C may be reflected in the manifest.

"Medical waste" or "regulated medical waste" means solid wastes defined to be regulated medical wastes by Part ~~III~~ II of the Regulated Medical Waste Management Regulations (~~9VAC20-120~~) (9VAC20-121). Solid waste packaged as regulated medical waste is regulated medical waste. Medical wastes that have been sterilized, treated or incinerated in accordance with the Regulated Medical Waste Management Regulations (~~9VAC20-120~~) (9VAC20-121) are no longer considered as regulated medical waste.

"Navigable waters of the Commonwealth" means state water being used or susceptible of being used, in its natural and ordinary condition, as a highway for commerce, on which trade and travel are or may be conducted in the customary modes of trade and travel on water.

"New facility" means any receiving facility that is constructed on or after July 2, 2003.

"Odors" means any emissions that cause an odor objectionable to individuals of ordinary sensibility.

Regulations

"Operator" means, in the case of a receiving facility, any person responsible for the overall operation of a receiving facility that handles solid wastes or regulated medical wastes. In the case of a vessel, it means any person who operates, charters by demise, rents or otherwise exercises control over or responsibility for a vessel.

"Owner" means, in the case of a receiving facility, any person who owns a receiving facility or part of a receiving facility that handles solid wastes or regulated medical wastes as cargo for hire. In the case of a vessel, it means any person who owns a vessel or a part of a vessel that transports solid wastes or regulated medical wastes as cargo for hire.

"Parent" means a corporation, partnership, governmental unit or agency, or individual who directly or indirectly owns, controls or holds, with power to vote, more than 50% of the outstanding voting securities of a pure captive insurer.

"Permit by rule" means provisions including public participation of this chapter stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Property damage" means the loss or destruction of, or damage to, the property of any third party including any loss, damage or expense incident to a waste deposit from a vessel. This term shall not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage.

"Provider of financial responsibility" means an entity that provides financial responsibility to an owner and operator of a vessel transporting solid wastes or regulated medical wastes through one of the mechanisms listed in 9VAC20-170-310, including a financial institution, surety, or issuer of a letter of credit.

"Public vessel" means a vessel that is owned or demise chartered and operated by the United States government or a government of a foreign country and that is not engaged in commercial service.

"Pure captive insurer" means any insurer transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of its parent, subsidiary companies of its parent, and associated and affiliated companies.

"Receiving facility" means a facility, vessel or operation that loads or off-loads solid wastes or regulated medical wastes transported upon the navigable waters of the Commonwealth by a commercial transporter.

"Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not

include (i) materials regulated as hazardous wastes under the Virginia Hazardous Waste Management Regulations (9VAC20-60); (ii) scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse and source-separated recyclables; (iii) solid or dissolved material in domestic sewage; (iv) solid or dissolved material in irrigation return flows or in industrial discharges that are sources subject to a permit from the State Water Control Board; or (v) source, special nuclear, or byproduct material as defined by the Federal Atomic Energy Act of 1954, as amended.

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

"Subsidiary company" means any corporation of which 50% or more of the outstanding voting securities are directly or indirectly owned, controlled, or held, with power to vote, by a parent or by a company that is a subsidiary of the parent.

"Surface water" means any water in the Commonwealth, except ground water as defined in § 62.1-255 of the Code of Virginia.

"Transport" or "transportation" means any movement of solid wastes or regulated medical wastes, and any packing, loading, unloading or storage incidental thereto.

"USC" means the U.S. Code.

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

"Waste deposit" or "deposit of waste" means any solid waste or regulated medical waste from a vessel or a receiving facility that is placed, discharged, spilled, dropped, or leaked into state waters or adjoining shorelines.

9VAC20-170-40. Relationship to other regulations.

A. The Solid Waste Management Regulations (9VAC20-81) prescribe requirements for the solid waste management facilities in general. While a facility utilized to receive solid wastes or regulated medical wastes transported, loaded, or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial transporter is a solid waste management facility, this chapter herein prescribes specific requirements, including siting, design/construction, operation, and permitting, for this type of facilities. If there is any overlapping requirement between these two regulations, whichever is more stringent shall apply.

B. The Regulated Medical Waste Management Regulations (~~9VAC20-120~~) (9VAC20-121) address special needs for regulated medical waste management. A facility utilized to receive regulated medical waste transported, loaded, or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial

transporter is a regulated medical waste facility and it must conform to any applicable sections of the Regulated Medical Waste Management Regulations adopted by the board. If there is any overlapping requirement between these two regulations, whichever is more stringent shall apply.

C. This chapter does not exempt any receiving facility from obtaining a Virginia Water Protection Permit as required by the Virginia Water Protection Permit Program Regulation (9VAC25-210), whenever it is applicable.

VA.R. Doc. No. R24-7628; Filed October 3, 2023, 2:00 p.m.

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Action Withdrawn

Title of Regulation: **11VAC10-60. Participants.**

Statutory Authority: § 59.1-369 of the Code of Virginia.

The Virginia Racing Commission has WITHDRAWN the regulatory action for **11VAC10-60, Participants**, which was published as a Notice of Intended Regulatory Action in [25:25 VA.R. 4372 August 17, 2009](#), then withdrawn in [26:25 VA.R. 2814 August 16, 2010](#). The purpose of the proposed action was to allow the Virginia Racing Commission to collect a higher fee for permits issued to the participants of horse racing. This action is being withdrawn because of the long amount of time that has elapsed since withdrawing the Notice of Intended Regulatory Action, and the commission is no longer pursuing this action.

Agency Contact: Kimberly Mackey, Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email kimberly.mackey@vrc.virginia.gov.

VA.R. Doc. No. R09-1942; Filed September 30, 2023, 5:49 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

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

Title of Regulation: **12VAC5-408. Certificate of Quality Assurance of Managed Care Health Insurance Plan Licensees (amending 12VAC5-408-170).**

Statutory Authority: §§ 32.1-12 and 32.1-137.3 of the Code of Virginia.

Effective Date: November 22, 2023.

Agency Contact: Rebekah Allen, Senior Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Henrico, VA 23233, telephone (804) 367-2157, or email rebekah.allen@vdh.virginia.gov.

Summary:

Pursuant to Chapters 376 and 377 of the 2023 Acts of Assembly, the amendments require carriers to establish protocols for processing new provider credentialing applications and to reimburse new provider applicants for health care services provided to covered persons during the period when their completed credentialing application is pending, including (i) carrier notification to the applicant when the application is received; (ii) approval or denial of the application within 60 days of receiving a completed application; (iii) adjudication and payment for claims for services rendered during the pending application period no later than 40 days after the new provider applicant is credentialed and contracted; and (iv) reimbursement at the in-network rate. These protocols and procedures only apply if a contractual relationship exists between the carrier and the new provider applicant or entity for whom the new provider applicant is employed or engaged, and, beginning January 1, 2024, a new provider applicant's application is deemed complete within 30 days of the carrier receiving the application, unless the carrier has provided notice that the application is not complete.

12VAC5-408-170. Provider credentialing and recredentialing.

A. The MCHIP licensee shall establish and maintain a comprehensive credentialing verification program to ensure its providers meet the minimum standards of professional licensure or certification. Written supporting documentation for providers who have completed their residency or fellowship requirements for their specialty area more than 12 months prior to the credentialing decision shall include:

1. Current valid license and history of licensure or certification;
2. Status of hospital privileges, if applicable;
3. Valid DEA certificate, if applicable;
4. Information from the National Practitioner Data Bank, as available;
5. Education and training, including post graduate training, if applicable;

Regulations

6. Specialty board certification status, if applicable;
7. Practice or work history covering at least the past five years; and
8. Current, adequate malpractice insurance and malpractice history of at least the past five years.

B. The MCHIP licensee may grant provisional credentialing for providers who have completed their residency or fellowship requirements for their specialty area within 12 months prior to the credentialing decision. Written supporting documentation necessary to provisionally credential a practitioner shall include:

1. Primary source verification of a current, valid license to practice prior to granting the provisional status;
2. Written confirmation of the past five years of malpractice claims or settlements, or both, from the malpractice carrier or the results of the National Practitioner Data Bank query prior to granting provisional status; and
3. A completed application and signed attestation.

C. Providers provisionally credentialed may remain so for 60 calendar days.

D. Policies for credentialing and recredentialing shall include:

1. Criteria used to credential and recredential;
2. Process used to make credentialing and recredentialing decisions;
3. Type of providers, including network providers, covered under the credentialing and recredentialing policies;
4. Process for notifying providers of information obtained that varies substantially from the information provided by the provider;
5. Process for receiving input from participating providers to make recommendations regarding the credentialing and recredentialing process; and
6. A requirement that the MCHIP licensee notify the applicant within 60 calendar days of receipt of an application if information is missing or if there are other deficiencies in the application. The MCHIP licensee shall complete the credentialing process within 90 calendar days of the receipt of all such information requested by the MCHIP licensee or, if information is not requested from the applicant, within 120 calendar days of receipt of an application. If there is a contractual relationship between the MCHIP licensee and the applicant or entity for whom the applicant is employed or engaged, the timeframes for notification that the application is not complete and completion of the credentialing process shall be in accordance with the protocols and procedures established by the MCHIP licensee under subsection O of this section. The department may impose administrative sanctions upon an MCHIP licensee

for failure to complete the credentialing process as provided ~~herein~~ in this section if ~~it~~ the department finds that such failure occurs with such frequency as to constitute a general business practice.

The policies shall be made available to participating providers and applicants upon written request.

E. A provider fully credentialed by an MCHIP licensee, who changes his place of employment or his nonMCHIP licensee employer, shall, if within 60 calendar days of such change and if practicing within the same specialty, continue to be credentialed by that MCHIP licensee upon receipt by the MCHIP licensee of the following:

1. The effective date of the change;
2. The new tax ID number and copy of W-9, as applicable;
3. The name of the new practice, contact person, address, and telephone and fax numbers; and
4. Other such information as may materially differ from the most recently completed credentialing application submitted by the provider to the MCHIP licensee.

This provision shall not apply if the provider's prior place of employment or employer had been delegated credentialing responsibility by the MCHIP licensee.

Nothing in this section shall be construed to require an MCHIP licensee to contract or recontract with a provider.

F. The providers shall be recredentialled at least every three years. Recredentialing documentation shall include:

1. Current valid license or certification;
2. Status of hospital privileges, if applicable;
3. Current valid DEA registration, if applicable;
4. Specialty board eligibility or certification status, if applicable;
5. Data from covered person complaints and the results of quality reviews, utilization management reviews, and covered persons satisfaction surveys, as applicable; and
6. Current, adequate malpractice insurance and history of malpractice claims and professional liability claims resulting in settlements or judgments.

G. All information obtained in the credentialing process shall be subject to review and correction of any erroneous information by the health care provider whose credentials are being reviewed. Nothing in the previous sentence shall require an MCHIP or MCHIP licensee to disclose to a provider, or any other person or party, information or documents: (i) that the MCHIP or the MCHIP licensee, itself, develops or causes to be developed as part of the MCHIP's credentialing process or (ii) that are privileged under applicable law. The department may

require the MCHIP licensee to provide a copy of its credentialing policies.

H. Providers shall be required by the MCHIP licensee to notify the MCHIP of any changes in the status of any credentialing criteria.

I. The MCHIP licensee shall not refuse to initially credential or refuse to reverify the credentials of a health care provider solely because the provider treats a substantial number of patients who require expensive or uncompensated care.

J. The MCHIP licensee shall have policies and procedures for altering the conditions of the provider's participation with the MCHIP licensee. The policies shall include actions to be taken to improve performance prior to termination and an appeals process for instances when the MCHIP licensee chooses to alter the condition of provider participation based on issues of quality of care or service, except in circumstances where a covered person's health has been jeopardized. Providers shall have complete and timely access to all data and information used by the licensee to identify or determine the need for altering the conditions of participation.

K. The MCHIP licensee shall retain the right to approve new providers and sites based on quality issues; and to terminate or suspend individual providers. Termination or suspension of individual providers for quality of care considerations shall be supported by documented records of noncompliance with specific MCHIP expectations and requirements for providers. The provider shall have a prescribed system of appeal of this decision available to ~~them~~ the provider as prescribed in the contract between the MCHIP or its delegated service entity and the provider.

L. Providers shall be informed of the appeals process. Profession specific providers actively participating in the MCHIP plan shall be included in reviewing appeals and making recommendations for action.

M. The MCHIP licensee shall notify appropriate authorities when a provider's application or contract is suspended or terminated because of quality deficiencies by the health care provider whose credentials are being reviewed.

N. There shall be an organized system to manage and protect the confidentiality of personnel files and records. Records and documents relating to a provider's credentialing application shall be retained for at least seven years.

O. The MCHIP licensee shall establish protocols and procedures for processing new provider credentialing applications and reimbursing new provider applicants, after being credentialed by the MCHIP licensee, for health care services provided to covered persons during the period in which the ~~new provider~~ approved applicant's completed credentialing application was pending. At a minimum, the protocols and procedures shall require the following:

~~1. Apply only if the new provider applicant's credentialing application is approved by the MCHIP licensee~~ If the MCHIP licensee accepts applications through an online credentialing system, the MCHIP licensee shall notify a new provider applicant through the online credentialing system that the provider has submitted and attested to the application as notice by the carrier that the application is received. If the MCHIP licensee does not accept applications through an online credentialing system, the MCHIP licensee shall within 10 days of receiving an application provide notification to the new provider applicant either by postal mail or electronic mail, as selected by the applicant, that the application was received;

~~2. Permit provider reimbursement for services rendered from the date the~~ Beginning January 1, 2024, a new provider applicant's completed credentialing application is received for consideration by deemed complete within 30 days of the MCHIP licensee receiving the application, unless the MCHIP licensee has provided notice that the application is not complete. Notice shall be provided by electronic mail unless the provider applicant has selected notification by postal mail;

~~3. Apply~~ The MCHIP licensee shall approve or deny a new provider applicant credentialing application within 60 days of receiving a completed application;

4. Claims submitted according to the MCHIP licensee's claims submittal policies for services rendered during the period of a pending application shall be adjudicated and paid no later than 40 days after the new provider applicant is credentialed and contracted;

~~5. The protocols and procedures shall apply~~ only if a contractual relationship exists between the MCHIP licensee and the new provider applicant or entity for whom the new provider applicant is employed or engaged; and

~~4. Require that any~~ 6. Any reimbursement shall be paid at the in-network rate that the new provider applicant would have received had the provider been, at the time the covered health care services were provided, a credentialed participating provider in the network for the applicable managed care plan.

P. Nothing in this section shall require:

1. Reimbursement of provider-rendered services that are not benefits or services covered by the MCHIP licensee's managed care plan.

2. An MCHIP licensee to pay reimbursement at the contracted in-network rate for any covered health care services provided by the new provider applicant if the new provider applicant's credentialing application is not approved or the MCHIP licensee is otherwise not willing to contract with the new provider applicant.

Regulations

Q. Payments made or retroactive denials of payments made under this section shall be governed by § 38.2-3407.15 of the Code of Virginia.

R. If a payment is made by the MCHIP licensee to a new provider applicant or any entity that employs or engages a new provider applicant under this section for a covered service, the patient shall only be responsible for any coinsurance, copayments, or deductibles permitted under the insurance contract with the MCHIP licensee or participating provider agreement with the provider.

S. A new provider applicant, in order to submit claims to the MCHIP licensee pursuant to this section, shall provide written or electronic notice to covered persons in advance of treatment that:

1. The provider has submitted a credentialing application to the MCHIP licensee of the covered person; and
2. The MCHIP licensee is in the process of obtaining and verifying the written documentation from the new provider applicant pursuant to subsection A of this section.

The written or electronic notice shall conform to the requirements in § 38.2-3407.10:1 G of the Code of Virginia.

V.A.R. Doc. No. R24-7505; Filed September 28, 2023, 6:15 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

Titles of Regulations: 12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-30, 12VAC30-50-70, 12VAC30-50-170; adding 12VAC30-50-132).

12VAC30-80. Methods and Standards for Establishing Payment Rate; Other Types of Care (amending 12VAC30-80-30).

Statutory Authority: § 32.1-325 of the Code of Virginia, 42 USC § 1396 et seq.

Effective Dates: October 6, 2023, through April 5, 2025.

Agency Contact: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, email meredith.lee@dmas.virginia.gov.

Preamble:

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

Pursuant to Items MM(1) and MM(2) of Chapter 1 of the 2023 Acts of Assembly, Special Session I, the amendments

(i) adjust medical necessity criteria for Medicaid-funded private duty nursing services, including changes to services covered, provider qualifications, medical necessity criteria, and rates and rate methodologies for private duty nursing; and (ii) clarify that private duty nursing services are not covered unless an individual receives services under an Early and Periodic Screening, Diagnosis, and Treatment Services or a § 1915(c) Waiver.

12VAC30-50-30. Services not provided to the categorically needy.

The following services and devices are not provided to the categorically needy:

1. Chiropractor services.
2. Private duty nursing services unless an individual receives services under an Early and Periodic Screening, Diagnosis, and Treatment Services or a § 1915(c) Waiver.
3. Dentures.
4. Other diagnostic and preventive services other than those provided elsewhere in this plan: diagnostic services (12VAC30-50-95).
5. (Reserved.)
6. Special tuberculosis related services under § 1902(z)(2)(F) of the Social Security Act (the Act).
7. Respiratory care services (in accordance with § 1920(e)(9)(A) through (C) of the Act).
8. Ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider (in accordance with § 1920 of the Act).
9. Any other medical care and any type of remedial care recognized under state law specified by the U.S. Secretary of Health and Human Services: personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

12VAC30-50-70. Services or devices not provided to the medically needy.

1. Chiropractor services.
2. Private duty nursing services unless an individual receives services under an Early and Periodic Screening, Diagnosis, and Treatment Services or a § 1915(c) Waiver.
3. Dentures.
4. Diagnostic or preventive services other than those provided elsewhere in the State Plan.
5. Inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals 65 years of age or older in institutions for mental diseases.

6. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined in accordance with § 1905(a)(4)(A) of the Social Security Act (the Act), to be in need of such care in a public institution, or a distinct part thereof, for persons with intellectual or developmental disability or related conditions.

7. (Reserved.)

8. Special tuberculosis services under § 1902(z)(2)(F) of the Act.

9. Respiratory care services (in accordance with § 1920(e)(9)(A) through (C) of the Act).

10. Ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider (in accordance with § 1920 of the Act).

11. Personal care services in a recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

12. Home and community care for functionally disabled elderly individuals, as defined, described and limited in 12VAC30-50-470.

13. Personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for intellectually or developmentally disabled persons, or institution for mental disease that are (i) authorized for the individual by a physician in accordance with a plan of treatment, (ii) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, and (iii) furnished in a home.

12VAC30-50-132. Private duty nursing services under early and periodic screening, diagnostic, and treatment.

A. This section applies to private duty nursing services for eligible individuals in fee-for-service programs. Individuals enrolled with managed care health plans receive private duty nursing services through their plans.

B. Service description. Private duty nursing services are individualized, medically necessary nursing care services consisting of skilled interventions, assessment, monitoring, and teaching of those who are or will be involved in nursing care for the individual. Private duty nursing services under the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit are provided when appropriate and medically necessary to correct and ameliorate a member's health conditions. As opposed to intermittent care provided under skilled nursing or home health nursing, private duty nursing is provided on a continuous or regularly scheduled basis according to medical necessity. Private duty nursing care provided can be based in the individual's home or any setting in which normal life activities take place. Congregate private

duty nursing is defined as private duty nursing provided to two or more individuals who require private duty nursing in the same setting. Services are provided in accordance with 42 CFR 440.80.

C. Service components. Private duty nursing service is the management and administration of the treatment and care of an individual by a licensed nurse, within the scope of practice as outlined by the Virginia Board of Nursing. Private duty nursing service is not limited to:

1. Assessments (e.g., respiratory assessment, patency of airway, vital signs, feeding assessment, seizure activity, hydration, level of consciousness, constant observation for comfort and pain management);

2. Administration of treatment related to technological dependence (e.g., ventilator, tracheotomy, bi-level positive airway pressure (BiPAP), intravenous (IV) administration of medications and fluids, feeding pumps, nasal stints, central lines);

3. Monitoring and maintaining parameters or machinery (e.g., oximetry, blood pressure, lab draws, end tidal CO₂s, ventilator and tube feeding pumps);

4. Interventions (e.g., medications, suctioning, IVs, hyperalimentation, enteral feeds, ostomy care, tracheostomy care); and

5. Exclusions from Department of Medical Assistance Services (DMAS) coverage of private duty nursing services include the following:

a. Not custodial or personal care delivered for the purpose of helping with activities of daily living (ADLs), including dressing, feeding, bathing, or transferring from a bed to a chair, and that can safely and effectively be performed by trained nonmedical personnel;

b. Monitoring for medically-controlled disorders as part of "maintenance of care"; and

c. Respite services.

D. Provider qualifications.

1. Private duty nursing providers shall meet the following requirements:

a. Operate from a business office;

b. Disclose ownership, if requested; and

c. Attest to the ability to document and maintain individual case records in accordance with state and federal requirements.

2. Private duty nursing must be provided by a registered nurse (RN) or licensed practical nurse (LPN) employed by (or subcontracted with) and supervised by a private duty nursing provider enrolled with DMAS.

a. The RN private duty nurse must possess the following qualifications:

Regulations

(1) A license to practice in the Commonwealth of Virginia; and

(2) A satisfactory work history as evidenced by two satisfactory reference checks from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults or children, recorded in the nurse's personnel file. If the RN has worked for a single employer, one satisfactory reference from a prior job experience and one personal reference both with no evidence of abuse, neglect, or exploitation of an incapacitated or older adults or children is acceptable, and the RN private duty nurse shall submit to a criminal record check obtained through the Virginia State Police. If the individual receiving services is a minor, the RN must also submit to a search of the Virginia Department of Social Services (VDSS) Child Protective (CPS) Central Registry. The provider shall not hire any RN with findings of barrier crimes identified in § 32.1-162.9:1 of the Code of Virginia or founded complaints in the VDSS CPS Central Registry.

b. A licensed practical nurse (LPN) shall meet the following requirements:

(1) Be licensed to practice in the Commonwealth of Virginia;

(2) Have a satisfactory work history as evidenced by two satisfactory reference checks from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults or children, recorded in the nurse's personnel file. If the LPN has worked for a single employer, one satisfactory reference from a prior job experience and one personal reference both with no evidence of abuse, neglect, or exploitation of an incapacitated or older adult is acceptable; and

(3) Submit to a search of the VDSS CPS Central Registry if the individual receiving services is a minor child. The provider shall not hire any persons who have been convicted of barrier crimes as identified in § 32.1-162.9:1 the Code of Virginia or has a founded complaint confirmed by the VDSS CPS Central Registry.

3. The RN or LPN must have (i) a documented provider training program or (ii) at least six months of related clinical nursing experience meeting the needs of the individual to receive care. Regardless of whether a nurse has six months of experience or completes a provider training course, the provider agency shall be responsible for assuring all nurses who are assigned to an individual are competent in the care needs of that individual.

4. Nursing services must be provided under the supervision of a licensed, registered nurse (RN supervisor) in the Commonwealth.

a. RN supervisors shall meet the following requirements:

(1) Be verified as currently licensed to practice nursing in the Commonwealth;

(2) Have at least one year of verified related clinical nursing experience as an RN;

(3) Clinical experience may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, or nursing facility; and

(4) Have a satisfactory work history as evidenced by two satisfactory reference checks from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults or children, recorded in the nurse's personnel file. If the RN has worked for a single employer, one satisfactory reference from a prior job experience and one personal reference both with no evidence of abuse, neglect, or exploitation of an incapacitated or older adults or children is acceptable, and the RN supervisor shall submit to a criminal record check obtained through the Virginia State Police. If the individual receiving services is a minor, the RN supervisor must also submit to a search of the VDSS CPS Central Registry. The provider shall not hire any RN supervisor with findings of barrier crimes identified in § 32.1-162.9:1 of the Code of Virginia or founded complaints in the VDSS CPS Central Registry.

b. As part of direct supervision, the RN supervisor shall make, at a minimum, a visit every 30 days to ensure both quality and appropriateness of nursing services to assess the individual's and the individual's representative's satisfaction with the services being provided, to review the plan of care and to update and verify the most current physician signed orders are in the home. When a delay occurs in the RN supervisor's visits because the individual is unavailable, the reason for the delay shall be documented in the individual's record, and the visit shall occur as soon as the individual is available. Failure to meet this standard may result in a DMAS recovery of payments made. Additional supervisory visits may be required under the following circumstances: (i) at the provider's discretion; (ii) at the request of the individual when a change in the individual's condition has occurred; (iii) any time the health, safety, or welfare of the individual could be at risk; and (iv) at the request of the DMAS staff. The RN is responsible for documentation of the visit's date, time, and evaluation.

c. The RN supervisor shall:

(1) Use and foster a person centered planning team approach to nursing services;

(2) Ensure choice of services is made by the individual, legally authorized guardian, or responsible party if a minor;

(3) Ensure personal goals of the individual are respected;

(4) Conduct the initial evaluation visit to initiate EPSDT private duty nursing services in the primary residence;

(5) Regularly evaluate the individual's status and nursing needs and notify the primary care provider if the

individual no longer meets criteria for private duty nursing;

(6) Complete the Plan of Care and update as necessary for revisions;

(7) Ensure provision of those services requiring substantial and specialized nursing skill and that assigned nurses have the necessary licensure;

(8) Initiate appropriate preventive and rehabilitative nursing procedures;

(9) Perform an assessment, at least every 30 days (the monthly nursing assessment cannot be made by the nurse providing care in the home); RN Monthly Supervisory Visits shall be completed in the primary residence at least every other visit. Visits may be conducted at school every other visit if necessary;

(10) Coordinate private duty nursing services;

(11) Inform the physician and case manager as appropriate of changes in the individual's condition and needs;

(12) Educate the individual and family or caregiver in meeting nursing and related goals;

(13) Supervise and educate other personnel involved in the individual's care;

(14) Ensure that required documentation is in the individual's agency record;

(15) Ensure that all employees are aware of the requirements to report suspected abuse, neglect, or exploitation immediately to Adult Protective Services or Child Protective Services, as appropriate. A civil penalty may be imposed on mandated reporters who do not report suspected abuse, neglect, or exploitation to VDSS as required;

(16) Ensure services are provided in a manner that is in the best interest of the individual and does not endanger the individual's health, safety, or welfare;

(17) Recommend staff changes when needed;

(18) Report to DMAS or the DMAS contractor any unethical or incompetent practices that jeopardize public safety or cause a risk of harm to individuals, including household issues that may jeopardize the safety of the private duty nurse; and

(19) Ensure that all nurses and caregivers are aware that timesheets must be accurate with arrival and departure time of the nurse and that falsifying timesheets is Medicaid fraud.

d. Parents (natural, step-parent, adoptive, foster parent, or other legal guardian), spouses, siblings, grandparents, grandchildren, adult children, or any person living under the same roof with the individual shall not provide private duty nursing services for the purpose of Medicaid reimbursement for the individual.

E. Service limits. Private duty nursing services are limited to the hours of skilled nursing care and medically-necessary supervision as specified in the Plan of Care signed by the child's physician (per §§ 54.1-2957 and 54.1-2957.02 of the Code of Virginia, signature by a nurse practitioner is acceptable in certain circumstances) and limited to the number of hours approved by DMAS or the DMAS contractor through the DMAS service authorization form (DMAS-62). Authorization of the number of medically necessary hours is based on assessing an individual's medical and support needs related to respiratory function, cardiovascular access and medications, wound care, feeding, central nervous system function, assessments that require the skills of a medical professional, toileting, and any other additional medical or support needs that require the skills of a licensed clinician. These medical and support needs are encompassed in the DMAS-62, and the number of hours approved will be based on medical needs final score, as detailed in the DMAS-62. Individuals younger than 21 years of age qualifying under EPSDT shall receive the services described in excess of any State Plan limit, up to 24 hours per day, if services are determined to be medically necessary to correct, ameliorate or maintain the member's health condition and are prior authorized by the DMAS or the DMAS contractor.

12VAC30-50-170. Private duty nursing services.

Private duty nursing services are not provided unless an individual receives services under an Early and Periodic Screening, Diagnostic and Treatment Services or a § 1915(c) Waiver.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, 4th Floor, Richmond, Virginia 23219.

FORMS (12VAC30-50)

~~Virginia Uniform Assessment Instrument, UAI, Virginia Long-Term Care Council (1994)~~

[Virginia Uniform Assessment Instrument, UAI, Virginia Long-Term Care Council \(rev. 11/2018\)](#)

I.V. Therapy Implementation Form, DMAS-354 (eff. 6/1998)

Health Insurance Claim Form, Form HCFA-1500 (eff. 12/1990)

[Certificate of Medical Necessity-Durable Medical Equipment and Supplies, DMAS-352 \(rev. 7/2010\)](#)

~~Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-~~

Regulations

~~PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/2000)~~

[Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-PAS Waiver or DD Waiver, DMAS-95 Addendum \(eff. 8/2005\)](#)

~~DD Waiver Enrollment Request, DMAS 453 (eff. 1/2001)~~

~~DD Waiver Consumer Service Plan, DMAS 456 (eff. 1/2001)~~

~~DD Medicaid Waiver Level of Functioning Survey Summary Sheet, DMAS 458 (eff. 1/2001)~~

~~Documentation of Recipient Choice between Institutional Care or Home and Community Based Services (eff. 8/2000)~~

[Comprehensive Outpatient Rehab Facility Participation Agreement \(undated; filed 11/2015\)](#)

[Rehabilitation Hospital Participation Agreement \(undated; filed 11/2015\)](#)

[Medical Necessity Assessment and Private Duty Nursing Service Authorization Form \(DMAS 62\)](#)

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public). Except as otherwise noted in this section, state developed fee schedule rates are the same for both governmental and private individual practitioners. The state agency fee schedule is published on the Department of Medical Assistance Services (DMAS) website at <http://www.dmas.virginia.gov/#/searchcptcodes>.

1. Physicians' services. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public) except that emergency room services 99282-99284 with a principal diagnosis on the Preventable Emergency Room Diagnosis List shall be reimbursed the rate for 99281. The Preventable Emergency Room Diagnosis List shall be based on the list used for managed care organization clinical efficiency rate adjustments.

2. Dentists' services. Dental services, dental provider qualifications, and dental service limits are identified in 12VAC30-50-190. Dental services are paid based on procedure codes, which are listed in the agency's fee schedule. Except as otherwise noted, state-developed fee schedule rates are the same for both governmental and private individual practitioners.

3. Mental health services.

a. Professional services furnished by nonphysicians as described in 12VAC30-50-150. These services are reimbursed using current procedural technology (CPT)

codes. The agency's fee schedule rate is based on the methodology as described in subsection A of this section.

(1) Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists in subdivision A 1 of this section.

(2) Services provided by independently enrolled licensed clinical social workers, licensed professional counselors, licensed clinical nurse specialists-psychiatric, or licensed marriage and family therapists shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

b. Intensive in-home services are reimbursed on an hourly unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

c. Therapeutic day treatment services are reimbursed based on the following units of service: one unit equals two to 2.99 hours per day; two units equals three to 4.99 hours per day; three units equals five or more hours per day. No room and board is included in the rates for therapeutic day treatment. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

d. Therapeutic group home services (formerly called level A and level B group home services) shall be reimbursed based on a daily unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

e. Therapeutic day treatment or partial hospitalization services shall be reimbursed based on the following units of service: one unit equals two to three hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

f. Psychosocial rehabilitation services shall be reimbursed based on the following units of service: one unit equals two to 3.99 hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

g. Crisis intervention services shall be reimbursed on the following units of service: one unit equals two to 3.99 hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

h. Intensive community treatment services shall be reimbursed on an hourly unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

i. Crisis stabilization services shall be reimbursed on an hourly unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

j. Independent living and recovery services (previously called mental health skill building services) shall be reimbursed based on the following units of service: one unit equals one to 2.99 hours per day; two units equals three to 4.99 hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME) and supplies.

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

"DMERC" means the Durable Medical Equipment Regional Carrier rate as published by the Centers for Medicare and Medicaid Services at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSchd/DMEPOS-Fee-Schedule.html>.

"HCPCS" means the Healthcare Common Procedure Coding System, Medicare's National Level II Codes, HCPCS 2006 (Eighteenth edition), as published by Ingenix, as may be periodically updated.

a. Obtaining prior authorization shall not guarantee Medicaid reimbursement for DME.

b. The following shall be the reimbursement method used for DME services:

(1) If the DME item has a DMERC rate, the reimbursement rate shall be the DMERC rate minus 10%. For dates of service on or after July 1, 2014, DME items subject to the Medicare competitive bidding program shall be reimbursed the lower of:

(a) The current DMERC rate minus 10%; or

(b) The average of the Medicare competitive bid rates in Virginia markets.

(2) For DME items with no DMERC rate, the agency shall use the agency fee schedule amount. The reimbursement rates for DME and supplies shall be listed in the DMAS Medicaid Durable Medical Equipment (DME) and Supplies Listing and updated periodically. The agency fee schedule shall be available on the agency website at www.dmas.virginia.gov.

(3) If a DME item has no DMERC rate or agency fee schedule rate, the reimbursement rate shall be the manufacturer's net charge to the provider, less shipping and handling, plus 30%. The manufacturer's net charge to the provider shall be the cost to the provider minus all available discounts to the provider. Additional information specific to how DME providers, including manufacturers who are enrolled as providers, establish and document their costs for DME codes that do not have

established rates can be found in the relevant agency guidance document.

c. DMAS shall have the authority to amend the agency fee schedule as it deems appropriate and with notice to providers. DMAS shall have the authority to determine alternate pricing, based on agency research, for any code that does not have a rate.

d. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services or durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such

Regulations

bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital). The agency's rates for clinical laboratory services were set as of July 1, 2014, and are effective for services on or after that date.

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-ray services.

11. Optometry services.

12. Reserved.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90, except for services in ambulatory surgery clinics reimbursed under 12VAC30-80-35.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

c. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter.

d. Effective May 1, 2017, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 258% of Medicare rates.

17. Supplemental payments for services provided by physicians at Virginia freestanding children's hospitals.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS provides supplemental

payments to Virginia freestanding children's hospital physicians providing services at freestanding children's hospitals with greater than 50% Medicaid inpatient utilization in state fiscal year 2009 for furnished services provided on or after July 1, 2011. A freestanding children's hospital physician is a member of a practice group (i) organized by or under control of a qualifying Virginia freestanding children's hospital, or (ii) who has entered into contractual agreements for provision of physician services at the qualifying Virginia freestanding children's hospital and that is designated in writing by the Virginia freestanding children's hospital as a practice plan for the quarter for which the supplemental payment is made subject to DMAS approval. The freestanding children's hospital physicians also must have entered into contractual agreements with the practice plan for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 1, 2015, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 178% of Medicare rates as defined in the supplemental payment calculation for Type I physician services. Payments shall be made on the same schedule as Type I physicians.

18. Supplemental payments for services provided by physicians affiliated with Eastern Virginia Medical Center.

a. In addition to payments for physician services specified elsewhere in this chapter, the Department of Medical Assistance Services provides supplemental payments to physicians affiliated with Eastern Virginia Medical Center for furnished services provided on or after October 1, 2012. A physician affiliated with Eastern Virginia Medical Center is a physician who is employed by a publicly funded medical school that is a political subdivision of the Commonwealth of Virginia, who provides clinical services through the faculty practice plan affiliated with the publicly funded medical school, and who has entered into contractual arrangements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective November 1, 2018, the supplemental payment amount shall be the difference between the Medicaid payments otherwise made for physician services and 145% of the Medicare rates. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

c. Supplemental payments shall be made quarterly, no later than 90 days after the end of the quarter.

19. Supplemental payments for services provided by physicians at freestanding children's hospitals serving children in Planning District 8.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS shall make supplemental payments for physicians employed at a freestanding children's hospital serving children in Planning District 8 with more than 50% Medicaid inpatient utilization in fiscal year 2014. This applies to physician practices affiliated with Children's National Health System.

b. The supplemental payment amount for qualifying physician services shall be the difference between the Medicaid payments otherwise made and 178% of Medicare rates but no more than \$551,000 for all qualifying physicians. The methodology for determining allowable percent of Medicare rates is based on the Medicare equivalent of the average commercial rate described in this chapter.

c. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter. Any quarterly payment that would have been due prior to the approval date shall be made no later than 90 days after the approval date.

20. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in this chapter, DMAS provides supplemental payments to qualifying nonstate government-owned or government-operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist, or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or government-operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 20 d of this subsection and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 20 b (1) of this subsection for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision 20 b (2) of this subsection by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section will be made annually in a lump sum during the last quarter of the fiscal year.

d. To determine the aggregate upper payment limit referred to in subdivision 20 b (3) of this subsection, Medicaid payments to nonstate government-owned or government-operated clinics will be divided by the "additional factor" whose calculation is described in 12VAC30-80-190 B 2 in regard to the state agency fee schedule for Resource Based Relative Value Scale. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

21. Personal assistance services (PAS) or personal care services for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200 or covered under Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), and respite services covered under EPSDT. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the DMAS website at <http://www.dmas.virginia.gov>. The agency's rates, based upon one-hour increments, were set as of July 1, 2020, and shall be effective for services on and after that date.

22. Private duty nursing services covered under EPSDT are reimbursed based on an hourly unit of service in accordance with the state agency fee schedule. The fee schedule is the same for both governmental and private providers and was set as of July 1, 2016, and shall be effective for services provided on and after that date. The state agency fee schedule is published on the DMAS website at <https://www.dmas.virginia.gov/providers/procedure-fee-files-cpt-codes/>.

23. Supplemental payments to state-owned or state-operated clinics.

a. Effective for dates of service on or after July 1, 2015, DMAS shall make supplemental payments to qualifying state-owned or state-operated clinics for outpatient services provided to Medicaid patients on or after July 1, 2015. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist, or other medical professional acting within the scope of his license to an eligible individual.

b. The amount of the supplemental payment made to each qualifying state-owned or state-operated clinic is determined by calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 19 b of this subsection and the amount otherwise actually paid for the services by the Medicaid program.

c. Payments for furnished services made under this section shall be made annually in lump sum payments to each clinic.

d. To determine the upper payment limit for each clinic referred to in subdivision 19 b of this subsection, the state payment rate schedule shall be compared to the Medicare resource-based relative value scale nonfacility fee schedule per Current Procedural Terminology code for a base period of claims. The base period claims shall be extracted from the

Regulations

Medical Management Information System and exclude crossover claims.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility. As of July 1, 2019, payments for hospice services in a nursing facility are 100% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

C. Effective July 1, 2019, the telehealth originating site facility fee shall be increased to 100% of the Medicare rate and shall reflect changes annually based on changes in the Medicare rate. Federally qualified health centers and rural health centers are exempt from this reimbursement change.

VA.R. Doc. No. R22-6862; Filed October 5, 2023; 2:47 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Emergency Regulation

Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-110; adding 18VAC110-20-113).

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

Effective Dates: September 29, 2023, through March 28, 2025.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Preamble:

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

Pursuant to Chapter 628 of the 2022 Acts of Assembly, the amendments add a new section addressing pharmacy work environments, including to ensure (i) that the decisions of the pharmacist are not overridden by the pharmacy permit holder, including staffing decisions and the decision of whether pharmacy staff can safely provide vaccines at a given time; (ii) that pharmacy permit holders provide sufficient staffing levels to avoid interference with a pharmacist's ability to practice with reasonable competence and safety; (iii) that a pharmacist and

pharmacy personnel are provided with proper and functioning equipment; (iv) pharmacists and pharmacy staff are not burdened with external factors that may inhibit the ability to provide services to the public; (v) staff are properly trained to provide the services with which they are tasked; (vi) pharmacists are provided appropriate breaks while maintaining drug stock integrity and providing required consultation services to the public; (vii) pharmacists are provided adequate time to perform professional duties; and (viii) the existence of a reporting mechanism for staffing concerns.

18VAC110-20-110. Pharmacy permits generally.

A. A pharmacy permit shall not be issued to a pharmacist to be simultaneously in charge of more than two pharmacies.

B. Except in an emergency, a permit holder shall not require a pharmacist to work longer than 12 continuous hours in any work day and shall allow at least six hours of off-time between consecutive shifts. A pharmacist may, however, volunteer to work longer than 12 continuous hours. A pharmacist working longer than six continuous hours shall be allowed to take a 30-minute break. Breaks, including uninterrupted rest periods and meal breaks, shall be provided consistent with 18VAC110-20-113 B 5.

C. The PIC or the pharmacist on duty shall control all aspects of the practice of pharmacy. Any decision overriding such control of the PIC or other pharmacist on duty shall be deemed the practice of pharmacy and may be grounds for disciplinary action against the pharmacy permit.

D. A pharmacist shall not be eligible to serve as PIC until after having obtained a minimum of two years of experience practicing as a pharmacist in Virginia or another jurisdiction in the United States. The board may grant an exception to the minimum number of years of experience for good cause shown.

E. When the PIC ceases practice at a pharmacy or no longer wishes to be designated as PIC, ~~he~~ the pharmacist shall immediately return the pharmacy permit to the board indicating the effective date on which ~~he~~ the pharmacist ceased to be the PIC.

F. Although not required by law or regulation, an outgoing PIC shall have the opportunity to take a complete and accurate inventory of all Schedules II through V controlled substances on hand on the date ~~he~~ the pharmacist ceases to be the PIC, unless the owner submits written notice to the board showing good cause as to why this opportunity should not be allowed.

G. A PIC who is absent from practice for more than 30 consecutive days shall be deemed to no longer be the PIC. Pharmacists-in-charge having knowledge of upcoming absences for longer than 30 days shall be responsible for notifying the board and returning the permit. For unanticipated absences by the PIC, which exceed 15 days with no known

return date within the next 15 days, the owner shall immediately notify the board and shall obtain a new PIC.

H. An application for a permit designating the new PIC shall be filed with the required fee within 14 days of the original date of resignation or termination of the PIC on a form provided by the board. It shall be unlawful for a pharmacy to operate without a new permit past the 14-day deadline unless the board receives a request for an extension prior to the deadline. The executive director for the board may grant an extension for up to an additional 14 days for good cause shown.

I. Only one pharmacy permit shall be issued to conduct a pharmacy occupying the same designated prescription department space. A pharmacy shall not engage in any other activity requiring a license or permit from the board, such as manufacturing or wholesale-distributing, out of the same designated prescription department space.

J. Before any permit is issued, the applicant shall attest to compliance with all federal, state, and local laws and ordinances. A pharmacy permit shall not be issued to any person to operate from a private dwelling or residence after September 2, 2009.

18VAC110-20-113. Pharmacy working conditions.

A. A pharmacy permit holder shall protect the health, safety, and welfare of patients by consulting with the PIC or pharmacist on duty and other pharmacy staff to ensure patient care services are safely provided in compliance with applicable standards of patient care. A permit holder's decisions shall not override the control of the PIC or other pharmacist on duty regarding appropriate working environments for all pharmacy personnel necessary to protect the health, safety, and welfare of patients.

B. To provide a safe working environment in a pharmacy, a permit holder shall, at a minimum:

1. Ensure sufficient personnel are scheduled to work at all times in order to prevent fatigue, distraction, or other conditions that interfere with a pharmacist's ability to practice with reasonable competence and safety. Staffing levels shall not be solely based on prescription volume, but shall consider any other requirements of pharmacy staff during working hours;

2. Provide sufficient tools and equipment in good repair and minimize excessive distractions to support a safe workflow for a pharmacist to practice with reasonable competence and safety to address patient needs in a timely manner;

3. Avoid the introduction of external factors, such as productivity or production quotas or other programs, to the extent that they interfere with the pharmacist's ability to provide appropriate professional services to the public;

4. Ensure staff are sufficiently trained to safely and adequately perform their assigned duties, ensure staff

demonstrate competency, and ensure that pharmacy technician trainees work closely with pharmacists and pharmacy technicians with sufficient experience as determined by the PIC;

5. Provide appropriate opportunities for uninterrupted rest periods and meal breaks consistent with 18VAC110-20-110 and the following:

a. A pharmacy may close when a pharmacist is on break based on the professional judgment of the pharmacist on duty provided that the pharmacy has complied with the 14-day notice to the public pursuant to § 54.1-3434 of the Code of Virginia and 18VAC110-20-135;

b. If a pharmacy does not close while the pharmacist is on break, the pharmacist must ensure adequate security of drugs by taking a break within the prescription department or on the premises. The pharmacist on duty must determine whether pharmacy technicians or pharmacy interns may continue to perform duties and whether the pharmacist is able to provide adequate supervision; and

c. If the pharmacy remains open, only prescriptions verified by a pharmacist pursuant to 18VAC110-20-270 may be dispensed when the pharmacist is on break. An offer to counsel any person filling a new prescription must be offered pursuant to § 54.1-3319 of the Code of Virginia. Persons who request to speak to the pharmacist shall be told that the pharmacist is on break and that they may wait to speak with the pharmacist or provide a telephone number for the pharmacist to contact them upon return from break. Pharmacists returning from break shall immediately attempt to contact persons who requested counseling and document when such counseling is provided;

6. Provide adequate time for a pharmacist to complete professional duties and responsibilities, including:

a. Drug utilization review;

b. Immunization;

c. Counseling;

d. Verification of prescriptions;

e. Patient testing; and

f. All other duties required by Chapter 33 (§ 54.1-3300 et seq.) and Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia and this chapter; and

7. Ensure that pharmacy technicians shall never perform duties otherwise restricted to a pharmacist.

C. A pharmacy permit holder shall not override the control of the pharmacist on duty regarding all aspects of the practice of pharmacy, including a pharmacist's decision not to administer vaccines when one pharmacist is on duty and, in the pharmacist's professional judgment, vaccines cannot be administered safely.

Regulations

D. Staffing requests or concerns shall be communicated by the PIC or pharmacist on duty to the permit holder using a form developed by the board.

1. Executed staffing forms shall be provided to the immediate supervisor of the PIC or pharmacist on duty, with one copy maintained in the pharmacy for three years, and produced for inspection by the board.

2. The PIC or pharmacist on duty may report any staffing issues directly to the board if the PIC or pharmacist on duty believes the situation warrants immediate board review.

3. Under no circumstances shall a good faith report of staffing concerns by the PIC, pharmacist on duty, or notification of such issues by pharmacy personnel to the PIC or pharmacist on duty result in workplace discipline against the reporting staff member.

E. Permit holders shall review completed staffing reports and shall:

1. Respond to reporting staff member to acknowledge receipt of the staffing request or concern;

2. Resolve any issues listed in a timely manner to ensure a safe working environment for pharmacy staff and appropriate medication access for patients;

3. Document any corrective action taken, steps taken toward corrective action as of the time of inspection, or justification for inaction, which documentation shall be maintained on site or produced for inspection by the board within 48 hours of request; and

4. Communicate corrective action taken or justification for inaction to the PIC or reporting pharmacist on duty.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, 4th Floor, Richmond, Virginia 23219.

FORMS (18VAC110-20)

[Application for a Pharmacy Permit \(rev. 10/2020\)](#)

[Application for a Non-resident Pharmacy Registration \(rev. 10/2020\)](#)

[Application for a Non-Resident Wholesale Distributor Registration \(rev. 10/2020\)](#)

[Application for Registration as Nonresident Manufacturer \(rev. 10/2020\)](#)

[Application for a Non-Resident Third Party Logistics Provider Registration \(rev. 10/2020\)](#)

[Application for Registration as a Nonresident Warehouser \(rev. 10/2020\)](#)

[Application for a Non-resident Outsourcing Facility Registration \(rev. 10/2020\)](#)

[Application for an Outsourcing Facility Permit \(rev. 10/2020\)](#)

[Application for a Medical Equipment Supplier Permit \(rev. 10/2020\)](#)

[Application for a Permit as a Restricted Manufacturer \(rev. 10/2020\)](#)

[Application for a Permit as a Non-Restricted Manufacturer \(rev. 10/2020\)](#)

[Application for a License as a Wholesale Distributor \(rev. 10/2020\)](#)

[Application for a Permit as Warehouser \(rev. 10/2020\)](#)

[Application for a Permit as a Third-Party Logistics Provider \(rev. 10/2020\)](#)

[Application for Registration as a Non-resident Medical Equipment Supplier \(rev. 10/2020\)](#)

[Application for a Controlled Substances Registration Certificate \(rev. 10/2020\)](#)

[Closing of a Pharmacy \(rev. 5/2018\)](#)

[Application for Approval of an Innovative \(Pilot\) Program \(rev. 8/2023\)](#)

[Registration for a Pharmacy to be a Collection Site for Donated Drugs \(rev. 5/2018\)](#)

[Application for Approval of a Repackaging Training Program \(rev. 10/2020\)](#)

[Registration for a Facility to be an Authorized Collector for Drug Disposal \(rev. 5.2018\)](#)

[Application for Re-inspection of a Facility \(rev. 3/2023\)](#)

[Notification of Distribution Cessation due to Suspicious Orders \(rev. 5/2018\)](#)

[Staffing Requests or Concerns Form \(eff. 9/2023\)](#)

VA.R. Doc. No. R24-7342; Filed September 29, 2023, 8:04 a.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

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

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, 4th Floor, Richmond, Virginia 23219.

STATE BOARD OF HEALTH

Titles of Documents: [Radiation Safety Procedures for Dental Offices.](#)

[Radiation Safety Procedures for General Radiography.](#)

[Radiation Safety Procedures for Nonmedical Devices.](#)

[Radiation Safety Procedures for Veterinary Offices.](#)

Public Comment Deadline: November 22, 2023.

Effective Date: November 23, 2023.

Agency Contact: Cameron Rose, Deputy Director, Office of Radiological Health, Virginia Department of Health, 109 Governor Street, Room 733, Richmond, VA 23219, telephone (804) 864-7090, or email cameron.rose@vdh.virginia.gov.

BOARD OF PHARMACY

Title of Document: [Pharmacy Inspection Deficiency Monetary Penalty Guide.](#)

Public Comment Deadline: November 22, 2023.

Effective Date: November 23, 2023.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Title of Document: [Neighborhood Assistance Program Donor Fact Sheet.](#)

Public Comment Deadline: November 22, 2023.

Effective Date: November 23, 2023.

Agency Contact: Wanda Stevenson, Neighborhood Assistance Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, (804) 726-7924, or email wanda.stevenson@dss.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF ENERGY

Public Comment Opportunity - Study on the Economic and Environmental Impacts of Eliminating Waste Coal Piles in Southwest Virginia

Per Senate Joint Resolution 258 from the 2023 Session of the Virginia General Assembly, the Virginia Department of Energy is conducting a study on the economic and environmental impacts of eliminating waste coal piles in Southwest Virginia. The department will be examining various use case scenarios ranging from capping all existing waste coal piles in place to combusting all the material at the Virginia City Hybrid Energy Center or other approved facilities. Each scenario considered by the department shall contain an analysis of the direct and indirect economic and environmental benefits of that scenario.

The department will be taking public comments on the study and the issue of waste coal piles in Southwest Virginia through October 27, 2023. Commenters may submit comments at <https://townhall.virginia.gov/l/comments.cfm?GeneralNoticeid=2677>.

Public comment will also be accepted on October 2, 2023, at 6 p.m. at 139 Highland Drive, Room 115, Lebanon, VA 24266. The public meeting for the coal mine methane evaluation that Virginia Department of Energy is conducting pursuant to Chapter 495 of the 2023 Acts of Assembly will also be taking place at this event.

Contact Information Larry Corkey, Energy and Regulatory Program Manager, Virginia Department of Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3239, or email larry.corkey@energy.virginia.gov.

Public Comment Opportunity - Evaluating Policy Options to Encourage the Capture and Beneficial Use of Coal Mine Methane

Per Chapter 495 of the 2023 Acts of Assembly, the Virginia Department of Energy is evaluating policy options to encourage the capture and beneficial use of coal mine methane. The evaluation will consider the environmental benefits and economic development potential of the capture and use of coal mine methane. The evaluation will include an analysis of federal and state policies, including tax incentives, and programs that incentivize the capture and beneficial use of coal mine methane, impediments to coal mine methane qualifying for carbon offset markets, and the extent to which such policies may result in a net reduction in methane emissions.

The department will be taking public comments on the study and the issue of coal mine methane capture through October 27, 2023. Those interested may submit comments at <https://townhall.virginia.gov/l/comments.cfm?GeneralNoticeid=2678>.

Public comment will also be accepted in person on October 2, 2023, at 6 p.m. at 139 Highland Drive, Room 115, Lebanon, VA 24266. The public meeting on the waste coal pile study that Virginia Department of Energy is conducting pursuant to Senate Joint Resolution 258 will also be taking place at this event.

Contact Information Larry Corkey, Energy and Regulatory Program Manager, Virginia Department of Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3239, or email larry.corkey@energy.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Blue Rock Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Buckingham County

Blue Rock Solar LLC has provided the Department of Environmental Quality (DEQ) a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project (solar) located in southeastern Buckingham County and southwestern Cumberland County. The project name is Blue Rock Solar; the DEQ project number is RE0000298.

The project location is south of Stage Coach Road (Route 636) and east of South James Madison Highway (Route 15); the project is centered at Latitude 37.3742327, Longitude - 78.4501708. The proposed project will have a maximum generating capacity of 100 megawatts alternating current across approximately 1,127 acres. The project includes the utilization of approximately 237,000 photovoltaic solar modules affixed to a single-axis tracking system. The project developer is RWE Clean Energy.

Contact Information: Amber Foster, Small Renewable Energy Permit By Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 774-8474, or email amber.foster@deq.virginia.gov.

Proposed Enforcement Action for HR Bristol LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for HR Bristol LLC for violations of the State Water Control Law and regulations at 500 Gate City Highway, Bristol, Virginia. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. The DEQ contact will accept comments by email or postal mail from October 23, 2023, through November 22, 2023.

Contact Information: Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Public Meeting and Opportunity for Public Comment for a Cleanup Plan for Moores and Mill Creeks in Rockbridge County, Virginia

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, for Moores and Mill Creeks in Rockbridge County, Virginia. These streams are listed as impaired since monitoring data indicates that the waters do not meet Virginia's water quality standards for aquatic life (benthics). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia 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.

A cleanup plan has been completed for the Moores and Mill Creek watersheds that identifies corrective actions needed to improve water quality and discusses the associated costs and environmental benefits of the actions. A summary of the plan will be presented at the meeting. Citizens are invited to provide comment on the plan and will learn how they can be part of implementing the plan to improve water quality in the watershed. Community engagement meetings to assist in development of this cleanup plan were convened on November 17, 2022, and May 31, 2023.

Cleanup plan location: The cleanup plan addresses the following impaired stream segments: Moores Creek is located in northern Rockbridge County, with its headwaters just below the Augusta and Rockbridge County line. The impaired segment begins at the headwaters in Raphine and continues nine miles south to the confluence with South River. Mill Creek is located in Rockbridge County above the City of Lexington. The impaired segment is 9.14 miles in length. It begins at the headwaters of the stream south of Fairfield and continues to the confluence with the Maury River above Lexington.

Public meeting: 150 South Main Street, Rockbridge County Administration Building, Board of Supervisors Meeting Room in Lexington, Virginia, on October 30, 2023, at 5:30 p.m. In the event of inclement weather, the meeting will be held on November 3, 2023, at the same time and location.

Public comment period: October 30, 2023, to November 29, 2023.

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

Contact agency staff listed for public comments, document requests, and additional information. The public may review

the cleanup plan at <https://www.deq.virginia.gov/our-programs/water-quality/implementation/implementation-plans-under-development>.

Contact Information: Nesha McRae, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 217-7173, or email nesha.mcrae@deq.virginia.gov.

BOARD OF PHARMACY

Rescission of Request for Applications for Pharmaceutical Processors - Health Service Area I

On September 26, 2023, the Board of Pharmacy voted to rescind RFA No. PHR-2020-01 entitled Pharmaceutical Processors-Health Service Area I. This RFA was originally issued on September 25, 2020. The RFA for Health Service Area I will be conducted by the Virginia Cannabis Control Authority, which assumes control of the Medical Cannabis Program on January 1, 2024.

Contact Information: Caroline Juran, RPh, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North Ninth Street, 4th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

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

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.**

Publication: 40:4 VA.R. 187 October 9, 2023.

Correction to Final Regulation:

Page 187, 9VAC25-31-805 A, line 10, after "substances" delete "(PFAS)"

VA.R. Doc. No. R24-7567; Filed October 11, 2023, 9:43 a.m.