VIRGINIA REGISTER OF REGULATIONS

VOL. 40 ISS. 26 PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION August 12, 2024

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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 inconsequen111tial 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.

PUBLICATION SCHEDULE AND DEADLINES

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

August 2024 through August 2025

Volume: Issue	Material Submitted By Noon*	Will Be Published On
40:26	July 24, 2024	August 12, 2024
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41:26	July 23, 2025	August 11, 2025
42:1	August 6, 2025	August 25, 2025

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PSYCHOLOGY

Initial Agency Notice

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology.**

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Name of Petitioner: Tisha N. Juggins.

Nature of Petitioner's Request: The petitioner requests that the Board of Psychology amend 18VAC125-20-80 to eliminate the requirement to pass the national examination within two years immediately preceding application for licensure and to place the score of 400 in regulation as a passing score.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on August 12, 2024. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which opens August 12, 2024, and closes September 11, 2024. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. That meeting is currently scheduled for December 3, 2024. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: September 11, 2024.

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

VA.R. Doc. No. PFR24-42; Filed July 18, 2024, 9:59 a.m.

BOARD OF SOCIAL WORK

Agency Decision

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

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

Name of Petitioner: Sophia Stephenson.

Nature of Petitioner's Request: The petitioner requests that the Board of Social Work amend 18VAC140-20-50 B to permit licensed professional counselors to serve as supervisors for supervised post-master-degree clinical experience.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on July 12, 2024, the board voted to take no action on the petition. The board did not feel the requested changes would be necessary or beneficial due to differing levels of supervision between the two disciplines, existing availability of licensed clinical social work supervisors, changes in technology that allow virtual supervision with greater ease, and the advisability of maintaining consistency with the requirements of the Council on Social Work Education.

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

VA.R. Doc. No. PFR24-41; Filed January 13, 2024, 4:06 p.m.

TITLE 3. ALCOHOLIC BEVERAGE AND CANNABIS CONTROL

VIRGINIA ALCHOLIC BEVERAGE CONTROL AUTHORITY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Alcoholic Beverage Control Authority conducted a periodic review and a small business impact review of **3VAC5-10, Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers; 3VAC5-30, Tied-House;** and **3VAC5-60, Manufacturers and Wholesalers Operations** and determined that these regulations should be amended. The proposed regulatory actions amending 3VAC5-10, 3VAC5-30, and 3VAC5-60, which are published in this issue of the Virginia Register, serve as the reports of findings.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services conducted a periodic review and a small business impact review of **12VAC35-260, Certified Recovery Residences**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated July 22, 2024, to support this decision.

12VAC35-260 was created through a fast-track action in March 2020 in compliance with Chapter 220 of the 2019 Acts of Assembly, which added a new section numbered § 37.2-431.1 in the Code of Virginia, creating an avenue for the certification of recovery residences through the Department of Behavioral Health and Developmental Services (DBHDS). That original regulatory action defined "recovery residences" and, as allowed by the enabling legislation, created a voluntary certification for residences that meet standards of credentialing entities specified by DBHDS. The two credentialing entities specified in the regulation are nationally recommended organizations that reportedly follow best practice standards for recovery.

No comments were received that warranted amendments at this time. Certain specific changes mentioned in the comments would require further action by the General Assembly. However, the board initiated a responding action to Chapter 30 of the 2024 Acts of Assembly through promulgation of an action on July 17, 2024, which requires any certified recovery residence in Virginia to report any death or serious injury that occurs in the recovery residence to DBHDS.

There is a continued need for the regulation due to the mandate from the General Assembly.

This regulation was developed through a stakeholder workgroup over a year and with broad community feedback that called for greater oversight for recovery housing in Virginia. It was kept very brief in order to be a basic structure without changing the peer-run model. The model for recovery residences is to be peer-run and unlicensed and to provide no treatment on site. DBHDS licensed facilities fall under very extensive service regulations for the health, safety, and welfare of individuals receiving services. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. This is the first periodic review of the regulation since it became effective. There have been no significant changes to technology, economic conditions, or other factors in the area affected by the regulation.

Contact Information: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-820, General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia**. The purpose of the proposed action is to amend and reissue the existing general permit, which expires on December 31, 2026. This general permit regulation governs facilities holding individual VPDES permits that discharge or propose to discharge total nitrogen, total phosphorus, or both to the Chesapeake Bay or its tributaries. The facilities are authorized to discharge to surface waters and exchange credits for total nitrogen, total phosphorus, or both. Nitrogen and phosphorus are both nutrients. The nutrient load limits, monitoring requirements, and special conditions of the general permit will be reviewed to ensure that the permit is still protective of water quality. Amendments may be identified following the submittal of public comments on this Notice of Intended Regulatory Action and by the technical advisory committee during deliberations of this general permit regulation.

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

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

Public Comment Deadline: September 11, 2024.

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

VA.R. Doc. No. R24-8010; Filed July 24, 2024, 10:00 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

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 Dentistry intends to consider amending **18VAC60-21, Regulations Governing the Practice of Dentistry,** and **18VAC60-25, Regulations Governing the Practice of Dental Hygiene**. The purpose of the proposed action is to respond to a petition for rulemaking. The board is proposing to amend 18VAC60-21-240 and 18VAC60-25-210 to (i) expand the type of refresher courses reinstatement applicants may take and (ii) clarify that the number of course hours required and the amount of didactic training and clinical training required will depend on the number of years a dentist or dental hygienist has been out of practice.

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

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

Public Comment Deadline: September 11, 2024.

Agency Contact: Jamie Sacksteder, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4581, FAX (804) 698-4266, or email jamie.sacksteder@dhp.virginia.gov.

VA.R. Doc. No. R22-20; Filed July 12, 2024, 3:37 p.m.

BOARD OF VETERINARY MEDICINE

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 Veterinary Medicine intends to consider amending **18VAC150-20, Regulations Governing the Practice of Veterinary Medicine**. The purpose of the proposed action is to update the regulation based on findings from a periodic review conducted of the regulation. Amendments being considered include (i) updating definitions; (ii) loosening license posting requirements; (iii) removing outdated and redundant continuing education requirements; (iv) reorganizing inactive license requirements and reactivation requirements; (v) expanding availability of licensure by endorsement for all license types and removing redundant and unnecessary provisions; (vi) simplifying faculty licensure and intern or resident licensure; (vii) revising unprofessional conduct provisions that conflict with law; (viii) coordinating requirements for veterinary establishment registration; (ix) revising and clarifying requirements for prescribing opioids; (x) improving drug safety and security of establishments; (xi) removing information redundant to statute regarding sale or closure of veterinary practice; and (xii) revising and simplifying requirements regarding equine dental technicians.

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

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

Public Comment Deadline: September 11, 2024.

Agency Contact: Kelli Moss, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4133, FAX (804) 767-1011, or email kelli.moss@dhp.virginia.gov.

VA.R. Doc. No. R22-7113; Filed July 12, 2024, 4:07 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-73, Standards for Licensed Assisted Living Facilities**. The purpose of the proposed action is to conform the regulation to Chapter 580 of the 2023 Acts of Assembly. The amendments being considered require every assisted living facility (ALF) to maintain a minimum amount of liability insurance, as determined by the board on the basis of the number of residents for which the ALF is licensed, and provide notice of such insurance, upon request, to any resident or prospective resident.

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

Statutory Authority: §§ 63.2-217, 63.2-1732, 63.2-1802, 63.2-1805, and 63.2-1808 of the Code of Virginia.

Public Comment Deadline: September 11, 2024.

Agency Contact: Kristopher Drew, Licensing Consultant, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (434) 443-0754, FAX (804) 726-7132, or email kristopher.drew@dss.virginia.gov.

VA.R. Doc. No. R25-7763; Filed July 24, 2024, 12:45 p.m.

TITLE 3. ALCOHOLIC BEVERAGE AND CANNABIS CONTROL

VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Proposed Regulation

Title of Regulation: **3VAC5-10. Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers (amending 3VAC5-10-10 through 3VAC5-10-130, 3VAC5-10-150 through 3VAC5-10-450; adding 3VAC5-10-490; repealing 3VAC5-10-340).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 11, 2024.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Basis: Section 4.1-103 of the Code of Virginia provides that the Virginia Alcoholic Beverage Control Authority Board of Directors has the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia. Section 4.1-111 of the Code of Virginia provides the board with the authority to adopt reasonable regulations that it deems necessary to carry out the provisions of Title 4.1 of the Code of Virginia and to amend or repeal such regulations.

Purpose: This regulation is essential to protect the health, safety, and welfare of citizens because the regulation provides guidance for administrative proceedings at the Virginia Alcoholic Beverage Control Authority (authority) that is impactful to the regulated licensees and the communities where licensees operate. This regulation provides guidance for how administrative proceedings will be conducted and provides essential information necessary to interested parties about how to exercise due process rights.

Substance: The proposed amendments (i) specify that only an interested party or the interested party's legal counsel can exercise the right of cross-examination; (ii) extend the timeframe in which an offer in compromise may be submitted; (iii) align the regulation with current procedures, authority, and terminology; and (iv) eliminate obsolete text.

Issues: The primary advantage to the public is that these changes bring additional clarity to the authority's procedural rules for hearings before the authority. The amendments also include information regarding mediations that is not currently included in the regulation. There are no disadvantages to the public. The advantages to the Commonwealth include clarifying the authority's procedural rules for hearings before the authority. There are no disadvantages to the Commonwealth. The same advantages that are outlined for the public and the Commonwealth represent the pertinent matters of interest to the regulated community, government officials, and the public.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Virginia Alcoholic Beverage Control Authority Board of Directors (board) proposes amendments to the regulation to (i) specify that only interested parties or their legal counsel can exercise the right of cross-examination; (ii) extend the timeframe in which an offer in compromise may be submitted; (iii) align the regulation with current procedures, authority, and terminology; and (iv) eliminate obsolete text.

Background. Cross-examination: The current regulation refers to counsel, interested parties, and other representatives of such parties exercising the right of cross-examination. Until recently, non-attorney consultants have at times also done cross-examination.[2] On September 29, 2023, the Supreme Court of Virginia approved the Virginia State Bar Unauthorized Practice of Law Opinion 219 (UPL Opinion 219).[3] UPL Opinion 219 states in part that non-lawyer members of a lay consulting firm may not represent licensees and licensee applicants in hearings before the board. Thus, the board proposes to amend the regulation to specify that only interested parties or their legal counsel can exercise the right of cross-examination.

Offers in Compromise: The current regulation states that "Offers in compromise may be submitted anytime following notice of a disciplinary proceeding and before the conclusion of an appeal hearing." The board proposes to amend that wording to "Offers in compromise may be submitted anytime following notice of a disciplinary proceeding and before the authority issues a final decision in an appeal." The current regulation also states that "Any such offer may not be accepted at the informal conference and no offer shall be submitted after the conclusion of the appeal hearing." The board proposes to eliminate that sentence.

Align with Current Procedures and Authority: The current regulation states that hearings may be conducted in person or by telephone. The board proposes to add that hearings may also be conducted virtually. According to the Virginia Alcoholic Beverage Control Authority (ABC) staff, hearings are already conducted virtually when all parties agree to that method. The board proposes to expand the list of items within the authority of administrative law judges by adding "Conduct mediation

between interested parties" and "Require the designation of an interested person to act as a representative for proceedings involving groups of individuals present for the same purpose." Administrative law judges were given the authority for mediation by Chapter 698 of the 2017 Acts of Assembly.[4] Another section of the regulation already allows the judges to require that an interested person be designated to act as a representative for proceedings involving groups of individuals present for the same purpose via text.[5]

Estimated Benefits and Costs. Since the approval of UPL Opinion 219, the administrative law judges have not permitted non-attorney consultants to conduct cross-examination.[7] Thus, amending the regulation to specify that only interested parties or their legal counsel can exercise the right of cross-examination would not affect what occurs in practice, but it would improve clarity and reduce the possibility that readers of the regulation misunderstand what can occur in practice. Expanding the timeframe within which offers in compromise can be submitted and accepted is beneficial in that it increases the likelihood that a compromise suitable to all parties can be reached. The proposed amendments to reflect current procedures, authority, and terminology are beneficial in that the regulation would better reflect what occurs and can occur in practice.

Businesses and Other Entities Affected. The proposed amendments potentially affect ABC's approximate 20,892 licensees[7] who manufacture, distribute, or sell and serve alcoholic beverages in the Commonwealth and other interested parties. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[8] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[9] None of the proposed amendments increase cost or reduce benefit. Thus, no adverse impact is indicated.

Small Businesses[10] Affected.[11] The proposed amendments do not appear to adversely affect small businesses.

Localities[12] Affected.[13] The proposed amendments neither disproportionally affect any particular localities, nor affect costs for local governments.

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

Effects on the Use and Value of Private Property. The proposed amendments do not substantively affect the use and value of private property. The proposed amendments do not affect real estate development costs.

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

[2] Source: Virginia Alcoholic Beverage Control Authority.

[3] See https://vsb.org/common/Uploaded files/UPLs/219.pdf.

[4] See https://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0698.

[5] Specifically, 3VAC5-10-90 C.

[6] Source: ABC.

[7] Data Source: ABC.

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

[9] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

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

[12] "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[13] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Virginia Alcoholic Beverage Control Authority concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) specify that only an interested party or the interested party's legal counsel can exercise the right of cross-examination; (ii) extend the timeframe in which an offer in compromise may be submitted; (iii) align the regulation with current procedures, authority, and terminology; and (iv) eliminate obsolete text.

CHAPTER 10
PROCEDURAL RULES FOR THE CONDUCT OF HEARINGS ~~BEFORE~~ BEFORE THE ~~BOARD~~ VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY AND

ITS ~~HEARING OFFICERS~~ ADMINISTRATIVE LAW JUDGES

Part I

Hearings ~~Before Hearing Officers~~ before Administrative Law Judges

3VAC5-10-10. Appearance.

A. Any interested party who would be aggrieved by a decision of the ~~board~~ Virginia Alcoholic Beverage Control Authority upon any application or in a disciplinary proceeding may appear and be heard in person, or by duly authorized representative, and produce under oath evidence relevant and material to the matters in issue. Upon due notice a hearing may be conducted by telephone as provided in Part IV (3VAC5-10-410 through 3VAC5-10-470) of this chapter. Hearings may also be conducted virtually.

B. The interested parties will be expected to appear or be represented at the place and on the date of hearing or on the dates to which the hearing may be continued.

C. If an interested party fails to appear at a hearing, the ~~hearing officer~~ administrative law judge may proceed in ~~his~~ the interested party's absence and render a decision.

3VAC5-10-20. Argument.

Oral ~~or~~ argument, written argument, or both~~,~~ may be submitted to and limited by the ~~hearing officer~~ administrative law judge. Oral argument is to be included in the stenographic report of the hearing.

3VAC5-10-30. Attorneys; representation.

Any individual, partnership, association, or corporation ~~who~~ that is a licensee or applicant for any license or any interested party shall have the right to be represented by counsel at any ~~board~~ Virginia Alcoholic Beverage Control Authority hearing for which ~~he~~ the licensee or applicant has received notice. The licensee, applicant, or interested party shall not be required to be represented by counsel during such hearing. Any officer or director of a corporation may examine, cross-examine, and question witnesses, present evidence on behalf of the corporation, draw conclusions, and make arguments before the ~~hearing officers~~ administrative law judges.

3VAC5-10-40. Communications.

Communications regarding hearings before ~~hearing officers~~ administrative law judges upon licenses and applications for licenses should be addressed to the Chief ~~Hearing Officer~~ Clerk, Hearings ~~and,~~ Appeals, and Judicial Services Division.

3VAC5-10-50. Complaints.

The ~~board~~ Virginia Alcoholic Beverage Control Authority, in its discretion and for good cause shown, may arrange a hearing upon the complaint of any aggrieved ~~party(s)~~ party against the continuation of a license. The complaint shall be in writing directed to the ~~Director,~~ Chief of the Bureau of Law Enforcement ~~Operations~~, setting forth the name and post office address of the ~~person(s)~~ person against whom the complaint is filed, together with a concise statement of all the facts necessary to an understanding of the grievance and a statement of the relief desired.

3VAC5-10-60. Continuances.

Motions to continue a hearing will be granted as in actions at law. Requests for continuances should be addressed to the Chief ~~Hearing Officer~~ Administrative Law Judge, Hearings ~~and,~~ Appeals, and Judicial Services Division~~,~~ or the ~~hearing officer~~ administrative law judge who will preside over the hearing.

3VAC5-10-70. Decisions.

A. Initial decisions. The decision of the ~~hearing officer~~ administrative law judge shall be deemed the initial decision, shall be a part of the record, and shall include:

1. A statement of the ~~hearing officer's~~ administrative law judge's findings of fact and conclusions, as well as the reasons or bases ~~therefor~~ for the findings, upon all the material issues of fact, law, or discretion presented on the record; and

2. The appropriate rule, order, sanction, relief, or denial thereof as to each such issue.

B. Summary decisions. At the conclusion of a hearing, the ~~hearing officer~~ administrative law judge, in ~~his~~ the administrative law judge's discretion, may announce the initial decision to the interested parties.

C. Notice. At the conclusion of any hearing, the ~~hearing officer~~ administrative law judge shall advise interested parties that the initial decision will be reduced to writing and the notice of such decision, along with notice of the right to appeal to the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority), will be mailed to ~~them~~ the interested party or ~~their~~ the interested party's representative and filed with the ~~board~~ authority in due course. (See 3VAC5-10-240 for Appeals).

D. Prompt filing. The initial decision shall be reduced to writing~~,~~; mailed to interested parties at the address on record with the ~~board~~ authority by certified mail, return receipt requested, and by regular mail~~,~~; and filed with the ~~board~~ authority as promptly as possible after the conclusion of the hearing or the expiration of the time allowed for the receipt of additional evidence.

E. Request for early or immediate decision. Where the initial decision is deemed to be acceptable, an interested party may file, either orally before the ~~hearing officer~~ administrative law judge or in writing, a waiver of ~~his~~ the interested party's right of appeal to the ~~board~~ authority and request early or immediate implementation of the initial decision. The ~~board~~ authority or ~~hearing officer~~ administrative law judge may grant the request for early or immediate implementation of the decision by causing issuance or surrender of the license and prompt entry of the appropriate order.

F. Timely review. The ~~board~~ authority shall review the initial decision and may render a proposed decision, which may adopt, modify, or reject the initial decision unless immediate implementation is ordered. In any event, the ~~board~~ authority

shall issue notice of any proposed decision, along with notice of right to appeal, within the time provided for appeals as stated in 3VAC5-10-240.

3VAC5-10-80. Docket.

Cases will be placed upon the docket in the order in which they mature except that, for good cause shown or for reasons appearing to the ~~board~~ Virginia Alcoholic Beverage Control Authority or to the ~~chief hearing officer~~ chief administrative law judge, the order may be varied.

3VAC5-10-90. Evidence.

A. Generally. All relevant and material evidence shall be received, except that:

1. The rules relating to privileged communications and privileged topics shall be observed; and

2. Secondary evidence of the contents of a document shall be received only if the original is not readily available. In deciding whether a document is readily available, the ~~hearing officer~~ administrative law judge shall balance the importance of the evidence against the difficulty of obtaining it, and the more important the evidence, the more effort should be made to have the original document produced.

B. Cross-examination. Subject to the provisions of subsection A of this section, any interested party shall have the right to cross-examine adverse witnesses and any agent or subordinate of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) whose report is in evidence and to submit rebuttal evidence, except that:

1. Where the interested party is represented by counsel, only counsel shall exercise the right of cross-examination;

2. Where there is more than one interested party, only counsel or ~~other representatives of such parties~~ the other interested parties shall exercise the right of cross-examination; and

3. Where there is more than one group of interested parties present for the same purpose, only counsel or ~~other representative of such groups~~ the interested party designated to represent each group shall exercise the right of cross-examination. If the ~~hearing officer~~ administrative law judge deems it necessary, in order to expedite the proceedings, a merger of such groups shall be arranged.

C. Cumulative testimony. The introduction of ~~evidence which is~~ cumulative, corroborative, or collateral evidence shall be avoided. The ~~hearing officer~~ administrative law judge may limit the testimony of any witness ~~which~~ that is judged to be cumulative, corroborative, or collateral; however, the interested party offering such testimony may make a short avowal of the testimony ~~which~~ that would be given and, if the witness asserts that such avowal is true, this avowal shall be made a part of the stenographic report.

D. Subpoenas, depositions, and request for admissions. Subpoenas, depositions de bene esse, and requests for admissions may be taken, directed, and issued in accordance with ~~§§~~ § 2.2-4022 and subdivision 10 of § 4.1-103 ~~10 and 9-6.14:13~~ of the Code of Virginia.

E. Stenographic report. All evidence, stipulations, and argument in the stenographic report ~~which~~ that are relevant to the matters in issue shall be deemed to have been introduced for the consideration of the ~~board~~ administrative law judge or the authority.

F. Stipulations. Insofar as possible, interested parties will be expected to stipulate as to any facts involved. Such stipulations shall be made a part of the stenographic report.

3VAC5-10-100. Hearings; penalty.

A. Hearings before the ~~hearing officer~~ administrative law judge shall be held, insofar as practicable, at the county seat of the county in which the establishment of the applicant or licensee is located, or, if the establishment is located within the corporate limits of any city, then in such city. However, if it is located in a county or city within a metropolitan area in which the ~~board~~ Virginia Alcoholic Beverage Control Authority maintains a hearing room in a district office, such hearings may be held in such hearing room. Notwithstanding ~~the above~~ this subsection, ~~hearing officers~~ administrative law judges may conduct hearings at locations convenient to the greatest numbers of persons in order to expedite the hearing process. Hearings may also be held via telephone or virtually.

B. At any hearing held by ~~a hearing officer~~ an administrative law judge, any person hindering the orderly conduct or decorum of the hearing shall be guilty of a violation of this regulation and shall be subject to the penalty prescribed by § 4.1-349 of the Code of Virginia.

3VAC5-10-110. ~~Hearing officers~~ Administrative law judges.

A. ~~Hearing officers~~ Administrative law judges are charged with the duty of conducting fair and impartial hearings and of maintaining order in a form and manner consistent with the dignity of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority).

B. Each ~~hearing officer~~ administrative law judge shall have authority, subject to the published rules of the ~~board~~ authority and within its powers, to:

1. Administer oaths and affirmations;

2. Issue subpoenas as authorized by law;

3. Rule upon offers of proof and receive relevant and material evidence;

4. Take or cause depositions and interrogatories to be taken, directed, and issued;

5. Examine witnesses and otherwise regulate the course of the hearing;

6. Hold conferences for the settlement or simplification of issues by consent of interested parties;

7. Dispose of procedural requests and similar matters;

8. Amend the issues or add new issues, provided the applicant or licensee expressly waives notice thereof. The waiver shall be made a part of the stenographic report of the hearing;

9. Submit initial decisions to the ~~board~~ authority and to other interested parties or ~~their~~ representatives; ~~and~~

10. Take any other action authorized by the rules of the ~~board~~ authority;

11. Conduct mediation between interested parties; and

12. Require the designation of an interested person to act as a representative for proceedings involving groups of individuals present for the same purpose.

3VAC5-10-120. Interested parties.

As used in this chapter, "interested parties" shall mean the following persons:

1. The applicant;

2. The licensee;

3. Persons who would be aggrieved by a decision of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority); and

4. For purposes of appeal pursuant to 3VAC5-10-240, interested parties shall be only those persons who appeared at and asserted an interest in the hearing before ~~a hearing officer~~ an administrative law judge.

Where in this chapter reference is made to "licensee," the term likewise shall be applicable to a permittee (i.e. a person that holds or held a permit issued by the authority) or a designated manager to the extent that this chapter ~~are~~ is not inconsistent with the statutes and regulations relating to such persons.

3VAC5-10-130. Motions or requests.

Motions or requests for ruling made prior to the hearing before ~~a hearing officer~~ an administrative law judge shall be in writing~~,~~; addressed to the Chief ~~Hearing Officer~~ Administrative Law Judge, Hearings ~~and~~, Appeals, and Judicial Services Division~~,~~; and shall state with reasonable certainty the ~~ground therefor~~ grounds for the motion or request for ruling. Argument upon such motions or requests will not be heard without special leave granted by the ~~hearing officer~~ administrative law judge who will preside over the hearing.

3VAC5-10-150. Consent settlement.

A. Generally. The ~~board,~~ Virginia Alcoholic Beverage Control Authority (authority) or ~~its~~ the authority's designee~~,~~ may offer to resolve disciplinary cases when the nature of the proceeding and public interest permit. In appropriate cases, the ~~board~~ authority or ~~its~~ the authority's designee will extend an offer for a consent settlement to the licensee.

B. Who may accept. The licensee or ~~his~~ the licensee's attorney may accept an offer of consent settlement. If the licensee is a corporation, only an attorney or an officer, director, or majority stockholder of the corporation may accept an offer of consent settlement.

C. How to accept. The licensee shall return the properly executed consent order along with the payment in full of any monetary penalty no later than 21 calendar days from the date of mailing by the ~~board~~ authority. Failure to respond within the time period will result in a withdrawal of the offer by the agency and a formal hearing will be held on the date specified in the notice of hearing.

D. Effect of acceptance. Acceptance of the consent settlement offer shall constitute an admission of the alleged violation of the ~~A.B.C. laws~~ Alcoholic Beverage Control Act (§ 4.1-100 et seq. of the Code of Virginia) or authority regulations and will result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges. The offer of consent settlement is not negotiable; however, the licensee is not precluded from submitting an offer in compromise under 3VAC5-10-160.

E. ~~Board~~ Authority review. Prior to extending an offer of consent settlement to the licensee, the ~~board~~ authority or ~~its~~ the authority's designee may reject any proposed settlement ~~which~~ that is contrary to law or policy or ~~which~~ that, in ~~its~~ the authority's sole discretion, is not appropriate.

F. Record. Unaccepted offers of consent settlement will become a part of the record only after completion of the hearing process.

3VAC5-10-160. Offers in compromise and negotiations.

A. Following notice of a disciplinary proceeding, a licensee may be afforded opportunity for the submission of an offer in compromise in lieu of suspension or in addition thereto, or in lieu of revocation of ~~his~~ the license, where, in the discretion of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority), the nature of the proceeding and the public interest permit. Such offer should be addressed to the chief ~~hearing officer~~ administrative law judge. Acceptance of the offer in compromise shall constitute an admission of the alleged violation of the ~~A.B.C. laws~~ Alcoholic Beverage Control Act (§ 4.1-100 et seq. of the Code of Virginia) or authority regulations~~,~~ and shall result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges. The reason for the acceptance of such an offer shall be made a part of the record of the proceeding. Unless good cause ~~be~~ is shown, continuances for purposes of considering an offer in compromise will not be granted. Offers in compromise may be submitted anytime following notice of a disciplinary proceeding and before the ~~conclusion of an appeal hearing~~ authority issues a final decision in an appeal. ~~Any such offer may not be accepted at the informal conference and no offer shall be submitted after the conclusion of the appeal hearing.~~ The ~~board~~ authority may waive any provision of this section for good cause shown.

B. Following notice of a disciplinary proceeding or objection from the authority to the issuance of a license, a licensee or applicant in conjunction with the authority may agree to a negotiated resolution in lieu of a suspension or in addition thereto, in lieu of revocation of the license, or in lieu of a denial

of the application where, in the discretion of the authority, the nature of the proceeding and the public interest permit. Such negotiation shall be handled by the interested party and the authority. Acceptance of a negotiated resolution may constitute an admission of the alleged violation of the Alcoholic Beverage Control Act or authority regulations and shall result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges or objections. Unless good cause is shown, continuances for purposes of finalizing a negotiated resolution will not be granted. Negotiated resolutions may be submitted anytime following notice of a disciplinary proceeding or objections hearing and before the authority issues a final decision in an appeal.

3VAC5-10-170. Record.

A. The certified transcript of testimony, argument, and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record of the initial decision.

B. Upon due application made to the chief ~~hearing officer~~ administrative law judge, copies of the record of a hearing shall be made available to parties entitled thereto at a fee established by the ~~board~~ Virginia Alcoholic Beverage Control Authority.

3VAC5-10-180. Rehearings.

~~A~~ No rehearing before ~~a hearing officer~~ an administrative law judge shall ~~not~~ be held in any matter unless it ~~be~~ is affirmatively shown that relevant and material evidence, which ought to produce an opposite result on rehearing, is available~~,~~; is not merely cumulative, corroborative, or collateral~~,~~; and could not have been discovered before the original hearing by the use of ordinary diligence~~,~~ provided~~,~~ that the ~~board~~ Virginia Alcoholic Beverage Control Authority, in its discretion, may cause a rehearing to be held before ~~a hearing officer~~ an administrative law judge in the absence of the foregoing conditions, as provided in 3VAC5-10-290.

3VAC5-10-190. Self-incrimination.

If any witness subpoenaed to appear on behalf of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) shall testify in a hearing before ~~a hearing officer~~ an administrative law judge on complaints against a licensee as to any violation in which the witness, as a licensee or an applicant, has participated, such testimony shall not be used against ~~him nor shall the board~~ the witness. The authority shall take ~~any~~ no administrative action against ~~him~~ the witness for the offense to which ~~he~~ the witness testifies.

3VAC5-10-200. Subpoenas.

Upon request of any interested party, the chief ~~hearing officer,~~ administrative law judge or ~~a hearing officer~~ an administrative law judge is authorized to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers, and other documents at a hearing before ~~a hearing officer~~ an administrative law judge.

3VAC5-10-210. Witnesses.

A. Interested parties shall arrange to have their witnesses present at the time and place designated for the hearing.

B. Upon request of any party entitled to cross-examine witnesses, as set forth in 3VAC5-10-90 B, the ~~hearing officer~~ administrative law judge may separate the witnesses, including agents of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority).

C. A person subpoenaed as a witness to appear on behalf of the ~~board~~ authority shall be entitled to the same allowance for expenses as witnesses for the Commonwealth in criminal cases.

3VAC5-10-220. Pre-hearing conferences.

A. A pre-hearing conference will be conducted when an applicant for a license or a licensee who is the subject of a disciplinary proceeding does not waive ~~its~~ the right to such a conference. A waiver may be verbal or in writing. Unless the parties are advised otherwise, the ~~agency~~ Virginia Alcoholic Beverage Control Authority (authority) will automatically waive the pre-hearing conference when the applicant or licensee does so. When the applicant or licensee is offered a pre-hearing conference and fails to respond within 10 calendar days after the date of such offer, the pre-hearing conference will be deemed to be waived.

B. The pre-hearing conference will serve as a vehicle to acquaint the interested party, in a general way, with the nature of the charges or objections~~,~~ and the evidence in support ~~thereof and~~ of the charges or objections, to hear any matters relevant thereto presented by the interested parties, and to explore whether (i) administrative proceedings or objections should be terminated or (ii) the case should proceed to formal hearing and stipulations can be reached. The conference will be open to the public, but participation will be limited to the interested parties, ~~their~~ the interested parties' attorneys-at-law or other qualified representatives, and designated ~~board~~ authority representatives. The pre-hearing conference may be held virtually or ~~telephonically,~~ by telephone and at least five days prior to the formal hearing. The conference may be held, when practical, at the county or city in which the establishment of the applicant or licensee is located. Reasonable notice of administrative charges or objections and the date, time, and place of the conference shall be given to the participants. The failure of the applicant or licensee to appear at a scheduled conference will be deemed a waiver of the pre-hearing conference. The pre-hearing conference will not be recorded. Sworn testimony will not be taken, nor will subpoenas be issued. Any initial decision will include a summary of the pre-hearing conference.

3VAC5-10-230. ~~Agency~~ Virginia Alcoholic Beverage Control Authority representation.

The ~~Director,~~ Chief of the Bureau of Law Enforcement Operations or ~~his~~ a designee may (i) represent the Bureau of Law Enforcement ~~Operations~~ before the ~~board~~ Virginia

Alcoholic Beverage Control Authority (authority) or any ~~hearing officer~~ administrative law judge; (ii) petition the ~~board~~ authority for modification of the ~~hearing officer's~~ administrative law judge's decision; or (iii) request a ruling on other motions as may be necessary. This authority does not extend to complaints under the Franchise Acts.

Part II

Hearings ~~Before~~ before the ~~Board~~ Virginia Alcoholic Beverage Control Authority

3VAC5-10-240. Appeals.

A. An interested party may appeal to the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) an adverse initial decision, including the findings of fact and the conclusions, of ~~a hearing officer~~ an administrative law judge or a proposed decision, or any portion ~~thereof~~ of a proposed decision, of the ~~board~~ authority, provided a request ~~therefor~~ in writing identifying any alleged errors in the decision is received within 30 days after the date of mailing of the initial decision or the proposed decision, whichever is later.

B. ~~At his option, an~~ An interested party may submit written exceptions to the initial or proposed decision within the 30-day period and waive further hearing proceedings.

C. If an interested party fails to appear at a hearing, the ~~board~~ authority may proceed in ~~his~~ the interested party's absence and render a decision.

3VAC5-10-250. Attorneys; representation.

Any individual, partnership, association, or corporation ~~who~~ that is a licensee or applicant for any license or any interested party shall have the right to be represented by counsel at any ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) hearing for which ~~he~~ the licensee, applicant, or interested party has received notice. The licensee, applicant, or interested party shall not be required to be represented by counsel during such hearing. Any officer or director of a corporation may examine, cross-examine, and question witnesses~~,~~; present evidence on behalf of the corporation~~,~~; draw conclusions; and make arguments before the ~~board~~ authority.

3VAC5-10-260. Communications.

Communications regarding appeal hearings upon licenses and applications for licenses should be addressed to the ~~secretary to the board~~ Chief Clerk of the Hearing, Appeals, and Judicial Services Division.

3VAC5-10-270. Continuances.

Continuances will be granted as in actions at law. Requests for continuances of appeal hearings should be addressed to the ~~secretary to the board~~ Chief Clerk of the Hearings, Appeals, and Judicial Services Division.

3VAC5-10-280. Decision of the ~~board~~ Virginia Alcoholic Beverage Control Authority.

The final decision of the ~~board~~ Virginia Alcoholic Beverage Control Authority, together with any written opinion, should be transmitted to each interested party or to ~~his~~ the interested party's representative.

3VAC5-10-290. Evidence.

A. Generally. Subject to the exceptions permitted in this section, and to any stipulations agreed to by all interested parties, all evidence should be introduced at hearings before ~~hearing officers~~ administrative law judges.

B. Additional evidence. Should the appeal panel or Virginia Alcoholic Beverage Control Authority (authority) determine at an appeal hearing, either upon motion or otherwise, that it is necessary or desirable that additional evidence be taken, the appeal panel may:

1. Direct ~~that a hearing officer~~ an administrative law judge to fix a time and place for the taking of such evidence within the limits prescribed by the ~~board~~ authority and in accordance with 3VAC5-10-180; and

2. Upon unanimous consent of the appeal panel, permit the introduction of after-discovered or new evidence at the appeal hearing.

If the initial decision indicates that the qualifications of the establishment of an applicant or licensee are such as to cast substantial doubt upon the eligibility of the place for a license, evidence may be received at the appeal hearing limited to the issue involved and to the period of time subsequent to the date of the hearing before the ~~hearing officer~~ administrative law judge.

C. Examination. Any appeal panel member may examine a witness upon any question relevant to the matters in issue.

D. Cross-examination. The right to cross-examine and the submission of rebuttal evidence as provided in 3VAC5-10-90 shall be allowed in any appeal hearing where the introduction of additional evidence is permitted.

3VAC5-10-300. Hearings.

Hearings before the ~~board~~ Virginia Alcoholic Beverage Control Authority or appeal panel in the absence of notice to the contrary will be held in the office of the ~~board~~ Virginia Alcoholic Beverage Control Authority, Virginia A.B.C. Building, 7450 Freight Way, Mechanicsville, Virginia 23116.

3VAC5-10-310. Motions or requests.

Motions or requests for rulings~~,~~ made after a hearing before ~~a hearing officer~~ an administrative law judge and prior to an appeal hearing before the ~~board,~~ Virginia Alcoholic Beverage Control Authority (authority) shall be in writing, addressed to the ~~secretary to the board,~~ Chief Clerk of the Hearings, Appeals, and Judicial Services Division, and shall state with reasonable certainty the grounds ~~therefor~~ for the motion or request for ruling. Argument upon such motions or requests will not be heard without special leave granted by the ~~board~~ authority.

3VAC5-10-320. Notice of hearing.

Reasonable notice of the time and place of an appeal hearing shall be given to each interested party who appeared at the initial hearing or ~~his~~ the interested party's representative.

3VAC5-10-330. Record.

A. The record of the hearing before the ~~hearing officer~~ administrative law judge, including the initial decision, and the transcript of testimony, argument, and exhibits together with all papers and requests filed in the proceeding before the ~~board,~~ Virginia Alcoholic Beverage Control Authority (authority) shall constitute the exclusive record for the final decision of the ~~board~~ authority.

B. Upon due application made to the ~~secretary to the board~~ Chief Clerk of the Hearings, Appeals, and Judicial Services Division, copies of the record, including the decision of the ~~board~~ authority and any opinion setting forth the reasons for the decision, shall be made available to parties entitled thereto at a rate established by the ~~board~~ authority.

3VAC5-10-340. ~~Rehearings and reconsideration.~~ (Repealed.)

~~The board may, in its discretion for good cause shown, grant a rehearing or reconsideration on written petition of an interested party addressed to the Secretary to the Board and received within 30 days after the date of the final decision of the board. The petition shall contain a full and clear statement of the facts pertaining to the grievance, the grounds in support thereof, and a statement of the relief desired. The board may grant such at any time on its own initiative for good cause shown.~~

3VAC5-10-350. Scope of hearing.

A. Except as provided in 3VAC5-10-290, the appeal hearing shall be limited to the record made before the ~~hearing officer~~ administrative law judge.

B. The provisions of Part I (3VAC5-10-10 through 3VAC5-10-230) of this chapter shall be applicable to proceedings held under this part except to the extent such provisions are inconsistent ~~herewith~~ with this part.

3VAC5-10-360. Complaints.

Complaints shall be referred in writing to the ~~secretary to the board~~ Chief Clerk of the Hearings, Appeals, and Judicial Services Division.

3VAC5-10-370. Hearings.

Hearings will be conducted in accordance with the provisions of Part I (3VAC5-10-10 through 3VAC5-10-230) of this chapter ~~(3VAC5-10-10 et seq.)~~. Further, the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) and the ~~hearing officers~~ administrative law judges designated by ~~it~~ the authority may require an accounting to be submitted by each party in determining an award of costs and ~~attorneys'~~ attorney fees.

3VAC5-10-380. Appeals.

The decision of the ~~hearing officer~~ administrative law judge may be appealed to the ~~board~~ Virginia Alcoholic Beverage Control Authority as provided in 3VAC5-10-240. Appeals shall be conducted in accordance with the provisions of Part II (3VAC5-10-240 through 3VAC5-10-350) of this chapter ~~(3VAC5-10-240 et seq.)~~.

3VAC5-10-390. Hearings on notification of price increases.

Upon receipt from a winery, brewery, or wine or beer importer of a request for notice of a price increase less than 30 days in advance, a hearing will be scheduled before the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority), not ~~a hearing officer~~ an administrative law judge, as soon as practicable with five ~~days~~ days' notice to all parties, which include, at a minimum, all the wholesalers selling the winery or brewery's product. There will be no continuances granted and the ~~board~~ authority must rule within 24 hours of the hearing.

3VAC5-10-400. Discovery, prehearing procedures and production at hearings; definitions.

The Rules of the Supreme Court of Virginia Parts One, One A, Two, Two A, Three, and Four shall apply in all proceedings under the Wine and Beer Franchise Acts, Chapters 4 (§ 4.1-400 et seq.) and 5 (§ 4.1-500 et seq.) of Title 4.1 of the Code of Virginia, including mediation and arbitration proceedings when necessary pursuant to §§ 4.1-409 and 4.1-508 of the Code of Virginia. Any references to a "court" contained in the rules shall be deemed to mean the ~~hearing officer~~ administrative law judge or officers of the ~~board~~ Virginia Alcoholic Beverage Control Authority conducting the proceeding.

No provision of this section shall affect the practice of taking evidence at a hearing, but such practice, including that of generally taking evidence ore tenus only at hearings before ~~hearing officers~~ administrative law judges, shall continue unaffected hereby.

3VAC5-10-410. Applicability.

The ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) and its ~~hearing officers~~ administrative law judges may conduct hearings by telephone only when the ~~applicant/licensee~~ applicant or licensee expressly waives the in-person hearing. The ~~board~~ authority will determine whether or not certain hearings might practically be conducted by telephone. The provisions of Part I (3VAC5-10-10 ~~et seq.~~ through 3VAC5-10-230) of this chapter shall apply only to Part IV (3VAC5-10-410 ~~et seq.~~ through 3VAC5-10-470) of this chapter where applicable.

3VAC5-10-420. Appearance.

The interested parties will be expected to be available by telephone at the time set for the hearing and may produce, under oath, evidence relevant and material to the matters in issue. The ~~board~~ Virginia Alcoholic Beverage Control

Authority will arrange for telephone conference calls at its expense.

3VAC5-10-430. Argument.

Oral or written argument may be submitted to and limited by the ~~hearing officer~~ administrative law judge. Oral argument is to be included in the stenographic report of the hearing. Written argument, if any, must be submitted to the ~~hearing officer~~ administrative law judge and other interested parties in advance of the hearing.

3VAC5-10-440. Documentary evidence.

Documentary evidence~~, which~~ that an interested party desires to be considered by the ~~hearing officer,~~ administrative law judge must be submitted to the ~~hearing officer~~ administrative law judge and other interested parties in advance of the hearing.

3VAC5-10-450. Hearings.

A. Telephone hearings will usually originate from the central office of the ~~board~~ Virginia Alcoholic Beverage Control Authority in ~~Richmond~~ Mechanicsville, Virginia, but may originate from other locations. ~~Interested parties~~ An interested party may participate from the location of ~~their~~ the interested party's choice where a telephone is available. If an interested party is not available by telephone at the time set for the hearing, the hearing may be conducted in ~~his~~ the interested party's absence.

B. If at any time during a telephone hearing, the ~~hearing officer~~ administrative law judge determines that the issues are so complex that a fair and impartial hearing cannot be accomplished, the ~~hearing officer~~ administrative law judge shall adjourn the telephone hearing and reconvene an in-person hearing as soon as practicable.

3VAC5-10-490. Mediation.

A. Upon consent of all interested parties, the Virginia Alcoholic Beverage Control Authority (authority) may afford the parties an opportunity to resolve appropriate cases through mediation.

B. The mediations may be conducted by an administrative law judge of the authority.

C. If the mediation is unsuccessful, the matter may proceed to a formal hearing. The administrative law judge who conducted the mediation shall not preside over the formal hearing.

VA.R. Doc. No. R23-7490; Filed July 1, 2024, 4:17 p.m.

Proposed Regulation

Title of Regulation: **3VAC5-30. Tied-House (amending 3VAC5-30-10 through 3VAC5-30-90; adding 3VAC5-30-100).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 11, 2024.

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Basis: Section 4.1-103 of the Code of Virginia provides that the Virginia Alcoholic Beverage Control Authority Board of Directors has the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia. Section 4.1-111 of the Code of Virginia provides the board with the authority to adopt reasonable regulations that it deems necessary to carry out the provisions of Title 4.1 of the Code of Virginia and to amend or repeal such regulations.

Purpose: This regulation is essential to protect the health, safety, and welfare of citizens because the regulation provides guidance for regulants aimed at preventing violations of the Tied-House Laws, which often create unfair advantages in the alcohol industry at the expense of the consumer.

Substance: The proposed amendments (i) add new sections and requirements, (ii) revise fees, and (iii) remove duplicative or unnecessary provisions.

Issues: The primary advantage to the public is that the revisions move requirements that deal with Tied-House issues to this chapter devoted to Tied-House, making the requirements easier to find. The changes reorganize the chapter so that it reads more fluidly. The revisions bring clarity to the Virginia Alcoholic Beverage Control Authority rules regarding price discrimination for entities that have both on-premises and off-premises privileges. The benefit to the Commonwealth is that the regulation utilizes current terminology and also makes the requirements easier to explain. There are no disadvantages to the public or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. As part of a periodic review, the Virginia Alcoholic Beverage Control Board of Directors (board) proposes amendments to the regulation to align the regulation with current industry practices, conform to the Code of Virginia, improve clarity, and remove redundant and obsolete language.

Background. Section 4.1-111 B 3 of the Code of Virginia states that the board shall promulgate regulations that "maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers, and wholesalers" and "prevent undue competitive domination of any person by

any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth."[2] In addition, § 4.1-215 C of the Code of Virginia states that, "The General Assembly finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages caused by overly aggressive marketing techniques."[3] Accordingly, Tied-House (3VAC5-30) addresses various details pertaining to business arrangements between manufacturers or wholesalers and retail establishments, including the rotation and exchange of retailer stocks by wholesalers, deposits for containers, recordkeeping requirements, routine business entertainment, the provision of advertising materials, and price discrimination.

In order to meet the regulatory reduction requirements of Executive Order 19, the board met six times between June and October 2022 to review all of the Virginia Alcoholic Beverage Control Authority regulations and convened roughly 60 stakeholders, representing all categories of license holders.[4] Thus, the board seeks to make a number of changes that would update the regulation to reflect current practice, align the language with statute, and remove redundant or obsolete language. The most substantive changes are summarized as follows: Deposits on containers (3VAC5-30-40): This section currently specifies the minimum deposit fees that wholesalers must charge retailers for beer bottles, cases, kegs, and other equipment for use by customers. The board proposes to remove the table of specific minimum deposit charges and instead specify that wholesalers (i) collect a deposit from retail licensees and (ii) charge the same deposit fee for all of their retailers. The board would retain text in this section requiring that invoices reflect the deposit charges and that the deposits be refunded upon return of the containers in good condition.

Routine business entertainment (3VAC5-30-70): The definition of "routine business entertainment" in this section only includes (i) meals and beverages; (ii) concerts, theater, and arts entertainment; (iii) sports participation and entertainment; (iv) entertainment at charitable events; (iv) private parties; and (vi) local transportation in order to attend one or more of the aforementioned activities. The board proposes to remove this definition to allow for other types of events and expenses. The authority indicated that the intent of the regulation is not to restrict the types of expenses, but rather the magnitude and frequency at which such expenses are incurred, thus the listing of individual activities is unnecessary. Accordingly, the board would retain the expense-related limits currently in the regulation. These include a spending cap of $400 in a 24-hour period, as well as the limitation that no person may be entertained more than six times in a year by a wholesaler and six times in a year by a manufacturer.

Price discrimination (3VAC5-30-90): This section prohibits wholesale wine or beer licensees from engaging in price discrimination (charging different prices to different retailers for the same product) except under certain circumstances. This section was modified in 2017 to allow wholesale wine licensees to charge different prices for the same product to retail purchasers. Specifically, retail purchasers with on-premises privileges could be charged different prices than retailers with off-premises privileges, provided all retailers within each category were charged the same price.[5] Subsequently, the board issued a Guidance Document requiring certain documentation for retail licensees with dual privileges.[6] The board seeks to include the provisions of that document in the regulation and to delete that Guidance Document once this action becomes effective.[7] The proposed amendments would specify that (i) the wholesale price provided to a retailer with both privileges must depend on the type of sales from which the licensee obtains the majority of its business revenue, (ii) retailers with both privileges who choose to accept the price differentiations shall provide wholesalers with a written statement declaring which privilege generates the majority of their business revenue,[8] (iii) wholesalers shall maintain these statements and indicate which privilege the retailer has designated on their sales invoices, and (iv) upon request, wholesalers and retailers shall provide the board with written substantiation for any price differentiation.

In addition to these changes, the board also proposes to reorganize some of the provisions in 3VAC5-30-60 (Inducements to retailers), including moving some stipulations regarding advertising to 3VAC5-30-80 (Advertising materials that may be provided to retailers by manufacturers, importers, bottlers, or wholesalers) and deleting language redundant of statute, specifically subsection K, which contains a reference to statute that provides the penalties for violating that section of the regulation. Lastly, 3VAC5-30-80 (Advertising materials) would also be amended to add two provisions that would be moved from 3VAC5-20 (Advertising) and a new 3VAC5-30-100 (Novelties and specialties) would be created in this regulation, in which existing requirements would be moved verbatim from the Advertising regulation, 3VAC5-20.[9]

Estimated Benefits and Costs. The proposed amendments largely serve to update the regulation to reflect current practice, conform to statute, and remove redundant or obsolete language, and are therefore not expected to create significant costs. The changes pertaining to price discrimination by wine wholesalers could add new administrative costs for on-premises and off-premises licensees that choose to accept price differentiation and for the wine wholesalers, but only if they do not already follow the provisions of the guidance document. However, as mentioned previously, the authority reports that they enjoy widespread voluntary compliance with the guidance, and any new recordkeeping cost for a one-time declaration of which privilege generates greater revenue is likely negligible for on-premises and off-premises retail licensees.

Removing the minimum deposit amounts for beer containers and equipment for customer use (such as taps for kegs) from

the regulation and specifying that all retailers be charged the same amount is unlikely to have any practical impact. The authority reports that stakeholders who were convened to review the regulation reported that they already charge higher deposit fees than the minimums specified in the regulation. Thus, removing the minimum charges would be unlikely to result in an increase in those fees by wholesalers. Although the authority does not collect information on the deposit amounts charged by beer wholesalers, and the regulation does not currently specify that wholesalers must charge all retailers the same deposit fees, the authority reports that in practice, participants in the industry communicate openly with each other, and retailers tend to learn if they are being charged a different deposit by the same wholesaler. Thus, adding the requirement that deposit fees be uniform across retailers would mainly serve to reflect current practice.

Removing the definition of "routine business entertainment" would provide wholesalers, manufacturers, importers, and brokers with greater flexibility for the type of entertainment they are able to provide to retail licensees. This would likely benefit them as well as the retail licensees who are the recipients of such business entertainment.

Lastly, the board proposal to delete 3VAC5 30-60 K entirely, instead of amending the language to reference the relevant Code of Virginia section, may make it more difficult for industry members and the public to find information on the penalties for noncompliance with the section.

Businesses and Other Entities Affected. The proposed amendments potentially affect the authority's approximate 20,892 licensees[10] who manufacture, distribute, or sell and serve alcoholic beverages in the Commonwealth and other interested parties. Changes pertaining to price discrimination and minimum deposits would affect 524 beer and wine wholesaler licensees. There are 19,349 retail licensees in total; retail licensees with on-premises and off-premises privileges who choose to accept price differentiations from wine wholesalers may incur a small one-time administrative cost if they have not already provided a written declaration in accordance with the 2017 Guidance Document.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[11] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[12] The proposed amendments do not appear to increase net costs or reduce benefit. Thus, no adverse impact is indicated.

Small Businesses[13] Affected.[14] The proposed amendments do not appear to adversely affect small businesses. Some of the retail licensees with on-and-off-premises privileges who choose to accept price differentiations from wine wholesalers may be small businesses and may incur a small one-time administrative cost if they have not already provided a written declaration in accordance with the 2017 Guidance Document.

Localities[15] Affected.[16] The proposed amendments neither disproportionally affect any particular localities nor affect costs for local governments.

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

Effects on the Use and Value of Private Property. The proposed amendments do not substantively affect the use and value of private property. The proposed amendments do not affect real estate development costs.

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

[2] See https://law.lis.virginia.gov/vacode/title4.1/chapter1/section4.1-111/.

[3] See https://law.lis.virginia.gov/vacode/title4.1/chapter2/section4.1-215/.

[4] See https://townhall.virginia.gov/L/Meetings.cfm?BoardID=2&time=Past. The authority provided a list of external stakeholders; although all stakeholders may not have attended every meeting, the meetings were spent conducting a line-by-line review of the regulations, and the proposed changes reflect board decisions after considering stakeholder input.

[5] See https://townhall.virginia.gov/l/ViewAction.cfm?actionid=4660.

[6] See https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=6207. The guidance was issued in response to complaints that retail licensees with on- and off-premises privileges were exploiting the new provision to purchase wine at the wholesale price for off-premises licensees, which is lower than the price for on-premises licensees, but sell it to customers for on-premises consumption, which allows for a higher markup.

[7] Although the authority reports widespread voluntary compliance with the guidance, a licensee pointed out that the authority could not legally enforce the guidance document, prompting the board to make this change. In addition, as a result of 2020 license reform, all on-premises retail licensees now also have off-premises privileges; the on-premises retail license was effectively converted into the on-premises and off-premises retail license. (See Chapter 1113 of the 2020 Acts of Assembly.) ABC also reports that they can verify if a retailer is being honest with the wholesaler about which privilege generates the majority of its revenues based on record-keeping requirements contained in § 4.1-204 of the Code of Virginia and 3VAC5-70-90.

8 Choosing to accept price differentiations, as used here and in the regulation, applies to on-premises and off-premises retail licensees who choose to pay the off-premises price. the authority has clarified that on-premises and off-premises retail licensees who choose to pay the on-premises price would not be choosing a price differentiation and would not be subject to these recordkeeping requirements.

[9] The board is concurrently amending 3VAC5-20 to remove these provisions so as not to be duplicative, and to make other changes and conduct a periodic review. See https://townhall.virginia.gov/ L/viewstage.cfm?stageid=10229 for proposed changes to that regulation.

[10] Data Source: the authority.

[11] Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities

should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[12] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

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

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

[16] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Virginia Alcoholic Beverage Control Authority concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) align the regulation with current industry practices, (ii) conform the regulation to the Code of Virginia, (iii) improve clarity, and (iv) remove redundant and obsolete language.

3VAC5-30-10. Rotation and exchange of stocks of retailers by wholesalers; permitted and prohibited acts.

A. Permitted acts. Manufacturers, importers, bottlers, brokers, or wholesalers~~,~~ or ~~their~~ representatives~~,~~ may perform~~, except on Sundays in jurisdictions where local ordinances restrict Sunday sales of alcoholic beverages,~~ the following services for a retailer upon consent, which may be a continuing consent, of the retailer:

1. Rotate, repack, and rearrange alcoholic beverages in a display (e.g., shelves, coolers, cold boxes~~, and the like~~, and floor displays in a sales area);

2. Restock alcoholic beverages;

3. Rotate, repack, rearrange, and add to ~~his~~ the retailer's own stocks of alcoholic beverages in a storeroom space assigned to ~~him~~ the individual by the retailer;

4. Transfer alcoholic beverages between storerooms, between displays, and between storerooms and displays; and

5. Create or build original displays using alcoholic beverages only.

B. Prohibited acts. ~~A~~ No manufacturer, importer, bottler, broker, or wholesaler, or ~~its~~ representative~~,~~ may ~~not~~:

1. Alter or disturb in any way the merchandise sold by another manufacturer, importer, bottler, broker, or wholesaler, whether in a display, sales area, or storeroom, except in the following cases:

a. When the products of one manufacturer, importer, bottler, broker, or wholesaler have been erroneously placed in the area previously assigned by the retailer to another manufacturer, importer, bottler, broker, or wholesaler; or

b. When a floor display area previously assigned by a retailer to one manufacturer, importer, bottler, broker, or wholesaler has been reassigned by the retailer to another manufacturer, importer, bottler, broker, or wholesaler;

2. Mark or affix retail prices to products other than those sold by the manufacturer, importer, bottler, broker, or wholesaler to the retailer; or

3. Sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth ~~below~~ in this subdivision:

a. Products defective at the time of delivery may be replaced;

b. Products erroneously delivered may be replaced or money refunded;

c. Products ~~of~~ for which a manufacturer or importer discontinues production or importation may be returned and money refunded if no lawful exchange under subdivision 3 g of this subsection is available and if prior written approval is provided by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority);

d. Resalable draft beer may be returned and money refunded;

e. Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary surrender, or order of the ~~board~~ authority may be returned and money refunded upon ~~permit issued~~ written approval by the ~~board~~ authority;

f. Products ~~which~~ that have been ~~condemned and~~ deemed a threat to public safety or are not permitted to be sold in ~~this~~ the Commonwealth may be replaced or money refunded upon ~~permit issued~~ written approval by the ~~board~~ authority; or

g. Alcoholic beverages may be exchanged on an identical quantity and brand basis for quality control purposes. Where production of the product has been discontinued, the distributor may exchange the product for a product from the same manufacturer on an identical quantity and comparable wholesale price basis. Any such exchange

shall be documented by the word "exchange" on the proper invoice.

3VAC5-30-20. Restrictions upon employment; exceptions.

No retail licensee shall employ in any capacity ~~in his~~ at the licensed business any person engaged or employed in the manufacturing, bottling, or wholesaling of alcoholic beverages; nor shall any licensed manufacturer, bottler, or wholesaler employ in any capacity ~~in his~~ at the licensed business any person engaged or employed in the retailing of alcoholic beverages.

This section shall not apply to banquet licensees, farm winery licensees, or ~~off-premises~~ winery licensees, nor shall this section apply in any situation in which the manufacturer, bottler, or wholesaler does not sell or otherwise furnish, directly or indirectly, alcoholic beverages or other merchandise to the retailer.

3VAC5-30-30. Payment and recordkeeping requirements for certain transactions.

A. Sales of wine or beer between wholesale and retail licensees of the authority shall be for cash paid and collected at the time of or prior to delivery, except where payment is to be made by electronic ~~fund~~ funds transfer as provided in this section. Each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery and shall specify the manner of payment.

B. "Cash," as used in this section, shall include (i) legal tender of the United States, (ii) a money order issued by a duly licensed firm authorized to engage in such business in the Commonwealth, (iii) a valid check drawn upon a bank account in the name of the licensee or permittee or in the trade name of the licensee or permittee making the purchase, or (iv) an electronic ~~fund~~ funds transfer~~,~~ initiated by a wholesaler pursuant to subsection D of this section~~,~~ from a bank account in the name or trade name of the retail licensee making a purchase from a wholesaler or the authority.

C. If a check, money order, or electronic ~~fund~~ funds transfer is used, the following provisions apply:

1. If only alcoholic beverage merchandise is being sold, the amount of the checks, money orders, or electronic ~~fund~~ funds transfers shall be no larger than the purchase price of the alcoholic beverages; and

2. If nonalcoholic merchandise is also sold to the retailer, the check, money order, or electronic ~~fund~~ funds transfer may be in an amount no larger than the total purchase price of the alcoholic beverages and nonalcoholic beverage merchandise. If a separate invoice is used for the nonalcoholic merchandise, a copy of it shall be attached to the copies of the alcoholic beverage invoices that are retained in the records of the wholesaler and the retailer. If a single invoice is used for both the alcoholic beverages and nonalcoholic beverage merchandise, the alcoholic beverage items shall be separately identified and totaled.

D. If an electronic ~~fund~~ funds transfer is used for payment by a licensed retailer or a permittee for any purchase from a wholesaler or the authority, the following provisions shall apply:

1. Prior to an electronic ~~fund~~ funds transfer, the retail licensee shall enter into a written agreement with the wholesaler specifying the terms and conditions for an electronic ~~fund~~ funds transfer in payment for the delivery of wine or beer to that retail licensee. The electronic ~~fund~~ funds transfer shall be initiated by the wholesaler no later than one business day after delivery, and the wholesaler's account shall be credited by the retailer's bank no later than the following business day. The electronic ~~fund~~ funds transfer agreement shall incorporate the requirements of this subdivision, but this subdivision shall not preclude an agreement with more restrictive provisions. For purposes of this subdivision, the term "business day" shall mean a business day of the respective bank;

2. The wholesaler must generate an invoice covering the sale of wine or beer and shall specify that payment is to be made by electronic ~~fund~~ funds transfer. Each invoice must be signed by the purchaser at the time of delivery; and

3. Nothing in this subsection shall be construed to require that any licensee must accept payment by electronic ~~fund~~ funds transfer.

E. Wholesalers shall maintain on their licensed premises records of all invalid checks received from retail licensees for the payment of wine or beer, as well as any stop payment order, insufficient fund report, or any other incomplete electronic ~~fund~~ funds transfer reported by the retailer's bank in response to a ~~wholesaler-initiated~~ wholesaler-initiated electronic ~~fund~~ funds transfer from the retailer's bank account. Further, wholesalers shall report to the Virginia Alcoholic Beverage Control Authority (authority) any invalid checks or incomplete electronic ~~fund~~ funds transfer reports received in payment of wine or beer when either (i) any such invalid check or incomplete electronic ~~fund~~ funds transfer is not satisfied by the retailer within seven days after notice of the invalid check or a report of the incomplete electronic ~~fund~~ funds transfer is received by the wholesaler, or (ii) the wholesaler has received, whether satisfied or not, either more than one such invalid check from any single retail licensee or received more than one incomplete electronic ~~fund~~ funds transfer report from the bank of any single retail licensee, or any combination of the two, within a period of 180 days. Such reports shall be upon a form provided by the authority and in accordance with the instructions set forth in such form.

F. Payments to the authority for the following items shall be for cash, as defined in subsection B of this section:

1. State license taxes and application fees;

2. Wine taxes and excise taxes on beer and wine coolers;

3. Solicitors' permit fees and temporary permit fees;

4. Registration and certification fees, and the markup or profit on cider, collected pursuant to ~~these regulations~~ this chapter;

5. Civil penalties or charges and costs imposed on licensees and permittees by the ~~board~~ authority; and

6. Forms provided to licensees and permittees at cost by the ~~board~~ authority.

~~Provided however, payments~~ Payments to the authority may be made directly through the authority's licensing system software.

3VAC5-30-40. Deposits on containers required; records; redemption of deposits; exceptions.

A. Wholesalers shall collect a deposit in cash~~,~~ at or prior to the time of delivery of any beer sold to a retail licensee~~, the following minimum deposit charges on containers:~~ for bottles; cardboard, fiber, or composition cases; kegs; and tapping equipment, cooling tubs, and cold plates for use by consumers.

~~Bottles having a capacity of not more than 12 oz~~	~~$.02~~
~~Bottles having a capacity of more than 12 oz. but not more than 32 oz~~	~~$.04~~
~~Cardboard, fibre or composition cases other than for 1 1/8- or 2 1/4 gallon kegs~~	~~$.02~~
~~Cardboard, fibre or composition cases for 1 1/8- or 2 1/4 gallon kegs~~	~~$.50~~
~~Kegs, 1 1/8 gallon~~	~~$1.75~~
~~Kegs, 2 1/4 gallon~~	~~$3.50~~
~~Kegs, 1/4 barrel~~	~~$4.00~~
~~Kegs, 1/2 barrel~~	~~$6.00~~
~~Keg covers, 1/4 barrel~~	~~$4.00~~
~~Keg covers, 1/2 barrel~~	~~$6.00~~
~~Tapping equipment for use by consumers~~	~~$10.00~~
~~Cooling tubs for use by consumers~~	~~$5.00~~
~~Cold plates for use by consumers~~	~~$15.00~~

Wholesalers shall charge the same deposit fee for all of the wholesaler's retailers.

B. The sales ticket or invoice shall reflect the deposit charge and shall be preserved as a part of the licensee's records.

C. Deposits shall be refunded upon the return of containers in good condition.

D. Deposits shall not be required on containers sold as nonreturnable items.

3VAC5-30-50. Solicitation of licensees by wine and beer solicitor ~~salesmen~~ salespersons or representatives.

A. A permit is not required to solicit or promote wine or beer to wholesale or retail licensees, including mixed beverage licensees, by a wine or beer solicitor ~~salesman~~ salesperson who represents any winery, brewery, wholesaler, or importer licensed in ~~this~~ the Commonwealth engaged in the sale of wine and beer. Further, a permit is not required to sell ~~(~~, which shall include the solicitation or receipt of orders~~)~~, wine or beer to wholesale or retail licensees, including mixed beverage licensees, by a wine or beer solicitor ~~salesman~~ salesperson who represents any winery, brewery, or wholesaler licensed in ~~this~~ the Commonwealth engaged in the sale of wine and beer.

B. A permit is required to solicit or promote wine or beer to wholesale or retail licensees, including mixed beverage licensees, by a wine or beer solicitor ~~salesman~~ salesperson or representative of any out-of-state wholesaler engaged in the sale of wine or beer. A permit under this section shall not authorize the sale of wine by the permittee, the direct solicitation or receipt of orders for wine, or the negotiation of any contract or contract terms for the sale of wine unless such sale, receipt, or negotiations are conducted in the presence of a licensed Virginia wholesaler or importer or such Virginia wholesaler's or importer's solicitor ~~salesman~~ salesperson or representative. In order to obtain a permit, a person ~~shall~~:

1. ~~Register~~ Shall register with the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) by filing an application on such forms as prescribed by the ~~board~~ authority; and

2. ~~Be~~ Shall be 18 years ~~old~~ of age or older to solicit or promote the sale of wine or beer~~, and~~; may not be employed at the same time by an out-of-state wholesaler engaged in the sale of wine or beer and by a licensee to solicit the sale of or sell wine or beer~~,~~; and shall not be in violation of 3VAC5-30-20.

C. Each permit shall expire yearly on June 30 unless sooner suspended or revoked by the ~~board~~ authority.

D. Solicitation and promotion under this ~~regulation~~ chapter may include educational programs regarding wine or beer for mixed beverage licensees~~,~~ but shall not include the promotion of~~,~~ or educational programs related to~~,~~ spirits or the use ~~thereof~~ of spirits in mixed drinks unless a spirits solicitor's permit has been obtained in addition to a solicitor's permit.

E. For the purposes of this ~~regulation~~ chapter, the soliciting or promoting of wine or beer shall be distinguished from the sale of such products, the direct solicitation, or receipt of orders for alcoholic beverages or the negotiation of any contract or contract terms for the sale of alcoholic beverages. This ~~regulation~~ chapter shall not be deemed to regulate the

representative of a manufacturer, importer, or wholesaler from merely calling on retail licensees to check on market conditions, the freshness of products on the shelf or in stock, the percentage or nature of display space, or the collection of similar information where solicitation or product promotion is not involved.

3VAC5-30-60. Inducements to retailers; ~~beer and wine~~ alcohol tapping equipment; bottle or can openers; spirits back-bar pedestals; ~~banquet licensees;~~ paper, cardboard or plastic advertising materials; clip-ons and table tents; sanctions and penalties.

A. Any manufacturer, importer, bottler, broker, or wholesaler~~,~~ of alcoholic beverages or ~~its~~ representative~~,~~ may sell, rent, lend, buy for, or give to any retailer, without regard to the value thereof, the following:

1. ~~Draft beer or wine~~ Alcoholic beverage knobs~~,~~ containing advertising ~~matter,~~ which shall include the brand name and may further include only trademarks, housemarks, and slogans and shall not include any illuminating devices or be otherwise adorned with mechanical devices ~~which~~ that are not essential in the dispensing of draft beer or wine; ~~and~~

2. Clip-ons and table tents; and

3. Tapping equipment, defined as all the parts of the mechanical system required for dispensing draft beer in a normal manner from the ~~carbon dioxide~~ gas pressure tank through the beer faucet, excluding the following:

a. The carbonic acid gas in containers, except that such gas may be sold only at the reasonable open market price in the locality where sold;

b. Gas pressure gauges ~~(~~, which may be sold at cost~~)~~;

c. Draft arms or standards;

d. Draft boxes;

e. Refrigeration equipment or components thereof; and

f. Carbon dioxide filters, which may be provided and installed without cost.

Further, a manufacturer, bottler, or wholesaler may sell, rent, or lend to any retailer, for use only by a purchaser of draft beer in kegs or barrels from such retailer, whatever tapping equipment may be necessary for the purchaser to extract such draft beer from its container.

B. Any manufacturer, importer, bottler, broker, or wholesaler~~,~~ or ~~their representatives,~~ representative may sell to ~~any retailer~~ and install in ~~the~~ any retailer's establishment dispensing accessories ~~(~~, such as standards, faucets, rods, vents, taps, tap standards, hoses, cold plates, washers, couplings, gas gauges, vent tongues, shanks, and check valves~~)~~, and carbon dioxide ~~(~~and other gases used in dispensing equipment~~)~~ at a price not less than the cost of the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale. Manufacturers, importers, bottlers, brokers, or wholesalers of alcoholic beverages or the representatives of such manufacturers, importers, bottlers, brokers, or wholesalers may clean and service, either for free or for compensation, coils and other similar equipment used in dispensing alcoholic beverages and may sell solutions or compounds for cleaning alcoholic beverage glasses, provided the reasonable open market price is charged.

C. Any beer tapping equipment may be converted for wine tapping by the beer wholesaler who originally placed the equipment on the premises of the retail licensee, provided that such beer wholesaler is also a wine wholesaler licensee. Moreover, at the time such equipment is converted for wine tapping, it shall be sold, or have previously been sold, to the retail licensee at a price not less than the initial purchase price paid by such wholesaler.

D. Any manufacturer, bottler, or wholesaler of ~~wine or beer~~ alcoholic beverages may sell or give to any retailer~~,~~ bottle or can openers upon which advertising ~~matter regarding alcoholic beverages may appear~~ is displayed, provided the wholesale value of any such openers given to a retailer ~~by any individual manufacturer, bottler or wholesaler~~ does not exceed $20. Openers in excess of $20 in wholesale value may be sold, provided the reasonable open market price is charged ~~therefor~~.

E. Any manufacturer of spirits may sell, lend, buy for, or give to any retail licensee, without regard to the value thereof, back-bar pedestals to be used on the retail premises and upon which advertising ~~matter~~ regarding spirits may appear.

~~F. Manufacturers of alcoholic beverages and their authorized vendors or wholesalers of wine or beer may sell at the reasonable wholesale price to banquet licensees glasses or paper or plastic cups upon which advertising matter regarding alcoholic beverages may appear.~~

~~G. Manufacturers, importers, bottlers, brokers, or wholesalers of alcoholic beverages, or their representatives, may not provide point-of-sale advertising for any alcoholic beverage or any nonalcoholic beer or nonalcoholic wine to retail licensees except in accordance with 3VAC5-30-80. Manufacturers, importers, bottlers, brokers, and wholesalers, or their representatives, may provide advertising materials to any retail licensee that have been customized for that retail licensee (including the name, logo, address, and website of the retail licensee) provided that such advertising materials must:~~

~~1. Comply with all other applicable regulations of the board;~~

~~2. Be for interior use only;~~

~~3. Contain references to the alcoholic beverage products or brands offered for sale by the manufacturer, bottler, or wholesaler providing such materials and to no other products; and~~

~~4. Be made available to all retail licensees.~~

~~H. Any manufacturer, importer, bottler, broker, or wholesaler of wine, beer, or spirits, or its representatives, may sell, lend, buy for, or give to any retail licensee clip-ons and table tents.~~

~~I. Any manufacturer, importer, bottler, broker, or wholesaler of alcoholic beverages, or their representatives, may clean and service, either free or for compensation, coils and other like equipment used in dispensing alcoholic beverages, and may sell solutions or compounds for cleaning alcoholic beverage glasses, provided the reasonable open market price is charged.~~

~~J.~~ F. Any manufacturer, importer, bottler, or wholesaler of alcoholic beverages licensed in ~~this~~ the Commonwealth may sell ice to retail licensees, provided the reasonable open market price is charged.

~~K. Any licensee of the board, including any manufacturer, bottler, importer, broker as defined in § 4.1-216 A of the Code of Virginia, wholesaler, or retailer who violates, attempts to violate, solicits any person to violate or consents to any violation of this section shall be subject to the sanctions and penalties as provided in § 4.1-328 of the Code of Virginia.~~

3VAC5-30-70. Routine business entertainment; ~~definition; permitted activities;~~ conditions.

A. Nothing in this chapter shall prohibit a wholesaler, manufacturer, importer, or broker of alcoholic beverages licensed in the Commonwealth from providing a retail licensee ~~"~~routine business entertainment~~" which is defined as those activities enumerated in subsection B of this section~~.

~~B. Permitted activities are:~~

~~1. Meals and beverages;~~

~~2. Concerts, theatre and arts entertainment;~~

~~3. Sports participation and entertainment;~~

~~4. Entertainment at charitable events;~~

~~5. Private parties; and~~

~~6. Local transportation in order to attend one or more of the activities permitted by this subsection.~~

~~C.~~ B. The following conditions apply:

1. Such routine business entertainment shall be provided without a corresponding obligation on the part of the retail licensee to purchase alcoholic beverages or to provide any other benefit to such wholesaler or manufacturer or to exclude from sale the products of any other wholesaler or manufacturer;

2. Wholesaler or manufacturer personnel shall accompany the personnel of the retail licensee during such business entertainment;

3. ~~Except as is inherent in the definition of routine business entertainment as contained herein, nothing~~ Nothing in this ~~regulation~~ chapter shall be construed to authorize the providing of property or any other thing of value to retail licensees;

4. No more than $400 may be spent per 24-hour period on any employee of any retail licensee, including a self-employed sole proprietor, or, if the licensee is a partnership, ~~or~~ on any partner or employee ~~thereof~~ of the partnership, or if the licensee is a corporation, on any corporate officer, director, shareholder of 10% or more of the stock, or other employee, such as a buyer. Expenditures attributable to the spouse of any such employee, partnership, or stockholder, and the like~~,~~ shall not be included within the ~~foregoing~~ restrictions of this subdivision;

5. No person enumerated in subdivision 4 of this subsection may be entertained more than six times by a wholesaler and six times by a manufacturer per calendar year;

6. Wholesale licensees and manufacturers shall keep complete and accurate records for a period of three years of all expenses incurred in the entertainment of retail licensees. These records shall indicate the date and amount of each expenditure, the type of entertainment activity, and the retail licensee entertained; and

7. This section shall not apply to personal friends of manufacturers, importers, bottlers, brokers, or wholesalers as provided for in 3VAC5-70-100.

3VAC5-30-80. Advertising materials that may be provided to retailers by manufacturers, importers, bottlers, or wholesalers.

A. There shall be no cooperative advertising ~~as~~ between a producer, manufacturer, bottler, importer, or wholesaler and a retailer of alcoholic beverages, except as may be authorized by regulation pursuant to § 4.1-216 of the Code of Virginia. The term "cooperative advertising" shall mean the payment or credit, directly or indirectly, by any manufacturer, bottler, importer, or wholesaler, whether licensed in ~~this~~ the Commonwealth or not, to a retailer for all or any portion of advertising done by the retailer.

B. Manufacturers or their authorized vendors as defined in § 4.1-216.1 of the Code of Virginia and wholesalers of alcoholic beverages may sell, lend, buy for, or give to retailers any nonilluminated advertising materials made of paper, cardboard, canvas, rubber, foam, or plastic, provided the advertising materials have a wholesale value of $40 or less per item. Advertising material referring to any brand or manufacturer of spirits may only be provided to mixed beverage licensees and may not be provided by beer and wine wholesalers~~,~~ or their employees, unless ~~they hold~~ those wholesalers or their employees hold a spirits solicitor's permit.

C. Manufacturers, bottlers, or wholesalers may supply to retailers napkins, placemats, and coasters that contain (i) a reference to the name of a brand of nonalcoholic beer or nonalcoholic wine~~,~~ or (ii) a message relating solely to and

promoting moderation and responsible drinking, which ~~message~~ may contain the name, logo, and address of the sponsoring manufacturer, bottler, or wholesaler, provided such recognition is subordinate to the message.

D. Any manufacturer, including any vendor authorized by any such manufacturer, whether or not licensed in the Commonwealth, may sell service items bearing alcoholic brand references to on-premises retail licensees. Such retail licensee may display the service items on the premises of ~~his~~ the licensed establishment. Each such retail licensee purchasing such service items shall retain a copy of the evidence of ~~his~~ the payment to the manufacturer or authorized vendor for a period of not less than two years from the date of each sale of the service items. As used in this subdivision, "service items" means articles of tangible personal property normally used by the employees of on-premises licensees to serve alcoholic beverages to customers, including~~, but not limited to,~~ glasses, napkins, buckets, and coasters.

E. Alcoholic beverage "neckers," recipe booklets, brochures relating to the alcoholic beverage manufacturing process, vineyard, brewery, and distillery geography~~, and~~ or history of an alcoholic beverage manufacturing area, and point-of-sale entry blanks relating to contests and sweepstakes may be provided by manufacturers, importers, bottlers, brokers, or wholesalers to retail licensees for use on retail premises~~,~~ if such items are offered to all retail licensees equally~~,~~ and the manufacturer, importer, bottler, broker, or wholesaler has obtained the consent, which may be a continuing consent, of each retailer or ~~his~~ the retailer's representative. Wholesale licensees in the Commonwealth may not put entry blanks on the package. Solicitors holding permits under the provisions of 3VAC5-60-80 may provide point-of-sale entry blanks relating to contests and sweepstakes to mixed beverage licensees for use on the premises if such items are offered to all mixed beverage licensees equally~~,~~ and the solicitor has obtained the consent, which may be a continuous consent, of each mixed beverage licensee or ~~his~~ the licensee's representative.

F. Manufacturers, importers, bottlers, brokers, or wholesalers~~,~~ or ~~their~~ representatives~~,~~ may supply refund coupons if ~~they~~ the coupons are supplied, displayed, and used in accordance with 3VAC5-20-90.

G. No manufacturer, bottler, wholesaler, or importer of alcoholic beverages, whether licensed in ~~this~~ the Commonwealth or not, may directly or indirectly sell, rent, lend, buy for, or give to any retailer any advertising materials, decorations, or furnishings under any circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising.

H. Any advertising materials provided for ~~herein, which~~ in this section that may have been obtained by any retail licensee from any manufacturer, bottler, broker, importer, or wholesaler of alcoholic beverages, may be installed in the interior of the licensed establishment by any such industry member or ~~their~~ the industry member's representatives using any normal and customary installation materials. With the consent of the retail licensee, which ~~consent~~ may be a continuing consent, manufacturers, importers, bottlers, brokers, or wholesalers~~,~~ or ~~their~~ representatives~~,~~ may mark or affix retail prices on these materials.

I. Every retail licensee who obtains any point-of-sale advertising shall keep a complete, accurate, and separate record of all such material obtained. Such records shall show (i) the name and address of the person from whom the material was obtained; (ii) the date furnished; (iii) the item furnished; and (iv) the price charged ~~therefore~~. All such records, invoices, and accounts shall be kept by each such licensee at the place designated in the license for a period of two years and shall be available for inspection and copying by any member of the board or ~~its~~ the board's special agents during reasonable hours.

J. No alcoholic beverage manufacturer, importer, or wholesale licensee may sell, rent, lend, buy for, or give to any retail licensee any outdoor alcoholic beverage advertising, any billboard placements for such advertising, or in any other way confer on any retail licensee anything of value that constitutes outdoor alcoholic beverage advertising.

K. No alcoholic beverage manufacturer, importer, or wholesale licensee may engage in cooperative advertising, as defined in this section, on behalf of any retail licensee.

L. Manufacturers of alcoholic beverages and manufacturer-authorized vendors or wholesalers of wine or beer may sell at the reasonable wholesale price to banquet licensees glasses or paper or plastic cups upon which advertising matter regarding alcoholic beverages may appear.

M. No manufacturer, importer, bottler, broker, or wholesaler of alcoholic beverages or representative of such manufacturer, importer, bottler, broker, or wholesaler may provide point-of-sale advertising for any alcoholic beverage or any nonalcoholic beer or nonalcoholic wine to retail licensees, except in accordance with this section. Manufacturers, importers, bottlers, brokers, and wholesalers or representatives of such manufacturers, importers, bottlers, brokers, or wholesalers may provide advertising materials to any retail licensee that have been customized for that retail licensee, including the name, logo, address, and website of the retail licensee, provided that such advertising materials must:

1. Comply with all other applicable regulations of the board;

2. Be for interior use only;

3. Contain references to the alcoholic beverage products or brands offered for sale by the manufacturer, bottler, or wholesaler providing such materials and to no other products; and

4. Be made available to all retail licensees.

3VAC5-30-90. Price discrimination; inducements.

A. No wholesale wine or beer licensee shall discriminate in price of alcoholic beverages between different retail purchasers, except where the difference in price charged by such wholesale licensee is due to:

1. Acceptance or rejection by a retail purchaser of terms or conditions affecting a price offer, including a quantity discount, as long as such terms or conditions are offered on an equal basis to all retailers;

2. A bona fide difference in the cost of sale or delivery; or

3. The wholesale licensee charging a lower price in good faith to meet an equally low price charged by a competing wholesale licensee on a brand and package of like grade and quality.

Where such difference in price charged to any such retail purchaser does occur, the board may ask for and the wholesale licensee shall furnish written substantiation for the price difference.

B. Notwithstanding subsection A of this section, wholesale wine licensees may differentiate in the pricing between retail purchasers with on-premises and off-premises privileges. However, there shall be no discrimination in pricing among retail licensee purchasers with on-premises privileges and no discrimination in pricing among retail licensee purchasers with off-premises privileges, unless the conditions in subsection A of this section are present. Price differentiations shall be subject to the following provisions:

1. The wholesale price provided for differentiation to a retailer with on-premises and off-premises privileges shall be based on which privilege generates the majority of the business revenue.

2. Licensees with on-premises and off-premises privileges who choose to accept price differentiations from wholesalers shall provide those wholesalers with a written statement declaring which privilege generates the majority of their business revenue.

3. Wholesalers will be responsible for maintaining those statements as well as indicating on sales invoices which privilege the retailer has designated as their major revenue generator.

4. Upon request, wholesalers and retailers shall provide the board with written substantiation for any price differentiation.

C. No person holding a license authorizing the sale of alcoholic beverages at retail shall knowingly induce or receive a discrimination in price prohibited by this section.

3VAC5-30-100. Novelties and specialties.

Distribution of novelty and specialty items, including wearing apparel bearing alcoholic beverage advertising, shall be subject to the following limitations and conditions:

1. Items not in excess of $10 in wholesale value may be given away. No manufacturer, importer, bottler, broker, wholesaler, or representative of such manufacturer, importer, bottler, broker, or wholesaler may give such items to patrons on the premises of retail licensees; however, a manufacturer or the manufacturer's authorized representative, other than wholesalers, conducting tastings pursuant to the provisions of § 4.1-201.1 of the Code of Virginia, may give no more than one such item to each consumer provided a sample of alcoholic beverages during the tasting event;

2. Items bearing moderation and responsible drinking messages may be displayed by the licensee and the licensee's employees on the licensed premises and given to patrons on such premises as long as any references to any alcoholic beverage manufacturer or the alcoholic beverage manufacturer's brands are subordinate in type size and quantity of text to such moderation message;

3. Items in excess of $10 in wholesale value may be donated by distilleries, wineries, and breweries only to participants or entrants in connection with the sponsorship of conservation and environmental programs, professional, semi-professional, or amateur athletic and sporting events subject to the limitations of 3VAC5-20-100, and for events of a charitable or cultural nature;

4. Items may be sold by mail upon request or over the counter at retail establishments customarily engaged in the sale of novelties and specialties, provided the items are sold at the reasonable open market price in the localities where sold;

5. Wearing apparel shall be in adult sizes;

6. Point-of-sale order blanks relating to novelty and specialty items may be provided by beer and wine wholesalers to retail licensees for use on the retail licensee's premises if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or the retailer's representative. Wholesalers may not be involved in the redemption process; and

7. Novelty and specialty items bearing alcoholic beverage advertising may not be distributed to persons younger than the legal drinking age.

VA.R. Doc. No. R23-7509; Filed July 1, 2024, 4:17 p.m.

Proposed Regulation

Title of Regulation: **3VAC5-60. Manufacturers and Wholesalers Operations (amending 3VAC5-60-10 through 3VAC5-60-50, 3VAC5-60-70, 3VAC5-60-100; repealing 3VAC5-60-60, 3VAC5-60-80, 3VAC5-60-90).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 11, 2024.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Basis: Section 4.1-103 of the Code of Virginia provides that the Virginia Alcoholic Beverage Control Authority Board of Directors has the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia. Section 4.1-111 of the Code of Virginia provides the board with the authority to adopt reasonable regulations that it deems necessary to carry out the provisions of Title 4.1 of the Code of Virginia and to amend or repeal such regulations.

Purpose: This regulation is essential to protect the health, safety, and welfare of citizens because the regulation provides comprehensive guidance for manufacturers and wholesalers on numerous issues, including licensing; taxes, bonds, and sureties; and solicitor salespersons.

Substance: The proposed amendments (i) rearrange requirements into the appropriate sections; (ii) remove references to "retail off-premises" wineries that now have off-premises privileges; (iii) increase the amount of indemnifying bond required of wholesale wine licensees to $10,000; (iv) add terms; and (v) repeal unnecessary requirements.

Issues: The primary advantage to the public is that provisions that were in a different chapter and difficult to locate have been moved to this regulation where it makes more sense for them to be included. The primary advantage to the Commonwealth is that the regulation was amended to more closely align with the Code of Virginia. There are no disadvantages to the public or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Virginia Alcoholic Beverage Control Authority Board of Directors (board) proposes amendments to the regulation to align the regulation with current industry practices, conform to the Code of Virginia, improve clarity, and remove redundant and obsolete language.

Background. In order to meet the regulatory reduction requirements of Executive Order 19 (2022), the board met six times between June and October 2022 to review all of the Virginia Alcoholic Beverage Control Authority regulations, and convened roughly 60 stakeholders, representing all categories of license holders.[2] As a result of that review process, and as part of a periodic review,[3] the board proposes to make the following changes:·

3VAC5-60-10: References to "salesmen" would be changed to "salesperson." The existing subsection C is struck as these provisions are addressed in §§ 4.1-229, 4.1-225, and 4.1-227 of the Code of Virginia.[4] The rest of the proposed new language in 3VAC5-60-10 is being moved from 3VAC5-60-60 and 3VAC5-60-80 of this regulation because it consolidates all related provisions into one section and would minimize confusion.

3VAC5-60-30: "Off-premises" and "retail off-premises" are struck as the 2020 license reform separated winery licenses from retail licenses.[5]

3VAC5-60-40: Wine wholesalers are currently required to pay an indemnifying bond of $2,500 to obtain a license. Virginia Alcoholic Beverage Control Authority (authority) proposes to increase this amount to $10,000, which is the maximum amount allowed in § 4.1-223 of the Code of Virginia.[6] The purpose of the bond is to protect the board if a wholesale wine licensee fails to make timely tax payments; the board seeks to increase this amount to maximize the protection to the board in such cases. However, the Code of Virginia does allow the board to waive the bond requirement if the wholesaler has previously demonstrated financial responsibility, and this flexibility is reflected in the regulation as well. The board also proposes to insert "for good cause shown" as a requirement for wholesale wine licensees to request a waiver of the surety and the bond.

3VAC5-60-50: The term "readily calculable" would be added in the reporting requirements for wine volumes; this change is intended to allow regulants to convert the volume to liters when reporting the volume of a product that is labeled in a different unit of measurement.

3VAC5-60-60 and 3VAC5-60-80: These sections would be repealed and moved in their entirety into 3VAC5-60-10.

3VAC5-60-70: The term "legal holiday" would be replaced with "state or federal holiday."

3VAC5-60-90: This section currently prohibits wholesale deliveries of wine and beer on Sundays and would be repealed in its entirety because the stakeholder workgroup considered it to be outdated.

3VAC5-60-100: The title of this section would be changed to "Certain employees of manufacturers and wholesalers" to be more accurate.

Estimated Benefits and Costs. The proposed amendments largely serve to update the regulation to reflect current practice, conform to statute, and remove redundant or obsolete language. The proposed increase to the indemnity bond amount from $2,500 to $10,000 would increase the overall cost of

obtaining a wholesale wine license. It should be noted that the increase in cost would depend on how much more the wholesaler would have to pay to obtain the bond from the surety.[7] In addition, current licensees who have been in good financial standing with authority may request a waiver of the bond altogether, provided they show good cause. Removing the prohibition on wholesale deliveries on Sundays would benefit wholesalers and their customers for whom Sunday deliveries would be more convenient and desirable.

Businesses and Other Entities Affected. The proposed amendments primarily affect the authority's manufacturer, distiller, and wholesaler licensees; currently, there are 897 active manufacturer-type licensees, including winery, farm winery, brewery, and limited brewery, 112 active distillery or limited distillery licensees, and 524 active wholesaler-type licensees (beer and wine wholesalers).[8]

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[9] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[10] The proposed increase in the indemnity bond amount would marginally increase the cost of maintaining the wine wholesale license for current and future licensees. Thus, an adverse impact is indicated for wine wholesalers.

Small Businesses[11] Affected.[12] The proposed amendments do not appear to adversely affect small businesses. The authority does not collect information on which of their licensees qualify as small businesses; however, wine wholesalers are not likely to meet the definition of small businesses.

Localities[13] Affected.[14] The proposed amendments neither disproportionally affect any particular localities, nor affect costs for local governments.

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

Effects on the Use and Value of Private Property. The proposed increase in the required indemnity bond amount would increase the license cost of wine wholesalers, which would decrease the value of these private businesses. However, any reduction in value arising from this cost increase is likely to be negligible relative to wine wholesaler revenues. The proposed amendments do not affect real estate development costs.

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

[2] See https://townhall.virginia.gov/L/Meetings.cfm?BoardID=2&time=Past. The authority provided a list of external stakeholders; although all stakeholders may not have attended every meeting, the meetings were spent conducting a line-by-line review of the regulations, and the proposed changes reflect the board's decisions after considering stakeholder input.

[3] Pursuant to the Administrative Process Act, agencies are required to review regulations every four years. See § 2.2-4007.1 of the Code of Virginia (https://law.lis.virginia.gov/vacode/title2.2/chapter40/section2.2-4007.1/) and § 2.2-4017 of the Code of Virginia (https://law.lis.virginia.gov/vacode/title2.2/chapter40/section2.2-4017/).

[4] See https://law.lis.virginia.gov/vacode/4.1-227/, https://law.lis.virginia.gov/vacode/title4.1/ chapter2/section4.1-225/, and https://law.lis.virginia.gov/vacode/4.1-229/.

[5] See https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB390.

6 See https://law.lis.virginia.gov/vacode/title4.1/chapter2/section4.1-223/.

7 The price of the bond to the wholesaler is generally less than the bond amount and reflects the surety estimation of the wholesaler risk of defaulting on taxes.

8 Data Source: Authority.

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

[10] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

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

[13] "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[14] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Virginia Alcoholic Beverage Control Authority concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) rearrange requirements into the appropriate sections; (ii) remove references to "retail off-premises" wineries that now have off-premises privileges; (iii) increase the amount of indemnifying bond

required of wholesale wine licensees to $10,000; (iv) add terms; and (v) repeal unnecessary requirements.

3VAC5-60-10. Solicitor ~~salesmen~~ salespersons; records; employment restrictions; wine and beer importer licenses; conditions for exercise of license privileges; suspension or revocation of permits.

A. A solicitor ~~salesman~~ salesperson employed by any out-of-state wholesaler to solicit the sale of or sell wine or beer shall keep complete and accurate records for a period of two years, reflecting all expenses incurred by ~~him~~ the salesperson in connection with the solicitation of the sale of ~~his~~ the salesperson's employer's products and shall, upon request, furnish the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) with a certified copy of such records.

B. A solicitor ~~salesman~~ salesperson must be 18 years ~~old~~ of age or older to solicit the sale of wine or beer and may not be employed at the same time by an out-of-state wholesaler and by a licensee to solicit the sale of or sell wine or beer.

~~C. The board may suspend or revoke the permit of a solicitor salesman if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has violated any provision of this section or committed any other act that would justify the board in suspending or revoking a license.~~

~~Before suspending or revoking such permit, the board shall accord the solicitor salesman the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.~~

C. The authority shall approve such forms as are necessary to facilitate compliance with § 4.1-218 of the Code of Virginia. Any document executed by or on behalf of brand owners for the purpose of designating wine or beer importer licensees as the authorized representative of such brand owner must be signed by a person authorized by the brand owner to do so. If such person is not an employee of the brand owner, then such document must be accompanied by a written power of attorney that provides that the person executing the document on behalf of the brand owner is the attorney-in-fact of the brand owner and has full power and authority from the brand owner to execute the required statements on the brand owner's behalf. The authority may approve a limited power of attorney form to effectuate the provisions of this subsection.

D. When filing the list required by § 4.1-218 of the Code of Virginia of all wholesale licensees authorized by a wine or beer importer to distribute brands of wine or beer in the Commonwealth, wine and beer importer licensees shall comply with the provisions of the Wine and Beer Franchise Acts (Chapters 4 (§ 4.1-400 et seq.) and 5 (§ 4.1-500 et seq.) of the Code of Virginia) pertaining to designations of primary areas of responsibility in the case of wholesale wine licensees and designation of sales territories in the case of wholesale beer licensees.

E. In the event that, subsequent to the filing of a brand owner's authorization for a licensed importer to import any brand of wine or beer, the importer makes arrangements to sell and deliver or ship additional brands of wine or beer into the Commonwealth, the privileges of the importer's license shall not extend to such additional brands until the licensee complies with the requirements of § 4.1-218 of the Code of Virginia and this section in relation to each such additional brand. Likewise, if a brand owner who has previously authorized a licensed importer to import one or more of its brands of wine or beer into the Commonwealth should subsequently withdraw from the importer its authority to import such brand, it shall be incumbent upon such importer to make a supplemental filing of its brand owner authorizing documents indicating the deletion of any such brands of wine or beer.

F. The provisions of subsections A through E of this section shall not impair contracts in existence or entered into prior to July 1, 1991, between a licensed importer and the licensed importer's supplier or brand owner.

G. Solicitation of a mixed beverage licensee other than by a permittee of the authority and in the manner authorized by this section shall be prohibited.

H. Permits for mixed beverage solicitor salesperson.

1. No person shall solicit a mixed beverage licensee unless such person has been issued a permit. To obtain a permit, a person shall:

a. Register with the authority by filing an application on such forms as prescribed by the authority;

b. Pay the fee in advance;

c. Submit with the application a letter of authorization from the manufacturer, brand owner, or a duly designated United States agent of each specific brand of spirits that the permittee is authorized to represent on behalf of the manufacturer or brand owner in the Commonwealth; and

d. Be at least 21 years of age.

2. Each permit shall expire yearly on June 30, unless sooner suspended or revoked by the authority.

3. A permit issued pursuant to this chapter shall authorize the permittee to solicit or promote only the brand of spirits that the permittee has been issued written authorization to represent on behalf of the manufacturer, brand owner, or a duly designated United States agent and provided that a letter of authorization from the manufacturer or brand owner to the permittee specifying the brand such permittee is authorized to represent shall be on file with the authority. Until written authorization or a letter of authorization, in a form authorized by the authority, is received and filed with the authority for a particular brand of spirits, there shall be no solicitation or promotion of such product by the

permittee. Further, no amendment, withdrawal, or revocation, in whole or in part, of a letter of authorization on file with the authority shall be effective as against the authority until written notice is received and filed with the authority and, until the authority receives such notice, the permittee shall be deemed to be the authorized representative of the manufacturer or brand owner for the brand specified on the most current authorization on file with the authority.

I. Records for mixed beverage solicitor salespersons. A permittee shall keep complete and accurate records of the permittee's solicitation of any mixed beverage licensee for a period of two years, reflecting all expenses incurred by the permittee in connection with the solicitation of the sale of the permittee's employer's products and shall, upon request, furnish the authority with a copy of such records.

J. Permitted activities for mixed beverage solicitor salespersons. Solicitation by a permittee shall be limited to the permittee's authorized brand; may include contact, meetings with, or programs for the benefit of mixed beverage licensees and employees of the licensee on the licensed premises; and, in conjunction with solicitation, a permittee may:

1. Directly or indirectly distribute written educational material, up to one item per retailer and one item per employee per visit, that may not be displayed on the licensed premises; distribute novelty and specialty items bearing spirits advertising not in excess of $10 in wholesale value in quantities equal to the number of employees of the retail establishment present at the time the items are delivered; and provide film or video presentations of spirits that are essentially educational to licensees and employees only and that are not for display or viewing by customers;

2. Provide to a mixed beverage licensee sample servings from containers of spirits and furnish one unopened sample container no larger than 375 milliliters of each brand being promoted by the permittee and not sold by the licensee. Such containers and sample containers shall be purchased at a government store and bear the permittee's permit number and the word "sample" in reasonable sized lettering on the container or sample container label; further, the spirits container shall remain the property of the permittee and may not be left with the licensee, and any sample containers left with the licensee shall not be sold by the licensee;

3. Promote the permittee's authorized brands of spirits at conventions, trade association meetings, or similar gatherings of organizations, a majority of whose membership consists of mixed beverage licensees or spirits representatives for the benefit of members and guests, and shall be limited to:

a. Sample servings from containers of spirits purchased from government stores when the spirits donated are intended for consumption during the gathering;

b. Displays of spirits in closed containers bearing the word "sample" in lettering of reasonable size and informational signs, provided such merchandise is not sold or given away, except as permitted in this section;

c. Distribution of informational brochures, pamphlets, and the like, relating to spirits;

d. Distribution of novelty and specialty items bearing spirits advertising not in excess of $10 in wholesale value;

e. Film or video presentations of spirits that are essentially educational;

f. Displays at the event of the brands being promoted by the permittee;

g. Rental of display booth space if the rental fee is the same as paid by all exhibitors at the event;

h. Provision of hospitality that is independent from activities sponsored by the association or organization holding the event;

i. Purchase of tickets to functions and payment of registration fees if the payments or fees are the same as paid by all attendees, participants, or exhibitors at the event; and

j. Payment for advertisements in programs or brochures issued by the association or organization holding the event if the total payments made for all such advertisements do not exceed $300 per year for any association or organization holding the event; or

4. Provide or offer to provide point-of-sale advertising material to licensees as provided in 3VAC5-20-20 or 3VAC5-30-80.

K. Prohibited activities. A mixed beverage solicitor salesperson permittee shall not:

1. Sell spirits to any licensee, solicit or receive orders for spirits from any licensee, provide or offer to provide cash discounts or cash rebates to any licensee, or negotiate any contract or contract terms for the sale of spirits with a licensee;

2. Discount or offer to discount any merchandise or other alcoholic beverages as an inducement to sell or offer to sell spirits to licensees;

3. Provide or offer to provide gifts, entertainment, or other forms of gratuity to licensees, except that a permittee may provide a licensee "routine business entertainment," as defined in 3VAC5-30-70, subject to the same conditions and limitations that apply to wholesalers and manufacturers under 3VAC5-30-70;

4. Provide or offer to provide any equipment, furniture, fixtures, property, or other thing of value to licensees, except as permitted by this regulation;

5. Purchase or deliver spirits or other alcoholic beverages for or to licensees or provide any services as inducements to

licensees, except that this provision shall not preclude the sale or delivery of wine or beer by a licensed wholesaler;

6. Be directly or indirectly employed in the manufacturing, bottling, importing, or wholesaling of spirits and simultaneously be employed by a retail licensee;

7. Solicit licensees on any premises other than on the licensee's licensed premises or at conventions, trade association meetings, or similar gatherings as permitted in subdivision D 3 of this section;

8. Solicit or promote any brand of spirits without having on file with the authority a letter from the manufacturer or brand owner authorizing the permittee to represent such brand in the Commonwealth; or

9. Engage in solicitation of spirits other than as authorized by law.

L. Refusal, suspension, or revocation of permits.

1. The authority may refuse, suspend, or revoke a permit if it has reasonable cause to believe that any cause exists that would justify the authority in refusing to issue such person a license or that such person has violated any provision of this section or committed any other act that would justify the authority in suspending or revoking a license.

2. Before refusing, suspending, or revoking such permit, the authority shall follow the same administrative procedures accorded an applicant or licensee under the Alcoholic Beverage Control Act (§ 4.1-100 et seq. of the Code of Virginia) and regulations of the authority.

3VAC5-60-20. Wines; purchase orders generally; wholesale wine licensees.

A. Purchases of wine between the ~~board,~~ Virginia Alcoholic Beverage Control Authority (authority) licensees or persons outside the Commonwealth shall be executed only on order forms prescribed by the ~~board~~ authority and provided at cost if supplied by the ~~department~~ authority.

B. Wholesale wine licensees shall comply with the following procedures:

1. Purchase orders. A copy of each purchase order for wine and a copy of any change in such order shall be forwarded to the ~~board~~ authority by the wholesale wine licensee at the time the order is placed or changed. Upon receipt of shipment, one copy of such purchase order shall be forwarded to the ~~board~~ authority by the licensee ~~reflecting~~ accurately reflecting the date received and any changes. In lieu of forwarding copies of purchase orders to the ~~board~~ authority, a wholesale licensee may submit a report to the ~~board~~ authority monthly, in a format approved by the ~~board~~ authority, of all purchase orders for the previous month. The report must be submitted to the ~~board~~ authority on or before the 15th day of the succeeding month.

2. Sales in the Commonwealth. Separate invoices shall be used for all nontaxed wine sales in the Commonwealth and a copy of each such invoice shall be furnished to the ~~board~~ authority upon completion of the sale. In lieu of forwarding copies of invoices to the ~~board~~ authority, a wholesale licensee may submit a report to the ~~board~~ authority monthly, in a format approved by the ~~board~~ authority, of all invoices for the previous month. The report must be submitted to the ~~board~~ authority on or before the 15th day of the succeeding month.

3. Out-of-state sales. Separate sales invoices shall be used for wine sold outside the Commonwealth and a copy of each such invoice shall be furnished to the ~~board~~ authority upon completion of the sale. In lieu of forwarding copies of invoices to the ~~board~~ authority, a wholesale licensee may submit a report to the ~~board~~ authority monthly, in a format approved by the board, of all invoices for the previous month. The report must be submitted to the ~~board~~ authority on or before the 15th day of the succeeding month.

4. Peddling. A maximum of two cases or 24 bottles of wine may be peddled to retail licensees during an invoiced delivery, provided that the wholesale wine licensee provides a revised purchase order indicating the additional wine peddled during the transaction.

5. Repossession. Repossession of wine sold to a retailer shall be accomplished on forms prescribed by the ~~board~~ authority and provided at cost if supplied by the ~~board~~ authority, and in compliance with the instructions on the forms.

6. Reports to the ~~board~~ authority. Each month wholesale wine licensees shall, on forms or an electronic system prescribed by the ~~board~~ authority and in accordance with the instructions set forth ~~therein~~ in this section, report to the ~~board~~ authority the purchases and sales made during the preceding month, and the amount of state wine tax collected from retailers pursuant to §§ 4.1-234 and 4.1-235 of the Code of Virginia. Each wholesale wine licensee shall, on forms or an electronic system prescribed by the ~~board~~ authority, on a quarterly basis indicate the quantity of wine on hand at the close of business on the last day of the last month of the preceding quarter based on actual physical inventory by brands. Reports shall be accompanied by remittance for the amount of taxes collected, less any refunds, replacements, or adjustments and shall be postmarked or submitted electronically no later than the 15th of the month, or if the 15th ~~is not a business day~~ falls on a Saturday, Sunday, or state or federal holiday, the next business day thereafter.

3VAC5-60-25. Winery, farm winery, and brewery licenses; reports.

A. On or before the 15th day of each month, each winery~~,~~ and farm winery licensee~~, or on or before the 10th day of each month each brewery licensee~~ shall, on forms or an electronic

system prescribed by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) and in accordance with the instructions set forth ~~therein~~ in this chapter, file a report with the ~~board~~ authority of sales made in the previous calendar month. Tax payment in accordance with § 4.1-234 or 4.1-236 of the Code of Virginia shall be made with the submission of this report.

B. On or before the 10th day of each month, each brewery licensee shall, on forms or an electronic system prescribed by the authority and in accordance with the instructions set forth in this chapter, file a report with the authority of sales made in the previous calendar month. Tax payment in accordance with § 4.1-234 or 4.1-236 of the Code of Virginia shall be made with the submission of this report.

3VAC5-60-30. Procedures for ~~retail off-premises~~ winery licenses; purchase orders; segregation, identification, and storage.

A. Wine offered for sale by a ~~retail off-premises~~ winery licensee shall be procured on order forms prescribed by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) and provided at cost if supplied by the ~~board~~ authority. The order shall be accompanied by the correct amount of state wine tax levied by § 4.1-234 of the Code of Virginia, due the Commonwealth in cash, as defined in 3VAC5-30-30.

B. Wine procured for sale at retail shall be segregated from all other wine and stored only at a location on the premises approved by the ~~board~~ authority. The licensee shall place ~~his~~ the licensee's license number and the date of the order on each container of wine so stored for sale at retail. Only wine acquired, segregated, and identified ~~as herein required~~ per the requirements of this section may be offered for sale at retail.

3VAC5-60-40. Indemnifying bond required of wholesale wine licenses.

No wholesale wine license shall be issued unless there shall be on file with the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) an indemnifying bond running to the Commonwealth in the penalty of ~~$2,500~~ $10,000, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth as surety, conditioned upon the faithful compliance with requirements of ~~Title 4.1~~ the Alcoholic Beverage Control Act (§ 4.1-100 et seq. of the Code of Virginia) and the regulations of the ~~board~~ authority.

A wholesale wine licensee may request in writing a waiver of the surety and the bond by the ~~board~~ authority for good cause shown. If the waiver is granted, the ~~board~~ authority may withdraw such waiver of surety and bond at any time for good cause.

3VAC5-60-50. Records required of distillers, winery licensees, and farm winery licensees; procedures for distilling for another; farm wineries.

A person holding a distiller's, winery, or a farm winery license shall comply with the following procedures:

1. Records. Complete and accurate records shall be kept at the licensee's place of business for a period of two years, which records shall be available during reasonable hours for inspection by any member of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) or its special agents. Such records shall include the following information:

a. The amount in liters and alcoholic content of each type of alcoholic beverage manufactured during each calendar month;

b. The amount of alcoholic beverages on hand at the end of each calendar month;

c. Withdrawals of alcoholic beverages for sale to the ~~board~~ authority or licensees;

d. Withdrawals of alcoholic beverages for shipment outside of the Commonwealth, showing:

(1) Name and address of consignee;

(2) Date of shipment; and

(3) Alcoholic content, brand name, type of beverage, size of container, and quantity of shipment;

e. Purchases of cider or wine, including:

(1) Date of purchase;

(2) Name and address of vendor;

(3) Amount of purchase readily calculable in liters; and

(4) Amount of consideration paid; and

f. A distiller employed to distill any alcoholic beverage shall include in ~~his~~ the distiller's records the name and address of ~~his~~ the distiller's employer for such purpose, the amount of grain, fruit products, or other substances delivered by such employer, the type, amount in liters, and alcoholic content of alcoholic beverage distilled ~~therefrom~~, the place where stored, and the date of the transaction.

2. Distillation for another. A distiller manufacturing spirits for another person shall:

a. At all times during distillation keep segregated and identifiable the grain, fruit, fruit products, or other substances furnished by the owner ~~thereof~~ of those items;

b. Keep the alcoholic beverages distilled for such person segregated in containers bearing the date of distillation, the name of the owner, the amount in liters, and the type and alcoholic content of each container; and

c. Release the alcoholic beverages so distilled to the custody of the owner~~,~~ or otherwise~~,~~ only upon a written permit issued by the ~~board~~ authority.

3. Farm wineries. A farm winery shall keep complete, accurate, and separate records of fresh fruits or other agricultural products grown or produced elsewhere and obtained for the purpose of manufacturing wine. Each farm winery must comply with the provisions of § 4.1-219 of the Code of Virginia for its applicable class of winery license relating to production of fresh fruits or other agricultural products. As provided in § 4.1-219, the ~~board~~ authority, upon petition by the Department of Agriculture and Consumer Services, may grant a waiver from the production requirements.

3VAC5-60-60. ~~Wine or beer importer licenses; conditions for exercise of license privileges.~~ (Repealed.)

~~A. In addition to complying with the requirements of § 4.1-206.1 of the Code of Virginia, pertaining to wine and beer importer licenses, holders of wine and beer importer licenses must comply with § 4.1-218 in order to exercise the privileges of such licenses. The board shall approve such forms as are necessary to facilitate compliance with § 4.1-218. Any document executed by, or on behalf of, brand owners for the purpose of designating wine or beer importer licensees as the authorized representative of such brand owner must be signed by a person authorized by the brand owner to do so. If such person is not an employee of the brand owner, then such document must be accompanied by a written power of attorney which provides that the person executing the document on behalf of the brand owner is the attorney in fact of the brand owner and has full power and authority from the brand owner to execute the required statements on its behalf. The board may approve a limited power of attorney form in order to effectuate the aforesaid provision.~~

~~B. When filing the list required by § 4.1-218 of the Code of Virginia of all wholesale licensees authorized by a wine or beer importer to distribute brands of wine or beer in the Commonwealth, wine and beer importer licensees shall comply with the provisions of the Wine and Beer Franchise Acts pertaining to designations of primary areas of responsibility in the case of wholesale wine licensees and designation of sales territories in the case of wholesale beer licensees.~~

~~C. In the event that, subsequent to the filing of the brand owner's authorization for a licensed importer to import any brand of wine or beer, the importer makes arrangements to sell and deliver or ship additional brands of wine or beer into this Commonwealth, the privileges of its license shall not extend to such additional brands until the licensee complies with the requirements of § 4.1-218 of the Code of Virginia and this section in relation to each such additional brand. Likewise, if the brand owner who has previously authorized a licensed importer to import one or more of its brands of wine or beer into this Commonwealth should, subsequent thereto, withdraw from the importer its authority to import such brand, it shall be incumbent upon such importer to make a supplemental filing of its brand owner authorizing documents indicating the deletion of any such brands of wine or beer.~~

~~D. The foregoing provisions of this regulation shall not impair contracts in existence or entered into prior to July 1, 1991, between the licensed importer and its supplier or brand owner.~~

3VAC5-60-70. Excise taxes; beer and wine coolers.

A. Indemnifying bond required of manufacturers, bottlers, or wholesalers of beer and wine coolers.

1. No license shall be issued to a manufacturer, bottler, or wholesaler of beer or wine coolers unless there shall be on file with the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority), on a form approved or authorized by the ~~board~~ authority, an indemnifying bond running to the Commonwealth in the penalty of not less than $1,000 or more than $100,000, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth as surety, conditioned upon the payment of the tax imposed by § 4.1-236 of the Code of Virginia and in accordance with the provisions thereof and § 4.1-239 of the Code of Virginia.

2. A manufacturer, bottler, or wholesaler of beer or wine coolers may request in writing a waiver of the surety and the bond by the ~~board~~ authority. The ~~board~~ authority may withdraw such waiver at any time for failure to comply with §§ 4.1-236 and 4.1-239 of the Code of Virginia.

B. Shipment of beer and wine coolers to installations of the armed forces.

1. Installations of the United States Armed Forces shall include~~, but not be limited to,~~ all United States Army, Navy, Air Force, Marine, Coast Guard, Department of Defense, and Veteran Administration bases, forts, reservations, depots, or other facilities.

2. The direct shipment of beer and wine coolers from points outside the geographical confines of the Commonwealth to installations of the United States Armed Forces located within the geographical confines of the Commonwealth for resale on such installations shall be prohibited. Beer and wine coolers must be shipped to duly licensed Virginia wholesalers who may deliver the same to such installations, but the sale of ~~such~~ beer and wine coolers so delivered shall be exempt from the excise tax on beer and wine coolers only if the sale ~~thereof~~ meets the exemption requirements of § 4.1-236 of the Code of Virginia.

C. Filing of monthly report and payment of tax falling due on Saturday, Sunday, or ~~legal~~ state or federal holiday; filing or payment by mail.

1. When the last day on which a monthly report may be filed or a tax may be paid without penalty or interest falls on a Saturday, Sunday, or ~~legal~~ state or federal holiday, then any report required by § 4.1-239 of the Code of Virginia may be

filed or such payment may be made without penalty or interest on the next succeeding business day.

2. When remittance of a monthly report or a tax payment is made by mail, receipt of such report or payment by the person with whom such report is required to be filed or to whom such payment is required to be made, in a sealed envelope bearing a postmark on or before midnight of the day such report is required to be filed or such payment made without penalty or interest, shall constitute filing and payment as if such report had been filed or such payment made before the close of business on the last day on which such report may be filed or such tax may be paid without penalty or interest.

D. Rate of interest. Unless otherwise specifically provided, interest on omitted taxes and refunds under the excise tax provisions of Title 4.1 of the Code of Virginia shall be computed in the same manner specified in § 58.1-15 of the Code of Virginia.

3VAC5-60-80. ~~Solicitation of mixed beverage licensees by representatives of manufacturers, etc., of spirits.~~ (Repealed.)

~~A. Generally. This section applies to the solicitation, directly or indirectly, of a mixed beverage licensee to sell or offer for sale spirits. Solicitation of a mixed beverage licensee for such purpose other than by a permittee of the board and in the manner authorized by this section shall be prohibited.~~

~~B. Permits.~~

~~1. No person shall solicit a mixed beverage licensee unless he has been issued a permit. To obtain a permit, a person shall:~~

~~a. Register with the board by filing an application on such forms as prescribed by the board;~~

~~b. Pay in advance the fee;~~

~~c. Submit with the application a letter of authorization from the manufacturer, brand owner or its duly designated United States agent, of each specific brand or brands of spirits which the permittee is authorized to represent on behalf of the manufacturer or brand owner in the Commonwealth; and~~

~~d. Be an individual at least 21 years of age.~~

~~2. Each permit shall expire yearly on June 30, unless sooner suspended or revoked by the board.~~

~~3. A permit hereunder shall authorize the permittee to solicit or promote only the brand or brands of spirits for which the permittee has been issued written authorization to represent on behalf of the manufacturer, brand owner, or its duly designated United States agent and provided that a letter of authorization from the manufacturer or brand owner to the permittee specifying the brand or brands he is authorized to represent shall be on file with the board. Until written authorization or a letter of authorization, in a form authorized by the board, is received and filed with the board for a particular brand or brands of spirits, there shall be no solicitation or promotion of such product by the permittee. Further, no amendment, withdrawal or revocation, in whole or in part, of a letter of authorization on file with the board shall be effective as against the board until written notice is received and filed with the board, and, until the board receives such notice, the permittee shall be deemed to be the authorized representative of the manufacturer or brand owner for the brand or brands specified on the most current authorization on file with the board.~~

~~C. Records. A permittee shall keep complete and accurate records of his solicitation of any mixed beverage licensee for a period of two years, reflecting all expenses incurred by him in connection with the solicitation of the sale of his employer's products and shall, upon request, furnish the board with a copy of such records.~~

~~D. Permitted activities. Solicitation by a permittee shall be limited to his authorized brand or brands, may include contact, meetings with, or programs for the benefit of mixed beverage licensees and employees thereof on the licensed premises, and in conjunction with solicitation, a permittee may:~~

~~1. Distribute directly or indirectly written educational material (one item per retailer and one item per employee, per visit) which may not be displayed on the licensed premises; distribute novelty and specialty items bearing spirits advertising not in excess of $10 in wholesale value (in quantities equal to the number of employees of the retail establishment present at the time the items are delivered); and provide film or video presentations of spirits which are essentially educational to licensees and their employees only and are not for display or viewing by customers;~~

~~2. Provide to a mixed beverage licensee sample servings from containers of spirits and furnish one, unopened, sample container no larger than 375 milliliters of each brand being promoted by the permittee and not sold by the licensee; such containers and sample containers shall be purchased at a government store and bear the permittee's permit number and the word "sample" in reasonable sized lettering on the container or sample container label; further, the spirits container shall remain the property of the permittee and may not be left with the licensee, and any sample containers left with the licensee shall not be sold by the licensee;~~

~~3. Promote his authorized brands of spirits at conventions, trade association meetings, or similar gatherings of organizations, a majority of whose membership consists of mixed beverage licensees or spirits representatives for the benefit of their members and guests, and shall be limited as follows:~~

~~a. To sample servings from containers of spirits purchased from government stores when the spirits donated are intended for consumption during the gathering;~~

b. To displays of spirits in closed containers bearing the word "sample" in lettering of reasonable size and informational signs provided such merchandise is not sold or given away except as permitted in this section;

c. To distribution of informational brochures, pamphlets and the like, relating to spirits;

d. To distribution of novelty and specialty items bearing spirits advertising not in excess of $10 in wholesale value;

e. To film or video presentations of spirits which are essentially educational;

f. To display at the event the brands being promoted by the permittee;

g. To rent display booth space if the rental fee is the same as paid by all exhibitors at the event;

h. To provide its own hospitality, which is independent from activities sponsored by the association or organization holding the event;

i. To purchase tickets to functions and pay registration fees if the payments or fees are the same as paid by all attendees, participants, or exhibitors at the event; and

j. To make payments for advertisements in programs or brochures issued by the association or organization holding the event if the total payments made for all such advertisements do not exceed $300 per year for any association or organization holding the event; or

4. Provide or offer to provide point-of-sale advertising material to licensees as provided in 3VAC5-20-20 or 3VAC5-30-80.

E. Prohibited activities. A permittee shall not:

1. Sell spirits to any licensee, solicit or receive orders for spirits from any licensee, provide or offer to provide cash discounts or cash rebates to any licensee, or to negotiate any contract or contract terms for the sale of spirits with a licensee;

2. Discount or offer to discount any merchandise or other alcoholic beverages as an inducement to sell or offer to sell spirits to licensees;

3. Provide or offer to provide gifts, entertainment or other forms of gratuity to licensees except that a permittee may provide a licensee "routine business entertainment," as defined in 3VAC5-30-70, subject to the same conditions and limitations that apply to wholesalers and manufacturers under that section;

4. Provide or offer to provide any equipment, furniture, fixtures, property or other thing of value to licensees except as permitted by this regulation;

5. Purchase or deliver spirits or other alcoholic beverages for or to licensees or provide any services as inducements to licensees, except that this provision shall not preclude the sale or delivery of wine or beer by a licensed wholesaler;

6. Be employed directly or indirectly in the manufacturing, bottling, importing or wholesaling of spirits and simultaneously be employed by a retail licensee;

7. Solicit licensees on any premises other than on their licensed premises or at conventions, trade association meetings or similar gatherings as permitted in subdivision D 3 of this section;

8. Solicit or promote any brand or brands of spirits without having on file with the board a letter from the manufacturer or brand owner authorizing the permittee to represent such brand or brands in the Commonwealth; or

9. Engage in solicitation of spirits other than as authorized by law.

F. Refusal, suspension or revocation of permits.

1. The board may refuse, suspend, or revoke a permit if it shall have reasonable cause to believe that any cause exists that would justify the board in refusing to issue such person a license, or that such person has violated any provision of this section or committed any other act that would justify the board in suspending or revoking a license.

2. Before refusing, suspending, or revoking such permit, the board shall follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia and regulations of the board.

3VAC5-60-90. Sunday deliveries by wholesalers prohibited; exceptions. (Repealed.)

Persons licensed to sell alcoholic beverages at wholesale shall make no delivery to retail purchasers on Sunday, except to boats sailing for a port of call outside of the Commonwealth, or to banquet licensees.

3VAC5-60-100. Employees Certain employees of manufacturers and wholesalers; approval by the Virginia Alcoholic Beverage Control Authority.

If a person licensed as a manufacturer, importer, or wholesaler of alcoholic beverages wishes to employ a person who has committed an act that would justify the board Virginia Alcoholic Beverage Control Authority (authority) in 4.1-225 of the Code of Virginia, the licensee may apply to the board authority for approval of such employment. The board will cause the Bureau of Law Enforcement Operations to conduct an investigation into the suitability of the person for employment and recommend approval or disapproval. Before disapproving the employment of a person, the board authority shall accord him the person the same notice and opportunity to be heard and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.

VA.R. Doc. No. R23-7513; Filed July 1, 2024, 4:19 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF WILDLIFE RESOURCES

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-50, 4VAC15-20-130).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

August 22, 2024 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Henrico, VA 23228.

Public Comment Deadline: September 10, 2024.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) update the department's "List of Native and Naturalized Fauna of Virginia" and the federal Endangered and Threatened Animal Species list incorporated by reference; and (ii) add "domesticated morphs of red cornsnake" to the definition of "domestic animal."

4VAC15-20-50. Definitions; "wild animal," "native animal," "naturalized animal," "nonnative (exotic) animal," and "domestic animal".

A. In accordance with § 29.1-100 of the Code of Virginia, the following terms shall have the meanings ascribed to them by this section when used in regulations of the board:

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's ~~2022~~ 2024 "List of Native and Naturalized Fauna of Virginia," with copies available in the headquarters and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia that have established wild, self-sustaining populations, as included in the department's ~~2022~~ 2024 "List of Native and Naturalized Fauna of Virginia," with copies available in the headquarters and regional offices of the department.

"Nonnative (exotic) animal" means those species and subspecies of animals not naturally occurring in Virginia, excluding domestic and naturalized species.

The following animals are defined as domestic animals:

Domestic dog (Canis familiaris), including wolf hybrids.

Domestic cat (Felis catus), including hybrids with wild felines.

Domestic horse (Equus caballus), including hybrids with Equus asinus.

Domestic ass, burro, and donkey (Equus asinus).

Domestic cattle (Bos taurus and Bos indicus).

Domestic sheep (Ovis aries)**,** including hybrids with wild sheep.

Domestic goat (Capra hircus).

Domestic swine (Sus scrofa), including pot-bellied pig and excluding any swine that are wild or for which no claim of ownership can be made.

Llama (Lama glama).

Alpaca (Lama pacos).

Camels (Camelus bactrianus and Camelus dromedarius).

Domesticated races of hamsters (Mesocricetus spp.).

Domesticated races of mink (Mustela vison) where adults are heavier than 1.15 kilograms or their coat color can be distinguished from wild mink.

Domesticated races of guinea pigs (Cavia porcellus).

Domesticated races of gerbils (Meriones unguiculatus).

Domesticated races of chinchillas (Chinchilla laniger).

Domesticated races of rats (Rattus norvegicus and Rattus rattus).

Domesticated races of mice (Mus musculus).

Domesticated breeds of European rabbit (Oryctolagus cuniculus) recognized by the American Rabbit Breeders Association, Inc. and any lineage resulting from crossbreeding recognized breeds. A list of recognized rabbit breeds is available on the department's website.

Domesticated races of chickens (Gallus).

Domesticated races of turkeys (Meleagris gallopavo).

Domesticated races of ducks and geese distinguishable morphologically from wild birds.

Feral pigeons (Columba domestica and Columba livia) and domesticated races of pigeons.

Domesticated races of guinea fowl (Numida meleagris).

Domesticated races of peafowl (Pavo cristatus).

Domesticated morphs of red cornsnake (Pantherophis guttatus) visibly distinguishable from native red cornsnakes based on their unique colors and patterns.

"Wild animal" means any member of the animal kingdom, except domestic animals, including ~~without limitation~~ any native, naturalized, or nonnative (exotic) mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate~~,~~ and ~~includes~~ any hybrid of ~~them~~ these animals, except as otherwise specified in regulations of the board, or part, product, egg, or offspring of them, or the dead body or parts ~~of them~~ thereof.

B. Exception for red foxes and European rabbits. Domesticated red foxes (Vulpes vulpes) having coat colors distinguishable from wild red foxes and wild European rabbits possessed in captivity on July 1, 2017, may be maintained in captivity until the animal dies, but the animal may not be bred or sold without a permit from the department. Persons possessing domesticated red foxes or European rabbits without a permit from the department must declare such possession in writing to the department by January 1, 2018. This written declaration must include the number of individual animals in possession and date acquired, sex, estimated age, coloration, and a photograph of each fox or European rabbit. This written declaration shall (i) serve as a permit for possession only, (ii) is not transferable, and (iii) must be renewed every five years.

4VAC15-20-130. Endangered and threatened species; adoption of federal list; additional species enumerated.

A. The board hereby adopts the Federal Endangered and Threatened Species List, Endangered Species Act of December 28, 1973 (16 USC §§ 1531-1543), as amended as of ~~December 28, 2022~~ April 1, 2024, and declares all species listed thereon to be endangered or threatened species in the Commonwealth. Pursuant to subdivision 12 of § 29.1-103 of the Code of Virginia, the director of the department is hereby delegated authority to propose adoption of modifications and amendments to the Federal Endangered and Threatened Species List in accordance with the procedures of §§ 29.1-501 and 29.1-502 of the Code of Virginia.

B. In addition to the provisions of subsection A of this section, the following species are declared endangered or threatened in ~~this~~ the Commonwealth and are afforded the protection provided by Article 6 (§ 29.1-563 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia:

1. Fish:	
Endangered:	
Dace, Clinch	Chrosomus sp. cf. saylori
Dace, Tennessee	Phoxinus tennesseensis
Darter, sharphead	Etheostoma acuticeps
Darter, variegate	Etheostoma variatum
Sunfish, blackbanded	Enneacanthus chaetodon
Threatened:	
Darter, Carolina	Etheostoma collis
Darter, golden	Etheostoma denoncourti
Darter, greenfin	Etheostoma chlorobranchium
Darter, western sand	Ammocrypta clara
Madtom, orangefin	Noturus gilberti
Paddlefish	Polyodon spathula
Shiner, emerald	Notropis atherinoides
Shiner, steelcolor	Cyprinella whipplei
Shiner, whitemouth	Notropis alborus
2. Amphibians:	
Endangered:	
Salamander, eastern tiger	Ambystoma tigrinum
Threatened:	
Salamander, Mabee's	Ambystoma mabeei
3. Reptiles:	
Endangered:	
Rattlesnake, canebrake (Coastal Plain population of timber rattlesnake)	Crotalus horridus
Turtle, bog	Glyptemys muhlenbergii
Turtle, eastern chicken	Deirochelys reticularia
Threatened:	
Lizard, eastern glass	Ophisaurus ventralis
Turtle, wood	Glyptemys insculpta

4. Birds:	
Endangered:	
Plover, Wilson's	Charadrius wilsonia
Rail, black	Laterallus jamaicensis
Woodpecker, red-cockaded	Dryobates borealis
Wren, Bewick's	Thryomanes bewickii
Threatened:	
Falcon, peregrine	Falco peregrinus
Shrike, loggerhead	Lanius ludovicianus
Sparrow, Bachman's	Aimophila aestivalis
Sparrow, Henslow's	Ammodramus henslowii
Tern, gull-billed	Sterna nilotica
5. Mammals:	
Endangered:	
Bat, Rafinesque's eastern big-eared	Corynorhinus rafinesquii macrotis
Bat, little brown	Myotis lucifugus
Bat, tri-colored	Perimyotis subflavus
Hare, snowshoe	Lepus americanus
Shrew, American water	Sorex palustris
Vole, rock	Microtus chrotorrhinus
6. Mollusks:	
Endangered:	
Coil, rubble	Helicodiscus lirellus
Coil, shaggy	Helicodiscus diadema
Deertoe	Truncilla truncata
Elephantear	Elliptio crassidens
Elimia, spider	Elimia arachnoidea
Floater, brook	Alasmidonta varicosa
Ghostsnail, thankless	Holsingeria unthanksensis
Heelsplitter, Tennessee	Lasmigona holstonia
Lilliput, purple	Toxolasma lividus
Mussel, slippershell	Alasmidonta viridis
Pigtoe, Ohio	Pleurobema cordatum
Pigtoe, pyramid	Pleurobema rubrum
Springsnail, Appalachian	Fontigens bottimeri
Springsnail (no common name)	Fontigens morrisoni
Supercoil, spirit	Paravitrea hera
Threatened:	
Floater, green	Lasmigona subviridis
Papershell, fragile	Leptodea fragilis
Pimpleback	Quadrula pustulosa
Pistolgrip	Tritogonia verrucosa
Riversnail, spiny	Iofluvialis
Sandshell, black	Ligumia recta
Supercoil, brown	Paravitrea septadens
7. Arthropods:	
Threatened:	
Amphipod, Madison Cave	Stygobromus stegerorum
Pseudotremia, Ellett Valley	Pseudotremia cavernarum
Xystodesmid, Laurel Creek	Sigmoria whiteheadi

C. It shall be unlawful to take, transport, process, sell, or offer for sale within the Commonwealth any threatened or endangered species of fish or wildlife except as authorized by law.

D. The incidental take of certain species may occur in certain circumstances and with the implementation of certain conservation practices as described in this subsection:

Species	Location	Allowable Circumstances	Required Conservation Measures	Expected Incidental Take
Little brown bat~~,~~ Tri-colored bat	Statewide	Human health risk – need for removal of individual animals from human-habited structures.	Between May 15 and August 31, no exclusion of bats from maternity colonies, except for human health concerns. Department-permitted nuisance wildlife control operator with department-recognized certification in techniques associated with removal of bats. Use of exclusion devices that allow individual animals to escape. Manual collection of individual animals incapable of sustaining themselves; transport to a willing and appropriately permitted wildlife rehabilitator.	Little to no direct lethal taking expected.
		Public safety or property damage risk – need for tree removal, application of prescribed fire, or other land management actions affecting known roosts; removal of animals from known roosts.	Hibernacula: no tree removal, use of prescribed fire, or other land management action within a 250-foot radius buffer area from December 1 through April 30. Between September 1 and November 30, increase the buffer to a 1/4-mile radius with the following conditions: for timber harvests greater than 20 acres, retain snags and wolf trees (if not presenting public safety or property risk) and small tree groups up to 15 trees of 3-inch diameter at breast height (dbh) or greater, one tree group per 20 acres. Otherwise, document the need (public safety, property damage risk) for tree removal during this period and verify that no known roost trees exist in the buffer area. Tree removal and prescribed fire are permitted outside of these dates. Known roost trees: no tree removal, use of prescribed fire, or other land management action within a 150-foot radius buffer area from June 1 through July 31, if possible. Otherwise, document public safety or property damage risk. Department-permitted nuisance wildlife control operator with department-recognized certification in techniques associated with removal of bats. Use of exclusion devices that allow individual animals to escape. Manual collection of individual animals incapable of sustaining themselves; transport to a willing and appropriately permitted wildlife rehabilitator.	Little to no direct lethal taking expected.

DOCUMENTS INCORPORATED BY REFERENCE (4VAC15-20)

~~List of Native and Naturalized Fauna of Virginia, April 2022, Virginia Department of Wildlife Resources~~

~~Federal Endangered and Threatened Animal Species as of December 8, 2022~~

List of Native and Naturalized Fauna of Virginia, May 2024, Virginia Department of Wildlife Resources

Federal Endangered and Threatened Animal Species as of April 1, 2024

VA.R. Doc. No. R24-7956; Filed July 15, 2024, 2:51 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-320. Fish: Fishing Generally (amending 4VAC15-320-25).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Public Hearing Information:

August 22, 2024 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Henrico, VA 23228.

Public Comment Deadline: September 10, 2024.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) remove two limits on largemouth and smallmouth bass; (ii) move authority to set limits for coastal striped bass caught in Crane Lake in Suffolk to Virginia Marine Resources Commission and disallow possession of coastal striped bass in waters of Meherrin, Nottoway, Blackwater, North Landing, Northwest, and Back Bay; (iii) update limits on chain pickerel, northern pike, and muskellunge; (iv) update limits on rock bass and Roanoke bass to add Blackwater (Chowan Drainage) to the geographic exceptions; (v) and remove bullheads for possession.

4VAC15-320-25. Creel and length limits.

The creel limits ~~(~~, including live possession~~)~~, and the length limits for the various species of fish shall be as follows, unless otherwise excepted by posted rules at department-owned or department-controlled waters (see 4VAC15-320-100 D).

Type of fish	Subtype or location	Creel and length limits	Geographic exceptions	Creel or length limits for exceptions
largemouth bass, smallmouth bass		5 per day in the aggregate (combined) No statewide length limits	**Lakes**	
			Briery Creek Lake	No largemouth or smallmouth bass 16 to 24 inches; only 1 largemouth or smallmouth bass per day in the aggregate longer than 24 inches
			Buggs Island (Kerr)	Only 2 of 5 largemouth or smallmouth bass in the aggregate less than 14 inches
			Claytor Lake	No smallmouth bass less than 14 inches
			Flannagan Reservoir	No smallmouth bass less than 15 inches No largemouth bass less than 12 inches
			Lake Gaston	Only 2 of 5 largemouth or smallmouth bass in the aggregate less than 14 inches

			Leesville Reservoir	Only 2 of 5 largemouth or smallmouth bass in the aggregate less than 14 inches
			Lake Moomaw	No largemouth or smallmouth bass less than 12 inches
			~~Philpott Reservoir~~	~~No largemouth or smallmouth bass less than 12 inches~~
			~~Quantico Marine Base waters~~	~~No largemouth or smallmouth bass 12 to 15 inches~~
			Smith Mountain Lake and its tributaries below Niagara Dam	Only 2 of 5 largemouth or smallmouth bass in the aggregate less than 14 inches
			Rivers	
			Clinch River – within the boundaries of Scott, Wise, Russell, or Tazewell Counties	No largemouth or smallmouth bass less than 20 inches; only 1 largemouth or smallmouth bass in the aggregate per day longer than 20 inches
			Levisa Fork River – within the boundaries Buchanan County	No largemouth or smallmouth bass less than 20 inches; only 1 largemouth or smallmouth bass in the aggregate per day longer than 20 inches
			Dan River and tributaries downstream from the Union Street Dam, Danville	Only 2 of 5 largemouth or smallmouth bass less than 14 inches

			James River – Confluence of the Jackson and Cowpasture rivers (Botetourt County) downstream to the 14th Street Bridge in Richmond	No largemouth or smallmouth bass 14 to 22 inches; only 1 largemouth or smallmouth bass in the aggregate per day longer than 22 inches
			New River – Fields Dam (Grayson County) downstream to the VA - WV state line and its tributaries Little River downstream from Little River Dam in Montgomery County, Big Walker Creek from the Norfolk Southern Railroad Bridge downstream to the New River, and Wolf Creek from the Narrows Dam downstream to the New River in Giles County (This does not include Claytor Lake, which is delineated as: The upper end of the island at Allisonia downstream to the dam)	No largemouth or smallmouth bass 14 to 22 inches; only 1 largemouth or smallmouth bass in the aggregate per day longer than 22 inches
			North Fork Holston River - Rt. 91 bridge upstream of Saltville, VA downstream to the VA - TN state line	No largemouth or smallmouth bass less than 20 inches; only 1 largemouth or smallmouth bass in the aggregate per day longer than 20 inches
			Potomac River - Virginia tidal tributaries above Rt. 301 bridge	No largemouth or smallmouth bass less than 15 inches from March 1 through June 15

			Roanoke (Staunton) River - and its tributaries below Difficult Creek, Charlotte County	Only 2 of 5 largemouth or smallmouth bass in the aggregate less than 14 inches
			Shenandoah River, South Fork Shenandoah River, North Fork Shenandoah River	No largemouth or smallmouth bass 11 to 14 inches
			Staunton River -	
			Leesville Dam (Campbell County) downstream to the mouth of Difficult Creek, Charlotte County	No largemouth or smallmouth bass less than 20 inches; only 1 largemouth or smallmouth bass in the aggregate per day longer than 20 inches
Alabama bass, spotted bass		No statewide daily limit No statewide length limit		
striped bass	landlocked striped bass and landlocked striped bass - white bass hybrids	4 per day in the aggregate No fish less than 20 inches	Buggs Island (Kerr) Reservoir, including the Staunton (Roanoke) River and its tributaries to Leesville Dam and the Dan River and its tributaries to Union Street Dam (Danville)	October 1 - May 31: 2 per day in the aggregate; no striped bass or hybrid striped bass less than 20 inches or greater than 26 inches June 1 - September 30: 4 per day in the aggregate; no length limit
			Claytor Lake and its tributaries	September 16 – June 30: 2 per day in the aggregate; no striped bass or hybrid bass less than 20 inches July 1 – September 15: 4 per day in the aggregate; no length limit

			Smith Mountain Lake and its tributaries, including the Roanoke River upstream to Niagara Dam	2 per day in the aggregate November 1 - May 31: No striped bass 30 to 40 inches June 1 - October 31: No length limit
			Lake Gaston	4 per day in the aggregate October 1 - May 31: No striped bass or hybrid striped bass less than 20 inches June 1 - September 30: No length limit
	anadromous (coastal) striped bass above the fall line in all coastal rivers of the Chesapeake Bay and Crane Lake (City of Suffolk)	Creel and length limits shall be set by the Virginia Marine Resources Commission for recreational fishing in tidal waters		
	anadromous (coastal) in the Meherrin, Nottoway, Blackwater (Chowan Drainage), North Landing and Northwest Rivers and their tributaries plus Back Bay	~~2 per day~~ ~~No striped bass less than 18 inches~~ No possession		
white bass		5 per day No statewide length limits	Buggs Island (Kerr) Reservoir, including the Staunton (Roanoke) River and its tributaries to Leesville Dam and the Dan River and its tributaries to Union Street Dam (Danville)	10 per day; no white bass less than 14 inches

			Lake Gaston	10 per day; no white bass less than 14 inches
walleye, saugeye		5 per day in the aggregate No walleye or saugeye less than 18 inches	Claytor Lake and the New River upstream of Claytor Lake Dam to Fries Dam in Grayson County	2 walleye per day; no walleye 19 to 28 inches
sauger		2 per day No statewide length limits		
yellow perch		No statewide daily limit No statewide length limits	Lake Moomaw	10 per day
			Below the fall line in all coastal rivers of the Chesapeake Bay	No yellow perch less than 9 inches; no daily limit
chain pickerel and northern pike		5 per day No statewide length limits	Gaston and Buggs Island (Kerr) Reservoirs	No daily limit
~~northern pike~~		~~2 per day~~ ~~No pike less than 20 inches~~		
muskellunge		~~2~~ 1 per day No muskellunge less than ~~30~~ 40 inches	~~New River - Fields Dam (Grayson County) downstream to Claytor Dam, including Claytor Lake~~	~~1 per day; no muskellunge less than 42 inches~~
			New River - Claytor Dam downstream to the VA - WV state line	1 per day June 1 - last day of February: No muskellunge 40 to 48 inches March 1 - May 31: No muskellunge less than 48 inches
bluegill (bream) and other sunfish excluding crappie, rock bass (redeye) and Roanoke bass		50 per day in the aggregate No statewide length limits	Gaston and Buggs Island (Kerr) Reservoirs, including the Staunton (Roanoke) River and its tributaries to Difficult Creek, Charlotte County and the Dan River and its tributaries to the Banister River,	No daily limit

			Halifax County and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	
crappie (black or white)		25 per day in the aggregate No statewide length limits	Lake Gaston and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
			Buggs Island (Kerr) Reservoir, including the Staunton (Roanoke) River and its tributaries to Difficult Creek, Charlotte County and the Dan River and its tributaries to the Banister River, Halifax County	No crappie less than 9 inches
			Briery Creek and Sandy River Reservoirs	No crappie less than 9 inches
			Flannagan and South Holston Reservoirs	No crappie less than 10 inches
rock bass (redeye)		25 per day; in the aggregate with Roanoke bass No statewide length limits	Gaston and Buggs Island (Kerr) Reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
			Nottoway, Meherrin, Blackwater (Franklin County), Blackwater (Chowan Drainage), Falling, and Smith Rivers and their tributaries	5 per day in the aggregate with Roanoke bass; no rock bass less than 8 inches

Roanoke bass		25 per day in the aggregate with rock bass No statewide length limits	Nottoway, Meherrin, Blackwater (Franklin County), Blackwater (Chowan Drainage), Falling, and Smith Rivers and their tributaries	5 per day in the aggregate with rock bass; no Roanoke bass less than 8 inches
trout	See 4VAC15-330. Fish: Trout Fishing.			
catfish	channel, white, and flathead catfish	20 per day; No length limits	All rivers below the fall line	No daily limit
	blue catfish	20 per day; No statewide length limits	Lake Gaston	No daily limit, except only 1 blue catfish per day longer than 32 inches
			Kerr Reservoir, including the Staunton (Roanoke) River and its tributaries to Difficult Creek, Charlotte County and the Dan River and its tributaries to the Banister River, Halifax County	20 per day, except only 1 blue catfish per day longer than 32 inches
			James River and its tributaries below the fall line, Rappahannock River and its tributaries below the fall line, and York River and its tributaries (including the Pamunkey River and Mattaponi River) below the fall line	No daily limit, except only 1 blue catfish per day longer than 32 inches
			All rivers below the fall line other than the James River and its tributaries, Rappahannock River and its tributaries, and the York River and its tributaries	No daily limit
	~~yellow, brown, and black bullheads~~	~~No daily limit;~~ ~~No length limits~~		

hickory shad	Above and below the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be the same as those set by the Virginia Marine Resources Commission in tidal rivers		
	Meherrin River below Emporia Dam Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest Rivers, and their tributaries plus Back Bay	10 per day No length limits		
American shad		No possession		
anadromous (coastal) alewife and blueback herring	Above and below the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be the same as those set by the Virginia Marine Resources Commission for these species in tidal rivers		
	Meherrin River, Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest Rivers, and their tributaries plus Back Bay	No possession		
red drum	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	1 per day No drum less than 18 inches or greater than 27 inches		
spotted sea trout (speckled trout)	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	4 per day No sea trout less than 14 inches		
grey trout (weakfish)	Back Bay and tributaries including Lake Tecumseh and	1 per day No grey trout less than 12 inches		

	North Landing River and its tributaries			
southern flounder	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	6 per day No flounder less than 15 inches		
northern snakehead		Anglers may possess snakeheads taken from Virginia waters if they immediately kill the fish and notify the headquarters or a regional office of the department; notification may be made by telephoning (804) 367-2925 No statewide daily limit No statewide length limits		
longnose gar		July 1 to April 14: 5 per day April 15 to June 30: 1 per day No statewide length limits		
bowfin		July 1 to April 14: 5 per day April 15 to June 30: 1 per day No statewide length limits		
American eel		25 per day No eel less than 9 inches	Back Bay and North Landing River	No possession limit for those individuals possessing a permit obtained under 4VAC15-340-80
other native or naturalized nongame fish	See 4VAC15-360-10. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish. Taking aquatic invertebrates, amphibians, reptiles, and nongame fish for private use.			
endangered or threatened fish	See 4VAC15-20-130. Definitions and Miscellaneous: In General. Endangered and threatened species; adoption of federal list; additional species enumerated.			

nonnative (exotic) fish	See 4VAC15-30-40. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals. Importation requirements, possession and sale of nonnative (exotic) animals.	

VA.R. Doc. No. R24-7952; Filed July 15, 2024, 2:52 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-330. Fish: Trout Fishing (amending 4VAC15-330-150, 4VAC15-330-160).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

August 22, 2024 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Henrico, VA 23228.

Public Comment Deadline: September 10, 2024.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) add Russell and Washington Counties to the list of areas where it is lawful year-round to fish for trout using only artificial lures with single hooks in Big Tumbling Creek; and (ii) reduce the stretch of Chestnut Creek where it is lawful to fish from October 1 through May 31 using only artificial lures.

4VAC15-330-150. Special provision applicable to trout fishing using artificial lures with single hook.

It shall be lawful year-round to fish for trout using only artificial lures with single hooks within:

1. The Stewarts Creek Trout Management Area in Carroll County.

2. The Rapidan and Staunton Rivers and their tributaries upstream from a sign at the Lower Shenandoah National Park boundary in Madison County.

3. The Dan River and its tributaries between the Townes Dam and the Pinnacles Hydroelectric Project powerhouse in Patrick County.

4. The East Fork of Chestnut Creek (Farmers Creek) and its tributaries upstream from the Blue Ridge Parkway in Grayson and Carroll Counties.

5. Roaring Fork and its tributaries upstream from the southwest boundary of Beartown Wilderness Area in Tazewell County.

6. That section of the South Fork Holston River and its tributaries from the concrete dam at Buller Fish Culture Station downstream to the lower boundary of the Buller Fish Culture Station in Smyth County.

7. North Creek and its tributaries upstream from a sign at the George Washington National Forest North Creek Campground in Botetourt County.

8. Spring Run from ~~it~~ its confluence with Cowpasture River upstream to a posted sign at the discharge for Coursey Springs Hatchery in Bath County.

9. Venrick Run and its tributaries within the Big Survey Wildlife Management Area and Town of Wytheville property in Wythe County.

10. Brumley Creek and its tributaries from the Hidden Valley Wildlife Management Area boundary upstream to the Hidden Valley Lake Dam in Washington County.

11. Stony Creek (Mountain Fork) and its tributaries within the Jefferson National Forest in Wise and Scott Counties from the outlet of High Knob Lake downstream to the confluence of Chimney Rock Fork and Stony Creek.

12. Little Stony Creek and its tributaries within the Jefferson National Forest in Scott County from the Falls of Little Stony Creek downstream to a posted sign at the Hanging Rock Recreation Area.

13. Little Tumbling Creek and its tributaries within the Clinch Mountain Wildlife Management Area in Smyth and Tazewell Counties downstream to the concrete bridge.

14. Big Tumbling Creek and its tributaries within the Clinch Mountain Wildlife Management Area in Russell, Smyth ~~County~~, and Washington Counties from a sign starting at the foot of the mountain and extending upstream seasonally from October 1 until five days prior to the first Saturday in April.

15. South River in the City of Waynesboro from the Wayne Avenue Bridge downstream 2.2 miles to the Second Street Bridge.

16. Wolf Creek and its tributaries within the Abingdon Muster Grounds in the Town of Abingdon from Colonial Road downstream to Stone Mill Road.

17. Beaver Creek and its tributaries within the boundaries of Sugar Hollow Park in the City of Bristol.

18. Green Cove Creek in Washington County from Route 859 downstream to its mouth.

19. Whitetop Laurel Creek in Washington County upstream from the mouth of Straight Branch to a sign posted at the Forest Service boundary just downstream of Taylor Valley, and in Whitetop Laurel Creek in Washington County upstream from the first railroad trestle above Taylor Valley to the mouth of Green Cove Creek at Creek Junction.

20. Smith Creek in Alleghany County from the Clifton Forge Dam downstream to a sign at the Forest Service boundary above the C & O Dam.

21. Snake Creek in Carroll County below Hall Ford and that portion of Little Snake Creek below the junction of Routes 922 and 674, downstream to Route 58.

22. The North Fork Moormans River and its tributaries from the head of Sugar Hollow Reservoir upstream 0.3 miles to the Shenandoah National Park boundary.

All trout caught in these waters must be immediately returned to the water. No trout or bait may be in possession at any time in these areas.

4VAC15-330-160. Special provisions applicable to certain portions of Accotink Creek, Back Creek, Big Moccasin Creek, Chestnut Creek, Hardy Creek, Holliday Creek, Holmes Run, Indian Creek, North River, Passage Creek, Pedlar River, Piney River, North Fork of Pound and Pound rivers, Middle Fork of Powell River, and Roanoke River.

It shall be lawful to fish from October 1 through May 31, both dates inclusive, using only artificial lures in Accotink Creek (Fairfax County) from King Arthur Road downstream 3.1 miles to Route 620 (Braddock Road), in Back Creek (Bath County) from the Route 600 bridge just below the Virginia Power Back Creek Dam downstream 1.5 miles to the Route 600 bridge at the lower boundary of the Virginia Power Recreational Area, in Big Moccasin Creek (Scott County) from the Virginia Department of Transportation foot bridge downstream approximately 1.9 miles to the Wadlow Gap Bridge, in Chestnut Creek (Carroll County) from the U.S. Route 58 bridge downstream ~~11.4~~ approximately 4.2 miles to the ~~confluence with~~ downstream boundary of the New River Trail State Park Cliffview Campground, in Hardy Creek (Lee County) from the Virginia Department of Transportation swinging bridge just upstream of the Route 658 ford downstream to the Route 661 bridge, in Holliday Creek (Appomattox/Buckingham Counties) from the Route 640 crossing downstream 2.8 miles to a sign posted at the headwaters of Holliday Lake, in Holmes Run (Fairfax County) from the Lake Barcroft Dam downstream 1.2 miles to a sign posted at the Alexandria City line, in Indian Creek within the boundaries of Wilderness Road State Park (Lee County), in the North River (Augusta County) from the base of Elkhorn Dam downstream 1.5 miles to a sign posted at the head of Staunton City Reservoir, in Passage Creek (Warren County) from the lower boundary of the Front Royal State Hatchery upstream 0.9 miles to the Shenandoah/Warren County line, in the Pedlar River (Amherst County) from the City of Lynchburg/George Washington National Forest boundary line (below Lynchburg Reservoir) downstream 2.7 miles to the boundary line of the George Washington National Forest, in the Piney River (Nelson County) in that portion of stream from the Piney River Trailhead (Route 151) to the Rose Mill Trailhead (Route 674) adjacent to the Blue Ridge Railway Trail, in North Fork of Pound and Pound rivers from the base of North Fork of Pound Dam downstream to the confluence with Indian Creek, in the Middle Fork of Powell River (Wise County) from the old train trestle at the downstream boundary of Appalachia extending approximately 1.9 miles downstream to the trestle just upstream of the Town of Big Stone Gap, in the Roanoke River (Roanoke County) from the Route 760 bridge (Diuguids Lane) upstream 1.0 miles to a sign posted at the upper end of Green Hill Park (Roanoke County), and in the Roanoke River (City of Salem) from the Route 419 bridge upstream 2.2 miles to the Colorado Street bridge. From October 1 through May 31, all trout caught in these waters must be immediately returned to the water unharmed, and it shall be unlawful for any person to have in possession any bait or trout. During the period of June 1 through September 30, the above restrictions will not apply.

VA.R. Doc. No. R24-7948; Filed July 15, 2024, 2:53 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-360. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish (amending 4VAC15-360-10).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Public Hearing Information:

August 22, 2024 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Henrico, VA 23228.

Public Comment Deadline: September 10, 2024.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments remove bullheads from the list of species that may be taken for private use in unlimited numbers from inland waters statewide.

4VAC15-360-10. Taking aquatic invertebrates, amphibians, reptiles, and nongame fish for private use.

A. Possession limits. Except as otherwise provided for in § 29.1-418 of the Code of Virginia, 4VAC15-20-130, 4VAC15-320-40, and ~~the sections of~~ this chapter, it shall be lawful to capture and possess live for private use and not for sale or export no more than one individual of any native or naturalized, as defined in 4VAC15-20-50, species of amphibian or reptile per physical address, and 20 individuals of any single native or naturalized ~~(~~, as defined in 4VAC15-20-50~~)~~, species of aquatic invertebrate and nongame fish unless specifically listed in this subsection:

1. The following species may be taken in unlimited numbers from inland waters statewide: carp, mullet, ~~yellow bullhead, brown bullhead, black bullhead, flat bullhead, snail bullhead,~~ white sucker, northern hogsucker, gizzard shad, threadfin shad, blueback herring (see 4VAC15-320-25 for anadromous blueback herring limits), white perch, yellow perch, alewife (see 4VAC15-320-25 for anadromous alewife limits), stoneroller (hornyhead), fathead minnow, golden shiner, goldfish, and Asian clams. Grass carp may only be harvested in unlimited numbers from public inland rivers and streams of the Commonwealth. It is unlawful to harvest grass carp from any public inland lake and reservoir. Anglers taking grass carp must ensure that all harvested grass carp are dead.

2. See 4VAC15-320-25 for American shad, hickory shad, channel catfish, white catfish, flathead catfish, and blue catfish limits.

3. For the purpose of this chapter, "fish bait" shall be defined as native or naturalized species of minnows and chubs (Cyprinidae), crayfish, and hellgrammites. The possession limit for taking "fish bait" shall be 50 individuals in aggregate, of which no more than 20 individuals may be crayfish, unless ~~said~~ the person has purchased "fish bait" and has a receipt specifying the number of individuals purchased by species, except salamanders and crayfish, which cannot be sold pursuant to the provisions of 4VAC15-360-60 and 4VAC15-360-70. However, stonerollers (hornyheads), fathead minnows, golden shiners, and goldfish may be taken and possessed in unlimited numbers as provided for in subdivision 1 of this subsection.

4. Any crayfish collected for use as fish bait may only be used as fish bait in the water body of capture.

5. The daily limit for bullfrogs shall be 15 and for snapping turtles shall be five. Snapping turtles shall only be taken from June 1 to September 30 and must have a minimum curved-line carapace length of 13 inches. Bullfrogs and snapping turtles may not be taken from the banks or waters of designated stocked trout waters.

6. The following species may not be taken or possessed in any number for private use: red-eared slider and all reptile and amphibian Species of Greatest Conservation Need designated in Virginia's 2015 Wildlife Action Plan.

7. Native amphibians and reptiles, as defined in 4VAC15-20-50, that are captured within the Commonwealth and possessed live for private use and not for sale may be liberated under the following conditions:

a. Period of captivity does not exceed 30 days;

b. Animals must be liberated at the site of capture;

c. Animals must have been housed separately from other wild-caught and domestic animals; and

d. Animals that demonstrate symptoms of disease or illness or that have sustained injury during their captivity may not be released.

8. Native or naturalized amphibians and reptiles, as defined in 4VAC15-20-50, may not be taken or possessed in any number from state or federal land without an appropriate permit or license.

B. Methods of taking species in subsection A of this section. Except as otherwise provided for in the Code of Virginia, 4VAC15-20-130, 4VAC15-320-40, and other regulations of the board, and except in any waters where the use of nets is prohibited, the species listed in subsection A of this section may only be taken (i) by hand, hook, and line; (ii) with a seine not exceeding four feet in depth by 10 feet in length; (iii) with an umbrella type net not exceeding five by five feet square; (iv) by small minnow traps with throat openings no larger than one inch in diameter; (v) with cast nets; and (vi) with hand-held bow nets with diameter not to exceed 20 inches and handle length not to exceed eight feet. ~~(such~~ Such cast net and hand-held bow nets when so used shall not be deemed dip nets under the provisions of § 29.1-416 of the Code of Virginia~~)~~. Gizzard shad and white perch may also be taken from below the fall line in all tidal rivers of the Chesapeake Bay using a gill net in accordance with Virginia Marine Resources Commission recreational fishing regulations. Bullfrogs may also be taken by gigging or bow and arrow and, from private waters, by firearms no larger than .22 caliber rimfire. Snapping turtles may be taken for personal use with hoop nets not exceeding six feet in length with a throat opening not exceeding 36 inches.

C. Areas restricted from taking mollusks. Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take the spiny riversnail (Io fluvialis) in the Tennessee drainage in Virginia (Clinch, Powell, and the North, South, and Middle Forks of the Holston Rivers and tributaries). It shall be unlawful to take mussels from any inland waters of the Commonwealth.

D. Areas restricted from taking crustaceans. Except for the permitted collection of specimens as provided for in § 29.1-418 of the Code of Virginia or the permitted taking for zoological, educational, or scientific purposes as provided for in § 29.1-568 of the Code of Virginia, it shall be unlawful to take any species of crayfish in the Big Sandy River Basin in

Virginia (Russell Fork, Pound River, Cranes Nest River, McClure River, Levisa Fork, Dismal Creek, Knox Creek, and tributaries).

E. Reduction of possession limits for native and naturalized amphibians and reptiles. Any person in possession of ~~legally obtained~~ legally obtained native and naturalized amphibians and reptiles, as defined in 4VAC15-20-50, prior to the change in personal possession allowances in subsection A of this section, effective July 1, 2021, must declare such possession to the department by January 1, 2022, in a manner prescribed by the department. This declaration shall serve as authorization for possession only and is not transferable.

VA.R. Doc. No. R24-7951; Filed July 15, 2024, 2:54 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 29.1-701 E of the Code of Virginia, which provides that the board shall promulgate regulations to supplement Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 of the Code of Virginia as prescribed in Article 1 (§ 29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia.

Title of Regulation: **4VAC15-380. Watercraft: Motorboat Numbering (amending 4VAC15-380-30, 4VAC15-380-40).**

Statutory Authority: §§ 29.1-701 and 29.1-735 of the Code of Virginia.

Public Hearing Information:

August 22, 2024 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Henrico, VA 23228.

Public Comment Deadline: September 10, 2024.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) align Department of Wildlife Resources rules regarding motorboat numbering with the Code of Federal Regulations and (ii) codify current procedure for department identification of rental boats.

4VAC15-380-30. Numbering pattern.

The motorboat number assigned shall consist of the symbol "VA" identifying the Commonwealth followed by not more than four ~~arabic~~ Arabic numerals and two capital letters, in sequence, separated by a hyphen or ~~equivalent~~ letter space that is greater than "I" or "1" and is in accordance with the serial numerically and alphabetically~~; e.g.~~, for example, "VA 1234 BB" or "VA-1234-BB." Since the letters "I," "O," and "Q" may be mistaken for ~~arabic~~ Arabic numbers, all letter sequences using "I," "O," and "Q" shall be omitted.

Any vessel used as a rental or livery or leased as specified in the Application for Watercraft Certificate of Title and Certificate of Number (Registration) shall be registered with the suffix RB, BR, or LB or a suffix designated by the department. Only owners of vessels specified with the primary operation as rent, lease, or livery on the Application for Watercraft Certificate of Title and Certificate of Number (Registration) are considered by the department to be rental or leased boat companies. Only vessels specified with the primary operation as rent, lease, or livery are considered rental, leased, or livery motorboats.

4VAC15-380-40. Display of numbers.

The numbers assigned for a motorboat shall be painted on or attached to each side of the forward half of the vessel to which the numbers are issued in such a position as to provide clear legibility for identification~~;~~, provided~~,~~ that on vessels so configured that a number on the hull or superstructure would not be easily visible or the numbers would not remain securely attached, the number must be painted on or attached to a backing plate that is attached to the forward half of the vessel so that the number is visible from each side of the vessel. The numbers shall read from left to right and shall be in block characters of good proportion ~~not less than~~ and three inches in height. The numbers shall be a color ~~which~~ that will contrast with the color of the background and so maintained as to be clearly visible and legible~~; i.e.~~, that is, dark numbers on a light background or light numbers on a dark background.

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

FORMS (4VAC15-380)

~~Application for duplicate validation decals, #DVD-7-93-IM.~~

~~Application for change of motor, MCH-9/91-IM.~~

~~Notification of change in status of a numbered vessel.~~

~~Affidavit of authority to transfer registration when registered owner is deceased.~~

~~Application for Duplicate Certificate of Boat Number, BC/DCT-2m (eff. 9/93).~~

Application for Watercraft Certificate of Title and Certificate of Number (rev. 8/2023)

Application for Duplicate Registration, Decal, Title, BRT-011 (rev. 12/2020)

Application for Change of Motor, BRT-012 (rev. 2/2023)

Affidavit of Authority to Transfer Registration when Registered Owner Is Deceased, BRT-003 (rev. 12/2020)

VA.R. Doc. No. R24-7953; Filed July 15, 2024, 2:54 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 29.1-701 E of the Code of Virginia, which provides that the board shall promulgate regulations to supplement Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 of the Code of Virginia as prescribed in Article 1 (§ 29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia.

Title of Regulation: **4VAC15-390. Watercraft: Safe and Reasonable Operation of Vessels (amending 4VAC15-390-10, 4VAC15-390-85, 4VAC15-390-140).**

Statutory Authority: §§ 29.1-701 and 29.1-735 of the Code of Virginia.

Public Hearing Information:

August 22, 2024 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Henrico, VA 23228.

Public Comment Deadline: September 10, 2024.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) correct the citation to the Inland Navigation Rules found at 33 CFR Parts 83 through 88, as established by the U.S. Coast Guard; and (ii) clarify language prohibiting operation of a motorboat with passengers riding or sitting on the bow, gunwales, or transom or on the decking over the bow of the vessel without adequate guards or railing.

4VAC15-390-10. Applicability.

The following sections in this chapter apply to the operation of "vessels," as defined in § 29.1-700 of the Code of Virginia, on all waters within the Commonwealth. Vessels complying with the Inland Navigation Rules, 33 CFR Parts 83, 84, ~~and~~ 86, 87, and 88, as established by the U.S. Coast Guard, are considered to be in compliance with the requirements of this chapter.

4VAC15-390-85. Operators to give right-of-way and reduce speed.

Every motorboat, when approaching or passing within 200 feet of any law-enforcement vessel or emergency services vessel that is displaying flashing blue, red, or public safety lights, as defined in 33 CFR Part 88, shall slow to no wake speed so that the effect of the wake does not disturb the activities of law-enforcement personnel or emergency services personnel. Where the operator of a motorboat fails to comply with the provisions of this section and such failure endangers the life or limb of any person or endangers or damages vessels, the operator shall be guilty of a Class 3 misdemeanor. Upon conviction, the operator shall additionally be required to complete and pass a National Association of State Boating Law Administrators approved safe boating course as required in § 29.1-746 of the Code of Virginia.

4VAC15-390-140. Riding on decks and gunwales.

It shall be unlawful for the operator of a motorboat to ~~allow~~ operate a vessel while any person ~~to ride or sit~~ is riding or sitting on the bow, gunwales, or transom~~,~~ or on the decking over the bow of the vessel while under power unless such motorboat is provided with adequate guards or railing to prevent passengers from falls overboard. Nothing in this section shall be construed to mean that passengers or other persons aboard a watercraft cannot occupy these areas of the vessel to moor or anchor the watercraft, to cast off, or for any other necessary purpose. Any person who violates any provision of this section shall be guilty of a Class 1 misdemeanor as provided by § 29.1-738 of the Code of Virginia.

VA.R. Doc. No. R24-7954; Filed July 15, 2024, 2:55 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 29.1-701 E of the Code of Virginia, which provides that the board shall promulgate regulations to supplement Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 of the Code of Virginia as prescribed in Article 1 (§ 29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia.

Title of Regulation: **4VAC15-420. Watercraft: Navigation Lights and Shapes (amending 4VAC15-420-10).**

Statutory Authority: §§ 29.1-701 and 29.1-735 of the Code of Virginia.

Public Hearing Information:

August 22, 2024 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Henrico, VA 23228.

Public Comment Deadline: September 10, 2024.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendment corrects the citation to the Inland Navigation Rules found at 33 CFR Parts 83 through 88 as established by the U.S. Coast Guard.

4VAC15-420-10. Application.

The navigation lights requirements in this chapter shall be complied with in all weather and from sunset to sunrise on the public waters of the Commonwealth. During such times no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in this chapter or do not impair their visibility or distinctive character, or interfere with the keeping of a proper lookout. The lights prescribed by this

chapter shall, if carried, also be exhibited from sunrise to sunset in restricted visibility and may be exhibited in all other circumstances when it is deemed necessary. The lights specified in this chapter shall comply with the Navigation Rules found in 33 CFR Parts 83, 84, ~~and~~ 86, 87, and 88 as established by the U.S. Coast Guard.

VA.R. Doc. No. R24-7955; Filed July 15, 2024, 2:55 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

Final Regulation

Title of Regulation: **6VAC40-50. Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material (amending 6VAC40-50-10 through 6VAC40-50-50, 6VAC40-50-70, 6VAC40-50-80).**

Statutory Authority: §§ 9.1-1110 and 19.2-188.1 of the Code of Virginia.

Effective Date: September 11, 2024.

Agency Contact: Amy Jenkins, Department Counsel, Department of Forensic Science, 700 North Fifth Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or email amy.jenkins@dfs.virginia.gov.

Summary:

The amendments broaden the definition of marijuana field test that may be considered by the Department of Forensic Science (DFS) to include a combination of chemical tests or a mobile instrument and to establish the criteria and process by which DFS would approve mobile instruments for the identification of marijuana and include (i) adding and amending definitions; (ii) updating a citation to the Code of Virginia and clarifying regulatory text; (iii) establishing sets of instructions, criteria, and procedures for approving chemical tests and mobile instruments; and (iv) increasing the fee for chemical tests and adding a fee for mobile instruments that are submitted for evaluation.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

6VAC40-50-10. Definitions.

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

"Agency" means any federal, state, or local government law-enforcement organization in the Commonwealth.

"Approval authority" means the Director of the Department of Forensic Science or ~~his~~ the director's designee.

"Cannabis plant material" means any part of the plant Cannabis sativa.

"Department" means the Department of Forensic Science.

"Industrial hemp" means industrial hemp as defined in § 3.2-4112 of the Code of Virginia.

"List of approved marijuana field tests" means a list of ~~Duquenois-Levine~~ field tests approved by the department for use by law-enforcement agencies in the Commonwealth and periodically published by the department in the Virginia Register of Regulations in accordance with § 19.2-188.1 of the Code of Virginia.

"Manufacturer" means any entity that makes or assembles marijuana field tests ~~or marijuana field test kits~~ to be used by any law-enforcement officer or agency in the Commonwealth for the purpose of detecting marijuana plant material.

"Manufacturer's instructions and claims" means those testing procedures, requirements, instructions, precautions, and proposed conclusions that are published by the manufacturer and supplied with the marijuana field tests ~~or marijuana field test kits~~.

"Marijuana" means marijuana as defined in ~~§ 18.2-247~~ § 4.1-600 of the Code of Virginia.

"Marijuana field test" means any ~~Duquenois-Levine~~ chemical test ~~unit~~, combination of chemical tests, or mobile instrument used outside of a ~~chemical~~ forensic laboratory environment to detect the presence of marijuana plant material.

~~"Marijuana field test kit" means a combination of individual marijuana field test units.~~

6VAC40-50-20. Authority for approval.

Section 19.2-188.1 of the Code of Virginia provides that the Department of Forensic Science shall approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of ~~§ 18.2-250.1~~ § 4.1-1105.1 of the Code of Virginia regarding whether or not any plant material, the identity of which is at issue, is marijuana.

6VAC40-50-30. Request for evaluation.

A. Any manufacturer who wishes to submit marijuana field tests ~~or marijuana field test kits~~ for evaluation pursuant to this chapter shall submit a written request for evaluation to the department director at the following address:

Director

Department of Forensic Science

700 North Fifth Street

Richmond, VA 23219

B. ~~Materials~~ For chemical tests, materials sufficient for at least ~~10~~ 20 marijuana field tests shall be supplied by each

manufacturer. The materials shall include any foundational validation studies and all instructions, precautions, color charts, flow charts, and the like ~~which~~ that are provided with the marijuana field test ~~or marijuana field test kit~~ and that describe the use and interpretation of the tests. ~~C.~~ The manufacturer shall also include exact specifications as to the chemical composition of all chemicals or reagents, if any, used in the marijuana field tests. These shall include the volume or weight of the chemicals and the nature of their packaging. ~~Material safety~~ Safety data sheets for each chemical ~~or~~ reagent shall be sufficient for this purpose.

C. For mobile instruments, two nonsequentially manufactured instruments and supporting materials shall be supplied for each model for which the manufacturer requests evaluation. These materials shall include all instructions, all training materials regarding the use of the instruments by law enforcement, the instrument specifications, and any foundational validation studies. If the manufacturer provides training for users of the instruments beyond the written instructional materials, such training shall be made available for the evaluation. The instruments shall be returned to the manufacturer upon completion of the evaluation.

D. The department's evaluation process may require up to 90 days from the receipt of the written request and all needed materials from the manufacturer.

E. The department will use ~~marijuana~~ Cannabis plant material, including both marijuana and industrial hemp, to assess those marijuana field tests submitted for evaluation. In order to be approved, the marijuana field test must correctly and consistently react in a clearly observable fashion ~~to the naked eye,~~ and distinguish marijuana from industrial hemp. The field test must perform in accordance with manufacturer's instructions and claims and offer convenience and efficiency in operation as determined by the department.

6VAC40-50-40. Notice of decision.

The department will notify each manufacturer in writing of the approval or disapproval of each marijuana field test for which evaluation was requested. Should any marijuana field test not be approved, the manufacturer may resubmit ~~their~~ its request for evaluation of that marijuana field test according to the previously outlined procedures along with a detailed explanation of all alterations or changes to the test or related instructions or claims since the department's ~~disapproval of the previously submitted test~~ most recent evaluation of the marijuana field test.

6VAC40-50-50. Maintenance of approved status.

The department may require that this evaluation be done as often as annually for routine purposes. If any modifications are made to an approved marijuana field test by the manufacturer, the department shall be notified in writing of the changes. If unreported modifications are discovered by the department, the department may require that evaluations be repeated for the particular ~~manufacturers'~~ manufacturer's approved marijuana field tests. The department shall notify the manufacturer in writing of this requirement. Any modified marijuana field test must be approved before it can be used in accordance with § 19.2-188.1 of the Code of Virginia. These changes shall include~~, but are not limited to,~~ any chemical, procedural ~~or,~~ instructional, firmware, or software modifications made to the marijuana field test.

6VAC40-50-70. Liability.

A. The department assumes no liability as to the safety of these marijuana field tests ~~or marijuana field test kits~~, any chemicals contained therein, or the procedures and instructions by which they are used.

B. The department further assumes no responsibility for any misuse or incorrect interpretation of results.

6VAC40-50-80. Fees.

~~Manufacturers~~ For chemical tests, manufacturers will be charged a fee of ~~$50~~ $100 for each marijuana field test for which individual evaluation is requested. For mobile instruments, manufacturers will be charged a fee of $500 for each model of the mobile instrument for which evaluation is requested. Manufacturers will also be charged the cost to the department, if any, of obtaining marijuana and industrial hemp samples for the evaluation. The department will review the manufacturer's request and notify the manufacturer in writing of the amount due before evaluation begins. Manufacturers who wish to withdraw a request for evaluation shall immediately notify the department in writing. The department's assessment of the amount of payment required will be based upon a detailed review of the manufacturer's request and that amount will be final. The evaluation process will not be initiated before full payment is made to the Treasurer of Virginia.

VA.R. Doc. No. R21-6809; Filed July 23, 2024, 4:28 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Board of Education 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 8VAC20-81-10, 8VAC20-81-190, 8VAC20-81-200, 8VAC20-81-210).

Statutory Authority: §§ 22.1-16 and 22.1-214 of the Code of Virginia; 20 USC § 1400 et seq.; 34 CFR Part 300.

Effective Date: September 16, 2024.

Agency Contact: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

Summary:

On March 13, 2024, the U.S. Department of Education's Office of Special Education Programs identified areas where 8VAC20-81 is noncompliant with the federal Individuals with Disabilities Education Act (20 USC § 1400 et seq.). The amendments (i) update and add definitions; (ii) clarify the availability of mediation; (iii) remove unnecessary or duplicative language; (iv) update the requirements for complaint statements; (v) update requirements regarding what information must be withheld when resolving complaints; (vi) update language for consistency and clarity; and (vii) update the regulation to ensure compliance with the federal act.

8VAC20-81-10. Definitions.

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

"Act" means the Individuals with Disabilities Education Improvement Act, P.L. 108-446, December 3, 2004, § 1400 et seq. (34 CFR 300.4)

"Age of eligibility" means all eligible children with disabilities who have not graduated with a standard or advanced studies high school diploma who, because of such disabilities, are in need of special education and related services, and whose second birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30 (two to 21, inclusive) in accordance with the Code of Virginia. A child with a disability whose 22nd birthday is after September 30 remains eligible for the remainder of the school year. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.101(a) and 34 CFR 300.102(a)(3)(ii))

"Age of majority" means the age when the procedural safeguards and other rights afforded to the parent of a student with a disability transfer to the student. In Virginia, the age of majority is 18. (§ 1-204 of the Code of Virginia; 34 CFR 300.520)

"Agree" or "agreement" – see the definition for "consent."

"Alternate assessment" means the state assessment program~~,~~ and any school divisionwide assessment to the extent that the school division has one~~,~~ for measuring student performance against alternate achievement standards for students with significant intellectual disabilities who are unable to participate in statewide Standards of Learning testing, even with accommodations. (34 CFR 300.320(a)(2)(ii) and 34 CFR 300.704(b)(4)(x))

"Alternative assessment" means the state assessment program for measuring student performance on grade level standards for students with disabilities who are unable to participate in statewide Standards of Learning testing, even with accommodations.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted~~,~~ or the replacement of that device. (34 CFR 300.5)

"Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: (34 CFR 300.6)

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5. Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

6. Training or technical assistance for professionals ~~(~~, including individuals providing education or rehabilitation services~~)~~, employers, or other individuals who provide services to employ or are otherwise substantially involved in the major life functions of that child.

"At no cost" means that all specially designed instruction is provided without charge~~,~~ but does not preclude incidental fees that are normally charged to students without disabilities or their parent as part of the regular education program. (34 CFR 300.39(b)(1))

"Audiology" means services provided by a qualified audiologist licensed by the Board of Audiology and Speech-Language Pathology and includes: (Regulations Governing the Practice of Audiology and Speech-Language Pathology, 18VAC30-20; 34 CFR 300.34(c)(1))

1. Identification of children with hearing loss;

2. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

4. Creation and administration of programs for prevention of hearing loss;

5. Counseling and guidance of children, parents, and teachers regarding hearing loss; and

6. Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in this definition are satisfied. (34 CFR 300.8(c)(1))

"Behavioral intervention plan" means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of students with disabilities or with the learning of others or behaviors that require disciplinary action.

"Business day" means Monday through Friday, ~~12 months of the year, exclusive of~~ except for federal and state holidays ~~(~~, unless holidays are specifically included in the designation of business days, as in 8VAC20-81-150 B 4 a (2)~~)~~. (34 CFR 300.11)

"Calendar days" means consecutive days, inclusive of Saturdays and Sundays~~. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or federal or state holiday~~, unless otherwise designated as a business day or a school day. (34 CFR 300.11)

"Career and technical education" means organized educational activities that offer a sequence of courses that: (20 USC § 2301 et seq.)

1. Provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers ~~(~~other than careers requiring a master's or doctoral degree~~)~~ in current or emerging employment sectors;

2. May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subdivision; or

3. Provides, at the postsecondary level, for a one-year certificate, an associate degree~~,~~ or industry-recognized credential and includes competency-based applied learning that contributes to ~~the~~ academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupational-specific skills.

"Caseload" means the number of students served by special education personnel.

"Change in identification" means a change in the categorical determination of the child's disability by the group that determines eligibility.

"Change in placement" or "change of placement" means when the local educational agency places the child in a setting that is distinguishable from the educational environment to which the child was previously assigned and includes: (34 CFR 300.102(a)(3)(iii), 34 CFR 300.532(b)(2)(ii), and 34 CFR 300.536)

1. The child's initial placement from general education to special education and related services;

2. The expulsion or long-term removal of a student with a disability;

3. The placement change that results from a change in the identification of a disability;

4. The change from a public school to a private day, residential, or state-operated program; from a private day, residential, or state-operated program to a public school; or to a placement in a separate facility for educational purposes;

5. Termination of all special education and related services; or

6. Graduation with a standard or advanced studies high school diploma.

A "change in placement" also means any change in the educational setting for a child with a disability that does not replicate the elements of the educational program of the child's previous setting.

"Change in placement" or "change of placement," for the purposes of discipline, means: (34 CFR 300.536)

1. A removal of a student from the student's current educational placement is for more than 10 consecutive school days; or

2. The student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as:

a. The length of each removal;

b. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals;

c. The total amount of time the student is removed; or

d. The proximity of the removals to one another.

"Chapter" means these regulations.

"Charter schools" means any school meeting the requirements for charter as set forth in the Code of Virginia. (§§ 22.1-212.5 through 22.1-212.16 of the Code of Virginia; 34 CFR 300.7)

"Child" means any person who shall not have reached his 22nd birthday by September 30 of the current year.

"Child with a disability" means a child evaluated in accordance with the provisions of this chapter as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disability (referred to in this part as "emotional disability"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, needs special education and related services. This also includes developmental delay if the local educational agency recognizes this category as a disability in accordance with 8VAC20-81-80 M 3. If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only needs a related service and not special education, the child is not a child with a disability under this part. If the related service required by the child is considered special education rather than a related service under Virginia standards, the child would be determined to be a child with a disability. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.8(a)(1) and 34 CFR 300.8(a)(2)(i) and (ii))

"Collaboration" means interaction among professionals as they work toward a common goal. Teachers do not necessarily have to engage in co-teaching in order to collaborate.

"Complaint" means a request that the Virginia Department of Education investigate an alleged violation by a ~~local educational~~ public agency of a right of a parent of a child who is eligible or suspected to be eligible for special education and related services based on federal and state law and regulations governing special education or a right of such child. A complaint is a statement of some disagreement with procedures or process regarding any matter relative to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. (34 CFR 300.151)

"Comprehensive Services Act" (CSA) means the Comprehensive Services Act for At-Risk Youth and Families that establishes the collaborative administration and funding system for services for certain at-risk youths and their families. (Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia)

"Consent" means: (34 CFR 300.9)

1. The parents or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's or eligible student's native language~~,~~ or other mode of communication;

2. The parent or eligible student understands and agrees, in writing, to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records ~~(~~, if any~~),~~ that will be released and to whom; and

3. The parent or eligible student understands that the granting of consent is voluntary on the part of the parent or eligible student and may be revoked any time.

a. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. Revocation ceases to be relevant after the activity for which consent was obtained was completed.)

b. If a parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the local educational agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

The meaning of the term "consent" is not the same as the meaning of the term "agree" or "agreement." "Agree" or "agreement" refers to an understanding between the parent and the local educational agency about a particular matter and as required in this chapter. There is no requirement that an agreement be in writing, unless stated in this chapter. The local educational agency and parent should document their agreement.

"Controlled substance" means a drug or other substance identified under Schedule I, II, III, IV, or V in § 202(c) of the Controlled Substances Act, 21 USC § 812(c). (34 CFR 300.530(i)(1))

"Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics~~,~~ and government, economics, arts, history, and geography. (34 CFR 300.10)

"Correctional facility" means any state facility of the Virginia Department of Corrections or the Virginia Department of Juvenile Justice, any regional or local detention home, or any

regional or local jail. (§§ 16.1-228 and 53.1-1 of the Code of Virginia)

"Coteaching" means a service delivery option with two or more professionals sharing responsibility for a group of students for some or all of the school day in order to combine their expertise to meet student needs.

"Counseling services" means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel. (34 CFR 300.34(c)(2); Licensure Regulations for School Personnel (8VAC20-22))

"Dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of~~,~~ causing death or bodily injury, except that such term does not include a pocket knife with a blade of less than three inches in length. (18 USC § 930(g)(2); § 18.2-308.1 of the Code of Virginia)

"Day" means calendar day unless otherwise indicated as business day or school day. (34 CFR 300.11)

"Deaf-blindness" means simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. (34 CFR 300.8(c)(2))

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. (34 CFR 300.8(c)(3))

"Destruction of information" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. (34 CFR 300.611(a))

"Developmental delay" means a disability affecting a child ages two by September 30 through six, inclusive: (34 CFR 300.8(b); 34 CFR 300.306(b))

1. ~~(i)~~ Who (i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development~~,~~ or (ii) ~~who~~ has an established physical or mental condition that has a high probability of resulting in developmental delay;

2. The delay is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and

3. The presence of one or more documented characteristics of the delay has an adverse ~~affect~~ effect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group.

"Direct services" means services provided to a child with a disability directly by the Virginia Department of Education, by contract, or through other arrangements. (34 CFR 300.175)

"Due process hearing" means an administrative procedure conducted by an impartial special education hearing officer to resolve disagreements regarding the identification, evaluation, educational placement and services, and the provision of a free appropriate public education that arise between a parent and a ~~local educational~~ public agency. A due process hearing involves the appointment of an impartial special education hearing officer who conducts the hearing, reviews evidence, and determines what is educationally appropriate for the child with a disability. (34 CFR 300.507)

"Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life. (34 CFR 300.34(c)(3))

"Education record" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term also has the same meaning as "scholastic record." In addition to written records, this also includes electronic exchanges between school personnel and parent regarding matters associated with the child's educational program (e.g., scheduling of meetings or notices). This term also includes the type of records covered under the definition of "education record" in the regulations implementing the Family Education Rights and Privacy Act. (20 USC § 1232g(a)(3); § 22.1-289 of the Code of Virginia; 34 CFR 300.611(b))

"Educational placement" means the overall instructional setting in which the student receives his education, including the special education and related services provided. Each local educational agency shall ensure that the parents of a child with a disability are members of the group that makes decisions on the educational placement of their child. (34 CFR 300.327)

"Educational service agencies and other public institutions or agencies" include: (34 CFR 300.12)

1. Regional public multiservice agencies authorized by state law to develop, manage, and provide services or programs to local educational agencies;

2. Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state;

3. Any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and

4. Entities that meet the definition of intermediate educational unit in § 1402(23) of the Act as in effect prior to June 4, 1997.

"Eligible student" means a child with a disability who reaches the age of majority and to whom the procedural safeguards and other rights afforded to the parent are transferred.

"Emotional disability" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (34 CFR 300.8(c)(4))

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;

2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

3. Inappropriate types of behavior or feelings under normal circumstances;

4. A general pervasive mood of unhappiness or depression; or

5. A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disability includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability as defined in this section.

"Equipment" means machinery, utilities, and built-in equipment~~,~~ and any necessary enclosures or structures to house machinery, utilities, or equipment and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture~~,~~; printed, published and audio-visual instructional materials~~,~~; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials. (34 CFR 300.14)

"Evaluation" means procedures used in accordance with this chapter to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (34 CFR 300.15)

"Excess costs" means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that shall be computed after deducting: (34 CFR 300.16)

1. Amounts received:

a. Under Part B of the Act;

b. Under Part A of Title I of the ESEA; and

c. Under Parts A and B of Title III of the ESEA; and

2. Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subdivision 1 a of this definition, but excluding any amounts for capital outlay or debt service.

"Extended school year services" for the purposes of this chapter means special education and related services that: (34 CFR 300.106(b))

1. Are provided to a child with a disability:

a. Beyond the normal school year of the local educational agency;

b. In accordance with the child's individualized education program;

c. At no cost to the parent of the child; and

2. Meet the standards established by the Virginia Department of Education.

"Federal core academic subjects" means English, reading or language arts, mathematics, science, foreign language (languages other than English), civics and government, economics, arts, history, and geography. (20 USC § 7801(11))

"Federal financial assistance" means any grant, loan, contract, or any other arrangement by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property. (34 CFR 104.3(h))

"Free appropriate public education" or "FAPE" means special education and related services that: (34 CFR 300.17)

1. Are provided at public expense, under public supervision and direction, and without charge;

2. Meet the standards of the Virginia Board of Education;

3. Include an appropriate preschool, elementary school, middle school, or secondary school education in Virginia; and

4. Are provided in conformity with an individualized education program that meets the requirements of this chapter.

"Functional behavioral assessment" means a process to determine the underlying cause or functions of a child's behavior that impede the learning of the child with a disability or the learning of the child's peers. A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the IEP team.

"General curriculum" means the same curriculum used with children without disabilities adopted by a local educational agency, schools within the local educational agency or, where applicable, the Virginia Department of Education for all children from preschool through secondary school. The term relates to content of the curriculum and not to the setting in which it is taught.

"Hearing impairment" means an impairment in hearing in one or both ears, with or without amplification, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. (34 CFR 300.8(c)(5))

"Highly qualified special education teacher" means a teacher has met the requirements as specified in 34 CFR 300.18 for special education teachers in general, for special education teachers teaching core academic subjects, for special education teachers teaching to alternate achievement standards, or for special education teachers teaching multiple subjects as it applies to their teaching assignment. (34 CFR 300.18)

"Home-based instruction" means services that are delivered in the home setting (or other agreed upon setting) in accordance with the child's individualized education program.

"Homebound instruction" means academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For a child with a disability, the IEP team shall determine the delivery of services, including the number of hours of services. (Regulations Establishing Standards for Accrediting Public Schools in Virginia, 8VAC20-131-180)

"Home instruction" means instruction of a child or children by a parent, guardian, or other person having control or charge of such child or children as an alternative to attendance in a public or private school in accordance with the provisions of the Code of Virginia. This instruction may also be termed home schooling. (§ 22.1-254.1 of the Code of Virginia)

"Homeless children" has the meaning given the term "homeless children and youth" in § 725 (42 USC § 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 USC § 11431 et seq. and listed below: (34 CFR 300.19)

The term "homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence within the meaning of § 103(a)(1) of the McKinney-Vento Homeless Assistance Act and includes the following:

1. Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to a lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

2. Children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings within the meaning of § 103(a)(2)(C);

3. Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

4. Migratory children (as such term is defined in § 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless because the children are living in circumstances described in subdivisions 1 through 3 of this definition.

The term "unaccompanied youth" includes a youth not in the physical custody of a parent or guardian.

"Home tutoring" means instruction by a tutor or teacher with qualifications prescribed by the Virginia Board of Education, as an alternative to attendance in a public or private school and approved by the division superintendent in accordance with the provisions of the Code of Virginia. This tutoring is not home instruction as defined in the Code of Virginia. (§ 22.1-254 of the Code of Virginia)

"Illegal drug" means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 USC § 812(c), or under any other provision of federal law. (34 CFR 300.530(i)(2))

"Impartial special education hearing officer" means a person, selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia to conduct a due process hearing.

"Implementation plan" means the plan developed by the local educational agency designed to operationalize the decision of the hearing officer in cases that are fully adjudicated.

"Independent educational evaluation" means an evaluation conducted by a qualified examiner or examiners who are not employed by the local educational agency responsible for the education of the child in question. (34 CFR 300.502(a)(3)(i))

"Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with this chapter. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child's educational needs. (34 CFR 300.22)

"Individualized education program team" means a group of individuals described in 8VAC20-81-110 that is responsible for developing, reviewing, or revising an IEP for a child with a disability. (34 CFR 300.23)

"Individualized family service plan (IFSP) under Part C of the Act" means a written plan for providing early intervention services to an infant or toddler with a disability eligible under

Part C and to the child's family. (34 CFR 303.24; 20 USC § 636)

"Infant and toddler with a disability" means a child, ages birth to two, inclusive, whose birthday falls on or before September 30, or who is eligible to receive services in the Part C early intervention system up to age three, and who: (§ 2.2-5300 of the Code of Virginia; 34 CFR 300.25)

1. Has delayed functioning;

2. Manifests atypical development or behavior;

3. Has behavioral disorders that interfere with acquisition of developmental skills; or

4. Has a diagnosed physical or mental condition that has a high probability of resulting in delay, even though no current delay exists.

"Informed parental consent": see "Consent."

"Initial placement" means the first placement for the child to receive special education and related services in either a local educational agency, other educational service agency, or other public agency or institution for the purpose of providing special education or related services.

"Intellectual disability" means the definition formerly known as "mental retardation" and means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (34 CFR 300.8(c)(6))

"Interpreting services" as used with respect to children who are deaf or hard of hearing, means services provided by personnel who meet the qualifications set forth under 8VAC20-81-40 and includes oral transliteration services, cued speech/language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell and interpreting services for children who are deaf-blind. A child who is not deaf or hard of hearing, but who has language deficits, may receive interpreting services as directed by the child's Individualized Education Program. (Regulations Governing Interpreter Services for the Deaf and Hard of Hearing 22VAC20-30; 34 CFR 300.34(c)(4)(i))

"Least restrictive environment" (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR 300.114 through 34 CFR 300.120)

"Level I services" means the provision of special education to children with disabilities for less than 50% of their instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the individualized education program, rather than the location of services.

"Level II services" means the provision of special education to children with disabilities for 50% or more of the instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the individualized education program, rather than the location of services.

"Limited English proficient" when used with respect to an individual means an individual: (20 USC § 7801(25); 34 CFR 300.27)

1. Who is aged two through 21;

2. Who is enrolled or preparing to enroll in an elementary school or secondary school; or

3. Who:

a. Was not born in the United States or whose native language is a language other than English;

b. Is a Native American or Alaska Native, or a native resident of the outlying areas, and comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

c. Is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

4. Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:

a. The ability to meet Virginia's proficient level of achievement on Virginia's assessments;

b. The ability to successfully achieve in classrooms where the language of instruction is English; or

c. The opportunity to participate fully in society.

"Local educational agency" means a local school division governed by a local school board, a state-operated program that is funded and administered by the Commonwealth of Virginia or the Virginia School for the Deaf and the Blind at Staunton. Neither state-operated programs nor the Virginia School for the Deaf and the Blind at Staunton are considered a school division as that term is used in these regulations. (§ 22.1-346 C of the Code of Virginia; 34 CFR 300.28)

"Long-term placement" if used in reference to state-operated programs as outlined in 8VAC20-81-30 H means those

hospital placements that are not expected to change in status or condition because of the child's medical needs.

"Manifestation determination review" means a process to review all relevant information and the relationship between the child's disability and the behavior subject to the disciplinary action.

"Medical services" means services provided by a licensed physician or nurse practitioner to determine a child's medically related disability that results in the child's need for special education and related services. (§ 22.1-270 of the Code of Virginia; 34 CFR 300.34(c)(5))

"Mental retardation" - see "Intellectual disability."

"Multiple disabilities" means simultaneous impairments (such as intellectual disability with blindness, intellectual disability with orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. (34 CFR 300.8(c)(7))

"National Instructional Materials Access Center" or "NIMAC" means the national center established to do the following: (34 CFR 300.172)

1. Receive and maintain a catalog of print instructional materials prepared in the NIMAS, as established by the U.S. Secretary of Education, made available to such center by the textbook publishing industry, state educational agencies, and local educational agencies;

2. Provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as the NIMAC may prescribe; and

3. Develop, adopt, and publish procedures to protect against copyright infringement, with respect to print instructional materials provided in accordance with the Act.

"National Instructional Materials Accessibility Standard" or "NIMAS" means the standard established by the United States Secretary of Education to be used in the preparation of electronic files suitable and used solely for efficient conversion of print instructional materials into specialized formats. (34 CFR 300.172)

"Native language" if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a child, the language normally used by the parent of the child, except in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). (34 CFR 300.29)

"Nonacademic services and extracurricular services" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available. (34 CFR 300.107(b))

"Notice" means written statements in English or in the primary language of the home of the parent, or, if the language or other mode of communication of the parent is not a written language, oral communication in the primary language of the home of the parent. If an individual is deaf or blind, or has no written language, the mode of communication would be that normally used by the individual (such as sign language, Braille, or oral communication). (34 CFR 300.503(c))

"Occupational therapy" means services provided by a qualified occupational therapist or services provided under the direction or supervision of a qualified occupational therapist and includes: (Regulations Governing the Licensure of Occupational Therapists (18VAC85-80-10 et seq.); 34 CFR 300.34(c)(6))

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

2. Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

3. Preventing, through early intervention, initial or further impairment or loss of function.

"Orientation and mobility services" means services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes travel training instruction, and teaching children the following, as appropriate: (34 CFR 300.34(c)(7))

1. Spatial and environmental concepts and use of information received by the senses (e.g., sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

2. To use the long cane or service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

3. To understand and use remaining vision and distance low vision aids; and

4. Other concepts, techniques, and tools.

"Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis~~,~~ and bone tuberculosis~~, etc.~~), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). (34 CFR 300.8(c)(8))

"Other health impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia and Tourette syndrome that adversely affects a child's educational performance. (34 CFR 300.8(c)(9))

"Paraprofessional," also known as paraeducator, means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter. (34 CFR 300.156(b)(2)(iii))

"Parent" means: (§ 20-124.6 and § 22.1-213.1 of the Code of Virginia; 34 CFR 99.4 and 34 CFR 300.30)

1. Persons who meet the definition of "parent":

a. A biological or adoptive parent of a child;

b. A foster parent, even if the biological or adoptive parent's rights have not been terminated, but subject to subdivision 8 of this definition;

c. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not a guardian ad litem, or the state if the child is a ward of the state);

d. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare;

e. If no party qualified under subdivisions 1 a through 1 d of this definition can be identified, or those parties are unwilling to act as parent, a surrogate parent who has been appointed in accordance with requirements detailed under 8VAC20-81-220; or

f. A minor who is emancipated under § 16.1-333 of the Code of Virginia.

2. If a judicial decree or order identifies a specific person under subdivisions 1 a through 1 e of this subsection to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person shall be determined to be the "parent" for purposes of this definition.

3. "Parent" does not include local or state agencies or their agents, including local departments of social services, even if the child is in the custody of such an agency.

4. The biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified under this section to act as a parent, shall be presumed to be the parent for purposes of this section unless the biological or adoptive parent's or parents' authority to make educational decisions on the child's behalf has been extinguished pursuant to § 16.1-277.01, 16.1-277.02, or 16.1-283 of the Code of Virginia or a comparable law in another state.

5. Noncustodial parents whose parental rights have not been terminated are entitled to all parent rights and responsibilities available under this chapter, including access to their child's records.

6. Custodial stepparents have the right to access the child's record. Noncustodial stepparents do not have the right to access the child's record.

7. A validly married minor who has not pursued emancipation under § 16.1-333 of the Code of Virginia may assert implied emancipation based on the minor's marriage record and, thus, assumes responsibilities of "parent" under this chapter.

8. The local educational agency shall provide written notice to the biological or adoptive parents at their last known address that a foster parent is acting as the parent under this section, and the local educational agency is entitled to rely upon the actions of the foster parent under this section until such time that the biological or adoptive parent attempts to act as the parent.

"Parent counseling and training" means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP. (34 CFR 300.34(c)(8))

"Participating agency" means a state or local agency (including a Comprehensive Services Act team), other than the local educational agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student. The term also means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under Part B of the Act. (34 CFR 300.611(c), 34 CFR 300.324(c) and 34 CFR 300.321(b)(3))

"Personally identifiable" means information that contains the following: (34 CFR 300.32)

1. The name of the child, the child's parent, or other family member;

2. The address of the child;

3. A personal identifier, such as the child's social security number or student number; or

4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

"Physical education" means the development of: (34 CFR 300.39(b)(2))

1. Physical and motor fitness;

2. Fundamental motor skills and patterns; and

3. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The term includes special physical education, adapted physical education, movement education, and motor development.

"Physical therapy" means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction. (Regulations Governing the Practice of Physical Therapy, 18VAC112-20; 34 CFR 300.34(c)(9))

"Private school children with disabilities" means children with disabilities enrolled by their parent in private, including religious, schools or facilities that meet the definition of elementary school or secondary school as defined in this section other than children with disabilities who are placed in a private school by a local school division or a Comprehensive Services Act team in accordance with 8VAC20-81-150. (34 CFR 300.130)

"Program" means the special education and related services, including accommodations, modifications, supplementary aids, and services, as determined by a child's individualized education program.

"Psychological services" means those services provided by a qualified psychologist or under the direction or supervision of a qualified psychologist, including: (34 CFR 300.34(c)(10))

1. Administering psychological and educational tests, and other assessment procedures;

2. Interpreting assessment results;

3. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

4. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

5. Planning and managing a program of psychological services, including psychological counseling for children and parents; and

6. Assisting in developing positive behavioral intervention strategies.

"Public agency" means the state educational agency, a local educational agency, an educational service agency or other public institution, or nonprofit public charter schools that are not otherwise included as a local educational agency or an educational service agency or other public institution and any other political subdivision of the Commonwealth that is responsible for providing education to children with disabilities.

"Public expense" means that the local educational agency either pays for the full cost of the service or evaluation or ensures that the service or evaluation is otherwise provided at no cost to the parent. (34 CFR 300.502(a)(3)(ii))

"Public notice" means the process by which certain information is made available to the general public. Public notice procedures may include newspaper advertisements, radio announcements, television features and announcements, handbills, brochures, electronic means, and other methods that are likely to succeed in providing information to the public.

"Qualified person who has a disability" means a "qualified handicapped person" as defined in the federal regulations implementing the Rehabilitation Act of 1973, as amended. (29 USC § 701 et seq.)

"Recreation" includes: (34 CFR 30.34(c)(11))

1. Assessment of leisure function;

2. Therapeutic recreation services;

3. Recreation program in schools and community agencies; and

4. Leisure education.

"Reevaluation" means completion of a new evaluation in accordance with this chapter. (34 CFR 300.303)

"Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended. (34 CFR 300.34(c)(12))

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services,

including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also includes school health services and school nurse services; social work services in schools; and parent counseling and training. Related services do not include a medical device that is surgically implanted including cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a child with a disability to benefit from special education. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.34(a) and (b))

Nothing in this section:

1. Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services that are determined by the IEP team to be necessary for the child to receive FAPE;

2. Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

3. Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

"School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. The term has the same meaning for all children in school, including children with and without disabilities. (34 CFR 300.11)

"School health services and school nurse services" means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person. (Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia; 34 CFR 300.34(c)(13))

"Scientifically based research" means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs and includes research that: (20 USC § 9501(18); 34 CFR 300.35)

1. Employs systematic, empirical methods that draw on observation or experiment;

2. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

3. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

4. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

5. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

6. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

"Screening" means those processes that are used routinely with all children to identify previously unrecognized needs and that may result in a referral for special education and related services or other referral or intervention.

"Section 504" means that section of the Rehabilitation Act of 1973, as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance. (29 USC § 701 et seq.)

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (18 USC § 1365(h)(3); 34 CFR 300.530(i)(3))

"Services plan" means a written statement that describes the special education and related services the local educational agency will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, and is developed and implemented in accordance with 8VAC20-81-150. (34 CFR 300.37)

"Social work services in schools" means those services provided by a school social worker or qualified visiting teacher, including: (Licensure Regulations for School Personnel, 8VAC20-22-660); 34 CFR 300.34(c)(14))

1. Preparing a social or developmental history on a child with a disability;

2. Group and individual counseling with the child and family;

3. Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

4. Mobilizing school and community resources to enable the child to learn as effectively as possible in the child's educational program; and

5. Assisting in developing positive behavioral intervention strategies for the child.

A local educational agency, in its discretion, may expand the role of a school social worker or visiting teacher beyond those services identified in this definition, as long as the expansion is consistent with other state laws and regulations, including licensure.

"Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, in institutions, and in other settings and instruction in physical education. The term includes each of the following if it meets the requirements of the definition of special education: (§ 22.1-213 of the Code of Virginia; 34 CFR 300.39)

1. Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards;

2. Vocational education; and

3. Travel training.

"Special education hearing officer" has the same meaning as the term "impartial hearing officer" as that term is used in the Act and its federal implementing regulations.

"Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction: (34 CFR 300.39(b)(3))

1. To address the unique needs of the child that result from the child's disability; and

2. To ensure access of the child to the general curriculum, so that the child can meet the educational standards that apply to all children within the jurisdiction of the local educational agency.

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disabilities; of environmental, cultural, or economic disadvantage. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.8(c)(10))

Dyslexia is distinguished from other learning disabilities due to its weakness occurring at the phonological level. Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate ~~and/or~~ or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment that adversely affects a child's educational performance. (34 CFR 300.8(c)(11))

"Speech-language pathology services" means the following: (34 CFR 300.34(c)(15))

1. Identification of children with speech or language impairments;

2. Diagnosis and appraisal of specific speech or language impairments;

3. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

4. Provision of speech and language services for the habilitation or prevention of communicative impairments; and

5. Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

"State assessment program" means the state assessment program in Virginia under the Act that is the component of the state assessment system used for accountability.

"State educational agency" means the Virginia Department of Education. (34 CFR 300.41)

"State-operated programs" means programs that provide educational services to children and youth who reside in facilities according to the admissions policies and procedures of those facilities that are the responsibility of state boards, agencies, or institutions. (§§ 22.1-7, 22.1-340 and 22.1-345 of the Code of Virginia)

"Supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings to enable children with disabilities to be educated with children without disabilities to

the maximum extent appropriate in accordance with this chapter. (34 CFR 300.42)

"Surrogate parent" means a person appointed in accordance with procedures set forth in this chapter to ensure that children are afforded the protection of procedural safeguards and the provision of a free appropriate public education. (34 CFR 300.519)

"Timely manner" if used with reference to the requirement for National Instructional Materials Accessibility Standard means that the local educational agency shall take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials. (34 CFR 300.172(b)(4))

"Transition from Part C (Early Intervention Program for Infants and Toddlers with Disabilities) services" means the steps identified in the Individualized Family Services Plan (IFSP) to be taken to support the transition of the child to: (34 CFR 300.124)

1. Early childhood special education to the extent that those services are appropriate; or

2. Other services that may be available, if appropriate.

"Transition services" if used with reference to secondary transition means a coordinated set of activities for a student with a disability that is designed within a results-oriented process that: (34 CFR 300.43)

1. Is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

2. Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services for students with disabilities may be special education~~,~~ if provided as specially designed instruction~~,~~ or related services~~,~~ if they are required to assist a student with a disability to benefit from special education.

"Transportation" includes: (34 CFR 300.34(c)(16))

1. Travel to and from school and between schools;

2. Travel in and around school buildings; and

3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force or by other medical conditions, including stroke, anoxia, infectious disease, aneurysm, brain tumors, and neurological insults resulting from medical or surgical treatments, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (34 CFR 300.8(c)(12))

"Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to: (34 CFR 300.39(b)(4))

1. Develop an awareness of the environment in which they live; and

2. Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

"Universal design" has the meaning given the term in § 3 of the Assistive Technology Act of 1998, as amended, 29 USC § 3002. The term "universal design" means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies. (34 CFR 300.44)

"Virginia School for the Deaf and the Blind at Staunton" means the Virginia school under the operational control of the Virginia Board of Education. The Superintendent of Public Instruction shall approve the education programs of this school. (§ 22.1-346 of the Code of Virginia)

"Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (34 CFR 300.8(c)(13))

"Vocational education," for the purposes of special education, means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career not requiring a baccalaureate or advanced degree, and includes career and technical education. (34 CFR 300.39(b)(5))

"Ward of the state" means a child who, as determined by the state where the child resides is: (34 CFR 300.45)

1. A foster child;

2. A ward of the state; or

3. In the custody of a public child welfare agency.

"Ward of the state" does not include a foster child who has a foster parent who meets the definition of a "parent."

"Weapon" means dangerous weapon under 18 USC § 930(g)(2). (34 CFR 530(i)(4))

8VAC20-81-190. Mediation.

A. Each local educational agency shall ensure that the ~~parent(s)~~ parents of a child with a disability are informed of the option of mediation to resolve disputes involving any matter arising under Part B of the Act, including the identification, evaluation, or educational placement and services of the child, the provision of a free appropriate public education to the child, and matters arising prior to the filing of a state complaint or request for a due process hearing. Mediation is available to parties to any dispute arising under the Act to resolve these issues at any time a joint request is made to the Virginia Department of Education from a school representative and a parent. (§ 22.1-214 B of the Code of Virginia; 34 CFR 300.506(a))

B. The local educational agency shall use the Virginia Department of Education's mediation process to resolve such disputes. The procedures shall ensure that the process is: (§ 22.1-214 B of the Code of Virginia; 34 CFR 300.506(b)(1))

1. Voluntary on the part of both the local educational agency and parent;

2. Not used to deny or delay a ~~parent's(s')~~ parent's right to a due process hearing or to deny any other rights afforded under the Act; and

3. Conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is knowledgeable in laws and regulations relating to the provision of special education and related services.

C. The local educational agency or the Virginia Department of Education may establish procedures to offer parents and schools who choose not to use the mediation process an opportunity to meet, at a time and location convenient to them, with a disinterested party who is under contract with a parent training and information center or community parent resource center in Virginia established under § 1471 or 1472 of the Act; or an appropriate alternative dispute resolution entity. The purpose of the meeting would be to explain the benefits of and encourage the parent(s) to use the mediation process. (34 CFR 300.506(b)(2))

D. In accordance with the Virginia Department of Education's procedures: (34 CFR 300.506(b)(3) and (4))

1. The Virginia Department of Education maintains a list of individuals who are qualified mediators, knowledgeable in laws and regulations relating to the provision of special education and related services, and trained in effective mediation techniques;

2. The mediator is chosen on a rotation basis; and

3. The Virginia Department of Education bears the cost of the mediation process, including costs in subsection C of this section.

E. The mediation process shall: (34 CFR 300.506(b)(5) through (b)(8))

1. Be scheduled in a timely manner and held in a location that is convenient to the parties to the dispute;

2. Conclude with a written legally binding agreement, if an agreement is reached by the parties to the dispute, that:

a. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

b. Is signed by both the parent and a representative of the local educational agency who has the authority to bind the local educational agency; and

c. Is enforceable in any state or federal court of competent jurisdiction.

3. Guarantee that discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any state or federal court. ~~Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge prior to the commencement of the mediation process.~~

F. An individual who serves as a mediator: (34 CFR 300.506(c))

1. May not be an employee of any local educational agency or the Virginia Department of Education if it is providing direct services to a child who is the subject of the mediation process;

2. Shall not have a personal or professional conflict of interest, including relationships or contracts with schools or parents outside of mediations assigned by the Virginia Department of Education; and

3. Is not an employee of the local educational agency or the Virginia Department of Education solely because the person is paid by the agency to serve as a mediator.

8VAC20-81-200. Complaint resolution procedures.

A. The Virginia Department of Education maintains and operates a complaint system that provides for the investigation and issuance of findings regarding violations of the rights of

parents or children with disabilities. The Superintendent of Public Instruction or designee is responsible for the operation of the complaint system. (34 CFR 300.151)

B. A complaint may be filed with the Virginia Department of Education by any individual, organization, or an individual from another state and shall: (34 CFR 300.153)

1. Be in writing;

2. Include the signature and contact information for the complainant;

3. Contain a statement that a ~~local educational agency~~ public agency has violated the Act or these special education regulations;

4. Include the facts upon which the complaint is based;

5. If alleging violations with respect to a specific child, include:

a. The name and address of the residence of the child;

b. The name of the school the child is attending;

c. In the case of a homeless child or youth (within the meaning of § 725(2) of the McKinney-Vento Homeless Act (42 USC 11434a(2)), available contact information for the child, and the name of the school the child is attending;

d. A description of the nature of the problem of the child, including facts relating to the problem; and

e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;

6. Address an action that occurred not more than one year prior to the date the complaint is received;

~~7. Contain all relevant documents;~~ and

~~8.~~ 7. Be provided simultaneously to the local educational agency or public agency serving the child.

C. Within seven days of a receipt of a complaint, the Virginia Department of Education determines if the complaint is sufficient according to subsection B of this section. If it is determined that the complaint is insufficient, the Virginia Department of Education notifies the complainant and the ~~local educational~~ public agency in writing. The complainant is given directions for resubmission of the complaint to the Virginia Department of Education.

D. Upon receipt of a valid complaint, the Virginia Department of Education shall initiate an investigation to determine whether the ~~local educational~~ public agency is in compliance with applicable law and regulations in accordance with the following procedures: (34 CFR 300.151 and 34 CFR 300.152)

1. Within seven business days of the receipt of a valid complaint, the Virginia Department of Education shall send written notification to each complainant and the ~~local educational~~ public agency against which the violation has been alleged, acknowledging receipt of a complaint.

a. The notification sent to the ~~local educational~~ public agency shall include:

(1) A copy of the complaint;

(2) An offer of technical assistance in resolving the complaint;

(3) A statement that the ~~local educational~~ public agency has the opportunity to propose, at the ~~local educational~~ public agency's discretion, a resolution of the complaint;

(4) Notification of the opportunity for the parties to engage voluntarily in mediation;

(5) A request that the ~~local educational~~ public agency submit within 10 business days of receipt of the letter of notification either:

(a) Written documentation that the complaint has been resolved; or

(b) If the complaint was not resolved, a written response, including all requested documentation. A copy of the response, along with all submitted documentation, shall simultaneously be sent by the ~~local educational~~ public agency to the ~~parents(s)~~ parents of the child who is the subject of the complaint or their attorney. If the complaint was filed by another individual, the ~~local educational~~ public agency shall also simultaneously send the response and submitted documentation to that individual if a release signed by the ~~parent(s)~~ parents has been provided.

b. The notification sent to the complainant and the ~~local educational~~ public agency shall provide the complainant and the ~~local educational~~ public agency with an opportunity to submit additional information about the allegations in the complaint, either orally or in writing. The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completion of the investigation within 60 calendar days.

c. If the complaint is filed by an individual other than the child's ~~parent(s) and/or their~~ parent or the parent's legal counsel, the Virginia Department of Education sends written notification to the complainant acknowledging receipt of the complaint. The complainant is notified that the parent will be informed of the receipt of the complaint and provided a copy of the complaint and pertinent correspondence. The Virginia Department of ~~Education's final determination of compliance or noncompliance will be issued to the parent(s) and the local educational agency, unless the complainant has obtained and filed the appropriate consent for release of~~ Education shall determine on a case-by-case basis what information must be withheld when resolving a complaint filed by someone other than the child's parent and the parent has not consented to the release of the child's personally identifiable information.

2. If a reply from the ~~local educational~~ public agency is not filed with the Virginia Department of Education within 10 business days of the receipt of the notice, the Virginia Department of Education shall send a second notice to the ~~local educational~~ public agency advising that failure to respond within seven business days of the date of such notice will result in review by the Superintendent of Public Instruction or designee for action regarding appropriate sanctions.

3. The Virginia Department of Education shall review the complaint and reply filed by the ~~local educational~~ public agency to determine if further investigation or corrective action needs to be taken.

a. If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the Virginia Department of Education shall:

(1) Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(2) Resolve any issue in the complaint that is not a part of the due process hearing involving the same parties.

b. If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the Virginia Department of Education shall inform the complainant that the due process hearing decision is binding.

c. The Virginia Department of Education shall resolve a complaint alleging that the ~~local educational~~ public agency has failed to implement a due process hearing decision.

4. During the course of the investigation, the Virginia Department of Education shall:

a. Conduct an investigation of the complaint that shall include a complete review of all relevant documentation and may include interviews with appropriate individuals, and an independent on-site investigation, if necessary.

b. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.

c. Make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and notify the parties in writing of the findings and the bases for such findings.

(1) The Virginia Department of Education has 60 calendar days after the valid written complaint is received to carry out the investigation and to resolve the complaint.

(2) An extension of the 60-calendar-day time limit may occur if exceptional circumstances exist with respect to a particular complaint or if the parties involved agree to extend the time to engage in mediation or other alternative means of dispute resolution.

(3) Both parties to the complaint will be notified in writing by the Virginia Department of Education of the exceptional circumstances, if applicable, and the extended time limit.

d. Ensure that the Virginia Department of Education's final decision is effectively implemented, if needed, through:

(1) Technical assistance activities;

(2) Negotiations; and

(3) Corrective actions to achieve compliance.

e. Report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.

f. Notify the parties in writing of any needed corrective actions and the specific steps that shall be taken by the ~~local educational~~ public agency to bring it into compliance with applicable timelines.

5. In resolving a complaint in which a failure to provide appropriate services is found, the Virginia Department of Education shall address:

a. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the child; and

b. Appropriate future provision of services for all children with disabilities.

E. Parties to the complaint procedures shall have the right to appeal the final decision to the Virginia Department of Education within 30 calendar days of the issuance of the decision in accordance with procedures established by the Virginia Department of Education.

F. When the ~~local educational~~ public agency develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the Virginia Department of Education.

G. If the ~~local educational~~ public agency does not come into compliance within the period of time set forth in the notification, the matter will be referred to the Superintendent of Public Instruction or designee for an agency review and referral to the Virginia Board of Education, if deemed necessary.

H. If, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, under the provisions of 8VAC20-81-290, it is determined that the local educational

agency has failed to comply with applicable laws and regulations and determines that compliance cannot be secured by voluntary means, then the Superintendent of Public Instruction shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to that local educational agency until there is no longer any failure to comply with the applicable law or regulation. (§ 22.1-214 E of the Code of Virginia)

I. The Virginia Department of Education's complaint procedures shall be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. (34 CFR 300.151)

8VAC20-81-210. Due process hearing.

A. The Virginia Department of Education provides for an impartial special education due process hearing system to resolve disputes between parents and ~~local educational~~ public agencies with respect to any matter relating to the: (§ 22.1-214 of the Code of Virginia; 34 CFR 300.121 and 34 CFR 300.507 through 34 CFR 300.518)

1. Identification of a child with a disability, including initial eligibility, any change in categorical identification, and any partial or complete termination of special education and related services;

2. Evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation);

3. Educational placement and services of the child; and

4. Provision of a free appropriate public education to the child.

B. The Virginia Department of Education uses the impartial hearing officer system that is administered by the Supreme Court of Virginia.

C. The Virginia Department of Education uses the list of hearing officers maintained by the Office of the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration for the names of individuals to serve as special education hearing officers. In accordance with the Rules of Administration, the Virginia Department of Education provides the Office of the Executive Secretary annually the names of those special education hearing officers who are recertified to serve in this capacity.

D. The Virginia Department of Education establishes procedures for:

1. Providing special education hearing officers specialized training on the federal and state special education law and regulations, as well as associated laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing.

2. Establishing the number of special education hearing officers who shall be certified to hear special education due process cases.

a. The Virginia Department of Education shall review annually its current list of special education hearing officers and determine the recertification status of each hearing officer.

b. Notwithstanding anything to the contrary in this subdivision, individuals on the special education hearing officers list on July 7, 2009, shall be subject to the Virginia Department of Education's review of recertification status based on past and current performance.

c. The ineligibility of a special education hearing officer continuing to serve in this capacity shall be based on the factors listed in subdivision 3 c of this subsection.

3. Evaluation, continued eligibility, and disqualification requirements of special education hearing officers:

a. The Virginia Department of Education shall establish procedures for evaluating special education hearing officers.

b. The first review of the recertification status of each special education hearing officer will be conducted within a reasonable time following July 7, 2009.

c. In considering whether a special education hearing officer will be certified or recertified, the Virginia Department of Education shall determine the number of hearing officers needed to hear special education due process cases, and consider matters related to the special education hearing officer's adherence to the factors in subdivision H 5 of this section, as well as factors involving the special education hearing officer's:

(1) Issuing an untimely decision, or failing to render decision within regulatory ~~time frames~~ timeframes;

(2) Unprofessional demeanor;

(3) Inability to conduct an orderly hearing;

(4) Inability to conduct a hearing in conformity with the federal and state laws and regulations regarding special education;

(5) Improper ex parte contacts;

(6) Violations of due process requirements;

(7) Mental or physical incapacity;

(8) Unjustified refusal to accept assignments;

(9) Failure to complete training requirements as outlined by the Virginia Department of Education;

(10) Professional disciplinary action; or

(11) Issuing a decision that contains:

(a) Inaccurate appeal rights of the parents; or

(b) No controlling case or statutory authority to support the findings.

d. When a special education hearing officer has been denied certification or recertification based on the factors in subdivision 3 c of this section, the Virginia Department of Education shall notify the special education hearing officer and the Office of the Executive Secretary of the Supreme Court of Virginia that the hearing officer is no longer certified to serve as a special education hearing officer.

Upon notification of denial of certification or recertification, the hearing officer may, within 10 calendar days of the postmark of the letter of notification, request of the Superintendent of Public Instruction, or his designee, reconsideration of the decision. Such request shall be in writing and shall contain any additional information desired for consideration. The Superintendent of Public Instruction, or his designee, shall render a decision within 10 calendar days of receipt of the request for reconsideration. The Virginia Department of Education shall notify the hearing officer and the Office of the Executive Secretary of the Supreme Court of Virginia of its decision.

4. Reviewing and analyzing the decisions of special education hearing officers, and the requirement for special education hearing officers to reissue decisions, relative to correct use of citations, readability, and other errors such as incorrect names or conflicting data, but not errors of law that are reserved for appellate review.

E. Filing the request for a due process hearing. If any of the following provisions are challenged by one of the parties in a due process hearing, the special education hearing officer determines the outcome of the case going forward.

1. The request for due process shall allege a violation that happened not more than two years before the ~~parent(s)~~ parent or the ~~local educational~~ public agency knew or should have known about the alleged action that forms the basis of the request for due process. This timeline does not apply if the request for a due process hearing could not be filed because: (34 CFR 300.507(a) and 34 CFR 300.511(e) and (f))

a. The local educational agency specifically misrepresented that it had resolved the issues identified in the request; or

b. The local educational agency withheld information that it was required to provide under the IDEA.

2. A ~~local educational~~ public agency may initiate a due process hearing to resolve a disagreement when the ~~parent(s)~~ parent withholds or refuses consent for an evaluation or an action that requires parental consent to provide services to a student who has been identified as a student with a disability or who is suspected of having a disability. However, a ~~local educational~~ public agency may not initiate a due process hearing to resolve parental withholding or refusing consent for the initial provision of special education to the child. (34 CFR 300.300(a)(3)(i) and 34 CFR 300.300(b)(3))

3. In circumstances involving disciplinary actions, the ~~parent(s)~~ parent of a student with a disability may request an expedited due process hearing if the ~~parent(s)~~ parent disagrees with: (34 CFR 300.532)

a. The manifestation determination regarding whether the child's behavior was a manifestation of the child's disability; or

b. Any decision regarding placement under the disciplinary procedures.

4. In circumstances involving disciplinary actions, the local educational agency may request an expedited hearing if the school division believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others. (34 CFR 300.532)

F. Procedure for requesting a due process hearing. (34 CFR 300.504(a)(2), 34 CFR 300.507, 34 CFR 300.508 and 34 CFR 300.511)

1. A request for a hearing shall be made in writing to the Virginia Department of Education. A copy of that request shall be delivered contemporaneously by the requesting party to the other party.

a. If the local educational agency initiates the due process hearing, the local educational agency shall advise the ~~parent(s)~~ parent and the Virginia Department of Education in writing of this action.

b. If the request is received solely by the Virginia Department of Education, the Virginia Department of Education shall immediately notify the local educational agency by telephone or by facsimile and forward a copy of the request to the local educational agency as soon as reasonably possible, including those cases where mediation is requested.

c. The request for a hearing shall be kept confidential by the local educational agency and the Virginia Department of Education.

2. A party may not have a due process hearing until that party or the attorney representing the party files a notice that includes:

a. The name of the child;

b. The address of the residence of the child (or available contact information in the case of a homeless child);

c. The name of the school the child is attending;

d. A description of the nature of the child's problem relating to the proposed or refused initiation or change, including facts relating to the problem; and

e. A proposed resolution of the problem to the extent known and available to the ~~parent(s)~~ parent at the time of the notice.

3. The due process notice shall be deemed sufficient unless the party receiving the notice notifies the special education hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements listed in subdivision 2 of this subsection.

4. The party receiving the notice may challenge the sufficiency of the due process notice by providing a notification of the challenge to the special education hearing officer within 15 calendar days of receipt the due process request. A copy of the challenge shall be sent to the other party and the Virginia Department of Education.

5. Within five calendar days of receipt of the notification challenging the sufficiency of the due process notice, the special education hearing officer shall determine on the face of the notice whether the notification meets the requirements in subdivision 2 of this subsection.

6. The special education hearing officer has the discretionary authority to permit either party to raise issues at the hearing that were not raised in the notice by the party requesting the due process hearing in light of particular facts and circumstances of the case.

7. The local educational agency shall upon receipt of a request for a due process hearing, inform the ~~parent(s)~~ parent of the availability of mediation described in 8VAC20-81-190 and of any free or low-cost legal and other relevant services available in the area. The local educational agency also shall provide the ~~parent(s)~~ parent with a copy of the procedural safeguards notice upon receipt of the ~~parent's(s')~~ parent's first request for a due process hearing in a school year.

G. Amendment of due process notice. (34 CFR 300.508(d)(3))

1. A party may amend its due process notice only if:

a. The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting; or

b. The special education hearing officer grants permission, except that the special education hearing officer may only grant such permission at any time not later than five calendar days before a due process hearing occurs.

2. The applicable timeline for a due process hearing under this part shall begin again at the time the party files an amended notice, including the timeline for resolution sessions.

H. Assignment of the special education hearing officer. (34 CFR 300.511)

1. Within five business days of receipt of the request for a nonexpedited hearing and three business days of receipt of the request for an expedited hearing:

a. The local educational agency shall contact the Supreme Court of Virginia for the appointment of the special education hearing officer.

b. The local educational agency contacts the special education hearing officer to confirm availability, and upon acceptance, notifies the special education hearing officer in writing, with a copy to the ~~parent(s)~~ parent and the Virginia Department of Education of the appointment.

2. Upon request, the Virginia Department of Education shall share information on the qualifications of the special education hearing officer with the ~~parent(s)~~ parent and the local educational agency.

3. Either party has five business days after notice of the appointment is received or the basis for the objection becomes known to the party to object to the appointment by presenting a request for consideration of the objection to the special education hearing officer.

a. If the special education hearing officer's ruling on the objection does not resolve the objection, then within five business days of receipt of the ruling the party may proceed to file an affidavit with the Executive Secretary of the Supreme Court of Virginia. The failure to file a timely objection serves as a waiver of objections that were known or should have been known to the party.

b. The filing of a request for removal or disqualification shall not stay the proceedings or filing requirements in any way except that the hearing may not be conducted until the Supreme Court of Virginia issues a decision on the request in accordance with its procedures.

c. If a special education hearing officer recuses himself or is otherwise disqualified, the Supreme Court of Virginia shall ensure that another special education hearing officer is promptly appointed.

4. A hearing shall not be conducted by a person who:

a. Has a personal or professional interest that would conflict with that person's objectivity in the hearing;

b. Is an employee of the Virginia Department of Education or the local educational agency that is involved in the education and care of the child. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he is paid by the agency to serve as a special education hearing officer; or

c. Represents schools or parents in any matter involving special education or disability rights, or is an employee of any parent rights agency or organization, or disability rights agency or organization.

5. A special education hearing officer shall:

a. Possess knowledge of, and the ability to understand, the provisions of the Act, federal and state regulations pertaining to the Act, and legal interpretations of the Act by federal and state courts;

b. Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

c. Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

I. Duration of the special education hearing officer's authority.

1. The special education hearing officer's authority begins with acceptance of the case assignment.

2. The special education hearing officer has authority over a due process proceeding until:

a. Issuance of the special education hearing officer's decision; or

b. The Supreme Court of Virginia revokes such authority by removing or disqualifying the special education hearing officer.

J. Child's status during administrative or judicial proceedings. (34 CFR 300.518; 34 CFR 300.533)

1. Except as provided in 8VAC20-81-160, during the pendency of any administrative or judicial proceeding, the child shall remain in the current educational placement unless the ~~parent(s)~~ parent of the child and local educational agency agree otherwise;

2. If the proceeding involves an application for initial admission to public school, the child, with the consent of the ~~parent(s)~~ parent, shall be placed in the public school until the completion of all the proceedings;

3. If the decision of a special education hearing officer agrees with the child's ~~parent(s)~~ parent that a change of placement is appropriate, that placement shall be treated as an agreement between the local educational agency and the ~~parent(s)~~ parent for the purposes of subdivision 1 of this section;

4. The child's placement during administrative or judicial proceedings regarding a disciplinary action by the local educational agency shall be in accordance with 8VAC20-81-160;

5. The child's placement during administrative or judicial proceedings regarding a placement for noneducational reasons by a Comprehensive Services Act team shall be in accordance with 8VAC20-81-150; or

6. If the proceeding involves an application for initial services under Part B of the Act from Part C and the child is no longer eligible for Part C services because the child has turned three, the school division is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, the school division shall provide those special education and related services that are not in dispute between the agency and the school division.

K. Rights of parties in the hearing. (§ 22.1-214 C of the Code of Virginia; 34 CFR 300.512)

1. Any party to a hearing has the right to:

a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

b. Present evidence and confront, cross-examine, and request that the special education hearing officer compel the attendance of witnesses;

c. Move that the special education hearing officer prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

d. Obtain a written or, at the option of the ~~parent(s)~~ parent, electronic, verbatim record of the hearing; and

e. Obtain written or, at the option of the ~~parent(s)~~ parent, electronic findings of fact and decisions.

2. Additional disclosure of information shall be given as follows:

a. At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing; and

b. A special education hearing officer may bar any party that fails to comply with subdivision 2 a of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

3. Parental rights at hearings.

a. A ~~parent(s)~~ parent involved in a hearing shall be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the ~~parent(s)~~ parent, even though the applicable appeal period has expired.

L. Responsibilities of the Virginia Department of Education. The Virginia Department of Education shall: (34 CFR 300.513(d), 34 CFR 300.509 and 34 CFR 300.511)

1. Maintain and monitor the due process hearing system and establish procedures for its operation;

2. Ensure that the local educational agency discharges its responsibilities in carrying out the requirements of state and federal statutes and regulations;

3. Develop and disseminate a model form to be used by the ~~parent(s)~~ parent to give notice in accordance with the contents of the notice listed in subdivision F 2 of this section;

4. Maintain and ensure that each local educational agency maintains a list of persons who serve as special education hearing officers. This list shall include a statement of the qualifications of each special education hearing officer;

5. Provide findings and decisions of all due process hearings to the state special education advisory committee and to the public after deleting any personally identifiable information;

6. Review and approve implementation plans filed by local educational agencies pursuant to hearing officer decisions in hearings that have been fully adjudicated; and

7. Ensure that noncompliance findings identified through due process or court action are corrected as soon as possible, but in no case later than one year from identification.

M. Responsibilities of the parent. In a due process hearing, the ~~parent(s)~~ parent shall: (34 CFR 300.512)

1. Decide whether the hearing will be open to the public;

2. Make timely and necessary responses to the special education hearing officer personally or through counsel or other authorized representatives;

3. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;

4. Provide information to the special education hearing officer to assist in the special education hearing officer's administration of a fair and impartial hearing;

5. Provide documents and exhibits necessary for the hearing within required timelines; and

6. Comply with timelines, orders, and requests of the special education hearing officer.

N. Responsibilities of the ~~local educational~~ public agency. The ~~local educational~~ public agency shall: (34 CFR 300.504, 34 CFR 300.506, 34 CFR 300.507 and 34 CFR 300.511)

1. Maintain a list of the persons serving as special education hearing officers. This list shall include a statement of the qualifications of each special education hearing officer;

2. Upon request, provide the ~~parent(s)~~ parent a form for use to provide notice that they are requesting a due process hearing;

3. Provide the ~~parent(s)~~ parent a copy of their procedural safeguards upon receipt of the ~~parent's(s')~~ parent's first request for a due process hearing in a school year;

4. Inform the ~~parent(s)~~ parent at the time the request is made of the availability of mediation;

5. Inform the ~~parent(s)~~ parent of any free or low-cost legal and other relevant services if the ~~parent(s)~~ parent requests it, or anytime the ~~parent(s)~~ parent or the local educational agency initiates a hearing;

6. Assist the special education hearing officer, upon request, in securing the location, transcription, and recording equipment for the hearing;

7. Make timely and necessary responses to the special education hearing officer;

8. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;

9. Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of a fair and impartial hearing;

10. Provide documents and exhibits necessary for the hearing within required timelines;

11. Comply with timelines, orders, and requests of the special education hearing officer;

12. Maintain a file, which is a part of the child's scholastic record, containing communications, exhibits, decisions, and mediation communications, except as prohibited by laws or regulations;

13. Forward all necessary communications to the Virginia Department of Education and parties as required;

14. Notify the Virginia Department of Education when a special education hearing officer's decision has been appealed to court by either the ~~parent(s)~~ parent or the local educational agency;

15. Forward the record of the due process proceeding to the appropriate court for any case that is appealed;

16. Develop and submit to the Virginia Department of Education an implementation plan, with copy to the ~~parent(s)~~ parent, within 45 calendar days of the hearing officer's decision in hearings that have been fully adjudicated.

a. If the decision is appealed or the ~~school division~~ local educational agency is considering an appeal and the decision is not an agreement by the hearing officer with the ~~parent(s)~~ parent that a change in placement is appropriate, then the decision and submission of

implementation plan is held in abeyance pursuant to the appeal proceedings.

b. In cases where the decision is an agreement by the hearing officer with the ~~parent(s)~~ parent that a change in placement is appropriate, the hearing officer's decision must be implemented while the case is appealed and an implementation plan must be submitted by the local educational agency.

c. The implementation plan:

(1) Must be based upon the decision of the hearing officer;

(2) Shall include the revised IEP if the decision affects the child's educational program; and

(3) Shall contain the name and position of a case manager in the local educational agency charged with implementing the decision; and

17. Provide the Virginia Department of Education, upon request, with information and documentation that noncompliance findings identified through due process or court action are corrected as soon as possible but in no case later than one year from issuance of the special education hearing officer's decision.

O. Responsibilities of the special education hearing officer. The special education hearing officer shall: (34 CFR 300.511 through 34 CFR 300.513; and 34 CFR 300.532)

1. Within five business days of agreeing to serve as the special education hearing officer, secure a date, time, and location for the hearing that are convenient to both parties, and notify both parties to the hearing and the Virginia Department of Education, in writing, of the date, time, and location of the hearing.

2. Ascertain whether the parties will have attorneys or others assisting them at the hearing. The special education hearing officer shall send copies of correspondence to the parties or their attorneys.

3. Conduct a prehearing conference via a telephone conference call or in person unless the special education hearing officer deems such conference unnecessary. The prehearing conference may be used to clarify or narrow issues and determine the scope of the hearing. If a prehearing conference is not held, the special education hearing officer shall document in the written prehearing report to the Virginia Department of Education the reason for not holding the conference.

4. Upon request by one of the parties to schedule a prehearing conference, determine the scope of the conference and conduct the conference via telephone call or in person. If the special education hearing officer deems such conference unnecessary, the special education hearing officer shall document in writing to the parties, with copy to the Virginia Department of Education, the ~~reason(s)~~ reason for not holding the conference.

5. At the prehearing stage:

a. Discuss with the parties the possibility of pursuing mediation and review the options that may be available to settle the case;

b. Determine when an IDEA due process notice also indicates a Section 504 dispute, whether to hear both disputes in order to promote efficiency in the hearing process and avoid confusion about the status of the Section 504 dispute; and

c. Document in writing to the parties, with copy to the Virginia Department of Education, prehearing determinations including a description of the right to appeal the case directly to either a state or federal court.

6. Monitor the mediation process, if the parties agree to mediate, to ensure that mediation is not used to deny or delay the right to a due process hearing, that parental rights are protected, and that the hearing is concluded within regulatory timelines.

7. Ascertain from the ~~parent(s)~~ parent whether the hearing will be open to the public.

8. Ensure that the parties have the right to a written or, at the option of the ~~parent(s)~~ parent, an electronic verbatim record of the proceedings and that the record is forwarded to the local educational agency for the file after making a decision.

9. Receive a list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) no later than five business days prior to the hearing.

10. Ensure that the local educational agency has appointed a surrogate parent in accordance with 8VAC20-81-220 when the ~~parent(s)~~ parent or guardian is not available or cannot be located.

11. Ensure that an atmosphere conducive to fairness is maintained at all times in the hearing.

12. Not require the parties or their representatives to submit briefs as a condition of rendering a decision. The special education hearing officer may permit parties to submit briefs, upon the parties' request.

13. Base findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law and regulations.

14. Report findings of fact and decisions in writing to the parties and their attorneys and the Virginia Department of Education. If the hearing is an expedited hearing, the special education hearing officer may issue an oral decision at the conclusion of the hearing, followed by a written decision within 10 school days of the hearing being held.

15. Include in the written findings:

a. Findings of fact relevant to the issues that are determinative of the case;

b. Legal principles upon which the decision is based, including references to controlling case law, statutes, and regulations;

c. An explanation of the basis for the decision for each issue that is determinative of the case; and

d. If the special education hearing officer made findings that required relief to be granted, then an explanation of the relief granted may be included in the decision.

16. Subject to the procedural determinations described in subdivision 17 of this subsection, the decision made by a special education hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

17. In matters alleging a procedural violation, a special education hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies:

a. Impeded the child's right to a free appropriate public education;

b. Significantly impeded the ~~parent's(s')~~ parent's opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the ~~parents'~~ parent's child; or

c. Caused a deprivation of educational benefits. Nothing in this subdivision shall be construed to preclude a special education hearing officer from ordering a ~~local educational~~ public agency to comply with procedural requirements under 34 CFR 300.500 through 34 CFR 300.536.

18. Maintain a well-documented record and return the official record to the local educational agency upon conclusion of the case.

19. Determine in a hearing regarding a manifestation determination whether the local educational agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements in 8VAC20-81-160.

P. Authority of the special education hearing officer. The special education hearing officer has the authority to: (§ 22.1-214 B of the Code of Virginia; 34 CFR 300.515, 34 CFR 300.512 and 34 CFR 300.532)

1. Exclude any documentary evidence that was not provided and any testimony of witnesses who were not identified at least five business days prior to the hearing;

2. Bar any party from introducing evaluations or recommendations at the hearing that have not been disclosed to all other parties at least five business days prior to the hearing without the consent of the other party;

3. Issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence:

a. The special education hearing officer shall rule on any party's motion to quash or modify a subpoena. The special education hearing officer shall issue the ruling in writing to all parties with copy to the Virginia Department of Education.

b. The special education hearing officer or a party may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.

c. Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the special education hearing officer does not quash or modify the subpoena after objection;

4. Administer an oath to witnesses testifying at a hearing and require all witnesses to testify under oath or affirmation when testifying at a hearing;

5. Stop hostile or irrelevant pursuits in questioning and require that the parties and their attorneys, advocates, or advisors comply with the special education hearing officer's rules and with relevant laws and regulations;

6. Excuse witnesses after they testify to limit the number of witnesses present at the same time or sequester witnesses during the hearing;

7. Refer the matter in dispute to a conference between the parties when informal resolution and discussion appear to be desirable and constructive. This action shall not be used to deprive the parties of their rights and shall be exercised only when the special education hearing officer determines that the best interests of the child will be served;

8. Require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with 8VAC20-81-170;

9. ~~a.~~ At the request of either party for a nonexpedited hearing, grant specific extensions of time beyond the periods set out in this chapter, if in the best interest of the child. This action shall in no way be used to deprive the parties of their rights and shall be exercised only when the requesting party has provided sufficient information that the best interests of the child will be served by the grant of an extension. The special education hearing officer may grant such requests for cause, but not for personal attorney convenience. Changes in hearing dates or timeline extensions shall be noted in writing and sent to all parties and to the Virginia Department of Education~~.~~

~~b. In instances where neither party requests an extension of time beyond the period set forth in this chapter, and mitigating circumstances warrant an extension, the special~~

~~education hearing officer shall review the specific circumstances and obtain the approval of the Virginia Department of Education to the extension~~ ;

10. Take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the special education hearing officer's orders;

11. Set guidelines regarding media coverage if the hearing is open to the public;

12. Enter a disposition as to each determinative issue presented for decision and identify and determine the prevailing party on each issue that is decided; and

13. Hold an expedited hearing when a parent of a child with a disability disagrees with any decision regarding a change in placement for a child who violates a code of student conduct, or a manifestation determination, or a local educational agency believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

a. The hearing shall occur within 20 school days of the date the due process notice is received. The special education hearing officer shall make a determination within 10 school days after the hearing.

b. Unless the parents and local educational agency agree in writing to waive the resolution meeting or agree to use the mediation process:

(1) A resolution meeting shall occur within seven days of receiving notice of the due process notice; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process notice.

c. Once a determination is made, the special education hearing officer may:

(1) Return the child with a disability to the placement from which the child was removed if the special education hearing officer determines that the removal was a violation of special education disciplinary procedures or that the child's behavior was a manifestation of the child's disability; or

(2) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the special education hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Q. Timelines for nonexpedited due process hearings. (34 CFR 300.510 and 34 CFR 300.515)

1. Resolution meeting.

a. Within 15 days of receiving notice of the ~~parent's(s')~~ parent's due process notice, and prior to the initiation of the due process hearing, the school division shall convene a meeting with the parent and the relevant ~~member(s)~~ members of the IEP Team who have specific knowledge of the facts identified in the due process notice that:

(1) Includes a representative of the local educational agency who has decision making authority on behalf of the local educational agency; and

(2) May not include an attorney of the local educational agency unless the parent is accompanied by an attorney.

b. The purpose of the meeting is for the parent of the child to discuss the due process issues, and the facts that form the basis of the due process request, so that the local educational agency has the opportunity to resolve the dispute that is the basis for the due process request.

c. The meeting described in subdivisions 1 a and 1 b of this subsection need not be held if:

(1) The parent and the local educational agency agree in writing to waive the meeting; or

(2) The parent and the local educational agency agree to use the mediation process described in this chapter.

d. The parent and the local educational agency determine the relevant members of the IEP Team to attend the meeting.

e. The parties may enter into a confidentiality agreement as part of their resolution agreement. There is nothing in this chapter, however, that requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a ~~parents'~~ parent's participation in the resolution meeting.

2. Resolution period.

a. If the local educational agency has not resolved the due process issues to the satisfaction of the parent within 30 calendar days of the receipt of the due process notice, the due process hearing may occur.

b. Except as provided in subdivision 3 of this subsection, the timeline for issuing a final decision begins at the expiration of this 30-calendar-day period.

c. Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subdivisions 2 a and 2 b of this subsection, the failure of the parent filing a due process notice to participate in the resolution meeting delays the timelines for the resolution process and the due process hearing until the meeting is held.

d. If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented in accordance with the provision in 8VAC20-81-110 E 4), the local educational agency may at the conclusion of the 30-calendar-day period, request that a special education hearing officer dismiss the parent's due process request.

e. If the local educational agency fails to hold the resolution meeting specified in subdivision 1 a of this subsection within 15 calendar days of receiving notice of a parent's request for due process or fails to participate in the resolution meeting, the parent may seek the intervention of a special education hearing officer to begin the due process hearing timeline.

3. Adjustments to 30-calendar-day resolution period. The 45-calendar-day timeline for the due process starts the day after one of the following events:

a. Both parties agree in writing to waive the resolution meeting;

b. After either the mediation or resolution meeting starts but before the end of the 30-calendar-day period, the parties agree in writing that no agreement is possible; or

c. If both parties agree in writing to continue the mediation at the end of the 30-calendar-day resolution period, but later, the parent or local educational agency withdraws from the mediation process.

4. Written settlement agreement. If a resolution to the dispute is reached at the meeting described in subdivisions 1 a and 1 b of this subsection, the parties shall execute a legally binding agreement that is:

a. Signed by both the parent and a representative of the local educational agency who has the authority to bind the local educational agency; and

b. Enforceable in any Virginia court of competent jurisdiction or in a district court of the United States.

5. Agreement review period. If the parties execute an agreement pursuant to subdivision 4 of this subsection, a party may void the agreement within three business days of the agreement's execution.

6. The special education hearing officer shall ensure that, not later than 45 calendar days after the expiration of the 30-calendar-day period under subdivision 2 or the adjusted time periods described in subdivision 3 of this subsection:

a. A final decision is reached in the hearing; and

b. A copy of the decision is mailed to each of the parties.

7. The special education hearing officer shall document in writing, within five business days, changes in hearing dates or extensions and send documentation to all parties and the Virginia Department of Education.

8. Each hearing involving oral arguments shall be conducted at a time and place that is reasonably convenient to the ~~parent(s)~~ parent and child involved.

9. The local educational agency is not required to schedule a resolution session if the local educational agency requests the due process hearing. The 45-day timeline for the special education hearing officer to issue the decision after the local educational agency's request for a due process hearing is received by the ~~parent(s)~~ parent and the Virginia Department of Education. However, if the parties elect to use mediation, the 30-day resolution process is still applicable.

R. Timelines for expedited due process hearings. (34 CFR 300.532(c))

1. The expedited due process hearing shall occur within 20 school days of the date the due process request is received. The special education hearing officer shall make a determination within 10 school days after the hearing.

2. Unless the parents and local educational agency agree in writing to waive the resolution meeting or agree to use the mediation process described in 8VAC20-81-190:

a. A resolution meeting shall occur within seven days of receiving notice of the due process complaint.

b. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

c. The resolution period is part of, and not separate from, the expedited due process hearing timeline.

3. Document in writing within five business days any changes in hearing dates and send documentation to all parties and the Virginia Department of Education.

S. Costs of due process hearing and attorneys' fees. (34 CFR 300.517)

1. The costs of an independent educational evaluation ordered by the special education hearing officer, special education hearing officer, court reporters, and transcripts are shared equally by the local educational agency and the Virginia Department of Education.

2. The local educational agency is responsible for its own attorneys' fees.

3. The ~~parent(s)~~ parents are responsible for their attorneys' fees. If the ~~parent(s)~~ parent is the prevailing party, the ~~parent(s)~~ parent has the right to petition either a state circuit court or a federal district court for an award of reasonable attorneys' fees as part of the costs.

4. A state circuit court or a federal district court may award reasonable ~~attorneys'~~ attorney fees as part of the costs to the ~~parent(s)~~ parent of a child with a disability who is the prevailing party.

5. The court may award reasonable attorneys' fees only if the award is consistent with the limitations, exclusions, exceptions, and reductions in accordance with the Act and its implementing regulations and 8VAC20-81-310.

T. Right of appeal. (34 CFR 300.516; § 22.1-214 D of the Code of Virginia)

1. A decision by the special education hearing officer in any hearing, including an expedited hearing, is final and binding

unless the decision is appealed by a party in a state circuit court within 180 days of the issuance of the decision, or in a federal district court within 90 days of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under § 1415 of the Act without regard to the amount in controversy.

2. On appeal, the court receives the record of the administrative proceedings, hears additional evidence at the request of a party, bases its decision on a preponderance of evidence, and grants the relief that the court determines to be appropriate.

3. If the special education hearing officer's decision is appealed in court, implementation of the special education hearing officer's order is held in abeyance except in those cases where the special education hearing officer has agreed with the child's ~~parent(s)~~ parent that a change in placement is appropriate in accordance with subsection J of this section. In those cases, the special education hearing officer's order shall be implemented while the case is being appealed.

4. If the special education hearing officer's decision is not implemented, a complaint may be filed with the Virginia Department of Education for an investigation through the provisions of 8VAC20-81-200.

U. Nothing in this chapter prohibits or limits rights under other federal laws or regulations. (34 CFR 300.516)

VA.R. Doc. No. R24-7829; Filed July 22, 2024, 11:08 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

Title of Regulation: **9VAC25-192. Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (amending 9VAC25-192-10, 9VAC25-192-20, 9VAC25-192-25, 9VAC25-192-50 through 9VAC25-192-90; adding 9VAC25-192-15).**

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

Effective Date: November 16, 2024.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1913, or email betsy.bowles@deq.virginia.gov.

Summary:

The amendments include (i) adding definitions; (ii) adding a permit condition describing when a permittee is required to submit a groundwater monitoring action plan and amending a permit condition to state which parameters must be analyzed by a laboratory accredited under the Virginia Environmental Laboratory Accreditation Program; (iii) changing animal waste storage conditions to clarify which tools are to be used to determine the floodplain when siting waste storage facilities, to adjust what is considered adequate storage of semi-solid and solid waste, to address situations where animal waste storage can be threatened by emergencies such as fire or flood, and to require notification to the department prior to the closure of a liquid waste storage facility; (iv) adding a requirement for the permittee to submit nutrient management plan (NMP) revisions approved by the Department of Conservation and Recreation (DCR) to the Department of Environmental Quality before the expiration date of the previous nutrient management plan; (v) reorganizing and renumbering the contents of the general permit to make it consistent with Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management (9VAC25-630); and (vi) updating the incorporation by reference date of Title 40 of the Code of Federal Regulations.

Changes to the proposed regulation include changing "board" to "department" in conformance to Chapter 356 of the 2022 Acts of Assembly and requiring that within 30 days of the approval by the DCR, all revised NMPs shall be submitted to the department, a change in response to public comment.

9VAC25-192-10. Definitions.

The following words and terms when used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

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

a. 300 slaughter and feeder cattle;

b. 200 mature dairy cattle (whether milked or dry cows);

c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);

d. 150 horses;

e. 3,000 sheep or lambs;

f. 16,500 turkeys;

g. 30,000 laying hens or broilers.

"Agricultural stormwater discharge" means a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation or under the control of an animal waste end-

user in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural land utilization of the nutrients in the manure, litter, or process wastewater.

"Animal feeding operation" means a lot or facility, together with any associated treatment works, where both of the following conditions are met:

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of ~~wastes~~ liquid waste.

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

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

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

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

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

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

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality, or ~~his designee~~ an authorized representative.

"General permit" means this chapter.

"Land application" means the distribution of animal waste by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing crops or vegetation or conditioning the soil. The fields or sites used for the land application of animal waste in accordance with this chapter are not considered to be treatment works. Deposition of animal waste by an animal is not land application.

"Local government ordinance form" means a notification from the governing body of the county, city, or town where the animal feeding operation is located that the animal feeding operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

"Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment, and management of animal waste and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; except that for an animal waste end-user who is not covered under ~~the~~ this general permit, the requirements of 9VAC25-192-90 constitute the NMP.

"Organic source" means any nutrient source including~~, but not limited to,~~ manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for the purposes of this regulation it excludes waste from wildlife.

"Permittee" means the owner or operator of an animal feeding operation or animal waste end-user whose animal waste management activities are covered under this general permit.

"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.

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

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

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

"Waste nutrient analysis rate" means a land application rate for animal waste approved by the board as specified in this regulation.

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

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

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

~~a. 300 slaughter and feeder cattle;~~

~~b. 200 mature dairy cattle (whether milked or dry cows);~~

~~c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);~~

~~d. 150 horses;~~

~~e. 3,000 sheep or lambs;~~

~~f. 16,500 turkeys;~~

~~g. 30,000 laying hens or broilers.~~

9VAC25-192-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency (EPA) set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, 2023.

9VAC25-192-20. Purpose; effective date of the general permit.

A. This ~~general permit regulation~~ chapter governs the pollutant management activities at animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit and animal waste utilized or stored by animal waste end-users. ~~These~~ The owners of animal feeding operations may ~~operate~~ run and maintain treatment works for waste storage, treatment, or recycling and may perform land application of manure, wastewater, compost, or sludges.

B. This general permit will become effective on November 16, ~~2014~~ 2024. This general permit will expire ~~10 years from the effective date~~ on November 15, 2034.

9VAC25-192-25. Duty to comply.

A. ~~Any~~ No person ~~who manages or proposes to manage pollutants regulated by 9VAC25-192~~ shall ~~comply with the applicable requirements of this chapter~~ operate an animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system after July 1, 2000, without having submitted a registration statement as provided in 9VAC25-192-60 or being covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit or an individual Virginia Pollution Abatement (VPA) permit.

B. ~~In order to manage pollutants from an animal feeding operation, the owner shall be required to obtain coverage under the Virginia Pollution Abatement (VPA) general permit or an individual VPA permit provided that the owner has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit.~~ The owner shall comply with the requirements of this chapter ~~and the permit~~.

C. An animal waste end-user shall comply with the technical requirements outlined in 9VAC25-192-80 and 9VAC25-192-90.

9VAC25-192-50. Authorization to manage pollutants.

A. Owner of an animal feeding operation. ~~Any~~ An owner ~~governed by~~ of an animal feeding operation that is subject to this general permit is hereby authorized to manage pollutants at the animal feeding operations provided that the owner files ~~the~~ a registration statement ~~of~~ in accordance with 9VAC25-192-60, complies with the requirements of 9VAC25-192-70, and provided that:

1. The owner has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit or an individual Virginia Pollution Abatement (VPA) permit according to subdivision 2 of 9VAC25-32-260.

2. The operation of the animal feeding operation shall not contravene the Water Quality Standards~~, as amended, and adopted by the board,~~ (9VAC25-260) or any provision of the State Water Control Law. There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural stormwater discharges are permitted. Domestic sewage shall not be managed under this general permit. Industrial ~~waste~~ wastes shall not be managed under this general permit, except for wastes that have been approved by the department and are managed in accordance with 9VAC25-192-70.

3. The owner of any proposed pollutant management activities or those which have not previously been issued a valid ~~Virginia Pollution Abatement (VPA)~~ general permit or an individual VPA permit or ~~Virginia Pollutant Discharge Elimination System (~~VPDES~~)~~ permit must attach a Local Government Ordinance Form to the registration statement~~,~~ ~~the Local Government Ordinance Form (a notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia)~~.

4. The owner shall obtain Department of Conservation and Recreation approval of a nutrient management plan for the animal feeding operation prior to the submittal of the registration statement. The owner shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan that was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The owner shall implement the approved nutrient management plan.

5. ~~a.~~ The owner shall give notice of the registration statement to all owners or residents of property that adjoins the property on which the animal feeding operation will be located.

a. Such notice shall include (i) the types and maximum number of animals ~~which~~ that will be maintained at the animal feeding operation and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the registration statement may be submitted. This notice requirement is waived whenever registration is for the purpose of renewing coverage under this general permit and no expansion is proposed and the department has not issued any special order or consent order relating to violations under this existing general permit.

b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, ~~on the basis of~~ based on such written comments or ~~his~~ the director's review, the director determines that the proposed operation will not be capable of complying with the provisions of ~~the~~ this general permit, then the director shall require the owner to obtain an individual VPA permit for the operation. Any such determination by the director shall be made in writing and mailed to the owner not more than 45 days after the filing of the registration statement, or~~,~~ if in the director's sole discretion additional time is necessary to evaluate comments received from the public, then not more than 60 days after the filing of the registration statement.

6. ~~As required by § 62.1-44.17:1 F of the Code of Virginia, each~~ Each owner of ~~a facility~~ an animal feeding operation covered by this general permit shall have completed the training program offered or approved by the department in the two years prior to submitting the registration statement for general permit coverage~~,~~ or shall complete such training within one year after the registration statement has been submitted for general permit coverage. All permitted owners shall complete the training program at least once every three years.

B. Animal waste end-user. An animal waste end-user shall comply with the requirements outlined in 9VAC25-192-80 and 9VAC25-192-90.

1. When an animal waste end-user does not comply with the requirements of 9VAC25-192-80 and 9VAC25-192-90, the department may choose to do ~~any or all of~~ the following:

a. Initiate enforcement action based upon the violation of the regulation;

b. Require the animal waste end-user to register for coverage under ~~the~~ this general permit or apply for an individual VPA permit; and

c. ~~Require the animal waste end-user to apply for the VPA individual permit; or~~

~~d.~~ Take other actions set forth in the VPA Permit Regulation (9VAC25-32).

2. ~~An~~ When an animal waste end-user ~~governed by~~ is required to register for coverage under this general permit, the end-user is hereby authorized to manage ~~pollutants relating to the utilization~~ and ~~storage of~~ store animal waste provided that the animal waste end-user files the registration statement of 9VAC25-192-60, complies with the requirements of 9VAC25-192-70, and:

a. The animal waste end-user has not been required to obtain ~~a~~ an individual VPA ~~individual~~ permit according to subdivision 2 of 9VAC25-32-260;

b. The activities of the animal waste end-user shall not contravene the Water Quality Standards~~, as amended, and adopted by the board,~~ (9VAC25-20-260) or any provision of the State Water Control Law ~~(§ 62.1-44 et seq. of the Code of Virginia)~~. There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural stormwater discharges are permitted. Domestic sewage shall not be managed under this general permit. Industrial ~~waste~~ wastes shall not be managed under this general permit, except for wastes that have been approved by the department and are managed in accordance with 9VAC25-192-70;

c. The animal waste end-user shall obtain Department of Conservation and Recreation approval of a nutrient management plan for land application sites where animal waste will be utilized or stored and managed prior to the submittal of the registration statement. The animal waste end-user shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan that was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The animal waste end-user shall implement the approved nutrient management plan; and

d. ~~As required by § 62.1-44.17:1 F of the Code of Virginia, each~~ Each permitted animal waste end-user shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted animal waste end-users shall complete a training program at least once every three years.

C. Continuation of general permit coverage.

1. In any case where the board, through no fault of the owner or permittee, does not issue the next consecutive general permit with an effective date on or before the expiration date of the expiring general permit, [~~the following applies. Any~~ any] owner that was authorized to manage pollutants under ~~the~~ this general permit ~~issued in 2004~~ and that submits a complete registration statement ~~on or before November 15, 2014, is authorized to continue to manage pollutants under the terms of the 2004 general permit~~ in accordance with 9VAC25-192-60 on or before the expiration date of the expiring general permit coverage, is authorized to continue to manage pollutants under the terms of the previously issued general permit. The conditions of the expiring general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive general permit and until such time as the [~~board~~ department] either:

a. Issues coverage to the owner or permittee under ~~this~~ the next consecutive general permit; or

b. Notifies the owner or permittee that coverage under ~~this~~ the next consecutive general permit is denied.

2. When the permittee that was covered under the expiring or expired general permit has violated or is violating the conditions of that general permit, the ~~board~~ department may choose to do ~~any or all of~~ the following:

a. Initiate enforcement action based upon the expiring or expired general permit;

b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, then the owner ~~would then~~ will be required to cease the activities authorized by the expiring or expired general permit or be subject to enforcement action for operating without a general permit;

c. Issue an individual VPA permit with appropriate conditions; ~~or~~ and

d. Take other actions set forth in the VPA Permit Regulation (9VAC25-32).

D. Receipt of this general permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

9VAC25-192-60. Registration statement.

A. The owner of an animal feeding operation. ~~In order to~~ To be covered under ~~the~~ this general permit, the owner shall file a complete VPA General Permit Registration Statement for the management of pollutants at animal feeding operations in accordance with this chapter. The registration statement shall be deemed complete for registration under ~~the VPA General Permit~~ this general permit if it contains the following information:

1. The animal feeding operation owner's name, mailing address, email address (if available), and telephone number;

2. The name, mailing address, email address (if available), and telephone number of the operator or contact person other than the owner, if applicable;

3. The farm name (if applicable) and location of the animal feeding operation;

4. The best time of day and day of the week to contact the operator or the contact person;

5. ~~If~~ The permit number, if the ~~facility~~ animal feeding operation has an existing general permit, individual VPA permit, or VPDES permit ~~number, the permit number~~;

6. The ~~type or~~ types of animals (e.g., dairy cattle, slaughter and feeder cattle, swine, other) and the maximum number and average weight of the ~~type or~~ types of animals to be maintained at the animal feeding operation;

7. The types of wastes that will be managed at the ~~facility~~ animal feeding operation and how much of each type of waste will be managed;

8. If waste will be transferred off-site, then the type of waste and how much will be transferred;

9. The owner of any ~~proposed pollutant management activities~~ animal feeding operation that will manage animal waste or those ~~which~~ that have not previously been issued a valid general permit, an individual VPA permit, or a VPDES permit must attach the Local Government Ordinance Form to the registration statement~~, the Local Government Ordinance Form (the notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia)~~;

10. A copy of the nutrient management plan approved by the Department of Conservation and Recreation;

11. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

12. The following certification: "I certify that notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the animal feeding operation will be located. This notice included the types and numbers of animals ~~which~~ that will be maintained at the ~~facility~~ animal feeding operation and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to ~~the~~ this general permit may be submitted. (The preceding certification is waived if the registration is for renewing coverage under ~~the~~ this general permit, and no expansion of the operation is proposed, and the department has not issued any special order or consent order relating to violations under the existing general permit.) I certify under penalty of law that all the requirements of the board for ~~the~~ this general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ~~assure~~ ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

B. The animal waste end-user. ~~In order to~~ To be covered under ~~the~~ this general permit, the animal waste end-user shall file a complete VPA General Permit Registration Statement in accordance with this chapter. The registration statement shall be deemed complete for registration under ~~the VPA General Permit~~ this general permit if it contains the following information:

1. The animal waste end-user's name, mailing address, email address (if available), and telephone number;

2. The name (if applicable) and location ~~of the facility~~ where the animal waste will be utilized, stored, or managed;

3. The best time of day and day of the week to contact the animal waste end-user;

4. ~~If~~ The permit number if the ~~facility~~ animal waste end-user has an existing general permit, an individual VPA permit, or a VPDES permit ~~number, the permit number~~;

5. If ~~confined~~ animals are ~~located at the facility~~ also confined, then indicate the ~~type or~~ types of animals (e.g., dairy cattle, slaughter and feeder cattle, swine, other) and the maximum number and average weight of the ~~type or~~ types of animals;

6. The types of wastes that will be managed ~~at the facility~~ by the animal waste end-user and how much of each type of waste will be managed;

7. If waste will be transferred off-site, then the type of waste and how much will be transferred;

8. A copy of the nutrient management plan approved by the Department of Conservation and Recreation;

9. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

10. The following certification: "I certify under penalty of law that all the requirements of the board for ~~the~~ this general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ~~assure~~ ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with ~~Part II F of~~ subdivision 1 of 9VAC25-32-70.

9VAC25-192-70. Contents of the general permit.

Any owner or animal waste end-user whose registration statement is accepted by the ~~board~~ department will receive the following general permit and shall comply with the requirements ~~therein~~ of the general permit and be subject to the VPA ~~permit regulation~~ Permit Regulation, 9VAC25-32.

General Permit No.: VPG1
Effective Date: November 16, ~~2014~~ 2024
Expiration Date: November 15, ~~2024~~ 2034

GENERAL PERMIT FOR POLLUTANT MANAGEMENT ACTIVITIES FOR ANIMAL FEEDING OPERATIONS AND ANIMAL WASTE MANAGEMENT

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system~~,~~ and animal waste end-users are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement, supporting documents submitted to the Department of Environmental

Quality, this cover page, Part I-Pollutant Management and Monitoring Requirements for Animal Feeding Operations, Part II-Conditions Applicable to ~~all VPA Permits~~ this General Permit, and Part III-Pollutant Management and Monitoring Requirements for Animal Waste End-Users, as set forth ~~herein~~ in this section.

Part I

Pollutant Management and Monitoring Requirements for Animal Feeding Operations

A. Pollutant management and monitoring requirements.

1. During the period beginning with ~~the~~ this general permit's effective date and lasting until ~~the~~ this general permit's expiration date, the permittee is authorized to manage pollutants at the location ~~or locations~~ identified in the registration statement and the ~~facility's~~ approved nutrient management plan written for the animal feeding operation.

2. At earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof, groundwater monitoring wells shall be installed. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires groundwater monitoring. Existing wells may be utilized to meet this requirement if properly located and constructed.

3. All ~~facilities~~ animal feeding operations previously covered under a general permit, an individual VPA permit, or a VPDES permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed ~~below~~ in this part regardless of where ~~they~~ the animal feeding operations are located relative to the seasonal high water table.

4. At ~~facilities~~ animal feeding operations where groundwater monitoring is required, the following conditions apply:

a. One data set shall be collected from each well prior to any waste being placed in the storage facility.

b. The static water level shall be measured prior to bailing well water for sampling.

c. At least three well volumes of groundwater shall be withdrawn immediately prior to sampling each monitoring well.

5. In accordance with subdivisions 2 and 3 of this subsection, the groundwater shall be monitored by the permittee at the monitoring wells as specified ~~below~~ in Table 1 of Part I. Additional groundwater monitoring may be required in the ~~facility's~~ approved nutrient management plan written for the animal feeding operation.

6. If groundwater monitoring results for any monitored parameter demonstrate potential noncompliance with this general permit related to the waste storage facility, then the permittee shall submit an approvable groundwater monitoring action plan that outlines appropriate measures to be taken to address the noncompliance. The groundwater monitoring action plan shall be submitted to the department within 30 days of obtaining the monitoring results.

7. The analysis of the groundwater samples for ammonia nitrogen and nitrate nitrogen shall be performed by a laboratory accredited under the Virginia Environmental Laboratory Accreditation Program (VELAP) in accordance with 1VAC30-46-20. Field sampling, testing, and measurement of the static water level, pH, and conductivity where the sample is taken are not subject to the VELAP requirement.

TABLE 1
GROUNDWATER MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Static Water Level	NL	Ft	1/3 years	Measured
Ammonia Nitrogen	NL	mg/L	1/3 years	Grab
Nitrate Nitrogen	NL	mg/L	1/3 years	Grab
pH	NL	SU	1/3 years	Grab
Conductivity	NL	~~umhos/cm~~ µmhos/cm	1/3 years	Grab
NL = No limit, this is a monitoring requirement only.				

~~6.~~ 8. Soil at the land application sites shall be monitored as specified ~~below~~ in Table 2 of Part I. Additional soils monitoring may be required in the ~~facility's~~ approved nutrient management plan written for the animal feeding operation.

TABLE 2 SOILS MONITORING				
PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite
NL = No limit, this is a monitoring requirement only. SU = Standard Units				

~~7.~~ 9. Soil monitoring shall be conducted at a depth of between 0-6 inches, unless otherwise specified in the ~~facility's~~ approved nutrient management plan written for the animal feeding operation.

~~8.~~ 10. Waste shall be monitored as specified ~~below~~ in Table 3 of Part I. Additional waste monitoring may be required in the ~~facility's~~ approved nutrient management plan written for the animal feeding operation.

TABLE 3 WASTE MONITORING				
PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/year	Composite
Ammonia Nitrogen	NL	*	1/year	Composite
Total Phosphorus	NL	*	1/year	Composite
Total Potassium	NL	*	1/year	Composite
Calcium	NL	*	1/year	Composite
Magnesium	NL	*	1/year	Composite
Moisture Content	NL	%	1/year	Composite
NL = No limit, this is a monitoring requirement only. *Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.				

~~9.~~ 11. Analysis of soil and waste shall be according to methods specified in the ~~facility's~~ approved nutrient management plan written for the animal feeding operation.

~~10.~~ 12. All monitoring data collected as required by this section and any additional monitoring shall be maintained on site for a period of five years and shall be made available to department personnel upon request.

B. ~~Other~~ Site design, storage, and operations requirements ~~or special conditions~~.

1. Any liquid manure collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Waste storage facilities constructed after December 1, 1998, shall not be located on a 100-year floodplain. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer or an employee of the Natural Resources Conservation Service of the ~~United States~~ U.S. Department of Agriculture with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this general permit. This certification shall be maintained on site.

4. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must be maintained at a level of at least two feet above the water table.

5. All liquid waste storage ~~or treatment~~ facilities shall maintain at least one foot of freeboard at all times, up to and including a 25-year, 24-hour storm.

6. For new waste storage ~~or treatment~~ facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer or an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this general permit. This certification shall be maintained on site.

7. The permittee shall notify the department's regional office at least 14 days prior to (i) animals being initially placed in the confined ~~facility~~ animal feeding operation or (ii) the utilization of any new waste storage ~~or treatment~~ facilities.

8. Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. Waste that is stockpiled outside for more than 14 days shall be kept in a waste storage facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Waste shall be covered to protect it from precipitation and wind;

b. Stormwater shall not run onto or under the stored waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. ~~"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.~~ Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second); and

d. For waste that is not stored in a waste storage facility or under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs. For semi-solid and solid waste that is stored on an impermeable barrier and where any stormwater runoff is collected in the waste storage facility, the semi-solid and solid waste can be stored adjacent to the waste storage facility regardless of the location of the waste storage facility so long as any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs are protected from runoff from the stored semi-solid and solid waste.

Semi-solid and solid waste that is stored on an impermeable barrier and where any stormwater runoff is collected in a waste storage facility is considered adequate storage and is therefore not required to be covered.

9. All equipment needed for the proper operation of the permitted ~~facilities~~ animal feeding operations shall be maintained in good working order. The manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate. The permittee shall periodically inspect for leaks on equipment used for land application of waste.

10. When wastes are treated by a digester or other manure treatment technologies, the waste treatment process shall be approved by the department and shall be managed by ~~a facility~~ the owner of an animal feeding operation covered under this general permit and in accordance with the following conditions:

a. All treated wastes generated by a digester or other manure treatment technologies must be managed through an approved nutrient management plan or transferred to another entity in accordance with animal waste transfer requirements in Part 1 ~~B 15~~ C 6 and ~~16~~ 7.

b. When ~~a facility~~ an animal feeding operation covered under this general permit generates a treated waste from animal waste and other feedstock, the permittee shall maintain records related to the production of the treated waste.

(1) If off-site wastes are added to generate the treated waste, then the permittee shall record the following items:

(a) The amount of waste brought to the ~~facility~~ animal feeding operation; and

(b) From whom and where the waste originated.

(2) For all treated wastes generated by the ~~facility~~ animal feeding operation, the permittee shall record the following items:

(a) The amount of treated waste generated;

(b) The nutrient analysis of the treated waste; and

(c) The final use of the treated waste.

(3) Permittees shall maintain the records required by Part I B 10 b (1) and (2) on site for a period of three years. All records shall be made available to department personnel upon request.

11. When the waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or the atmosphere. Prior to closure, the permittee shall notify the department of any plans to close a liquid waste storage facility. At closure, the permittee shall remove all waste residue from the animal waste storage facility. Removed waste materials shall be utilized according to the approved NMP.

C. Animal waste use and transfer requirements.

1. Animal waste generated by ~~this facility~~ an animal feeding operation that is subject to this general permit shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the ~~facility's~~ approved nutrient management plan written for the animal feeding operation.

~~12.~~ 2. The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the ~~plan~~ NMP on site. [~~All~~ Within 30 days of the approval by the Department of Conservation and Recreation, all] revised [~~and Department of Conservation and Recreation approved~~] NMPs shall be submitted to the department [~~prior to the expiration of the previous NMP~~]. The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus loss to ground waters and surface waters. The terms of the NMP shall be enforceable through this general permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling, including soil and waste monitoring;

d. Storage and land area requirements;

e. Calculation of waste application rates; and

f. Waste application schedules.

~~13.~~ 3. Waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a ~~permanent~~ vegetated buffer) or 35 feet (if a ~~permanent~~ vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer or 35-foot wide vegetated buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a matter that it would discharge to sinkholes that may exist in the area.

~~14.~~ 4. The following land application records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of five years after the date the application is made and shall be made available to department personnel upon request.

5. In cases where a waste storage facility is threatened by emergencies such as fire or flood or where these conditions are imminent, animal waste can be land applied outside of the spreading schedule outlined in the NMP written for an animal feeding operation. If this occurs, then the owner of the animal feeding operation shall document the land

application information in accordance with Part I C 4 and notify the department in accordance with Part II F 3.

~~15.~~ 6. Animal waste generated by ~~this facility~~ an animal feeding operation that is subject to this general permit may be transferred from the permittee to another person if one or more of the following conditions are met:

a. Animal waste generated by ~~this facility~~ an animal feeding operation that is subject to this general permit may be transferred off-site for land application or another acceptable use approved by the department, if:

(1) The sites where the animal waste will be utilized are included in ~~this permitted facility's~~ the animal feeding operation's approved nutrient management plan; or

(2) The sites where the animal waste will be utilized are included in another permitted ~~facility's~~ entity's approved nutrient management plan.

b. Animal waste generated by ~~this facility~~ an animal feeding operation that is subject to this general permit may be transferred off-site without identifying in the permittee's approved nutrient management plan the fields where such waste will be utilized, if one of the following conditions are met:

(1) The animal waste is registered with the Virginia Department of Agriculture and Consumer Services in accordance with regulations adopted pursuant to ~~subdivision A 2 of~~ § 3.2-3607 A 2 of the Code of Virginia; or

(2) When the permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall maintain records in accordance with Part I ~~B 16~~ C 7.

~~16.~~ 7. Animal waste may be transferred from a permittee to another person without identifying the fields where such waste will be utilized in the permittee's approved nutrient management plan if the following conditions are met:

a. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall provide that person with:

(1) Permittee's name, address, and permit number;

(2) A copy of the most recent nutrient analysis of the animal waste; and

(3) An animal waste fact sheet.

b. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall keep a record of the following:

(1) The ~~recipient~~ recipient's name and address;

(2) The amount of animal waste received by the person;

(3) The date of the transaction;

(4) The nutrient analysis of the animal waste;

(5) The locality in which the recipient intends to utilize the animal waste (i.e., nearest town or city and zip code);

(6) The name of the stream or waterbody, if known, to the recipient that is nearest to the animal waste utilization or storage site; and

(7) The signed waste transfer records form acknowledging the receipt of the following:

(a) The animal waste;

(b) The nutrient analysis of the animal waste; and

(c) An animal waste fact sheet.

c. Permittees shall maintain the records required by Part I ~~B 16~~ C 7 a and b for at least three years after the date of the transaction and shall make them available to department personnel upon request.

~~17. When the waste storage or treatment facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or the atmosphere. At closure, the permittee shall remove all waste residue from the animal waste storage or treatment facility. Removed waste materials shall be utilized according to the approved NMP.~~

~~18. As required by § 62.1-44.17:1 F of the Code of Virginia, each~~ D. Each permittee covered under this general permit shall have completed the training program offered or approved by the department in the two years prior to submitting the registration statement for this general permit coverage~~,~~ or shall complete such training within one year after the registration statement has been submitted for this general permit coverage. All permittees shall complete the training program at least once every three years.

Part II

Conditions Applicable to ~~all VPA Permits~~ this General Permit

A. ~~Sampling and analysis methods~~ Monitoring.

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

2. ~~Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants~~ Groundwater monitoring shall

~~comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants (40 CFR Part 136)~~ be conducted according to procedures listed under 40 CFR Part 136 unless otherwise specified in this general permit.

3. ~~The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.~~

~~4.~~ The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

4. If the permittee monitors any pollutant at the locations designated in this general permit more frequently than required by this general permit, using approved analytical methods as specified in this part, the results of such monitoring shall be included in the calculation and reporting of the values required in the project report. Such increased frequency shall also be reported.

B. ~~Recording of results~~ Records. ~~For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following~~

1. Records of monitoring information shall include:

~~1.~~ a. The date, exact place, and time of sampling or measurements;

~~2.~~ b. The ~~persons~~ name of the individuals who performed the sampling or measurements;

~~3.~~ c. The dates analyses were performed;

~~4.~~ d. The ~~persons~~ name of the individuals who performed each analysis;

~~5.~~ e. The analytical techniques or methods used with supporting information such as observations, readings, calculations, and bench data; and

~~6.~~ f. The results of such analyses ~~and measurements~~.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this general permit, and records of all data used to complete the application for this general permit for a period of at least three years from the date of the sample, measurement, report, or application. This period of retention may be extended by request of the department at any time.

C. ~~Records retention~~ Reporting monitoring results. ~~All records and information resulting from the monitoring activities~~ If reporting is required by Part I or Part III of this general permit, ~~including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation~~ the permittee shall ~~be retained on site for five years from the date of the sample, measurement or report. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the director~~ follow the requirements of this subsection.

1. The permittee shall submit the results of the monitoring required by this general permit not later than the 10th day of the month after the monitoring takes place, unless another reporting schedule is specified elsewhere in this general permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on forms provided or specified by the department.

3. If the permittee monitors the pollutant management activity, at a sampling location specified in this general permit, for any pollutant more frequently than required by this general permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

4. If the permittee monitors the pollutant management activity, at a sampling location specified in this general permit, for any pollutant that is not required to be monitored by the general permit, and uses approved analytical methods, the permittee shall report the results with the monitoring report.

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

D. ~~Additional monitoring by permittee~~ Duty to provide information. ~~If the permittee monitors any pollutant at the locations designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the project report. Such increased frequency shall also be reported.~~ The permittee shall furnish to the department, within a reasonable time, any information that the director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this general permit or to determine compliance with this general permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee. Plans, specifications, maps, conceptual reports, and other relevant information shall be submitted as requested by the director prior to commencing construction.

E. ~~Reporting requirements~~ Unauthorized discharges.

~~1. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the department at least the following information:~~

~~a. A description and cause of noncompliance;~~

~~b. The period of noncompliance, including exact dates and times or the anticipated time when the noncompliance will cease; and~~

~~c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance. Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The director may waive the written report requirement on a case by case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.~~

~~2. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information, specified in Part II E 1 a through c, regarding each such discharge immediately, that is, as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.~~

~~NOTE: The immediate (within 24 hours) reports required in Parts II E 1 and 2 may be made to the department's regional office. Reports may be made by telephone. For reports outside normal working hours, a message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.~~

Except in compliance with this general permit or another issued by the department, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health or to animal or aquatic life or to the use of such waters for domestic or industrial consumption or for recreation or for other uses.

F. ~~Signatory requirements~~ Notice of planned changes, and reports of unauthorized discharges, unusual or extraordinary discharges, noncompliance, and compliance schedules. ~~Any registration statement or certification required by this permit shall be signed as follows:~~

1. ~~For a corporation, by a responsible corporate official~~ Notice of planned changes. ~~For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.~~

a. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the design or operation of the pollutant management activity.

b. The permittee shall give at least 10 days advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with the general permit requirements.

2. ~~For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official~~ Reports of unauthorized discharges. ~~(A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)~~ Any permittee who discharges or causes or allows (i) a discharge of sewage, industrial wastes, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part II E, or (ii) a discharge that may reasonably be expected to enter state waters in violation of Part II E shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

a. A description of the nature and location of the discharge;

b. The cause of the discharge;

c. The date on which the discharge occurred;

d. The length of time that the discharge continued;

e. The volume of the discharge;

f. If the discharge is continuing, how long it is expected to continue;

g. If the discharge is continuing, what the expected total volume of the discharge will be; and

h. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this general permit.

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

3. ~~For a partnership or sole proprietorship, by a general partner or proprietor respectively~~ Reports of unusual or extraordinary discharges. If any unusual or extraordinary

discharge, including a bypass or upset, should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II F 4 b. Unusual and extraordinary discharges include any discharge resulting from:

a. Unusual spillage of materials resulting directly or indirectly from processing operations;

b. Breakdown of processing or accessory equipment;

c. Failure or taking out of service some or all of the treatment works; and

d. Flooding or other acts of nature.

4. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

a. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision 4 a:

(1) Any unanticipated bypass; and

(2) Any upset that causes a discharge to surface waters.

b. A written report shall be submitted within five days and shall contain:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

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

The department may waive the written report on a case-by-case basis for reports of noncompliance under Part II F 4 if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

c. The permittee shall report all instances of noncompliance not reported under Part II F 4 a or b in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II F 4 b.

NOTE: The immediate (within 24 hours) reports required in Part II F may be made to the department's regional office. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

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

G. ~~Change in management of pollutants~~ Proper operation and maintenance. ~~All pollutant management activities authorized by this permit shall be made in accordance with the terms and conditions of the permit.~~ The permittee shall ~~submit a new registration statement 30 days prior to all expansions, production increases, or process modifications, that will result in the management of new or increased pollutants~~ be responsible for the proper operation and maintenance of all treatment works, systems, and controls that are installed or used to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. ~~The management of any pollutant at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.~~

H. ~~Treatment works operation and quality control~~ Signatory requirements.

1. ~~Design and operation of facilities or treatment works and disposal of all wastes shall be in accordance with the registration statement filed with the department. The permittee has the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design or operational, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies~~ Applications. All general permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. ~~All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following~~ Reports and other information. All reports required by general permits and other information requested by the department shall be signed by a person described in Part II H 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. ~~At all times, all facilities and pollutant management activities shall be operated in a prudent and workmanlike manner.~~ The authorization is made in writing by a person described in Part II H 1;

b. The ~~permittee shall provide an adequate operating staff to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.~~ authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or a position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. ~~Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and limitation requirements are not violated~~ The written authorization is submitted to the department.

~~d. Collected solids shall be stored and utilized as specified in the approved nutrient management plan in such a manner as to prevent entry of those wastes (or runoff from the wastes) into state waters.~~

3. Changes to authorization. If an authorization under Part II H 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II H 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II H 1 or 2 shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

I. ~~Adverse impact~~ Duty to comply. The permittee shall ~~take~~ comply with all ~~feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation or limitations or~~ conditions ~~specified in~~ of this general permit~~,~~ and ~~shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation or limitations or conditions~~ this chapter. Any noncompliance with this general permit or this chapter constitutes a violation of the State Water Control Law. General permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. Compliance with this general permit during its term constitutes compliance for purposes of enforcement with the State Water Control Law.

J. Duty to ~~halt, reduce activity or to mitigate~~ reapply.

~~1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.~~

~~2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.~~

If the permittee wishes to continue an activity regulated by this general permit after the expiration date of this general permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective general permit shall submit a new application before the expiration date of the existing general permit unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing general permit.

K. ~~Structural stability~~ Bypass. ~~The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.~~

1. Prohibition. "Bypass" means intentional diversion of waste streams from any portion of a treatment works. A bypass of the treatment works is prohibited except as provided in this subsection.

2. Anticipated bypass. If the permittee knows in advance of the need for a bypass, the permittee shall notify the

department promptly at least 10 days prior to the bypass. After considering its adverse effects, the department may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment works that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. "Severe property damage" does not mean economic loss caused by delays in production; and

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment works, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in Part II K 2 a and b and in light of the information reasonably available to the permittee at the time of the bypass.

L. ~~Compliance with state law~~ Upset. ~~Compliance with this permit during its term constitutes compliance with the State Water Control Law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation.~~ A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. That the 24-hour reporting requirements to the department were met; and

4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the permit.

M. ~~Property rights~~ Inspection and entry. ~~The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.~~ Upon presentation of credentials, any duly authorized agent of the department may, at reasonable times and under reasonable circumstances:

1. Enter upon any public or private property on which the pollutant management activities that are governed by this general permit are located and have access to records required by this general permit;

2. Have access to, inspect, and copy any records that must be kept as part of the conditions in this general permit;

3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under this general permit; and

4. Sample or monitor any substances or parameters at any locations for the purpose of assuring general permit compliance or as otherwise authorized by the State Water Control Law.

N. ~~Severability~~ Effect of a permit. ~~The provisions of this permit are severable.~~ This general permit neither conveys any property rights in either real or personal property or any exclusive privileges nor authorizes any injury to private property or invasion of personal rights or any infringement of federal, state, or local law or regulations.

O. ~~Duty to reregister~~ State law. ~~If the permittee wishes to continue to operate under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 30 days prior to the expiration date of this permit.~~ Nothing in this general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in general permit conditions on bypassing in Part II K and upset in Part II L, nothing in this general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. ~~Right of entry~~ Oil and hazardous substance liability. ~~The permittee shall allow, or secure necessary authority to allow, authorized state representatives, upon the presentation of credentials:~~

~~1. To enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge or discharges is located or in which any records are required to be kept under the terms and conditions of this permit;~~

~~2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;~~

~~3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;~~

~~4. To sample at reasonable times any waste stream, process stream, raw material or by-product; and~~

~~5. To inspect at reasonable times any collection, treatment, or pollutant management activities required under this permit. For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained here shall make an inspection time unreasonable during an emergency.~~

Nothing in this general permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

Q. ~~Transferability of permits~~ Duty to mitigate. ~~Coverage under this permit may be transferred to a new owner by a permittee if:~~

~~1. The current permittee notifies the department 30 days in advance of the proposed transfer of the title to the facility or property;~~

~~2. The notice to the department includes a written agreement between the existing and proposed new permittee containing a specific date of transfer of permit responsibility, coverage and liability between them; and~~

~~3. The department does not within the 30-day time period notify the existing permittee and the proposed permittee of the board's intent to transfer coverage under the permit. Such transferred coverage under this permit shall, as of the date of the transfer, be fully effective.~~

The permittee shall take all reasonable steps to minimize or prevent any pollutant management activity in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

R. ~~Permit modification~~ Need to halt or reduce activity not a defense. ~~The permit may be modified when a change is made in the promulgated standards or regulations on which the permit was based.~~ It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this general permit.

S. Permit ~~termination~~ action. ~~After public notice and opportunity for a hearing, coverage under the general permit may be terminated for cause.~~ Permits may be modified, revoked and reissued, or terminated for cause upon the request of the permittee or interested persons or upon the department's initiative. If a permittee files a request for a general permit modification, revocation, or termination or files a notification of planned changes or anticipated noncompliance, the general permit terms and conditions shall remain effective until the request is acted upon by the department. This provision shall not be used to extend the expiration date of the effective general permit.

T. When an individual VPA permit may be required. The director may require any permittee authorized to manage pollutants covered under this general permit to apply for and obtain an individual VPA permit. Cases where an individual VPA permit may be required include~~, but are not limited to,~~ the following:

1. The pollutant management activities violate the terms or conditions of this general permit;

2. When additions or alterations have been made to the affected facility that require the application of permit conditions that differ from those of the existing general permit or are absent from it; and

3. When new information becomes available about the operation or pollutant management activities covered under this general permit that was not available at the time of general permit coverage.

Coverage under this general permit may be terminated as to an individual permittee for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.

U. When an individual VPA permit may be requested. Any permittee operating under this general permit may request to be excluded from the coverage under this general permit by applying for an individual VPA permit. When an individual VPA permit is issued to a permittee the applicability of this general permit to the individual permittee is automatically terminated on the effective date of the individual VPA permit.

V. ~~Civil and criminal liability~~ Transfer of coverage under this general permit. ~~Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.~~

1. Permits are not transferable to any person except after notice to the department. The department may require modification or revocation and reissuance of this general permit to change the name of the permittee and to incorporate such other requirements as may be necessary. Except as provided in Part II V 2, coverage under this general permit may be transferred by the permittee to a new owner or operator only if the general permit has been modified to reflect the transfer or has been revoked and reissued to the new owner or operator.

2. As an alternative to transfers under Part II V 1, coverage under this general permit shall be automatically transferred to a new permittee if:

a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of general permit responsibility, coverage, and liability between them; and

c. The department does not within the 30-day time period, notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the coverage under this general permit. If the department notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II V 2 b.

W. ~~Oil and hazardous substance liability~~ Severability. ~~Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.~~

~~X. Unauthorized discharge of pollutants. Except in compliance with this permit, it shall be unlawful for any permittee to:~~

~~1. Discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances; or~~

~~2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.~~

The provisions of this general permit are severable, and if any provision of this permit or the application of any provision of this general permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this general permit shall not be affected thereby.

Part III
Pollutant Management and Monitoring Requirements for Animal Waste End-Users

A. Pollutant management and monitoring requirements.

1. During the period beginning with ~~the~~ this general permit's effective date and lasting until ~~the~~ this general permit's expiration date, the permittee is authorized to manage pollutants at the ~~location or~~ locations identified in the registration statement and the ~~facility's~~ approved nutrient management plan written for the animal waste end-user.

2. At earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof, groundwater monitoring wells shall be installed. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires groundwater monitoring. Existing wells may be utilized to meet this requirement if properly located and constructed.

3. All ~~facilities~~ animal waste end-users previously covered under a general permit, individual VPA permit, or a VPDES permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed ~~below~~ in this part regardless of where ~~they~~ the animal waste end-users are located relative to the seasonal high water table.

4. ~~At facilities where~~ Where groundwater monitoring is required, the following conditions apply:

a. One data set shall be collected from each well prior to any waste being placed in the storage facility.

b. The static water level shall be measured prior to bailing well water for sampling.

c. At least three well volumes of groundwater shall be withdrawn immediately prior to sampling each monitoring well.

5. In accordance with subdivisions 2 and 3 of this subsection, the groundwater shall be monitored by the permittee at the monitoring wells as specified ~~below~~ in Table 1 of Part III. Additional groundwater monitoring may be required in the ~~facility's~~ approved nutrient management plan written for the animal waste end-user.

6. If groundwater monitoring results for any monitored parameter demonstrate potential noncompliance with this general permit related to the waste storage facility, then the permittee shall submit an approvable groundwater monitoring action plan that outlines appropriate measures to be taken to address the noncompliance. The groundwater monitoring action plan shall be submitted to the department within 30 days of obtaining the monitoring results.

7. The analysis of the groundwater samples for ammonia nitrogen and nitrate nitrogen shall be performed by a laboratory accredited under the Virginia Environmental Laboratory Accreditation Program (VELAP) in accordance with 1VAC30-46-20. Field sampling, testing, and measurement of the static water level, pH, and conductivity where the sample is taken are not subject to the VELAP requirement.

TABLE 1
GROUNDWATER MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type

Static Water Level	NL	Ft	1/3 years	Measured
Ammonia Nitrogen	NL	mg/L	1/3 years	Grab
Nitrate Nitrogen	NL	mg/L	1/3 years	Grab
pH	NL	SU	1/3 years	Grab
Conductivity	NL	~~umhos/cm~~ µmhos/cm	1/3 years	Grab
NL = No limit, this is a monitoring requirement only.				

~~6.~~ 8. Soil at the land application sites shall be monitored as specified ~~below~~ in Table 2 of Part III. Additional soils monitoring may be required in the ~~facility's~~ approved nutrient management plan written for the animal waste end-user.

TABLE 2
SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.
SU = Standard Units

~~7.~~ 9. Soil monitoring shall be conducted at a depth of between 0-6 inches, unless otherwise specified in the ~~facility's~~ approved nutrient management plan written for the animal waste end-user.

~~8.~~ 10. Waste shall be monitored as specified ~~below~~ in Table 3 of Part III. Additional waste monitoring may be required in the ~~facility's~~ approved nutrient management plan written for the animal waste end-user.

TABLE 3
WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/year	Composite
Ammonia Nitrogen	NL	*	1/year	Composite
Total Phosphorus	NL	*	1/year	Composite
Total Potassium	NL	*	1/year	Composite
Calcium	NL	*	1/year	Composite
Magnesium	NL	*	1/year	Composite
Moisture Content	NL	%	1/year	Composite

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

~~9.~~ 11. Analysis of soil and waste shall be according to methods specified in the ~~facility's~~ approved nutrient management plan written for the animal waste end-user.

~~10.~~ 12. All monitoring data collected as required by this section and any additional monitoring shall be maintained on site for a period of five years and shall be made available to department personnel upon request.

B. ~~Other~~ Site design, storage, and operation requirements ~~or special conditions~~.

1. Any liquid manure collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Waste storage facilities constructed after December 1, 1998, shall not be located on a 100-year floodplain. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer or an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this general permit. This certification shall be maintained on site.

4. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must be maintained at a level of at least two feet above the water table.

5. All liquid waste storage ~~or treatment~~ facilities shall maintain at least one foot of freeboard at all times, up to and including a 25-year, 24-hour storm.

6. For new waste storage ~~or treatment~~ facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer or an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this general permit. This certification shall be maintained on site.

7. The permittee shall notify the department's regional office at least 14 days prior to (i) animals being initially placed ~~in the confined facility~~ into confinement or (ii) the utilization of any new waste storage ~~or treatment~~ facilities.

8. Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. Waste that is stockpiled outside for more than 14 days shall be kept in a waste storage facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Waste shall be covered to protect it from precipitation and wind;

b. Stormwater shall not run onto or under the stored waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. ~~"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.~~ Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second); and

d. For waste that is not stored in a waste storage facility or under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs. For semi-solid and solid waste that is stored on an impermeable barrier and where any stormwater runoff is collected in the waste storage facility, the semi-solid and solid waste can be stored adjacent to the waste storage facility regardless of the location of the waste storage facility so long as any surface water,

intermittent drainage, wells, sinkholes, rock outcrops, and springs are protected from runoff from the stored semi-solid and solid waste.

Semi-solid and solid waste that is stored on an impermeable barrier and where any stormwater runoff is collected in a waste storage facility is considered adequate storage and is therefore not required to be covered.

9. All equipment needed for ~~the~~ proper operation ~~of the permitted facilities~~ shall be maintained in good working order. The manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate. The permittee shall periodically inspect for leaks on equipment used for land application of waste.

10. All treated wastes generated by a digester or other manure treatment technologies shall be approved by the department and shall be managed by ~~a facility~~ the animal waste end-user covered under this general permit and in accordance with the following conditions:

a. All treated wastes generated by a digester or other manure treatment technologies must be managed through an approved nutrient management plan or transferred to another entity in accordance with animal waste transfer requirements in Part III ~~B 15~~ C 6 and ~~16~~ 7.

b. When a ~~facility~~ animal waste end-user covered under this general permit generates a treated waste from animal waste and other feedstock, the permittee shall maintain records related to the production of the treated waste.

(1) If off-site wastes are added to generate the treated waste, then the permittee shall record the following items:

(a) The amount of waste brought to the ~~facility~~ animal waste end-user; and

(b) From whom and where the waste originated.

(2) For all treated wastes generated by the ~~facility~~ animal waste end-user, the permittee shall record the following items:

(a) The amount of treated waste generated;

(b) The nutrient analysis of the treated waste; and

(c) The final use of the treated waste.

(3) Permittees shall maintain the records required by Part III B 10 b (1) and (2) on site for a period of three years. All records shall be made available to department personnel upon request.

11. When the waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or the atmosphere. Prior to closure, the permittee shall notify the department of any plans to close a liquid waste storage facility. At closure, the permittee shall remove all waste residue from the animal waste storage facility. Removed waste materials shall be utilized according to the approved NMP.

C. Animal waste use and transfer requirements.

1. Animal waste generated by ~~this facility~~ an animal waste end-user that is subject to this general permit shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the ~~facility's~~ approved nutrient management plan written for this animal waste end-user.

~~12.~~ 2. The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. [~~All~~ Within 30 days of the approval by the Department of Conservation and Recreation, all] revised [~~and Department of Conservation and Recreation approved~~] NMPs shall be submitted to the department [~~prior to the expiration of the previous NMP~~]. The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus loss to ~~ground~~ groundwaters and surface waters. The terms of the NMP shall be enforceable through this general permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements;

e. Calculation of waste application rates; and

f. Waste application schedules.

~~13.~~ 3. Waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a ~~permanent~~ vegetated buffer) or 35 feet (if a ~~permanent~~ vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer or 35-foot wide vegetated buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a matter that it would discharge to sinkholes that may exist in the area.

~~14.~~ 4. The following land application records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of five years after the date the application is made and shall be made available to department personnel upon request.

~~15.~~ 5. In cases where a waste storage facility is threatened by emergencies such as fire or flood or where these conditions are imminent, animal waste can be land applied outside of the spreading schedule outlined in the NMP written for the animal waste end-user. If this occurs, then the animal waste end-user shall document the land application information in accordance with Part III C 4 and notify the department in accordance with Part II F 3.

6. Animal waste generated by ~~this facility~~ an animal waste end-user that is subject to this general permit may be transferred from the permittee to another person, if one or more of the following conditions are met:

a. Animal waste generated by ~~this facility~~ an animal waste end-user that is subject to this general permit may be transferred off-site for land application or another acceptable use approved by the department, if:

(1) The sites where the animal waste will be utilized are included in ~~this permitted facility's~~ the animal waste end-user's approved nutrient management plan; or

(2) The sites where the animal waste will be utilized are included in another permitted ~~facility's~~ entity's approved nutrient management plan.

b. Animal waste generated by ~~this facility~~ an animal waste end-user that is subject to this general permit may be transferred off-site without identifying in the permittee's approved nutrient management plan the fields where such waste will be utilized, if the following conditions are met:

(1) The animal waste is registered with the Virginia Department of Agriculture and Consumer Services in accordance with regulations adopted pursuant to ~~subdivision A 2 of~~ § 3.2-3607 A 2 of the Code of Virginia; or

(2) When the permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall maintain records in accordance with Part III ~~B 16~~ C 7.

~~16.~~ 7. Animal waste may be transferred from a permittee to another person without identifying the fields where such waste will be utilized in the permittee's approved nutrient management plan if the following conditions are met:

a. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall provide that person with:

(1) Permittee's name, address, and the general permit number;

(2) A copy of the most recent nutrient analysis of the animal waste; and

(3) An animal waste fact sheet.

b. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall keep a record of the following:

(1) The ~~recipient~~ recipient's name and address;

(2) The amount of animal waste received by the person;

(3) The date of the transaction;

(4) The nutrient analysis of the animal waste;

(5) The locality in which the recipient intends to utilize the animal waste (i.e., nearest town or city and zip code);

(6) The name of the stream or waterbody, if known, to the recipient that is nearest to the animal waste utilization or storage site; and

(7) The signed waste transfer records form acknowledging the receipt of the following:

(a) The animal waste;

(b) The nutrient analysis of the animal waste; and

(c) An animal waste fact sheet.

c. Permittees shall maintain the records required by Part III ~~B 16~~ C 7 a and b for at least three years after the date of the transaction and shall make them available to department personnel upon request.

~~17. When the waste storage or treatment facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste~~

~~decomposition products to the groundwater, surface water, or the atmosphere. At closure, the permittee shall remove all waste residue from the animal waste storage or treatment facility. Removed waste materials shall be utilized according to the approved NMP.~~

~~18. As required by § 62.1-44.17:1 F of the Code of Virginia, each~~ D. Each permittee covered under this general permit shall have completed the training program offered or approved by the department in the two years prior to submitting the registration statement for general permit coverage or shall complete such training within one year after the registration statement has been submitted for general permit coverage. All permittees shall complete the training program at least once every three years.

9VAC25-192-80. Tracking and accounting requirements for animal waste end-users.

A. When an animal waste end-user is the recipient of more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% percent or more moisture) in any 365-day period from an owner or operator of an animal feeding operation covered by a general permit, an individual VPA permit, or a VPDES permit, the end-user shall maintain records regarding the transfer and land application of animal waste.

1. The animal waste end-user shall provide the permittee with the following items:

a. ~~End-user~~ End-user's name and address;

b. The locality in which the end-user intends to utilize the waste (i.e., nearest town or city and zip code);

c. The name of the stream or waterbody, if known, to the end-user that is nearest to the waste utilization or storage site; and

d. Written ~~acknowledgement~~ acknowledgment of receipt of:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) An animal waste fact sheet.

2. The animal waste end-user shall record the following items regarding the waste transfer:

a. The ~~source~~ source's name, address, and permit number (if applicable);

b. The amount of animal waste that was received;

c. The date of the transaction;

d. The final use of the animal waste;

e. The locality in which the waste was utilized (i.e., nearest town or city and zip code); and

f. The name of the stream or waterbody, if known, to the recipient that is nearest to the waste utilization or storage site.

Records regarding animal waste transfers shall be maintained on site for a period of three years after the date of the transaction. All records shall be made available to department personnel upon request.

3. If waste is land applied, then the animal waste end-user shall keep a record of the following items regarding the land application of the waste:

a. The nutrient analysis of the waste;

b. Maps indicating the animal waste land application fields and storage sites;

c. The land application rate;

d. The land application dates;

e. What crops were planted;

f. Soil test results, if obtained;

g. NMP, if applicable; and

h. The method used to determine the land application rates (i.e., phosphorus crop removal, waste nutrient analysis rate, soil test recommendations, or a nutrient management plan).

Records regarding land application of animal waste shall be maintained on site for a period of three years after the date the application is made. All records shall be made available to department personnel upon request.

B. Any duly authorized agent of the ~~board~~ department may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

9VAC25-192-90. ~~Utilization and storage~~ Storage and land application requirements for transferred animal waste.

A. An animal waste end-user who receives animal waste from an owner or operator of an animal feeding operation covered by a general permit, an individual VPA permit, or a VPDES permit shall comply with the requirements outlined in this section.

B. Storage requirements. An animal waste end-user who receives animal waste from an owner or operator of an animal feeding operation covered by a general permit, an individual VPA permit, or a VPDES permit shall comply with the requirements outlined in this subsection regarding storage of animal waste in ~~his~~ the owner or operator's possession or under ~~his~~ the owner or operator's control.

1. ~~Animal~~ Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. ~~Animal~~ Semi-solid and solid waste that is stockpiled outside for more than 14 days shall be kept in a waste storage facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. ~~Animal~~ Semi-solid and solid waste shall be covered to protect it from precipitation and wind;

b. Stormwater shall not run onto or under the stored ~~animal~~ semi-solid and solid waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. ~~"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.~~ Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second); and

d. For ~~animal~~ semi-solid and solid waste that is not stored in a waste storage facility or under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs. For semi-solid and solid waste that is stored on an impermeable barrier and where any stormwater runoff is collected in the waste storage facility, the semi-solid and solid waste can be stored adjacent to the waste storage facility regardless of the location of the waste storage facility so long as surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs are protected from runoff from the stored semi-solid and solid waste.

Semi-solid and solid waste that is stored on an impermeable barrier and where any stormwater runoff is collected in a waste storage facility is considered adequate storage and is therefore not required to be covered.

2. Any liquid animal waste collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

3. Waste storage facilities constructed after December 1, 1998, shall not be located on a 100-year floodplain. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

4. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer or an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this subsection. This certification shall be maintained on site.

5. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must be maintained at a level of at least two feet above the water table.

6. All liquid waste storage ~~or treatment~~ facilities shall maintain at least one foot of freeboard at all times, up to and including a 25-year, 24-hour storm.

C. Land application requirements. An animal waste end-user who (i) receives more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) from an owner or operator of an animal feeding operation covered by a general permit, an individual VPA permit, or VPDES permit and (ii) land applies animal waste shall follow appropriate land application requirements as outlined in this subsection. The application of animal waste shall be managed to minimize adverse water quality impacts.

1. The maximum application rates can be established by the following methods:

a. Phosphorus crop removal application rates can be used when:

(1) Soil test phosphorus levels do not exceed the values listed in the Phosphorus Environmental Thresholds table ~~below~~:

Phosphorus Environmental Thresholds	
Region	Soil Test P (ppm) VPI & SU Soil Test (Mehlich I)*
Eastern Shore and Lower Coastal Plain	135
Middle and Upper Coastal Plain and Piedmont	136
Ridge and Valley	162
*If results are from another laboratory, then the Department of Conservation and Recreation approved conversion factors must be used.	

(2) The phosphorus crop removal application rates are set forth by regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia.

b. Animal waste may be applied to any crop once every three years at a rate of no greater than 80 pounds of plant available phosphorus per acre when:

(1) The plant available phosphorus supplied by the animal waste is based on a waste nutrient analysis obtained in the last two years;

(2) In the absence of current soil sample analyses and recommendations; and

(3) Nutrients have not been supplied by an organic source, other than pastured animals, to the proposed land application sites within the previous three years of the proposed land application date of animal waste.

c. Soil test recommendations can be used when:

(1) Accompanied by analysis results for soil tests that have been obtained from the proposed field ~~or fields~~ in the last three years;

(2) The analytical results are from procedures in accordance with 4VAC50-85-140 A 2 f; and

(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops. The recommendations shall be in accordance with 4VAC50-85-140 A 2 a.

d. A nutrient management plan developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

2. The timing of land application of animal waste shall be appropriate for the crop, and in accordance with 4VAC50-85-140 A 4, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated.

3. Animal waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a ~~permanent~~ vegetated buffer) or 35 feet (if a ~~permanent~~ vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

4. In cases where the waste storage facility is threatened by emergencies such as fire or flood or where these conditions are imminent, animal waste can be land applied outside of the spreading schedule outlined in the animal waste fact sheet. If this occurs, then the animal waste end-user shall document the land application information in accordance with 9VAC25-192-80 A 3.

D. Animal waste end-users shall maintain the records demonstrating compliance with the requirements of subsections B and C of this section for at least three years and make them available to department personnel upon request.

E. The activities of the animal waste end-user shall not contravene the Water Quality Standards~~, as amended and adopted by the board,~~ (9VAC25-260) or any provision of the State Water Control Law ~~(§ 62.1-44 et seq. of the Code of Virginia)~~.

F. Any duly authorized agent of the ~~board~~ department may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

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

FORMS (9VAC25-192)

~~Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations for Owners of Animal Feeding Operations, RS, VPG1 (rev. 3/14)~~

~~Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations for Animal Waste End-Users, RS End-Users, VPG1 (rev. 3/14)~~

~~Local Government Ordinance Form (eff. 11/94)~~

~~Virginia DEQ Fact Sheet for Animal Waste Use and Storage (rev. 4/14)~~

Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations and Animal Waste Management for Owners of Animal Feeding Operations, RS AFO Owners, VPG1 (rev. 11/2024)

Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations and Animal Waste Management for Animal Waste End-Users, RS End-Users, VPG1 (rev. 11/2024)

Local Government Ordinance Form (eff. 11/2024)

Virginia DEQ Fact Sheet for Animal Waste Use and Storage (rev. 11/2024)

VA.R. Doc. No. R23-7432; Filed July 24, 2024, 8:55 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-25, 12VAC30-60-40, 12VAC30-60-50, 12VAC30-60-120, 12VAC30-60-130, 12VAC30-60-150, 12VAC30-60-170, 12VAC30-60-185, 12VAC30-60-303).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 11, 2024.

Effective Date: September 26, 2024.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations, and § 32.1-324 of the Code of Virginia grants the Director of the Department of Medical Assistance Services (DMAS) the authority of the board when the board is not in session.

Purpose: The purpose of the amendments is to repeal documents that are out of date and have not been enforced, and therefore do not need to be referenced in the regulation. Up-to-date versions of these documents exist on the DMAS Medicaid Enterprise System (MES) Web Portal or via other sources that are not owned by DMAS (e.g., American Psychiatric Association Diagnostic and Statistical Manual). Repealing the documents is essential to protect the health, safety, and welfare of citizens because it ensures that the regulation does not contain outdated references, which eliminates potential sources of confusion.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial because it will remove outdated and unnecessary documents incorporated by reference in the regulation.

Substance: The regulatory action removes out-of-date and obsolete documents.

Issues: These amendments create no disadvantages to the public, the agency, the Commonwealth, or the regulated community. The advantages to the public, the agency, and the Commonwealth are that documents that are out-of-date and not enforced by DMAS will no longer be included in the regulation.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. Pursuant to Executive Order 19 (EO19), the Director of the Department of Medical Assistance Services (DMAS), on behalf of the Board of Medical Assistance Services, proposes to repeal 13 documents incorporated by reference in the regulation.

Background. As provided for by the Administrative Process Act and the Virginia Register Act, agencies may incorporate content from publications or documents in the text of a regulation. When this occurs, the "material in the document becomes the text of the regulation and an enforceable part of the regulation."[2] Following an internal review prompted by EO19, DMAS determined that 13 documents incorporated by reference in this regulation are out of date and have not been enforced. Therefore, DMAS proposes to repeal all of them. Further, DMAS notes that up-to-date versions of these documents exist on the DMAS Medicaid Enterprise System (MES) Web Portal (Provider Resources Section)[3] or via other sources that are not owned by DMAS (e.g., American Psychiatric Association Diagnostic and Statistical Manual), and therefore referencing them in the Virginia Administrative Code is unnecessary. The documents being removed are:

Department of Medical Assistance Services Provider Manuals (https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/ProviderManuals);

Virginia Medicaid Nursing Home Manual;

Virginia Medicaid Rehabilitation Manual;

Virginia Medicaid Hospice Manual;

Virginia Medicaid School Division Manual;

Development of Special Criteria for the Purposes of Pre-Admission Screening, Medicaid Memo, October 3, 2012, Department of Medical Assistance Services;

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV-TR), copyright 2000, American Psychiatric Association;

Patient Placement Criteria for the Treatment of Substance-Related Disorders (ASAM PPC-2R), Second Edition,

copyright 2001, American Society on Addiction Medicine, Inc.;

Medicaid Memo, Reissuance of the Pre-Admission Screening (PAS) Provider Manual, Chapter IV, November 22, 2016, Department of Medical Assistance Services;

Medicaid Special Memo, Subject: New Service Authorization Requirement for an Independent Clinical Assessment for Medicaid and FAMIS Children's Community Mental Health Rehabilitative Services, dated June 16, 2011, Department of Medical Assistance Services;

Medicaid Special Memo, Subject: Changes to Children Community Mental Health Rehabilitative Services Children's Services, July 1, 2010 & September 1, 2010, dated July 23, 2010, Department of Medical Assistance Services;

Medicaid Special Memo, Subject: Changes to Community Mental Health Rehabilitative Services Adult-Oriented Services, July 1, 2010 & September 1, 2010, dated July 23, 2010, Department of Medical Assistance Services; and

Approved Degrees in Human Services and Related Fields for QMHP Registration, adopted November 3, 2017, revised February 9, 2018.

Estimated Benefits and Costs. Since these documents have not been enforced in practice because they were outdated, their removal from this regulation as documents incorporated by reference should not create any significant economic impact other than eliminating a potential source of confusion. Additionally, according to DMAS, up-to-date versions of these documents are posted on the MES Web Portal and would be treated as guidance documents and not as law.

Businesses and Other Entities Affected. The proposed amendments apply to all Medicaid providers.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[4] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[5] As noted, the proposed action would remove references to manuals and documents that have not been enforced. Thus, no adverse impact is indicated.

Small Businesses[6] Affected.[7] The proposed amendments do not adversely affect small businesses.

Localities[8] Affected.[9] The proposed amendments neither disproportionately affect particular localities nor introduce costs for local governments.

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

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

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

[2] https://law.lis.virginia.gov/admincode/title1/agency7/chapter10/section140/.

[3] https://vamedicaid.dmas.virginia.gov/manuals/provider-manuals-library#gsc.tab=0.

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

[5] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

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

[8] "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[9] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department of Medical Assistance Services has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

The amendments remove references to documents incorporated by reference that are either outdated or that already exist on the Department of Medical Assistance Services (DMAS) Medicaid Enterprise System Web Portal, or via other sources that are not owned by DMAS.

12VAC30-60-25. Utilization control: freestanding psychiatric hospitals.

A. Psychiatric services in freestanding psychiatric hospitals shall only be covered for eligible persons younger than 21 years of age and older than 64 years of age.

B. ~~Prior authorization required.~~ DMAS shall monitor, consistent with state law, the utilization of all inpatient freestanding psychiatric hospital services. All inpatient hospital stays shall be preauthorized prior to reimbursement for these services. Services rendered without such prior authorization shall not be covered.

C. All Medicaid services are subject to utilization review and audit. Absence of any of the required documentation may result in denial or retraction of any reimbursement. In each case for which payment for freestanding psychiatric hospital services is made under the State Plan:

1. A physician must certify at the time of admission, or at the time the hospital is notified of an individual's retroactive eligibility status, that the individual requires or required inpatient services in a freestanding psychiatric hospital consistent with 42 CFR 456.160.

2. The physician, physician assistant, or nurse practitioner acting within the scope of practice as defined by state law and under the supervision of a physician, must recertify at least every 60 days that the individual continues to require inpatient services in a psychiatric hospital.

3. Before admission to a freestanding psychiatric hospital or before authorization for payment, the attending physician or staff physician must perform a medical evaluation of the individual and appropriate professional personnel must make a psychiatric and social evaluation as cited in 42 CFR 456.170.

4. Before admission to a freestanding psychiatric hospital or before authorization for payment, the attending physician or staff physician must establish a written plan of care for each recipient patient as cited in 42 CFR 441.155 and 456.180. The plan shall also include a list of services provided under written contractual arrangement with the freestanding psychiatric hospital (see 12VAC30-50-130) that will be furnished to the patient through the freestanding psychiatric hospital's referral to an employed or contracted provider, including the prescribed frequency of treatment and the circumstances under which such treatment shall be sought.

D. If the eligible individual is 21 years of age or older, then~~,~~ in order to qualify for Medicaid payment for this service, ~~he~~ the individual must be at least 65 years of age.

E. If younger than 21 years of age, it shall be documented that the individual requiring admission to a freestanding psychiatric hospital is ~~under~~ younger than 21 years of age, that treatment is medically necessary, and that the necessity was identified as a result of an early and periodic screening, diagnosis, and treatment (EPSDT) screening. Required patient documentation shall include~~, but not be limited to,~~ the following:

1. An EPSDT physician's screening report showing the identification of the need for further psychiatric evaluation and possible treatment.

2. A diagnostic evaluation documenting a current (active) psychiatric disorder ~~included in the DSM III R~~ based on nationally recognized criteria that supports the treatment recommended. The diagnostic evaluation must be completed prior to admission.

3. For admission to a freestanding psychiatric hospital for psychiatric services resulting from an EPSDT screening, a certification of the need for services as defined in 42 CFR 441.152 by an interdisciplinary team meeting the requirements of 42 CFR 441.153 or 441.156 and ~~The~~ the Psychiatric Treatment of Minors Act (§ 16.1-335 et seq. of the Code of Virginia).

F. If a Medicaid eligible individual is admitted in an emergency to a freestanding psychiatric hospital on a Saturday, Sunday, holiday, or after normal working hours, it shall be the provider's responsibility to obtain the required authorization on the next work day following such an admission.

G. The absence of any of the required documentation described in this subsection shall result in ~~DMAS'~~ a DMAS denial of the requested preauthorization and coverage of subsequent hospitalization.

H. To determine that the ~~DMAS-enrolled~~ DMAS-enrolled mental hospital providers are in compliance with the regulations governing mental hospital utilization control found in ~~the~~ 42 CFR 456.150, an annual audit will be conducted of each enrolled hospital. This audit may be performed either on site or as a desk audit. The hospital shall make all requested records available and shall provide an appropriate place for the auditors to conduct such review if done on site. The audits shall consist of review of the following:

1. Copy of the mental hospital's Utilization Management Plan to determine compliance with the regulations found in ~~the~~ 42 CFR 456.200 through 456.245.

2. List of current Utilization Management Committee members and physician advisors to determine that the committee's composition is as prescribed in ~~the~~ 42 CFR 456.205 and 456.206.

3. Verification of Utilization Management Committee meetings, including dates and list of attendees~~,~~ to determine that the committee is meeting according to ~~their~~ the committee's utilization management meeting requirements.

4. One completed Medical Care Evaluation Study to include objectives of the study, analysis of the results, and actions taken~~,~~ or recommendations made to determine compliance with 42 CFR 456.241 through 456.245.

5. Topic of one ongoing Medical Care Evaluation Study to determine the hospital is in compliance with 42 CFR 456.245.

6. From a list of randomly selected paid claims, the freestanding psychiatric hospital must provide a copy of the certification for services, a copy of the physician admission certification, a copy of the required medical, psychiatric, and social evaluations~~,~~ and the written plan of care for each selected stay to determine the hospital's compliance with §§ 16.1-335 through 16.1-348 of the Code of Virginia and 42 CFR 441.152, 456.160, 456.170, 456.180, and 456.181. If any of the required documentation does not support the admission and continued stay, reimbursement may be retracted.

I. The freestanding psychiatric hospital shall not receive a per diem reimbursement for any day that:

1. The initial or comprehensive written plan of care fails to include, within three business days of the initiation of the service provided under arrangement, all services that the individual needs while at the freestanding psychiatric hospital and that will be furnished to the individual through the freestanding psychiatric hospital's referral to an employed or contracted provider of services under arrangement;

2. The comprehensive plan of care fails to include, within three business days of the initiation of the service, the prescribed frequency of such service or includes a frequency that was exceeded;

3. The comprehensive plan of care fails to list the circumstances under which the service provided under arrangement shall be sought;

4. The referral to the service provided under arrangement was not present in the patient's freestanding psychiatric hospital record;

5. The service provided under arrangement was not supported in that provider's records by a documented referral from the freestanding psychiatric hospital;

6. The medical records from the provider of services under arrangement (i.e., admission and discharge documents, treatment plans, progress notes, treatment summaries, and documentation of medical results and findings) (i) were not present in the patient's freestanding psychiatric hospital record or had not been requested in writing by the freestanding psychiatric hospital within seven days of completion of the service or services provided under arrangement or (ii) had been requested in writing within seven days of completion of the service or services, but had not been received within 30 days of the request, and had not been re-requested; or

7. The freestanding psychiatric hospital did not have a fully executed contract or an employee relationship with the provider of services under arrangement in advance of the provision of such services. For emergency services, the freestanding psychiatric hospital shall have a fully executed contract with the emergency services hospital provider prior to submission of the ancillary provider's claim for payment.

J. The provider of services under arrangement shall be required to reimburse DMAS for the cost of any such service billed prior to receiving a referral from the freestanding psychiatric hospital or in excess of the amounts in the referral.

K. The hospitals may appeal in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) any adverse decision resulting from such audits that results in retraction of payment. The appeal must be requested pursuant to the requirements of 12VAC30-20-500 ~~et seq~~ through 12VAC30-20-570.

12VAC30-60-40. Utilization control: Nursing facilities.

A. Long-term care of residents in nursing facilities will be provided in accordance with federal law using practices and procedures that are based on the resident's medical and social needs and requirements. ~~All nursing facility services, including specialized care, shall be provided in accordance with guidelines found in the Virginia Medicaid Nursing Home Manual.~~

B. Nursing facilities must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. Each resident must be reviewed at least quarterly, and a complete assessment conducted at least annually.

C. The Department of Medical Assistance Services shall periodically conduct a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. The survey will be composed of a sample of Medicaid residents and will include review of both current and closed medical records.

D. Nursing facilities must submit to the Department of Medical Assistance Services resident assessment information at least every six months for utilization review. If an assessment completed by the nursing facility does not ~~reflect~~ accurately reflect a resident's capability to perform activities of daily living and significant impairments in functional capacity, then reimbursement to nursing facilities may be adjusted during the next quarter's reimbursement review. Any individual who willfully and knowingly certifies ~~(~~or causes another individual to certify~~)~~ a material and false statement in a resident assessment is subject to civil money penalties.

E. In order for reimbursement to be made to the nursing facility for a recipient's care, the recipient must meet nursing facility criteria as described in 12VAC30-60-300 ~~(~~Nursing

~~facility criteria)~~. In order for the additional $10 per day reimbursement to be made to the nursing facility for a recipient requiring a specialized treatment bed, the recipient must meet criteria as described in 12VAC30-60-350. Nursing facilities must obtain prior authorization for the reimbursement. DMAS shall provide the additional $10 per day reimbursement for recipients meeting criteria for no more than 246 days annually. Nursing facilities may receive the reimbursement for up to 82 days per new occurrence of a Stage IV ulcer. There must be at least 30 days between each reimbursement period. Limits are per recipient, regardless of the number of providers rendering services. Nursing facilities are not eligible to receive this reimbursement for recipients enrolled in the specialized care program.

In order for reimbursement to be made to the nursing facility for a recipient requiring specialized care, the recipient must meet specialized care criteria as described in 12VAC30-60-320 ~~(Adult ventilation/tracheostomy specialized care criteria)~~ or 12VAC30-60-340 ~~(Pediatric and adolescent specialized care criteria)~~. Reimbursement for specialized care must be preauthorized by the Department of Medical Assistance Services. In addition, reimbursement to nursing facilities for residents requiring specialized care will only be made on a contractual basis. Further specialized care services requirements are set forth ~~below~~ in this section.

In each case for which payment for nursing facility services is made under the State Plan, a physician must recommend at the time of admission, or if later, the time at which the individual applies for medical assistance under the State Plan, that the individual requires nursing facility care.

F. For nursing facilities, a physician must approve a recommendation that an individual be admitted to a facility. The resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter. At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

G. When the resident no longer meets nursing facility criteria or requires services that the nursing facility is unable to provide, then the resident must be discharged.

H. Specialized care services.

1. Providers must be nursing facilities certified by the Division of Licensure and Certification, ~~State~~ Virginia Department of Health, and must have a current signed participation agreement with the Department of Medical Assistance Services to provide nursing facility care. Providers must agree to provide care to at least four residents who meet the specialized care criteria for ~~children/adolescents~~ children or adolescents or adults.

2. Providers must be able to provide the following specialized services to Medicaid specialized care recipients:

a. Physician visits at least once weekly (after initial physician visit, subsequent visits may alternate between physician and physician assistant or nurse practitioner);

b. Skilled nursing services by a registered nurse available 24 hours a day;

c. Coordinated multidisciplinary team approach to meet the needs of the resident;

d. Infection control;

e. For residents ~~under age~~ younger than 21 years of age who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of 90 minutes each day, five days per week;

f. Ancillary services related to a plan of care;

g. Respiratory therapy services by a board-certified therapist (for ventilator patients, these services must be available 24 hours per day);

h. Psychology services by a licensed clinical psychologist, licensed clinical social worker, licensed professional counselor, or licensed clinical nurse specialist-psychiatric related to a plan of care;

i. Necessary durable medical equipment and supplies as required by the plan of care;

j. Nutritional elements as required;

k. A plan to assure that specialized care residents have the same opportunity to participate in integrated nursing facility activities as other residents;

l. Nonemergency transportation;

m. Discharge planning; and

n. Family or caregiver training.

3. Providers must coordinate with appropriate state and local agencies for educational and habilitative needs for Medicaid specialized care recipients who are ~~under the age of~~ younger than 21 years of age.

12VAC30-60-50. Utilization control: Intermediate care facilities for persons with intellectual and developmental disabilities and institutions for mental disease.

A. "Institution for mental disease" or "IMD" means the same as that term is defined in § 1905(i) of the Social Security Act.

B. With respect to each Medicaid-eligible resident in an intermediate care facility for persons with intellectual and developmental disabilities (ICF/ID) or an IMD in Virginia, a written plan of care must be developed prior to admission to or authorization of benefits in such facility, and a regular program of independent professional review ~~(~~, including a medical evaluation~~)~~, shall be completed periodically for such services. The purpose of the review is to determine~~:~~ the adequacy of the services available to meet the resident's current health needs and promote the resident's maximum physical well-being; the necessity and desirability of the resident's continued placement

in the facility; and the feasibility of meeting the resident's health care needs through alternative institutional or noninstitutional services. Long-term care of residents in such facilities will be provided in accordance with federal law that is based on the resident's medical and social needs and requirements.

C. With respect to each ICF/ID or IMD, periodic onsite inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams ~~(~~composed of a physician or registered nurse and other appropriate health and social service personnel~~)~~, shall be conducted. The review shall include, with respect to each recipient, a determination of the adequacy of the services available to meet the resident's current health needs and promote the resident's maximum physical well-being, the necessity and desirability of continued placement in the facility, and the feasibility of meeting the resident's health care needs through alternative institutional or noninstitutional services. Full reports shall be made to the state agency by the review team of the findings of each inspection, together with any recommendations.

D. In order for reimbursement to be made to a facility for persons with intellectual and developmental disabilities, the resident must meet criteria for placement in such facility as described in 12VAC30-60-360 and the facility must provide active treatment for intellectual or developmental disabilities.

E. In each case for which payment for nursing facility services for persons with intellectual or developmental disabilities or institution for mental disease services is made under the State Plan:

1. A certificate of need shall be completed by an independent certification team according to the requirements of 12VAC30-50-130 D 5. Recertification shall occur at least every 60 calendar days by a physician~~,~~ or by a physician assistant or nurse practitioner acting within their scope of practice as defined by state law and under the supervision of a physician. The certification must be made at the time of admission or, if an individual applies for assistance while in the facility, before the Medicaid agency authorizes payment; and

2. A physician, or physician assistant or nurse practitioner acting within the scope of the practice as defined by state law and under the supervision of a physician, must recertify for each applicant at least every 60 calendar days that services are needed in a facility for persons with intellectual and developmental disabilities or an institution for mental disease.

F. When a resident no longer meets criteria for facilities for persons with intellectual and developmental disabilities or for an institution for mental disease~~,~~ or no longer requires active treatment in a facility for persons with intellectual and developmental disabilities, then the resident shall be discharged.

G. ~~All services provided in an ICF/ID shall be provided in accordance with guidelines found in the Virginia Medicaid Nursing Home Manual.~~ (Reserved.)

H. All services provided in an IMD shall be provided with the applicable provider agreement and all documents referenced therein.

I. Psychiatric services in IMDs shall only be covered for eligible individuals younger than 21 years of age.

J. IMD services provided without service authorization from DMAS or its contractor shall not be covered.

K. Absence of any of the required IMD documentation shall result in denial or retraction of reimbursement.

L. In each case for which payment for IMD services is made under the State Plan:

1. A physician shall certify at the time of admission~~,~~ or at the time the IMD is notified of an individual's retroactive eligibility status, that the individual requires or required inpatient services in an IMD consistent with 42 CFR 456.160.

2. The physician, or physician assistant or nurse practitioner acting within the scope of practice as defined by state law and under the supervision of a physician, shall recertify at least every 60 calendar days that the individual continues to require inpatient services in an IMD.

3. Before admission to an IMD or before authorization for payment, the attending physician or staff physician shall perform a medical evaluation of the individual, and appropriate personnel shall complete a psychiatric and social evaluation as described in 42 CFR 456.170.

4. Before admission to an IMD or before authorization for payment, the attending physician or staff physician shall establish a written plan of care for each individual as described in 42 CFR 441.155 and 42 CFR 456.180.

M. It shall be documented ~~that the~~ for each individual requiring admission to an IMD who is younger than 21 years of age~~,~~ that treatment is medically necessary~~,~~ and that the necessity was identified as a result of an independent certification of need team review. Required documentation shall include the following:

1. Diagnosis~~, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition 2013, American Psychiatric Association,~~ based on nationally recognized criteria and based on an evaluation by a psychiatrist completed within 30 calendar days of admission or~~,~~ if the diagnosis is confirmed, in writing, by a previous evaluation completed within one year within admission.

2. A certification of the need for services as defined in 42 CFR 441.152 by an interdisciplinary team meeting the requirements of 42 CFR 441.153 or 42 CFR 441.156 and the Psychiatric Treatment of Minors Act (§ 16.1-335 et seq. of the Code of Virginia).

N. The use of seclusion and restraint in an IMD shall be in accordance with 42 CFR 483.350 through 42 CFR 483.376. Each use of a seclusion or restraint, as defined in 42 CFR 483.350 through 42 CFR 483.376, shall be reported by the service provider to DMAS or its contractor within one calendar day of the incident.

12VAC30-60-120. Quality management: Intensive physical rehabilitative services and ~~CORF~~ comprehensive outpatient rehabilitation facility services.

A. Within 24 hours of an individual's admission for either intensive inpatient rehabilitation or comprehensive outpatient rehabilitation facility (CORF) services, a physician shall be required to complete and sign and date the admission certification statement, as defined in 12VAC30-50-225 and 42 CFR 456.60, of the need for intensive rehabilitation or CORF services and the initial plan of care or orders.

1. Excluding CORF services, all other plans of care for inpatient rehabilitation services, including 60-day recertifications and the 60-day plan of care renewal orders shall be ordered by either a physician or a licensed practitioner of the healing arts, including~~, but not limited to,~~ nurse practitioners or physician assistants, within the scope of their licenses under state law.

2. If therapy services are recertified by a practitioner of the healing arts other than a physician, supervision shall be performed by a physician as required by §§ 54.1-2952 and 54.1-2957.01 of the Code of Virginia and 42 CFR 456.60.

3. For CORF providers, federal requirements do not permit nurse practitioners or physician assistants to order CORF intensive rehabilitation services. A physician shall be responsible for all documentation requirements, including~~, but not limited to,~~ admission certifications, recertifications, plans of care, progress notes, discharge orders, and any other required documentation (42 CFR 485.58(a)(i)).

4. Admission certification requirements shall apply to all individuals who are currently Medicaid eligible and to those individuals for whom a retroactive Medicaid eligibility determination is anticipated for coverage of an inpatient rehabilitative stay or for CORF services.

B. Within 72 hours of an individual's admission to an intensive rehabilitation or CORF program or upon notification to the provider of the individual's Medicaid eligibility or that ~~his~~ the individual's Medicare benefits are exhausted, the provider shall notify DMAS or its contractor in writing, or as required, of the individual's admission and the medical need for service authorization.

1. This notification shall include a description of the admitting diagnosis, plan of care, and expected progress and a physician's written admission certification statement that the individual meets the rehabilitation admission criteria. DMAS or its contractor shall review such requests for service authorization and make a determination based on medical necessity criteria (see 12VAC30-50-225) as designated by DMAS~~,~~ and notify the provider of its decision. If services are approved, DMAS or its contractor shall establish and notify the provider of an approved length of stay. Additional lengths of stay shall be requested by the provider prior to the end date of the initial service authorization and must be approved by DMAS or its contractor for reimbursement. Admissions or lengths of stay not authorized by DMAS or its contractor shall not be approved for reimbursement.

2. For continued intensive rehabilitation or CORF services, the individual must demonstrate an ability to actively participate in goal-related therapeutic interventions developed by the interdisciplinary team.

C. Documentation of rehabilitation services required by DMAS for reimbursement for all disciplines of intensive rehabilitation or CORF services shall include all of the following:

1. A written physician admission certification statement.

2. A 60-day written recertification statement if a continued stay is determined to be medically necessary by the physician or other licensed practitioner of the healing arts within the scope of ~~his~~ the practitioner's license. Admission certification or recertification statements for CORF services shall be signed and dated only by licensed physicians.

3. A physician's written initial plan of care shall include orders for medications, the frequency and duration of services, required rehabilitation therapies, diet, medically necessary treatments, and other required services such as psychology, social work, and therapeutic recreation services.

a. Except for CORF services, the plan of care may be written by either a physician or by a licensed practitioner of the healing arts within the scope of ~~his~~ the physician or licensed practitioner's license.

b. For CORF services, the plan of care shall be written, signed, and dated only by a licensed physician.

4. An initial evaluation that describes the individual's clinical signs and symptoms necessitating admission to the rehabilitation program.

5. A description of any prior treatment and attempts to rehabilitate the individual.

6. An accurate and complete chronological description of the individual's clinical course and progress in treatment.

7. Documentation~~,~~ by each participating therapy discipline~~,~~ of a comprehensive plan of care developed by the licensed therapist.

8. Documentation that an interdisciplinary coordinated team plan of care specifically designed for the individual has been developed within seven days of admission.

9. Detailed documentation of all treatment rendered to the individual in accordance with each discipline's plan of care with specific attention to frequency, duration, modality, the individual's response to treatment, and the identification of the licensed therapist or therapy assistant and dated signature of who provided such treatment.

10. Documentation of all changes in the individual's condition or conditions.

11. Documentation describing a discharge plan that includes the anticipated improvements in functional levels, the timeframes necessary to meet the individual's goals, and the individual's discharge destination.

12. Discharge summary shall be completed by each licensed discipline offering services to include goal outcomes. The provider may complete the discharge summary before the individual's discharge or up to 30 days after the date of the individual's discharge.

D. Services not specifically documented in the individual's medical record as having been rendered will be deemed not to have been rendered and no reimbursement will be provided.

E. Intentional altering of medical record documentation shall be prohibited. If corrections in medical records are ~~indicated, then they shall be made consistent with the procedures in~~ required, the agency's provider-specific rehabilitation guidance documents ~~(see https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/ProviderManua~~ provide information on the procedures to be used.

F. The interdisciplinary rehabilitative team shall meet and prepare written documentation of the interdisciplinary team plan of care within seven days of admission. Interdisciplinary rehabilitative team conferences shall be held as needed but at least every two weeks to assess and document the individual's progress or problems impeding progress. The interdisciplinary rehabilitative team shall assess the validity of the rehabilitation goals established at the time of the initial evaluation, determine if rehabilitation criteria continue to be met, and revise the individual's goals as needed. A simple reading review by the various interdisciplinary rehabilitative team members of each other's notes shall not constitute an interdisciplinary rehabilitative team conference. Where practical, the individual or family or both shall participate in the interdisciplinary rehabilitative team conferences. A dated summary of the conferences~~,~~ documenting the names and professional titles of the interdisciplinary rehabilitative team members present~~,~~ shall be recorded in the clinical record and shall reflect the reassessments of the various interdisciplinary rehabilitative team members.

G. DMAS or its contractor shall perform quality management reviews to determine if services were appropriately provided as verified in the medical record documentation and to ensure that the services provided to Medicaid individuals were medically necessary and appropriate and that the individual continued to meet intensive rehabilitation criteria throughout the entire admission in the rehabilitation program.

H. When a provider has been determined during a quality management review as not complying with DMAS regulations, DMAS or its contractor may request corrective action plans from the provider. The corrective action plan shall address how the provider will become compliant with DMAS regulations and requirements in the areas for which the provider has been cited for noncompliance.

I. Properly documented medical reasons for furlough visits away from the inpatient rehabilitation provider may be included as part of an overall rehabilitation program. Unoccupied beds ~~(~~or days~~)~~ resulting from an overnight therapeutic furlough shall not be reimbursed by DMAS.

J. Discharge planning shall be an integral part of the overall plan of care that is developed at the time of admission to the program. The plan shall identify the anticipated improvements in functional abilities and the probable discharge destination. The individual, unless unable to do so, or the responsible party shall participate in the discharge planning. Notations concerning changes in the discharge plan shall be entered into the record at least every two weeks~~,~~ as a part of the required interdisciplinary team conference.

K. Each of the following intensive rehabilitation professionals have specific licensure and documentation requirements based on their disciplines that shall be adhered to. This subsection outlines these requirements for physician, nursing, physical therapy, occupational therapy, speech-language pathology, cognitive rehabilitation therapy, psychology, social work, therapeutic recreation, and ~~prosthetic/orthotic~~ prosthetic and orthotic services as follows:

1. Physician services are those services furnished to an individual that meet all of the following conditions:

a. The individual shall be under the care of a physician who is legally authorized to practice and is acting within the scope of ~~his~~ the physician's license~~,~~ or a licensed practitioner of the healing arts as defined in 12VAC30-50-225. The physician shall be licensed by the Virginia Board of Medicine and have specialized training or experience in the field of physical medicine and rehabilitation;

b. Within 24 hours of an individual's admission, the physician shall provide a written initial admission certification consistent with 42 CFR 456.60. The physician shall provide a 60-day written recertification statement of the continued need for intensive physical

rehabilitation services. DMAS shall not provide reimbursement for services that are not supported by physician written admission certifications and 60-day recertifications;

c. The physician plan of care shall be written to include orders for medications, rehabilitation therapies, treatments, diet, and other required services pursuant to 42 CFR 456.80. Failure to obtain the physician written renewal of the plan of care every 60 days shall result in nonpayment for services rendered; and

d. The service shall be specific and provide effective treatment for the individual's condition in accordance with accepted standards of medical practice.

2. Rehabilitative nursing requires education, training, and experience that provides special knowledge and clinical skills to diagnose nursing needs and treat individuals who have health problems characterized by alteration in either cognitive or functional ability, or both. Rehabilitative nursing services are those services furnished to an individual that meet all of the following conditions:

a. The services shall be directly and specifically related to a written plan of care developed by a registered nurse licensed by the Virginia Board of Nursing who is experienced in physical rehabilitation;

b. The services shall be of a level of complexity and sophistication or the individual's condition shall be of a nature that the services can only be performed by a registered nurse or licensed professional nurse, nursing assistant, or rehabilitation technician under the direct supervision of a registered nurse who is experienced in physical rehabilitation;

c. The services shall be provided with the expectation, based on the physician's assessment of the individual's rehabilitation potential, that the individual's condition will improve significantly, as determined by the physician and the interdisciplinary rehabilitative team, in a reasonable and generally predictable period of time as determined by the nurse or therapist, or these services shall be necessary to the establishment of a safe and effective maintenance therapy program required in connection with a specific diagnosis; and

d. The service shall be specific and provide effective treatment for the individual's condition. The amount, frequency, and duration of the service shall comport with accepted standards of medical practice.

3. Physical therapy services are those services furnished to an individual that meet all of the following conditions:

a. The services shall be directly and specifically related to a written plan of care developed by a physical therapist licensed by the Virginia Board of Physical Therapy;

b. The services shall be of a level of complexity and sophistication or the individual's condition shall be of a nature that the services can only be performed by a physical therapist licensed by the Virginia Board of Physical Therapy or a physical therapy assistant who is licensed by the Virginia Board of Physical Therapy and under the direct supervision of a qualified licensed physical therapist;

c. The services shall be provided with the expectation, based on the physician's assessment of the individual's rehabilitation potential, that the individual's condition will improve significantly, as determined by the physician and the interdisciplinary rehabilitative team, in a reasonable and generally predictable period of time, or these services shall be necessary to the establishment of a safe and effective maintenance therapy program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the individual's condition. The amount, frequency, and duration of the services shall comport with accepted standards of medical practice.

4. Occupational therapy services are those services furnished to an individual that meet all of the following conditions:

a. The services shall be directly and specifically related to a written plan of care developed by an occupational therapist certified by the National Board for Certification in Occupational Therapy and licensed by the Virginia Board of Medicine;

b. The services shall be of a level of complexity and sophistication or the individual's condition shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the National Board for Certification in Occupational Therapy or an occupational therapy assistant certified by the National Board for Certification in Occupational Therapy and licensed by the Virginia Board of Medicine under the direct supervision of a qualified occupational therapist as defined in subdivision 4 a of this subsection;

c. The services shall be provided with the expectation, based on the physician's assessment of the individual's rehabilitation potential, that the individual's condition will improve significantly, as determined by the physician and the interdisciplinary rehabilitative team, in a reasonable and generally predictable period of time, or these services shall be necessary to the establishment of a safe and effective maintenance therapy program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the individual's condition. The amount, frequency, and duration of the services shall comport with accepted standards of medical practice.

5. Speech-language pathology therapy services are those services furnished to an individual that meet all of the following conditions:

a. The services shall be directly and specifically related to a written plan of care developed by a speech-language pathologist licensed by the Virginia Board of Audiology and Speech-Language Pathology or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440.110(c);

b. The services shall be of a level of complexity and sophistication or the individual's condition shall be of a nature that the services can only be performed by either a speech-language pathologist licensed by the Virginia Board of Audiology and Speech-Language Pathology or by a speech-language assistant who has been certified by the board and who is under the direct supervision of the speech-language pathologist;

c. The services shall be provided with the expectation, based on the physician's assessment of the individual's rehabilitation potential, that the individual's condition will improve significantly, as determined by the physician and the interdisciplinary rehabilitative team, in a reasonable and generally predictable period of time, or these services shall be necessary to the establishment of a safe and effective maintenance therapy program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the individual's condition. The amount, frequency, and duration of the services shall comport with accepted standards of medical practice.

6. Cognitive rehabilitation therapy services are those services furnished to an individual that meet all of the following conditions:

a. The services shall be directly and specifically related to a written plan of care developed by a clinical psychologist experienced in working with the neurologically impaired and licensed by the Virginia Board of Psychology;

b. The services, based on the findings of the neuropsychological evaluation, shall be of a level of complexity and sophistication or the individual's condition shall be of a nature, that the services can only be rendered after a neuropsychological evaluation administered by a licensed clinical psychologist or licensed physician experienced in the administration of neuropsychological assessments and in accordance with a plan of care;

c. Cognitive rehabilitation therapy services shall be provided by occupational therapists, speech-language pathologists, or psychologists, or all of these, who have experience in working with neurologically impaired individuals when such services have been ordered by a physician or other licensed practitioner;

d. The cognitive rehabilitation services shall be an integrated part of the individual's interdisciplinary plan of care and shall relate to information processing deficits ~~which~~ that are a consequence of and related to a neurologic event;

e. The services include therapeutic activities to improve a variety of cognitive functions, for example, orientation, ~~attention/concentration~~ attention and concentration, reasoning, memory, recall, discrimination, and behavior; and

f. The services shall be provided with the expectation, based on the physician's or psychologist's assessment of the individual's rehabilitation potential, that the individual's condition will improve significantly in a reasonable and generally predictable period of time, or these services shall be necessary to the establishment of a safe and effective maintenance therapy program required in connection with a specific diagnosis.

7. Psychological services are those services furnished to an individual that meet all of the following conditions:

a. Services shall be ordered by a physician or other licensed practitioner;

b. The services shall be of a level of complexity and sophistication or the individual's condition shall be of a nature that the services as set out in the written plan of care can only be developed and performed by a qualified, licensed psychologist as required by the Virginia Board of Psychology or a licensed clinical social worker, a licensed professional counselor, or a licensed clinical nurse specialist-psychiatric;

c. The services shall be provided with the expectation, based on the assessment of the individual's rehabilitation potential, that the individual's condition will improve significantly in a reasonable and generally predictable period of time, or these services shall be necessary to the establishment of a safe and effective maintenance therapy program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the individual's condition. The amount, frequency, and duration of the services shall comport with accepted standards of medical practice.

8. Social work services are those services furnished to an individual that meet all of the following conditions:

a. Services shall be ordered by a physician or other licensed practitioner;

b. The services shall be of a level of complexity and sophistication or the individual's condition shall be of a nature that the services as set out in the written plan of care can only be performed by a qualified social worker licensed by the Virginia Board of Social Work;

c. The services shall be provided with the expectation, based on the assessment of the individual's rehabilitation potential, that the condition of the individual will improve significantly in a reasonable and generally predictable period of time, or these services shall be necessary to the establishment of a safe and effective maintenance therapy

program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the individual's condition. The amount, frequency, and duration of the services shall comport with accepted standards of practice.

9. Therapeutic recreation services are those services furnished to an individual that meet all of the following conditions:

a. Services shall be ordered by a physician or other licensed practitioner;

b. The services shall be of a level of complexity and sophistication or the individual's condition shall be of a nature that the services as set out in the written plan of care are performed as an integrated part of a comprehensive rehabilitation plan of care by a recreation therapist certified with the National Council for Therapeutic Recreation at the professional level;

c. The services shall be provided with the expectation, based on the assessment of the individual's rehabilitation potential, that the individual's condition will improve significantly in a reasonable and generally predictable period of time, or these services shall be necessary to the establishment of a safe and effective maintenance therapy program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the individual's condition. The amount, frequency, and duration of the services shall comport with accepted standards of practice.

10. ~~Prosthetic/orthotic~~ Prosthetic and orthotic services.

a. Prosthetic services furnished to a patient include prosthetic devices that replace all or part of an external body member and services necessary to design the device, including measuring, fitting, and instructing the patient in its use.

b. Orthotic device services furnished to a patient include orthotic devices that support or align extremities to prevent or correct deformities, or to improve functioning, and services necessary to design the device, including measuring, fitting, and instructing the patient in its use.

c. Maxillofacial prosthetic and related dental services are those services that are specifically related to the improvement of oral function not to include routine oral and dental care.

d. The services shall be directly and specifically related to a written plan of care approved by a physician after consultation with a prosthetist, orthotist, or a licensed, ~~board-eligible~~ board-eligible prosthodontist who shall be certified in maxillofacial prosthetics.

e. The services shall be provided with the expectation, based on the physician's or other licensed practitioner's assessment of the individual's rehabilitation potential, that the individual's condition will improve significantly in a reasonable and predictable period of time, or these services shall be necessary to the establishment of a safe and effective maintenance therapy program.

f. The services shall be specific and provide effective treatment for the individual's condition. The amount, frequency, and duration of the services shall comport with accepted standards of medical and dental practice.

12VAC30-60-130. Hospice services.

A. Admission criteria.

1. Service election. To be eligible for hospice coverage under Medicare or Medicaid, the recipient shall be "terminally ill," defined as having a life expectancy of six months or less, and, except for individuals ~~under~~ younger than 21 years of age, elect to receive hospice services rather than active treatment for the illness. Both the attending physician (if the individual has an attending physician) and the hospice medical director, or the attending physician and the physician member of the interdisciplinary team, must initially certify the life expectancy. The election statement shall include (i) identification of the hospice that will provide care to the individual; (ii) the individual's or representative's acknowledgment that ~~he~~ the individual or representative has been given a full understanding of the palliative rather than curative nature of hospice care as it relates to the individual's terminal illness; (iii) with the exception of children, defined as persons younger than 21 years of age, acknowledgment that certain Medicaid services are waived by the election; (iv) the effective date of the election; and (v) the signature of the individual or representative.

2. Service revocation. The recipient shall have the right to revoke ~~his~~ election of hospice services at any time during the covered hospice periods. DMAS shall be contacted if the recipient revokes ~~his~~ hospice services. If the recipient reelects the hospice services, the hospice periods will begin as an initial timeframe. Therefore, the certification and time requirements in this subsection will apply. The recipient cannot retroactively receive hospice benefits from previously unused hospice periods. The recipient's written revocation statement shall be maintained in the recipient's medical record.

B. General conditions. The general conditions provided in this subsection apply to nursing care, medical social services, physician services, counseling services, short-term inpatient care, durable medical equipment and supplies, drugs and biologicals, home health aide and homemaker services, and rehabilitation services.

The recipient shall be under the care of a physician who is legally authorized to practice and who is acting within the scope of ~~his~~ the physician's license. The hospice medical

director or the physician member of the interdisciplinary team shall be a licensed doctor of medicine or osteopathy. Hospice services may be provided in the recipient's home or in a freestanding hospice, hospital, or nursing facility.

The hospice shall obtain the written certification that an individual is terminally ill in accordance with the following procedures:

1. For the initial 90-day benefit period of hospice coverage, a Medicaid written certification (DMAS 420) shall be signed and dated by the medical director of the hospice and the attending physician, or the physician member of the hospice interdisciplinary team and the attending physician, at the beginning of the certification period. This initial certification shall be submitted for preauthorization within 14 days from the physician's signature date. This certification shall be maintained in the recipient's medical record.

2. For the subsequent 90-day hospice period, a Medicaid written certification (DMAS 420) shall be signed and dated before or on the begin date of the 90-day hospice period by the medical director of the hospice or the physician member of the hospice's interdisciplinary team. The certification shall include the statement that the recipient's medical prognosis is that ~~his~~ the recipient's life expectancy is six months or less. This certification of continued need for hospice services shall be maintained in the recipient's medical record.

3. After the second 90-day hospice period and until the recipient is no longer in the Medicaid hospice program, a Medicaid written certification shall be signed and dated every 60 days on or before the begin date of the 60-day period. This certification statement shall be signed and dated by the medical director of the hospice or the physician member of the hospice's interdisciplinary team. The certification shall include the statement that the recipient's medical prognosis is that ~~his~~ the recipient's life expectancy is six months or less. This certification shall be maintained in the recipient's medical record.

C. Utilization review. Authorization for hospice services requires an initial preauthorization by DMAS and physician certification of life expectancy. Utilization review will be conducted to determine if services were provided by the appropriate provider and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the recipients' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided. ~~All hospice services shall be provided in accordance with guidelines established in the Virginia Medicaid Hospice Manual.~~

D. Hospice services are a medically directed, interdisciplinary program of palliative services for terminally ill people and their families~~,~~ emphasizing pain and symptom control. The rules pertaining to ~~them~~ hospice services are:

1. Interdisciplinary team. An interdisciplinary team shall include at least the following individuals: a physician (either a hospice employee or a contract physician), a registered nurse, a social worker, and a pastoral or other counselor. Other professionals may also be members of the interdisciplinary team depending on the terminally ill recipient's medical needs.

2. Nursing care. Nursing care shall be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

3. Medical social services. Medical social services shall be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

4. Physician services. Physician services shall be performed by a professional who is licensed to practice, who is acting within the scope of ~~his~~ the professional's license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team shall be a licensed doctor of medicine or osteopathy.

5. Counseling services. Counseling services shall be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Counseling, including dietary counseling, may be provided both for the purpose of training the individual's family or other caregiver to provide care~~,~~ and for the purpose of helping the individual and those caring for ~~him~~ the individual to adjust to the individual's approaching death. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

6. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit~~,~~ or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management ~~which~~ that cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

7. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

8. Drugs and biologicals. Only drugs ~~which~~ that are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

9. Home health aide and homemaker services. Home health aides providing services to hospice recipients shall meet the qualifications specified for home health aides by 42 CFR 484.80. Home health aides may provide personal care services. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment, and services to enable the individual to carry out the plan of care. Home health aide and homemaker services shall be provided under the general supervision of a registered nurse.

10. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

a. Occupational therapy services shall be those services furnished a patient ~~which~~ that meet all of the following conditions:

(1) The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;

(2) The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist; and

(3) The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice, including the requirement that the amount, frequency, and duration of the services shall be reasonable.

b. Physical therapy services shall be those furnished a patient ~~which~~ that meet all of the following conditions:

(1) The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

(2) The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a physical therapist licensed by the Board of Medicine; and

(3) The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice, including the requirement that the amount, frequency, and duration of the services shall be reasonable.

c. Speech-language pathology services shall be those services furnished a patient ~~which~~ that meet all of the following conditions:

(1) The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

(2) The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology; and

(3) The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice, including the requirement that the amount, frequency, and duration of the services shall be reasonable.

11. Documentation of hospice services shall be maintained in the recipient's medical record. Coordination of patient care between all health care professionals should be maintained in the recipient's medical record.

12VAC30-60-150. Quality management review of outpatient rehabilitation therapy services.

A. The following general conditions shall apply to reimbursable outpatient rehabilitation therapy services:

1. The covered services and medical necessity criteria as set out in 12VAC30-50-200 shall apply to these outpatient rehabilitation therapy services.

2. Outpatient rehabilitative therapy services, as defined in 42 CFR 440.130, shall be prescribed by a licensed physician or a licensed practitioner of the healing arts, specifically either a nurse practitioner or physician assistant, and be part of a written plan of care.

3. Quality management reviews shall be performed by DMAS or its contractor to ensure that all rehabilitative services provided to Medicaid individuals are medically necessary and appropriate. Services not specifically documented in the individual's medical record as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

B. Covered outpatient rehabilitative therapy services. Rehabilitation services shall be initiated by a physician or

licensed practitioner for the evaluation and plan of care. Both require a physician or licensed practitioner signature, title, and full date.

A plan of care for therapy services shall (i) include the specific procedures and modalities to be used, (ii) identify the specific discipline to carry out the plan of care, and (iii) indicate the frequency and duration of services.

C. All practitioners and providers of therapy services shall be required to meet state and federal licensing or certification requirements, or both, as may be applicable.

D. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, nursing facilities, home health agencies, and rehabilitation agencies shall at a minimum include:

1. An initial evaluation that describes the clinical signs and symptoms of the individual's condition, including an accurate and complete chronological picture of the individual's clinical course and treatments. The initial evaluation or the reevaluation shall be signed, titled, and dated by the licensed therapist (i) when an individual is initially admitted to a service, (ii) when there is a significant change in the individual's condition, or (iii) when an individual is readmitted to a service.

2. A written plan of care specifically developed for the individual shall be signed, titled, and fully dated by a licensed therapist. Within 21 days of the plan of care start date, the physician or a licensed practitioner shall sign, title, and fully date the plan of care and it shall:

a. Describe specifically the anticipated goal-related improvements in functional level, frequency, and duration of the ordered therapy ~~or therapies,~~ and the anticipated timeframes necessary to meet these long-term and short-term individual goals, including participation by the appropriate rehabilitation therapist or therapists, the individual, and the family or caregiver, as may be appropriate; and

b. Include a discharge plan that contains the anticipated improvements in functional levels and the anticipated timeframes necessary to meet the individual goals:

(1) For outpatient rehabilitative services for acute conditions, as defined in 12VAC30-50-200, the plan of care must be reviewed, updated, and signed and dated at least every 60 days by the licensed therapist and the physician or other licensed practitioner;

(2) For outpatient services for long-term, nonacute conditions, as defined in 12VAC30-50-200, the plan of care must be reviewed, updated, and signed and dated at least every 12 months by the licensed therapist and the physician or other licensed practitioner.

3. The documentation of all treatment rendered to the individual in the progress notes, in accordance with the written plan of care with specific attention to frequency, duration, modality, and the individual's response to treatment. The licensed therapist must sign, title, and fully date all progress notes in the medical record. If therapy assistants provide the treatment under the supervision of a licensed therapist, the assistant shall also sign, title, and fully date the progress notes in the medical record.

4. A description of all changes in the individual's condition, response to the rehabilitative written plan of care, and appropriate revisions to the written plan of care.

5. A discharge summary to be completed by the licensed therapist who is providing the service at the time that the service is terminated, including a description of the individual's response to services, level of independence in carrying out learned skills and abilities, assistive technology necessary to carry out and maintain activities and skills, and recommendations for continued services (i.e., referrals to alternate providers, home maintenance programs, and training to individuals or caregivers~~, etc.~~).

6. The therapist's signature, title, and full date (month/day/year) shall appear on all documentation; if therapy assistants provide the treatment, under the supervision of a licensed therapist, the supervising licensed therapist must document the findings of the supervisory onsite visit every 30 days.

E. Restrictions.

1. The intentional altering of medical record documentation shall be prohibited and is fraudulent. If corrections are ~~indicated, then they shall be made in medical records consistent with the procedures in~~ required, the agency's provider-specific guidance documents ~~(see https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/ProviderManual)~~ provide information on the procedures to be used.

2. DMAS shall not reimburse for evaluations provided prior to the date of the physician's or other licensed practitioner's signature. DMAS shall not reimburse for provider-initiated additional reevaluations that are not specific to DMAS requirements and that are in excess of ~~DMAS'~~ DMAS requirements.

12VAC30-60-170. Utilization review of treatment foster care ~~(TFC)~~ case management services.

A. Service description and provider qualifications. Treatment foster care (TFC) case management is a community-based program where treatment services are designed to address the special needs of children. TFC case management focuses on a continuity of services, and is goal directed and results oriented. Services shall not include room and board. Child-placing agencies licensed or certified by the Virginia Department of

Social Services and that meet the provider qualifications for treatment foster care set forth in Part XV (12VAC30-130-900 et seq.) of this chapter shall provide these services.

B. Utilization control.

1. Assessment. Each child referred for TFC case management must be assessed by a Family Assessment and Planning Team (FAPT) under the Comprehensive Services Act or by an interdisciplinary team approved by the State Executive Council. For purposes of ~~high quality~~ high-quality case management services, the team must (i) assess the child's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities; (ii) assess the potential for reunification of the child's family; (iii) set treatment objectives; and (iv) prescribe therapeutic modalities to achieve the plan's objectives.

2. Qualified assessors. A qualified assessor is a Family Assessment and Planning Team as authorized under §§ 2.2-5207, 2.2-5208, and 2.2-5209 of the Code of Virginia.

3. Preauthorization. Preauthorization shall be required for Medicaid payment of TFC case management services for each admission to this service and will be conducted by DMAS or its utilization management contractor. When service is authorized, an initial length of stay will be assigned. The provider must request authorization for continued stay. Failure to obtain authorization of Medicaid reimbursement for this service within 10 days of admission will result in denial of payments or recovery of expenditures.

4. Medical necessity criteria. Children whose conditions meet this medical necessity criteria will be eligible for Medicaid payment for TFC case management. TFC case management will serve children ~~under age~~ younger than 21 years of age in treatment foster care who are seriously emotionally disturbed (SED) or children with behavioral disorders who in the absence of such programs would be at risk for placement into more restrictive residential settings such as psychiatric hospitals, correctional facilities, residential treatment programs, or group homes. The child must have a documented moderate to severe impairment and moderate to severe risk factors as recorded on a state-designated uniform assessment instrument. The child's condition must meet one of the three levels described below.

a. Level I: Moderate impairment with one or more of the following moderate risk factors as documented on the state-designated uniform assessment instrument:

(1) Needs intensive supervision to prevent harmful consequences;

(2) ~~Moderate/frequent~~ Moderate or frequent disruptive or noncompliant behaviors in home setting that increase the risk to self or others;

(3) Needs assistance of trained professionals as caregivers.

b. Level II: Child must display a significant impairment with problems with authority, impulsivity, and caregiver issues as documented on the state-designated uniform assessment instrument. For example, the child must:

(1) Be unable to handle the emotional demands of family living;

(2) Need 24-hour immediate response to crisis behaviors; or

(3) Have severe disruptive peer and authority interactions that increase risk and impede growth.

c. Level III: Child must display a significant impairment with severe risk factors as documented on the state-designated uniform assessment instrument. Child must demonstrate risk behaviors that create significant risk of harm to self or others.

5. TFC case management admission documentation required. Before Medicaid preauthorization will be granted, the referring entity must submit the following documentation. The documentation will be evaluated by DMAS or its designee to determine whether the child's condition meets the department's medical necessity criteria.

a. A completed state-designated uniform assessment instrument;

b. Diagnosis ~~(Diagnostic Statistical Manual, Fourth Revision (DSM IV), including Axis I (Clinical Disorders); Axis II (Personality Disorders/Mental Retardation); Axis III (General Medical Conditions); Axis IV (Psychosocial and Environmental Problems); and Axis V (Global Assessment of Functioning)~~ based on nationally recognized criteria;

c. A description of the child's immediate behavior prior to admission;

d. A description of alternative placements tried or explored;

e. The child's functional level;

f. Clinical stability;

g. The level of family support available;

h. Initial plan of care; and

i. One of the following:

(1) Written documentation that the Community Planning and Management Team (CPMT) has approved the admission to treatment foster care; or

(2) Certification by the FAPT that TFC case management is medically necessary.

6. Penalty for failure to obtain preauthorization or to prepare and maintain the previously described documentation. The failure to obtain authorization for this service within 10 days of admission or to develop and maintain the documentation enumerated ~~above~~ in subdivision 5 of this subsection will result in denial of payments or recovery of expenditures.

C. Noncovered services. Permanency planning and other activities performed by foster care workers shall not be considered covered services and shall not be reimbursed.

12VAC30-60-185. Utilization review of substance use case management.

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

"Face-to-face" means the same as that term is defined in 12VAC30-130-5020.

"Individual service plan" or "ISP" means the same as the term is defined in 12VAC30-130-5020.

"Progress notes" means individual-specific documentation that contains the unique differences particular to the individual's circumstances, treatment, and progress that is also signed and contemporaneously dated by the provider's professional staff who have prepared the notes and are part of the minimum documentation requirements that convey the individual's status, staff intervention, and as appropriate, the individual's progress or lack of progress toward goals and objectives in the ISP. The progress notes shall also include, at a minimum, the name of the service rendered, the date of the service rendered, the signature and credentials of the person who rendered the service, the setting in which the service was rendered, and the amount of time or units or hours required to deliver the service. The content of each progress note shall corroborate the time or units billed for each rendered service. Progress notes shall be documented for each service that is billed.

"Register" or "registration" means notifying the Department of Medical Assistance Services or its contractor that an individual will be receiving services that do not require service authorization, such as outpatient services for substance use disorders or substance use case management.

B. Utilization review: substance use case management services.

1. The ~~Medicaid enrolled~~ Medicaid-enrolled individual shall ~~meet the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) criteria for~~ have a substance use disorder diagnosis based on nationally recognized criteria. Tobacco-related disorders or caffeine-related disorders and non-substance-related disorders shall not be covered.

2. Reimbursement shall be provided only for "active" case management. An active client for substance use case management shall mean an individual for whom there is a current substance use individual service plan (ISP) in effect that requires a minimum of two distinct substance use case management activities being performed each calendar month and at a minimum one face-to-face client contact at least every 90-calendar-day period.

3. Billing can be submitted for an active recipient only for months in which a minimum of two distinct substance use case management activities are performed.

4. An ISP shall be completed within 30 calendar days of initiation of this service with the individual in a person-centered manner and shall document the need for active substance use case management before such case management services can be billed. The ISP shall require a minimum of two distinct substance use case management activities being performed each calendar month and a minimum of one face-to-face client contact at least every 90 calendar days. The substance use case manager shall review the ISP with the individual at least every 90 calendar days for the purpose of evaluating and updating the individual's progress toward meeting the individualized service plan objectives.

5. The ISP shall be reviewed with the individual present, and the outcome of the review shall be documented in the individual's medical record.

C. Utilization review: substance use case management services.

1. Utilization review general requirements. Utilization reviews shall be conducted by DMAS or its designated contractor. Reimbursement shall be provided only when there is an active ISP, a minimum of two distinct substance use case management activities are performed each calendar month, and there is a minimum of one face-to-face client contact at least every 90-calendar-day period. Billing can be submitted only for months in which a minimum of two distinct substance use case management activities are performed within the calendar month.

2. In order to receive reimbursement, providers shall register this service with the managed care organization or the DMAS contractor, as required, within one business day of service initiation to avoid duplication of services and to ensure informed and seamless care coordination between substance use treatment and substance use case management providers.

3. The Medicaid eligible individual shall meet the ~~Diagnostic and Statistical Manual of Mental Disorders (DSM-5)~~ nationally recognized criteria for a substance use disorder with the exception of tobacco-related disorders or caffeine-related disorders and non-substance-related disorders.

4. Substance use case management shall not be billed for individuals in institutions for mental disease, except during the month prior to discharge to allow for discharge planning, limited to two months within a 12-month period. Substance use case management shall not be billed concurrently with any other type of Medicaid reimbursed case management and care coordination.

5. The ISP, as defined in 12VAC30-130-5020, shall document the need for substance use case management and be fully completed within 30 calendar days of initiation of the service, and the substance use case manager shall review the ISP at least every 90 calendar days. Such reviews shall be documented in the individual's medical record. If needed, a grace period will be granted following the date of the last review. When the review is completed in a grace period, the next subsequent review shall be scheduled 90 calendar days from the date the review was initially due and not the date of actual review.

6. The ISP shall be updated and documented in the individual's medical record at least annually and as an individual's needs change.

7. The provider of substance use case management services shall be licensed by the Department of Behavioral Health and Developmental Services as a provider of substance use case management and credentialed by the DMAS contractor or the managed care organization as a provider of substance use case management services.

8. Progress notes, as defined in subsection A of this section, shall be required to disclose the extent of services provided and corroborate the units billed.

12VAC30-60-303. Screening criteria for Medicaid-funded long-term services and supports.

A. Functional capacity alone shall not be deemed sufficient to demonstrate the need for nursing facility care admission or authorization for home and community-based services and supports. An individual shall be determined to meet the nursing facility criteria when:

1. The individual has both limited functional capacity, medical or nursing needs, and is at risk of NF admission within 30 days according to the requirements of this section; or

2. The individual is rated dependent in some functional limitations, but does not meet the functional capacity requirements, and the individual requires the daily direct services or supervision of a licensed nurse that cannot be managed on an outpatient basis (e.g., clinic, physician visits, home health services).

B. In order to qualify for Medicaid-funded LTSS, the individual shall meet the following criteria:

1. The criteria for screening an individual's eligibility for Medicaid reimbursement of NF services shall consist of three components: (i) functional capacity (the degree of assistance an individual requires to complete ADLs)~~;~~ (ii) medical or nursing needs~~;~~ and (iii) the ~~individual is at~~ individual's risk of NF admission within 30 days of the screening date. The rating of functional dependency on the UAI shall be based on the individual's ability to function in a community environment and exclude all institutionally induced dependencies.

2. In order for Medicaid-funded community-based LTSS to be authorized, an individual shall not be required to be physically admitted to ~~a~~ an NF. The criteria for screening an individual's eligibility for Medicaid reimbursement of community-based services shall consist of three components: (i) functional capacity~~;~~ (ii) medical or nursing needs~~;~~ and (iii) the individual's risk of NF placement within 30 days in the absence of community-based services.

C. Functional capacity.

1. When documented on a UAI that is completed in a manner consistent with the definitions of activities of daily living (ADLs) and directions provided by DMAS for the rating of those activities, individuals may be considered to meet the functional capacity requirements for nursing facility care when one of the following describes their functional capacity:

a. Rated dependent in two to four of the ADLs, and also rated semi-dependent or dependent in Behavior Pattern and Orientation, and semi-dependent or dependent in Joint Motion or dependent in Medication Administration.

b. Rated dependent in five to seven of the ADLs, and also rated dependent in Mobility.

c. Rated semi-dependent or dependent in two to seven of the ADLs, and also rated dependent in Mobility and Behavior Pattern and Orientation.

2. The rating of functional capacity on the screening instrument shall be based on the individual's ability to function in a community environment, not including any institutionally induced dependence. The following abbreviations shall mean: I = independent; d = semi-dependent; D = dependent; MH = mechanical help; HH = human help.

a. Bathing.

(1) Without help (I)

(2) MH only (d)

(3) HH only (D)

(4) MH and HH (D)

(5) Performed by Others (D)

b. Dressing.

(1) Without help (I)

(2) MH only (d)

(3) HH only (D)

(4) MH and HH (D)

(5) Performed by Others (D)

(6) Is not Performed (D)

c. Toileting.

(1) Without help day or night (I)

(2) MH only (d)

(3) HH only (D)

(4) MH and HH (D)

(5) Performed by Others (D)

d. Transferring.

(1) Without help (I)

(2) MH only (d)

(3) HH only (D)

(4) MH and HH (D)

(5) Performed by Others (D)

(6) Is not Performed (D)

e. Bowel function.

(1) Continent (I)

(2) Incontinent less than weekly (d)

(3) External/Indwelling Device/Ostomy -- self care (d)

(4) Incontinent weekly or more (D)

(5) Ostomy -- not self care (D)

f. Bladder function.

(1) Continent (I)

(2) Incontinent less than weekly (d)

(3) External device/Indwelling Catheter/Ostomy -- self care (d)

(4) Incontinent weekly or more (D)

(5) External device -- not self care (D)

(6) Indwelling catheter -- not self care (D)

(7) Ostomy -- not self care (D)

g. Eating/Feeding.

(1) Without help (I)

(2) MH only (d)

(3) HH only (D)

(4) MH and HH (D)

(5) Spoon fed (D)

(6) Syringe or tube fed (D)

(7) Fed by IV or clysis (D)

h. Behavior pattern and orientation.

(1) Appropriate or Wandering/Passive less than weekly + Oriented (I)

(2) Appropriate or Wandering/Passive less than weekly + Disoriented -- Some Spheres (I)

(3) Wandering/Passive Weekly/or more + Oriented (I)

(4) Appropriate or Wandering/Passive less than weekly + Disoriented -- All Spheres (d)

(5) Wandering/Passive Weekly/Some or more + Disoriented -- All Spheres (d)

(6) Abusive/Aggressive/Disruptive less than weekly + Oriented or Disoriented (d)

(7) Abusive/Aggressive/Disruptive weekly or more + Oriented (d)

(8) Abusive/Aggressive/Disruptive + Disoriented -- All Spheres (D)

i. Mobility.

(1) Goes outside without help (I)

(2) Goes outside MH only (d)

(3) Goes outside HH only (D)

(4) Goes outside MH and HH (D)

(5) Confined -- moves about (D)

(6) Confined -- does not move about (D)

j. Medication administration.

(1) No medications (I)

(2) Self administered -- monitored less than weekly (I)

(3) By lay persons, Administered/Monitored (D)

(4) By Licensed/Professional nurse Administered/Monitored (D)

k. Joint motion.

(1) Within normal limits or instability corrected (I)

(2) Limited motion (d)

(3) Instability -- uncorrected or immobile (D)

D. Medical or nursing needs. An individual with medical or nursing needs is an individual whose health needs require medical or nursing supervision or care above the level that could be provided through assistance with ADLs, medication administration, and general supervision and is not primarily for the care and treatment of mental diseases. Medical or nursing supervision or care beyond this level is required when any one of the following describes the individual's need for medical or nursing supervision:

1. The individual's medical condition requires observation and assessment to ensure evaluation of the individual's need for modification of treatment or additional medical procedures to prevent destabilization, and the person has demonstrated an inability to ~~self-observe~~ self-observe or evaluate the need to contact skilled medical professionals;

2. Due to the complexity created by the individual's multiple, interrelated medical conditions, the potential for the individual's medical instability is high or medical instability exists; or

3. The individual requires at least one ongoing medical or nursing service. The following is a nonexclusive list of medical or nursing services that may, but need not necessarily, indicate a need for medical or nursing supervision or care:

a. Application of aseptic dressings;

b. Routine catheter care;

c. Respiratory therapy;

d. Supervision for adequate nutrition and hydration for individuals who show clinical evidence of malnourishment or dehydration or have recent history of weight loss or inadequate hydration that, if not supervised, would be expected to result in malnourishment or dehydration;

e. Therapeutic exercise and positioning;

f. Routine care of colostomy or ileostomy or management of neurogenic bowel and bladder;

g. Use of physical (e.g., side rails, poseys, locked wards) or chemical restraints, or both;

h. Routine skin care to prevent pressure ulcers for individuals who are immobile;

i. Care of small uncomplicated pressure ulcers and local skin rashes;

j. Management of those with sensory, metabolic, or circulatory impairment with demonstrated clinical evidence of medical instability;

k. Chemotherapy;

l. Radiation;

m. Dialysis;

n. Suctioning;

o. Tracheostomy care;

p. Infusion therapy; or

q. Oxygen.

E. When screening a child, the screening entity ~~who~~ that is conducting the screening for LTSS shall utilize the electronic Uniform Assessment Instrument (UAI) ~~interpretive guidance as referenced in DMAS' Medicaid Memo dated November 22, 2016, entitled "Reissuance of the Pre-Admission Screening (PAS) Provider Manual, Chapter IV," which can be accessed on the DMAS website at https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/MedicaidMemostoProviders.~~
Instructions for completing the UAI may be found in the Long-Term Screening and Supports Manual.

~~DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-60)~~

~~Department of Medical Assistance Services Provider Manuals (https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/ProviderManuals):~~

~~Virginia Medicaid Nursing Home Manual~~

~~Virginia Medicaid Rehabilitation Manual~~

~~Virginia Medicaid Hospice Manual~~

~~Virginia Medicaid School Division Manual~~

~~Development of Special Criteria for the Purposes of Pre-Admission Screening, Medicaid Memo, October 3, 2012, Department of Medical Assistance Services~~

~~Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV-TR), copyright 2000, American Psychiatric Association~~

~~Patient Placement Criteria for the Treatment of Substance-Related Disorders (ASAM PPC-2R), Second Edition, copyright 2001, American Society on Addiction Medicine, Inc.~~

~~Medicaid Memo, Reissuance of the Pre-Admission Screening (PAS) Provider Manual, Chapter IV, November 22, 2016, Department of Medical Assistance Services~~

~~Medicaid Special Memo, Subject: New Service Authorization Requirement for an Independent Clinical Assessment for Medicaid and FAMIS Children's Community Mental Health Rehabilitative Services, dated June 16, 2011, Department of Medical Assistance Services~~

~~Medicaid Special Memo, Subject: Changes to Children Community Mental Health Rehabilitative Services - Children's Services, July 1, 2010 & September 1, 2010, dated July 23, 2010, Department of Medical Assistance Services~~

~~Medicaid Special Memo, Subject: Changes to Community Mental Health Rehabilitative Services - Adult-Oriented Services, July 1, 2010 & September 1, 2010, dated July 23, 2010, Department of Medical Assistance Services~~

~~Approved Degrees in Human Services and Related Fields for QMHP Registration, adopted November 3, 2017, revised February 9, 2018~~

VA.R. Doc. No. R24-7639; Filed July 15, 2024, 1:49 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Final Regulation

Title of Regulation: **18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-10, 18VAC50-30-120, 18VAC50-30-130, 18VAC50-30-210, 18VAC50-30-220, 18VAC50-30-230, 18VAC50-30-250, 18VAC50-30-260; adding 18VAC50-30-270; repealing 18VAC50-30-73, 18VAC50-30-75, 18VAC50-30-240).**

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

Effective Date: October 1, 2024.

Agency Contact: Cameron Parris, Regulatory Operations Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-9183, FAX (866) 350-5354, or email cameron.parris@dpor.virginia.gov.

Summary:

The amendments (i) remove the definition for "inactive tradesman" as it is no longer necessary; (ii) repeal requirements pertaining to the activation and inactivation of tradesmen licenses; (iii) add a new provision that

allows an individual who failed to reinstate a license to be deemed eligible to re-take the license examination in the same category and specialty as the expired license; (iv) remove the provision requiring a training provider to receive board approval of the training course subject prior to offering the course; (v) remove the requirement that student records and course completion information sent to the board contain a student's social security number to comport with federal requirements regarding use of social security numbers; (vi) repeal the requirement for posting of continuing education (CE) provider and CE course certificates of approval at the location where a course is taught; and (vii) add a new section stating that the board may conduct an audit of any board-approved education course to ensure compliance with the regulation.

Nonsubstantive corrections have been made to the proposed regulation.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC50-30-10. Definitions.

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

"Apprentice" means a person who assists tradesmen while gaining knowledge of the trade through on-the-job training and related instruction in accordance with the Virginia Voluntary Apprenticeship Act (§ 40.1-117 et seq. of the Code of Virginia).

"Backflow prevention device work" means work performed by a backflow prevention device worker as defined in § 54.1-1128 of the Code of Virginia (13VAC5-63).

"Building official/inspector" is an employee of the state, a local building department, or other political subdivision who enforces the Virginia Uniform Statewide Building Code (13VAC5-63).

"Certified accessibility mechanic" means an individual who is certified by the board who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing, or maintaining wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private residence elevators.

"Certified automatic fire sprinkler inspector" means an individual who is certified by this chapter and whose work includes the inspection of sprinkler systems as defined in Section 3.6.4 of NFPA 25 (2014 edition), including subsections 3.6.4.1 through 3.6.4.6.

"Certified elevator mechanic" means an individual who is certified by the board who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing, or maintaining elevators, escalators, or related conveyances in accordance with the Virginia Uniform Statewide Building Code.

"Department" means the Department of Professional and Occupational Regulation.

"Division" means a limited subcategory within any of the trades, as approved by the department.

"Electrical work" consists of, but is not limited to, the following: (i) planning and layout of details for installation or modifications of electrical apparatus and controls including preparation of sketches showing location of wiring and equipment; (ii) measuring, cutting, bending, threading, assembling, and installing electrical conduits; (iii) performing maintenance on electrical systems and apparatus; (iv) observation of installed systems or apparatus to detect hazards and need for adjustments, relocation, or replacement; and (v) repairing faulty systems or apparatus.

"Electrician" means a tradesman who does electrical work including the construction, repair, maintenance, alteration, or removal of electrical systems in accordance with the National Electrical Code and the Virginia Uniform Statewide Building Code.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the board, conducted by trade associations, businesses, the military, correspondence schools, or other similar training organizations.

"Gas fitter" means an individual who does gas fitting-related work usually as a division within the HVAC or plumbing trades in accordance with the Virginia Uniform Statewide Building Code. This work includes the installation, repair, improvement, or removal of liquefied petroleum or natural gas piping, tanks, and appliances annexed to real property.

"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in this chapter.

"HVAC tradesman" means an individual whose work includes the installation, alteration, repair, or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heating systems, boilers, process piping, backflow prevention devices, and mechanical refrigeration systems, including tanks incidental to the system.

~~"Inactive tradesman" means an individual who meets the requirements of 18VAC50-30-73 and is licensed under that section.~~

"Incidental" means work that is necessary for that particular repair or installation and is outside the scope of practice allowed to the regulant by this chapter.

"Journeyman" means a person who possesses the necessary ability, proficiency, and qualifications to install, repair, and maintain specific types of materials and equipment utilizing a

working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code and according to plans and specifications.

"Limited use/limited application endorsement" means an addition to the certification record of a certified accessibility mechanic authorizing the certificate holder to erect, construct, install, alter, service, repair, test, or maintain limited use/limited application elevators as defined by the Virginia Uniform Statewide Building Code.

"Liquefied petroleum gas fitter" means any individual who engages in or offers to engage in work for the general public for compensation in work that includes the installation, repair, improvement, alterations, or removal of piping, liquefied petroleum gas tanks, and appliances (excluding hot water heaters, boilers, and central heating systems that require a heating, ventilation and air conditioning, or plumbing certification) annexed to real property.

"Maintenance" means the reconstruction or renewal of any part of a backflow device for the purpose of maintaining its proper operation. This does not include the actions of removing, replacing, or installing, except for winterization.

"Master" means a person who possesses the necessary ability, proficiency, and qualifications to plan and lay out the details for installation and supervise the work of installing, repairing, and maintaining specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code.

"Natural gas fitter provider" means any individual who engages in, or offers to engage in, work for the general public for compensation in the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property, excluding new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires heating, ventilation, and air conditioning or plumbing certification.

"Periodic inspection" means to examine a cross connection control device in accordance with the requirements of the locality to be sure that the device is in place and functioning in accordance with the standards of the Virginia Uniform Statewide Building Code.

"Plumber" means an individual who does plumbing work in accordance with the Virginia Uniform Statewide Building Code.

"Plumbing work" means work that includes the installation, maintenance, extension, or alteration or removal of piping, fixtures, appliances, and appurtenances in connection with any of the following:

1. Backflow prevention devices;

2. Boilers;

3. Domestic sprinklers;

4. Hot water baseboard heating systems;

5. Hydronic heating systems;

6. Process piping;

7. Public or private water supply systems within or adjacent to any building, structure, or conveyance;

8. Sanitary or storm drainage facilities;

9. Steam heating systems;

10. Storage tanks incidental to the installation of related systems;

11. Venting systems; or

12. Water heaters.

These plumbing tradesmen may also install, maintain, extend, or alter the following:

1. Liquid waste systems;

2. Sewerage systems;

3. Storm water systems; and

4. Water supply systems.

"Regulant" means an individual (i) licensed as a tradesman, liquefied petroleum gas fitter, or natural gas fitter provider or (ii) certified as a backflow prevention device worker, elevator mechanic, water well systems provider, or fire sprinkler inspector.

"Reinstatement" means having a license or certification [~~card~~] restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or certification [~~card~~] for another period of time.

"Repair" means the reconstruction or renewal of any part of a backflow prevention device for the purpose of returning to service a currently installed device. This does not include the removal or replacement of a defective device by the installation of a rebuilt or new device.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code, one of whom must be on the job site at all times during installation.

"Testing organization" means an independent testing organization whose main function is to develop and administer examinations.

"Trade" means any of the following: electrical, gas fitting, HVAC (heating, ventilation, and air conditioning), liquefied petroleum gas fitting, natural gas fitting, plumbing, and divisions within them.

"Water distribution systems" includes fire sprinkler systems, highway/heavy, HVAC, lawn irrigation systems, plumbing, or water purveyor work.

18VAC50-30-73. ~~Licensing of inactive tradesmen.~~ (Repealed.)

~~Any individual who is not currently employed as a licensed tradesman and who is not performing any of the activities defined in § 54.1-1128 of the Code of Virginia may be licensed as an inactive tradesman by completing a form provided by the board.~~

18VAC50-30-75. ~~Activation of license.~~ (Repealed.)

~~Any inactive tradesman may activate a license to practice as a tradesman by completing a form provided by the board and completing the continuing education requirements for the current licensing cycle. Any tradesman that has not had an active license for a period of greater than three years will be required to meet the current prelicensing eligibility criteria.~~

18VAC50-30-120. Renewal.

A. Licenses issued under this chapter to electricians, gas fitters, HVAC tradesmen, or plumbers ~~shall~~ will expire three years from the last day of the month in which they were issued as indicated on the license.

B. All other licenses and [~~certification cards~~ certifications] issued under this chapter ~~shall~~ will expire two years from the last day of the month in which they were issued as indicated on the license or certification [~~card~~].

C. ~~Effective with all licenses issued or renewed after December 31, 2007, as~~ As a condition of renewal or reinstatement and pursuant to § 54.1-1133 of the Code of Virginia, all individuals holding tradesman licenses with the trade designations of plumbing, electrical, and heating ventilation and cooling ~~shall be required to~~ must satisfactorily complete three hours of continuing education for each designation, and individuals holding ~~licenses~~ a license as a liquefied petroleum gas ~~fitters and~~ fitter, a natural gas fitter ~~providers~~ provider, or a gas fitter, one hour of continuing education, relating to the applicable building code changes, from a provider approved by the board ~~in accordance with the provisions of this chapter. An inactive tradesman is not required to meet the continuing education requirements as a condition of renewal~~.

D. Certified elevator mechanics and certified accessibility mechanics, as a condition of renewal ~~or reinstatement~~ and pursuant to § 54.1-1143 of the Code of Virginia, ~~shall be required to~~ must satisfactorily complete eight hours of continuing education relating to the provisions of the Virginia Uniform Statewide Building Code (13VAC5-63) pertaining to elevators, escalators, and related conveyances. This continuing education ~~will~~ must be from a provider approved by the board ~~in accordance with the provisions of this chapter~~.

E. Certified water well systems providers, as a condition of renewal or reinstatement and pursuant to § 54.1-1129.1 B of the Code of Virginia, ~~shall be required to~~ must satisfactorily complete eight hours of continuing education in the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction from a provider approved by the board ~~in accordance with the provisions of this chapter~~.

F. Certified automatic fire sprinkler inspectors, as a condition of renewal and pursuant to § 54.1-1148 of the Code of Virginia, ~~shall be required to~~ must satisfactorily complete eight hours of continuing education relating to changes and knowledge of the Virginia Statewide Fire Prevention Code (13VAC5-51). No renewal will be permitted once 30 days from the expiration date have passed. After that date, the applicant must apply for a new certification and meet the current entry requirements.

G. Renewal fees are as follows:

Tradesman license	$135
Liquefied petroleum gas fitter license	$90
Natural gas fitter provider license	$90
Backflow prevention device worker certification	$90
Elevator mechanic certification	$90
Certified accessibility mechanic	$90
Certified automatic fire sprinkler inspector	$90
Water well systems provider certification	$90
Residential building energy analyst license	$90

All fees are nonrefundable and ~~shall~~ will not be prorated.

Tradesman license renewal fees received on or before August 31, 2025, shall be $100. For all other renewal fees received on or before August 31, 2025, the fee shall be $70.

H. The board will mail a renewal notice to the regulant outlining procedures for renewal. Failure to receive this notice, however, ~~shall~~ will not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a ~~photocopy~~ copy of the ~~tradesman~~ license or ~~backflow prevention device worker~~ certification ~~card~~ may be submitted with the required fee as an application for renewal within 30 days of the expiration date.

I. The date on which the renewal fee is received by the department or its agent will determine whether the regulant is eligible for renewal or required to apply for reinstatement.

J. The board may deny renewal of a ~~tradesman~~ license or ~~a backflow prevention device worker~~ certification ~~card~~ for the same reasons as it may refuse initial [~~issuance~~ licensure or certification] or discipline a regulant. The regulant has a right

to ~~appeal~~ request review of any such action by the board under the ~~Virginia~~ Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

K. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department ~~such as, but not limited to,~~ including renewal, reinstatement, or processing of a new application~~, or exam administration~~.

L. Residential building energy analysts, as a condition of renewal or reinstatement, ~~shall~~ must provide documentation of continued membership, in good standing, of a certifying organization approved by the board and proof of insurance as required in 18VAC50-30-40 I 4.

18VAC50-30-130. Reinstatement.

A. ~~Should the Department of Professional and Occupational Regulation fail to receive the renewal application or fees~~ Except as provided in 18VAC50-30-120 F, if all of the applicable requirements for renewal of the license or certification as specified in 18VAC50-30-120 are not completed within 30 days of the license or certification expiration date, ~~the regulant will be required to apply for reinstatement of the license or certification card~~ a reinstatement fee [~~shall~~ will] be required as established in subsection B of this section.

B. Reinstatement fees are as follows:

Tradesman license	$185*
Liquefied petroleum gas fitter license	$140*
Natural gas fitter provider license	$140*
Backflow prevention device worker certification	$140*
Elevator mechanic certification	$140*
Certified accessibility mechanic	$140*
Water well systems provider certification	$140*
Residential building energy analyst license	$140*
*Includes renewal fee listed in 18VAC50-30-120.	

All fees required by the board are nonrefundable and ~~shall~~ will not be prorated.

Tradesman license reinstatement fees received on or before August 31, 2025, shall be $150. For all other reinstatement fees received on or before August 31, 2025, the fee shall be $120. This fee includes the renewal fee listed in 18VAC50-30-120.

~~C. Applicants for reinstatement shall meet the requirements of 18VAC50-30-30.~~

~~D.~~ C. The date on which the reinstatement fee is received by the department or its agent will determine whether the license or certification [~~card~~] is reinstated or a new application is required.

~~E. In order to ensure that license or certification card holders are qualified to practice as tradesmen, gas fitters, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers, elevator mechanics, water well systems providers, or residential building energy analysts, no reinstatement will be permitted once~~ D. A license or certification may be reinstated for up to [~~two years~~ 24 months] ~~from~~ following the expiration date ~~has passed. After that date the applicant~~ of the license [or certification]. An individual who fails to reinstate the license or certification within 24 months after the expiration date must apply for a new license or certification ~~card~~ and meet ~~the then current~~ entry requirements in effect at the time of the submittal of the new application. Such individual will be deemed to be eligible to sit for the examination for the same category and specialty of license as the expired license.

~~F.~~ E. Any ~~tradesman, liquefied petroleum gas fitter, or natural gas fitter provider~~ regulated activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia. ~~Further, any person who holds himself out as a certified backflow prevention device worker, as defined in § 54.1-1128 of the Code of Virginia, or as a certified elevator mechanic or certified accessibility mechanic, as defined in § 54.1-1140 of the Code of Virginia, or as a water well systems provider as defined in § 54.1-1129.1 of the Code of Virginia, without the appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia. Any activity related to the operating integrity of an elevator, escalator, or related conveyance, conducted subsequent to the expiration of an elevator mechanic certification may constitute illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Any individual who completes a residential building energy analysis, as defined in § 54.1-1144 of the Code of Virginia, subsequent to the expiration of a residential building energy analyst license may have engaged in illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia.~~

~~G.~~ F. The board may deny reinstatement of a license or certification ~~card~~ for the same reasons as it may refuse initial ~~issuance~~ [~~license~~ licensure] or certification or ~~to~~ discipline a regulant. The regulant has a right to ~~appeal~~ request further review of any such action by the board under the ~~Virginia~~ Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

~~H.~~ G. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order ~~shall~~ will result in delaying or withholding

services provided by the department, ~~such as, but not limited to,~~ including renewal, reinstatement, or processing of a new application~~, or exam administration~~.

18VAC50-30-210. Continuing education providers.

A. ~~Application requirements for continuing education providers.~~ Each provider of a building code-related continuing education course ~~shall~~ must submit an application for approval on a form provided by the board. The application ~~shall~~ must include ~~but is not limited to~~:

1. The name of the provider;

2. Provider contact person, address and telephone number;

3. Course contact hours;

4. Schedule of courses, if established, including dates, time, and locations;

5. ~~Name(s)~~ Name of ~~instructor(s)~~ the instructor.

B. Continuing education providers ~~shall~~ must have their ~~subject(s)~~ subjects approved by the board ~~prior to initially offering the course~~. Correspondence and other distance learning courses must include appropriate testing procedures to verify completion of the course.

C. All providers must establish and maintain a record for each student. The record ~~shall~~ must include the student's name and address, ~~social security number or~~ current individual license number, the course name and clock hours attended, the course syllabus or outline, the name ~~or names~~ of the instructor, the date of successful completion, and the board's course code. Records ~~shall~~ must be available for inspection during normal business hours by authorized representatives of the board. Providers must maintain class records for a minimum of five years.

18VAC50-30-220. Continuing education courses.

A. All courses offered by continuing education providers must be approved by the board and ~~shall~~ must cover articles of the current edition of the building code, including any changes, for the applicable license ~~specialty~~ or certification. For electrical tradesmen ~~with the electrical specialty~~, the National Electrical Code; for plumbing tradesmen ~~with the plumbing specialty~~, the International Plumbing Code; for HVAC tradesmen ~~with HVAC specialty~~, the International Mechanical Code; for gas ~~fitters~~ fitter, liquefied petroleum gas ~~fitters~~ fitter, and natural gas ~~fitters~~ fitter provider [~~tradesman~~ tradesmen], the International Fuel Gas Code. Courses offered by continuing education providers for elevator mechanics ~~shall~~ must cover articles of the current edition of the building code and other applicable laws governing elevators, escalators, or related conveyances. Courses offered by continuing education providers for accessibility mechanics ~~shall~~ must cover articles of the current edition of the building code and other applicable laws governing wheelchair lifts, incline chairlifts, dumbwaiters, and private residence elevators. Courses offered by continuing education providers for water well systems providers ~~shall~~ must cover the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction.

B. Approved continuing education providers ~~shall~~ must submit an application for course approval on a form provided by the board. The application ~~shall~~ must include ~~but is not limited to~~:

1. The name of the provider and the approved provider number;

2. The name of the course;

3. The ~~date(s)~~ date, ~~time(s)~~ time, and ~~location(s)~~ location of the course;

4. Instructor information, including name, license ~~number(s)~~ number, if applicable, and a list of other appropriate trade designations; [and

~~5. Course and material fees;~~

~~6.~~ 5.] Course syllabus.

C. ~~Courses may be approved retroactively; however, no~~ No regulant will receive credit toward the continuing education requirements of renewal until such approval is received from the board.

18VAC50-30-230. Reporting of course completion.

All continuing education providers ~~shall~~ must electronically transmit course completion data to the board in an approved format within seven days of the completion of each individual course. The transmittal ~~will~~ must include each student's name, ~~social security number or~~ current individual license [or certification] number [~~;~~ ,] the date of successful completion of the course [~~;~~ ,] and the board's course code.

18VAC50-30-240. ~~Posting continuing education provider and course certificates of approval.~~ (Repealed.)

~~Copies of continuing education provider and course certificates of approval must be available at the location a course is taught.~~

18VAC50-30-250. Reporting of changes.

Any change in the information provided in 18VAC50-30-210 A must be reported to the board within 30 days of the change with the exception of changes in the schedule of courses, which must be reported within 10 days of the change. ~~Failure to report the changes as required may result in the withdrawal of approval of a continuing education provider by the board.~~

18VAC50-30-260. Withdrawal of approval.

The board may withdraw approval of any continuing education provider for the following reasons:

1. The courses being offered no longer meet the standards established by the board.

2. The provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive way.

3. The provider, instructor, or designee of the provider falsifies any information relating to the application for approval, course information, or student records or fails to produce records required by 18VAC50-30-210 C.

4. Failure to comply with 18VAC50-30-250.

18VAC50-30-270. Board authority to audit approved education courses.

The board may conduct an audit of any board-approved education course to ensure continued compliance with this chapter.

VA.R. Doc. No. R23-7419; Filed July 16, 2024, 9:38 a.m.

Final Regulation

Title of Regulation: **18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-10, 18VAC50-30-30, 18VAC50-30-41, 18VAC50-30-70, 18VAC50-30-90, 18VAC50-30-140 through 18VAC50-30-170, 18VAC50-30-185, 18VAC50-30-190, 18VAC50-30-200; adding 18VAC50-30-25; repealing 18VAC50-30-20).**

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

Effective Date: October 1, 2024.

Agency Contact: Cameron Parris, Regulatory Operations Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-9183, FAX (866) 350-5354, or email cameron.parris@dpor.virginia.gov.

Summary:

The amendments (i) update and clarify provisions of the regulation, ensuring that the regulation reflects current agency procedures and practices; (ii) ensure the regulation complements current Virginia law and is clearly written and understandable; (iii) remove requirements in the regulation that are not necessary to protect the public welfare; and (iv) reduce regulatory burdens, while still protecting the public health, safety, and welfare and include significant changes to definitions, application procedures, general requirements for licensure or certification, Board for Contractors disciplinary authority, and prohibited acts.

Clarifying amendments to the adding or deleting of trade designations on a trade license are made to the proposed regulation; all other changes to the proposed regulation are nonsubstantive.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC50-30-10. Definitions.

A. Section 54.1-1128 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Backflow prevention device worker"

"Board"

"Liquified petroleum gas fitter"

"Natural gas fitter provider"

"Tradesman"

"Water well systems provider"

B. Section 54.1-1140 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Accessibility mechanic"

"Certified accessibility mechanic"

"Elevator mechanic"

"Limited use/limited application endorsement"

C. Section 54.1-1144 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Accredited residential building energy analyst training program"

"Licensed residential building energy analyst"

"Residential building energy analysis"

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

~~"Apprentice" means a person who assists tradesmen while gaining knowledge of the trade through on-the-job training and related instruction in accordance with the Virginia Voluntary Apprenticeship Act (§ 40.1-117 et seq. of the Code of Virginia).~~

"Address of record" means the mailing address designated by the licensee to receive notices and correspondence from the board.

"Applicant" means an individual who has submitted an application for licensure.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

"Backflow prevention device work" means work performed by a backflow prevention device worker ~~as defined in § 54.1-1128 of the Code of Virginia (13VAC5-63)~~ for reconstruction or renewal of any part of a backflow prevention device for the

purpose of returning to service a currently installed device. This does not include the removal or replacement of a defective device by the installation of a rebuilt or new device.

~~"Building official/inspector" is an employee of the state, a local building department, or other political subdivision who enforces the Virginia Uniform Statewide Building Code.~~

~~"Certified accessibility mechanic" means an individual who is certified by the board who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing, or maintaining wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private residence elevators.~~

"Certified automatic fire sprinkler inspector" means an individual who is certified by this chapter and whose work includes the inspection of automatic fire sprinkler systems as defined in ~~Section 3.6.4 of NFPA 25 (2014 edition), including subsections 3.6.4.1 through 3.6.4.6~~ the Virginia Construction Code (Part I (13VAC5-63-10 et seq.) of 13VAC5-63).

~~"Certified elevator mechanic" means an individual who is certified by the board who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing, or maintaining elevators, escalators, or related conveyances in accordance with the Virginia Uniform Statewide Building Code.~~

~~"Division" means a limited subcategory within any of the trades, as approved by the department.~~

"Electrical work" consists of, but is not limited to, the following: (i) planning and layout of details for installation or modifications of electrical apparatus and controls including preparation of sketches showing location of wiring and equipment; (ii) measuring, cutting, bending, threading, assembling, and installing electrical conduits; (iii) performing maintenance on electrical systems and apparatus; (iv) observation of installed systems or apparatus to detect hazards and need for adjustments, relocation, or replacement; and (v) repairing faulty systems or apparatus.

"Electrician" means a tradesman who ~~does electrical work including~~ performs the construction, repair, maintenance, alteration, or removal of electrical systems ~~in accordance with the National Electrical Code and~~ regulated under the Virginia Uniform Statewide Building Code (13VAC5-63).

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the board, conducted by trade associations, businesses, the military, correspondence schools, or other similar training organizations.

"Gas fitter" means ~~an individual~~ a tradesman who ~~does~~ performs gas fitting-related work usually ~~as a division~~ within the HVAC or plumbing trades ~~in accordance with the~~ regulated under Virginia Uniform Statewide Building Code. ~~This~~ [~~Gas fitting related~~ Gas fitting-related] work includes the installation, repair, improvement, or removal of industrial gas, fuel gas, gaseous hydrogen, liquefied petroleum or natural gas piping, tanks, chimneys and vents, direct vents, equipment, and appliances annexed to real property.

"Helper" or "laborer" means a person who assists a ~~licensed tradesman and who is not an apprentice as defined in this chapter~~ regulant.

"HVAC tradesman" means an individual ~~whose work includes the installation, alteration, repair, or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heating systems, boilers, process piping, backflow prevention devices, and mechanical refrigeration systems, including tanks incidental to the system~~ who performs the construction, repair, maintenance, alteration, or removal of HVAC systems regulated under the Virginia Uniform Statewide Building Code.

"HVAC work" means work that includes the installation, alteration, repair, or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heating systems, boilers, process piping, backflow prevention devices, and mechanical refrigeration systems, including tanks incidental to the system.

"Inactive tradesman" means an individual who meets the requirements of 18VAC50-30-73 and is licensed under that section.

"Incidental" means work that is necessary for that particular repair or installation and is outside the scope of practice allowed to the regulant by this chapter.

"Journeyman" means a person who possesses the necessary ability, proficiency, and qualifications to install, repair, and maintain specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code and according to plans and specifications.

~~"Limited use/limited application endorsement" means an addition to the certification record of a certified accessibility mechanic authorizing the certificate holder to erect, construct, install, alter, service, repair, test, or maintain limited use/limited application elevators as defined by the Virginia Uniform Statewide Building Code.~~

~~"Liquefied petroleum gas fitter" means any individual who engages in or offers to engage in work for the general public for compensation in work that includes the installation, repair, improvement, alterations, or removal of piping, liquefied petroleum gas tanks, and appliances (excluding hot water heaters, boilers, and central heating systems that require a heating, ventilation and air conditioning, or plumbing certification) annexed to real property.~~

~~"Maintenance" means the reconstruction or renewal of any part of a backflow device for the purpose of maintaining its proper operation. This does not include the actions of removing, replacing, or installing, except for winterization.~~

"Master" means a person who possesses the necessary ability, proficiency, and qualifications to plan and lay out the details for installation and supervise the work of installing, repairing, and maintaining specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code.

~~"Natural gas fitter provider" means any individual who engages in, or offers to engage in, work for the general public for compensation in the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property, excluding new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires heating, ventilation, and air conditioning or plumbing certification.~~

~~"Periodic inspection" means to examine a cross connection control device in accordance with the requirements of the locality to be sure that the device is in place and functioning in accordance with the standards of the Virginia Uniform Statewide Building Code.~~

"Plumber" means ~~an individual~~ a tradesman who ~~does plumbing work in accordance with~~ performs the construction, repair, maintenance, alteration, or removal of plumbing systems regulated under the Virginia Uniform Statewide Building Code.

"Plumbing work" means work that includes the installation, maintenance, extension, or alteration or removal of piping, fixtures, appliances, and appurtenances in connection with any of the following:

1. Backflow prevention devices;

2. Boilers;

3. Domestic sprinklers;

4. Hot water baseboard heating systems;

5. Hydronic heating systems;

6. Process piping;

7. Public or private water supply systems within or adjacent to any building, structure, or conveyance;

8. Sanitary or storm drainage facilities;

9. Steam heating systems;

10. Storage tanks incidental to the installation of related systems;

11. Venting systems; or

12. Water heaters.

These plumbing tradesmen may also install, maintain, extend, or alter the following:

1. Liquid waste systems;

2. Sewerage systems;

3. Storm water systems; and

4. Water supply systems.

"Regulant" means an individual (i) licensed as a tradesman, liquefied petroleum gas fitter, ~~or~~ natural gas fitter provider, or gas fitter or (ii) certified as a backflow prevention device worker, accessibility mechanic, elevator mechanic, water well systems provider, or fire sprinkler inspector.

"Reinstatement" means ~~having a license or certification card restored to effectiveness after the expiration date has passed~~ the process and requirements through which an expired license can be made valid without the licensee having to apply as a new applicant.

"Renewal" means ~~continuing the effectiveness of a license or certification card for another period of time~~ the process and requirements for periodically approving the continuance of a license.

~~"Repair" means the reconstruction or renewal of any part of a backflow prevention device for the purpose of returning to service a currently installed device. This does not include the removal or replacement of a defective device by the installation of a rebuilt or new device.~~

~~"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code, one of whom must be on the job site at all times during installation.~~

"Testing organization" means an independent testing organization whose main function is to develop and administer examinations.

"Trade" means any ~~of the following: electrical, gas fitting, HVAC (heating, ventilation, and air conditioning), liquefied petroleum gas fitting, natural gas fitting, plumbing, and divisions within them~~ regulated activity.

~~"Water distribution systems" includes fire sprinkler systems, highway/heavy, HVAC, lawn irrigation systems, plumbing, or water purveyor work.~~

18VAC50-30-20. ~~Requirements for licensure or certification.~~ (Repealed.)

~~Each applicant shall meet or exceed the requirements set forth in this section prior to issuance of the license or certification card.~~

~~The applicant shall be required to take an examination to determine his general knowledge of the regulated activity in which he desires licensure or certification. If the applicant successfully completes the examination, an application furnished by the department shall be completed. The application shall contain the applicant's name, home address, place of employment, and business address; information on the~~

~~knowledge, skills, abilities and education or training of the applicant; and a statement certifying that the information on the application is correct. If the application is satisfactory to the board, a license or certification card shall be issued.~~

18VAC50-30-25. Application procedures.

A. All applicants seeking licensure or certification must submit an application with the appropriate fee specified in 18VAC50-30-90. Application must be made on forms provided by the board or the board's agent.

1. By submitting the application to the Department of Professional and Occupational Regulation, the applicant certifies that the applicant has read and understands the applicable statutes and the board's regulations.

2. The receipt of an application and the deposit of the fees by the board do not indicate approval of the application by the board.

B. The board may make further [~~inquires~~ inquiries] and investigations with respect to the applicant's qualifications to confirm or amplify information supplied. All applications must be completed in accordance with the instructions contained in this section and on the application. Applications will not be considered complete until all required documents are received by the board.

C. The applicant will be notified of receipt of initial application if the application is incomplete. An individual who fails to complete the application process within 12 months of receipt of the application in the board's office must submit a new application.

D. The applicant must immediately report all changes in information supplied with the application, if applicable, prior to the issuance of the license [or certificate] or expiration of the application.

18VAC50-30-30. General ~~qualifications~~ requirements for licensure or certification.

~~Every~~ In addition to the applicable provisions of 18VAC50-30-40 and 18VAC50-30-41, every applicant to the ~~Board for Contractors~~ board for licensure or certification ~~shall~~ must meet the requirements ~~and have the qualifications~~ provided in this section.

1. The applicant [~~shall~~ must] be at least 18 years [~~old~~ of age].

2. ~~Unless otherwise exempted, the~~ The applicant ~~shall meet the current educational requirements by passing all required courses prior to the time the applicant sits for the examination and applies for licensure or certification~~ must submit [~~an application on a form provided by the board and~~] documentation of identification, vocational training, and experience.

~~3. Unless exempted, the applicant shall have passed the applicable examination provided by the board or by a testing organization acting on behalf of the board.~~

~~4. The applicant shall meet the experience requirements as set forth in 18VAC50-30-40.~~

~~5.~~ 3. In those instances where the applicant is required to take the license or certification examination, the applicant ~~shall~~ must follow all rules established by the board with regard to conduct at the examination. Such rules ~~shall~~ include any written instructions communicated prior to the examination date and any instructions communicated at the site~~, either written or oral, on the date of the examination~~. Failure to comply with all rules established by the board and the testing organization with regard to conduct at the examination shall be grounds for denial of application.

~~6.~~ 4. The applicant ~~shall disclose the applicant's physical home address; a post office box alone is not acceptable~~ must provide an address of record. A post office box is only acceptable when a physical address is also provided.

~~7. Each nonresident applicant for a license or certification card shall file and maintain with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth. In those instances where service is required, the director of the department will mail the court document to the individual at the address of record.~~

~~8. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands Article 3 (§ 54.1-1128 et seq.) of Chapter 11 of Title 54.1 of the Code of Virginia and this chapter.~~

~~9. The board may make further inquiries and investigations with respect to the qualifications of the applicant or require a personal interview with the applicant.~~

~~10.~~ 5. In accordance with § 54.1-204 of the Code of Virginia, each applicant ~~shall~~ must disclose ~~a~~ any conviction~~,~~ in any jurisdiction~~,~~ of any felony or non-marijuana misdemeanor. ~~Any plea of nolo contendere shall be considered a conviction for the purpose of this subdivision. The record of conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.~~ The board, at its discretion, may deny licensure or certification to any applicant in accordance with § 54.1-204 of the Code of Virginia. The applicant has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

~~11. The applicant shall report any suspensions, revocations, or surrendering of a certificate or license in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure or certification in Virginia. The board, at its discretion, may~~

~~deny licensure or certification to any applicant based on prior suspensions, revocations, or surrender of certifications or licenses based on disciplinary action by any jurisdiction.~~ 6. The applicant must report any action taken by any board or administrative body in any jurisdiction against a professional or occupational license, certification, or registration issued to the applicant, to include any suspension, revocation, or surrender of a license, certification, or registration, imposition of a monetary penalty, or requirement to take remedial education or other corrective action. The board in its discretion may deny licensure to any applicant for any prior action taken by any board or administrative body in any jurisdiction. The applicant has the right to request further review of any such action by the board under the Administrative Process Act.

18VAC50-30-41. Evidence of ability and proficiency for automatic fire sprinkler inspector.

Pursuant to § 54.1-1147 B of the Code of Virginia, an applicant for certification as an automatic fire sprinkler inspector ~~shall~~ must provide satisfactory proof to the board of a Level II or higher Inspection and Testing of Water-Based Systems Certificate issued through the National Institute for Certification in Engineering Technologies or a substantially similar certification from a nationally recognized training program approved by the board.

18VAC50-30-70. Other recognized programs.

~~Individuals~~ Applicants certified or licensed as a ~~journeyman or master~~ tradesman or backflow prevention device worker by governing bodies located outside the Commonwealth of Virginia ~~shall be~~ are considered to be in compliance with this chapter if the board ~~or its designee~~ has determined the ~~certifying system to be~~ requirements and standards under which the license or certificate was issued are substantially equivalent to ~~the Virginia system~~ those established in this chapter. In addition to the requirements set forth in 18VAC50-30-30, ~~these individuals~~ such applicants must meet the following requirements:

1. The applicant ~~shall~~ must have received the tradesman certification or license by virtue of having passed in the jurisdiction of original certification or ~~licensing~~ licensure a written or oral examination deemed to be substantially equivalent to the Virginia examination~~. 2. The applicant shall~~ [~~,~~ and be in good standing as a certified or licensed tradesman in every jurisdiction where certified or licensed, and the~~. The~~ applicant shall must not have had a certificate or a license as a tradesman which that was suspended, revoked, or surrendered in connection with a disciplinary action or which that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia].

~~3.~~ 2. Individuals certified or licensed by governing bodies other than the Commonwealth of Virginia may sit for the same level of tradesman examination by completing the required application and providing a copy of a currently valid journeyman or master license or certification.

~~4.~~ 3. Individuals certified or licensed as backflow prevention device workers by governing bodies located outside the Commonwealth of Virginia may sit for the Virginia backflow prevention device worker examination upon presentation of a currently valid certificate or card from such jurisdictions with their completed examination application and fee. ~~Upon successful completion of this examination, the applicant will be provided with the proper application for certification as a backflow prevention device worker in the Commonwealth of Virginia.~~

18VAC50-30-90. Fees for licensure and certification.

A. Each check or money order ~~shall~~ must be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable and shall not be prorated. The date of receipt by the department or its agent is the date that will be used to determine whether or not it is on time. Fees remain active for a period of one year from the date of receipt and all applications must be completed within that time frame.

B. Fees are as follows:

Original tradesman license by examination	$130
Original tradesman license without examination	$130
Card exchange (exchange of locality-issued card for state-issued Virginia tradesman license)	$95
Liquefied petroleum gas fitter	$130
Natural gas fitter provider	$130
Additional tradesman designation	$90
Backflow prevention device worker certification	$130
Elevator mechanic certification	$130
Certified accessibility mechanic Certified automatic fire sprinkler inspector	$130 $130
Water well systems provider certification	$130
Residential building energy analyst license	$130
Limited use/limited application endorsement	$65

18VAC50-30-140. Status of regulant during the period prior to reinstatement.

A. When a regulant is reinstated, the individual ~~shall~~ will continue to have the same number and ~~shall~~ be assigned an expiration date three years from the previous expiration date for tradesman [licensees] and two years from the previous expiration date for all other licensees and certificate holders.

B. A regulant who reinstates ~~his~~ a license or certification ~~card shall~~ will be regarded as having been continuously licensed or certified without interruption. Therefore, the regulant ~~shall~~ will remain under the disciplinary authority of the board during this entire period and may be held accountable for ~~his~~ the regulant's activities during this period. Nothing in this chapter ~~shall~~ will divest the board of its authority to discipline a regulant for a violation of the law or regulations during the period of licensure or certification.

18VAC50-30-150. Adding or deleting trade designations.

A. A regulant may add [~~designations~~ a trade designation] to a license by [~~demonstrating~~ submitting], on a form provided by the board, acceptable evidence of experience, and examination [~~if appropriate~~ where applicable], in the designation sought. [~~The experience, and successful completion of examinations, must be demonstrated by meeting the requirements found in Part II (18VAC50-30-20 et seq.) of this chapter~~ Such regulant must meet the requirements established in 18VAC50-30-30 and the qualifications established in 18VAC50-30-40 applicable to the trade designation being sought].

~~B. The fee for each addition is $90. All fees required by the board are nonrefundable.~~

~~C.~~ B. While a regulant may have multiple trade designations on ~~his~~ the regulant's license, the renewal date will be based upon the date the [~~card~~ license] was originally issued to the individual by the board, not the date of the most recent trade designation addition.

~~D.~~ C. If a regulant is seeking to delete a designation, then the individual must provide a signed statement listing the designation to be deleted. ~~There is no fee for the deletion of a designation.~~ If the regulant only has one trade or level designation, the deletion of that designation will result in the termination of the license.

18VAC50-30-160. Change of address.

Any change of address ~~shall~~ must be reported in writing to the board within 30 days of the change. The board ~~shall~~ will not be responsible for the regulant's failure to receive notices or correspondence due to the regulant's failure to report a change of address. A post office ~~address~~ box alone is not acceptable.

18VAC50-30-170. Transfer of license or certification [~~card~~] prohibited.

No license or certification ~~card~~ issued by the board ~~shall~~ may be assigned or otherwise transferred.

18VAC50-30-185. ~~Revocation of licensure or certification~~ Grounds for disciplinary action.

~~A. Licensure or certification may be revoked for misrepresentation or a fraudulent application or for incompetence as demonstrated by an egregious or repeated violation of the Virginia Uniform Statewide Building Code.~~

~~B. The board shall have the power to require remedial education and to fine, suspend, revoke or deny renewal of a license or certification card of any individual who is found to be in violation of the statutes or regulations governing the practice of licensed tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers, elevator mechanics, accessibility mechanics, or residential building energy analysts in the Commonwealth of Virginia.~~ The board may impose remedial education, a monetary penalty in accordance with § 54.1-202 A of the Code of Virginia or revoke, suspend, or refuse to renew any license or certification when the licensee or certificate holder has been found to have violated or cooperated with others in violating any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.

18VAC50-30-190. Prohibited acts.

~~Any of the following are cause for~~ The following acts are prohibited and any violation may result in disciplinary action by the board:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board;

2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or certification ~~card~~;

3. Where the regulant has failed to report to the board, in writing, the suspension or revocation of a ~~tradesman, liquefied petroleum gas fitter or natural gas fitter provider license, certificate or card, or backflow prevention device worker, water well systems provider, elevator mechanic, or accessibility mechanic~~ license or certification ~~card,~~ by another state or a conviction in a court of competent jurisdiction of a building code violation;

4. Negligence or incompetence in the practice of ~~a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, water well systems~~

~~provider, or automatic fire sprinkler inspector~~ the licensed or certified profession;

5. Misconduct in the practice of ~~a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, water well systems provider, or automatic fire sprinkler inspector~~ the licensed or certified profession;

~~6. A finding of improper or dishonest conduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, or water well systems provider by a court of competent jurisdiction;~~

~~7.~~ 6. For licensed tradesmen, liquefied petroleum gas fitters ~~or,~~ natural gas fitter providers, or gas fitters performing jobs under $1,000, or backflow prevention device workers, elevator mechanics, accessibility mechanics, or water well systems providers performing jobs of any amount, abandonment, the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part (unjustified cessation of work under the contract for a period of 30 days or more shall be considered evidence of abandonment);

~~8.~~ 7. Making any misrepresentation or making a false promise of a character likely to influence, persuade, or induce;

~~9.~~ 8. Aiding or abetting an unlicensed contractor to violate any provision of Chapter 1 or Chapter 11 of Title 54.1 of the Code of Virginia or [~~these regulations~~ this chapter] or combining or conspiring with or acting as agent, partner, or associate for an unlicensed contractor; or allowing one's license or certification to be used by an unlicensed or uncertified individual;

~~10.~~ 9. Where the regulant has offered, given, or promised anything of value or benefit to any federal, state, or local government employee for the purpose of influencing that employee to circumvent, in the performance of ~~his~~ the employee's duties, any federal, state, or local law, regulation, or ordinance governing the construction industry;

~~11.~~ 10. Where the regulant has been convicted or found guilty, after initial licensure or certification, regardless of adjudication, in any jurisdiction of any felony or of a misdemeanor involving lying, cheating or stealing, sexual offense, non-marijuana drug distribution, physical injury, or relating to the practice of the profession, there being no appeal pending therefrom or the time of appeal having elapsed~~. Any pleas of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt~~;

~~12.~~ 11. Having failed to inform the board in writing, within 30 days, that the regulant ~~has pleaded guilty or nolo contendere or~~ was convicted ~~and found guilty~~ of any felony or a misdemeanor involving lying, cheating, stealing, sexual offense, non-marijuana drug distribution, physical injury, or relating to the practice of the profession;

~~13.~~ 12. Having been disciplined by any county, city, town, or any state or federal governing body for actions relating to the practice of any trade, backflow prevention device work, elevator or accessibility work, or water well systems provider work, which action shall be reviewed by the board before ~~it~~ the board takes any disciplinary action of its own;

~~14.~~ 13. Failure to comply with the Virginia Uniform Statewide Building Code (13VAC5-63);

~~15.~~ 14. Practicing in a classification or specialty service for which the regulant is not licensed or certified;

~~16.~~ 15. Failure to obtain any document required by the Virginia Department of Health for the drilling, installation, maintenance, repair, construction, or removal of water wells, water well systems, water well pumps, or other water well equipment;

~~17.~~ 16. Failure to obtain a building permit or applicable inspection where required;

~~18.~~ 17. Failure to perform a residential building energy analysis consistent with the requirements set forth by the board, the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the Energy Star Program;

~~19.~~ 18. Failure of a residential building energy analyst to maintain the general liability insurance required in 18VAC50-30-40 I 4; and

~~20.~~ 19. Failure of a certified automatic fire sprinkler inspector to continually maintain the certification required in § 54.1-1147 of the Code of Virginia.

18VAC50-30-200. Vocational training.

A. Vocational training courses must be completed through accredited colleges, universities, junior and community colleges; adult distributive, marketing and formal vocational training as defined in this chapter; Virginia Apprenticeship Council programs; or proprietary schools approved by the Virginia Department of Education.

B. Backflow prevention device worker courses must be completed through schools approved by the board. The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

C. Elevator mechanic courses must be completed through schools approved by the board. The board accepts training programs approved by the National Elevator Industry Education Program (NEIEP). Other programs could be approved after board

review. ~~D.~~ Water well systems provider and certified accessibility courses must be completed through ~~schools or programs~~ education providers approved by the board.

~~E. Certified accessibility courses must be completed through education providers approved by the board.~~

~~F.~~ D. Residential building energy analyst courses must be completed through programs that meet or exceed the standards set forth by the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the Home Performance with Energy Star Program. Other programs could be approved after board review.

VA.R. Doc. No. R23-7420; Filed July 16, 2024, 9:38 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Fast-Track Regulation

Title of Regulation: **18VAC65-20. Regulations Governing the Practice of Funeral Services (amending 18VAC65-20-153).**

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 11, 2024.

Effective Date: September 26, 2024.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4479, FAX (804) 527-4471, or email fanbd@dhp.virginia.gov.

Basis: Regulations of the Board of Funeral Directors and Embalmers are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which authorizes health regulatory boards to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system. Additionally, § 54.1-2816.1 of the Code of Virginia requires the board to promulgate regulations governing continuing education requirements for licensees of the board.

Purpose: The changes are necessary to protect the health, safety, and welfare of the public because they ensure the board can verify that licensees have complied with renewal requirements for licensure.

Rationale for Using Fast-Track Rulemaking Process: The action is noncontroversial because it conforms documentation retention requirements to the 2022 statutory changes regarding continuing education.

Substance: 18VAC65-20-153 currently requires licensees to retain evidence of compliance with continuing education requirements for two years. The amendment changes that requirement to three years.

Issues: The primary advantage to private citizens and licensees is clear guidance regarding how long a licensee must maintain documentation of compliance with continuing education and an assurance that, if audited, the board will be able to confirm that the licensee is compliant with requirements. There are no disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. In response to recent legislative changes, the Board of Funeral Directors and Embalmers (board) proposes to require licensees to retain evidence of compliance with continuing education requirements for three years.

Background. The Regulations of the Board of Funeral Directors and Embalmers require that funeral service licensees, funeral directors, and funeral embalmers complete a minimum of five hours per year of continuing education offered by a board-approved sponsor for licensure renewal in courses that emphasize the ethics, standards of practice, preneed contracts, and funding, or federal or state laws and regulations governing the profession of funeral service. The regulation also currently states that "One hour per year shall cover compliance with laws and regulations governing the profession, and at least one hour per year shall cover preneed funeral arrangements." That sentence was consistent with § 54.1-2816.1 of the Code of Virginia prior to 2022 legislation. Prior to the legislation § 54.1-2816.1 stated, "The board shall approve criteria for continuing education courses, requiring no more than five hours per year, that are directly related to the respective license and scope of practice of funeral service licensees, funeral directors and embalmers. Approved continuing education courses shall include, but not be limited to, at least one hour per year covering compliance with federal or state laws and regulations governing the profession, and at least one hour per year covering preneed funeral arrangements." Chapter 170 of the 2022 Acts of Assembly[2] amended the text to read, "The board shall approve criteria for continuing education courses, requiring no more than five hours per year, that are directly related to the respective license and scope of practice of funeral service licensees, funeral directors, and embalmers. Approved continuing education courses shall include at least one hour per year covering compliance with federal or state laws and regulations governing the profession or one hour per year covering preneed funeral arrangements, provided that at least one hour of continuing education in preneed is completed every three years."

The board has proposed to amend the regulation to be consistent with the changed text of § 54.1-2816.1 of the Code of Virginia in a separate exempt action.[3] The current regulation

requires licensees to maintain documentation of completion of continuing education for two years. Given the new statutory requirement that a licensee must complete continuing education regarding preneed funeral planning at least once every three years, the board is now proposing to require licensees to retain evidence of compliance with continuing education requirements for three years.

Estimated Benefits and Costs. The legislation is beneficial for licensees in that it allows them more flexibility in how they acquire continuing education hours. Since licensees will have to demonstrate completion of continuing education in preneed funeral arrangements once every three years, they would need to keep related records for three years rather than two in order to document that compliance. For those who otherwise would have purged their records after two years, the proposed change in the requirement represents a small increase in burden.

Businesses and Other Entities Affected. The proposed amendments affect the 1,528 funeral service licensees, 35 funeral directors, and three embalmers licensed in the Commonwealth.[4]

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the proposal to require that licensees retain evidence of compliance with continuing education requirements for an additional year would produce a small burden for those who otherwise would have purged those records after two years. Thus, a small adverse impact is indicated.

Small Businesses[6] Affected.[7]

Types and Estimated Number of Small Businesses Affected: As of June 30, 2022, the board licensed 425 funeral establishments.[8] Most, if not all, likely qualify as small businesses. However, the actual number is not known because the board does not have such data.

Costs and Other Effects: The proposed amendment modestly increases recordkeeping costs.

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

Localities[9] Affected.[10] The proposed amendment does not disproportionally affect any locality and does not introduce costs for local governments.

Projected Impact on Employment. The proposed amendment does not substantively affect employment.

Effects on the Use and Value of Private Property. The proposed amendment does not substantively affect the use and value of private property, and does not affect real estate development costs.

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

[2] See https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0170.

[3] See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=6008.

[4] Data source: https://www.dhp.virginia.gov/about/stats/2022Q4/04CurrentLicenseCountQ4FY2022.pdf.

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

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

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

8 Data source: https://www.dhp.virginia.gov/about/stats/2022Q4/04CurrentLicenseCountQ4FY2022.pdf.

[9] "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[10] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The amendment increases the number of years a licensee must retain records of continuing education from two to three years to accommodate the change made to continuing education requirements by Chapter 170 of the 2022 Acts of Assembly.

18VAC65-20-153. Documenting compliance with continuing education requirements.

A. All licensees with active status are required to maintain original documentation of continuing education for a period of ~~two~~ three years after the corresponding annual renewal period.

B. After the end of each renewal period, the board may conduct a random audit of licensees to verify compliance with the requirement for that renewal period.

C. Upon request, a licensee shall provide documentation within 14 days as follows:

1. Official transcripts showing credit hours earned from an accredited institution; or

2. Certificates of completion from approved providers.

D. Compliance with continuing education requirements, including the subject and purpose of the courses as prescribed in 18VAC65-20-151 B, the maintenance of records, and the relevance of the courses to the category of licensure, is the responsibility of the licensee. The board may request additional information if such compliance is not clear from the transcripts or certificates.

E. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

VA.R. Doc. No. R24-7305; Filed July 12, 2024, 3:43 p.m.

BOARD OF PHYSICAL THERAPY

Proposed Regulation

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-27, 18VAC112-20-65, 18VAC112-20-81, 18VAC112-20-121, 18VAC112-20-131, 18VAC112-20-200).**

Statutory Authority: §§ 54.1-2400 and 54.1-3474 of the Code of Virginia.

Public Hearing Information:

August 13, 2024 - 10:05 a.m. - Department of Health Professions, Perimeter Center, Suite 201, Board Room 4, Henrico, VA 23233-1463.

Public Comment Deadline: October 11, 2024.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive Suite 300, Henrico, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Physical Therapy the authority to promulgate regulations to administer the regulatory system. In the statutory definition of physical therapy, the practice of dry needling is not addressed, but treatment may be interpreted to include such practice.

Purpose: The regulation is necessary to protect the health, safety, and welfare of citizens; the changes are intended to reduce burdens on licensees without impacting the protection of the health, safety, and welfare of citizens. The goal of the amendments is to reduce regulatory burden on licensees.

Substance: The amendments (i) remove outdated fee reductions and unnecessary provisions, (ii) remove requirements for applicants for licensure by endorsement regarding the completion of continuing education, (iii) remove lists of continuing education providers and information that will appear in a board guidance document, (iv) fix cross-references, and (v) amend advertising requirements.

Issues: There are no primary advantages or disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Board of Physical Therapy (board) proposes to (i) repeal the current requirement that applicants for licensure by endorsement provide evidence of completion of 15 hours of continuing education for each year in which the applicant held a license in another United States jurisdiction or Canada, or 60 hours obtained within the past four years; (ii) remove the list of approved continuing education providers from the regulation; (iii) eliminate specified recordkeeping requirements concerning advertising; and (iv) repeal obsolete language.

Background. Licensure by Endorsement: Under both the current and proposed regulations, a physical therapist or physical therapist assistant who holds a current, unrestricted license in the United States, its territories, the District of Columbia, or Canada may apply for licensure in Virginia by endorsement. Under both regulations the applicant must (i) either meet specified education requirements or provide evidence of clinical practice consisting of at least 2,500 hours of patient care during the five years immediately preceding the application while practicing with a current, unrestricted license issued by another United States jurisdiction or Canadian province; (ii) pay the application fee ($140 for a physical therapist and $100 for a physical therapist assistant); (iii) submit a criminal background check; (iv) submit a current report from the National Practitioner Data Bank; and (v) submit either documentation of the completion of at least 320 hours of active practice in physical therapy in another United States jurisdiction or Canada that occurred within the four years immediately preceding application for licensure, or the successful completion of at least 320 hours in a traineeship. Under the current regulation, the applicant must also provide evidence of completion of 15 hours of continuing education for each year in which the applicant held a license in another United States jurisdiction or Canada, or 60 hours obtained within the past four years. The board proposes to repeal this requirement.

List of Approved Continuing Education Organizations: In order to renew an active license biennially, both the current and proposed regulations require that physical therapists and physical therapist assistants complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. A minimum of 20 contact hours (for physical therapists) and 15 contact hours (for physical therapist assistants) must be in an organized program of study, classroom experience, or similar educational experience that is directly related to the clinical practice of physical therapy and is approved or provided by an organization approved by the board. The current regulation lists those organizations. The board proposes to remove this list from the regulation and instead maintain the list in a guidance document.

Recordkeeping for Advertisements: Under the current regulation, "Documentation, scientific and otherwise, supporting claims made in an advertisement shall be maintained and available for the board's review for at least two years." Additionally, "For an advertisement for a practice in which there is more than one practitioner, the name of the practitioner responsible and accountable for the content of the advertisement shall be documented and maintained by the practice for at least two years." The board proposes to repeal these requirements.

Estimated Benefits and Costs. Licensure by Endorsement: According to the Department of Health Professions (DHP), applicants for licensure by endorsement who have met all other requirements, but had fewer than 15 hours of continuing education for each year in which the licensee held a license in another United States jurisdiction or Canada, or 60 hours obtained within the past four years, have always completed the difference in hours to meet the Virginia requirement. It is possible that a small number of individuals decided not to apply upon seeing that they did not already meet all requirements. Considering that free courses are offered to members of organizations approved by the board, including the American Physical Therapy Association,[2] it seems unlikely that there would be a substantial number of individuals so deterred from obtaining licensure by endorsement. Nevertheless, the proposal to eliminate this requirement may encourage a small number of individuals to apply for licensure by endorsement who might not otherwise have done so. Additionally, it would save time and possibly fees for those that do not initially fully meet the continuing education requirement, but would have applied anyway.

List of Approved Continuing Education Organizations: The list of approved continuing education organizations is available on the board's website.[3] Removing the list from the regulation and maintaining it in a guidance document is unlikely to substantively affect practitioners who seek to find out which organizations are approved since presumably most would look for the list on the board's website. Guidance documents can be revised much more quickly than regulations. If the board determines that an additional organization is worthy of being approved for providing or approving continuing education courses, this proposal would enable practitioners to use courses from or approved by such an organization to satisfy continuing education requirements considerably sooner.

Recordkeeping for Advertisements: According to DHP, the board found no discernible reason to require licensees to maintain two years of documentation related to claims made in advertisements. If facing a disciplinary action by the board for false, misleading, or deceptive advertising, the licensee would be responsible for providing evidence supporting the advertising claims, regardless of when the claims were made. Additionally, DHP indicates that maintaining records of the name of the practitioner responsible and accountable for the content of advertisements is also unnecessary. The board would review factual evidence concerning the practitioners gathered as part of disciplinary matter. Removing the advertising recordkeeping requirements would provide a small savings for practitioners.

In practice, advertisement-related violations are rare. DHP believes there was one complaint concerning advertising in the past eight years, but it did not result in a disciplinary action.

Businesses and Other Entities Affected. The 9,523 physical therapists and 3,791 physical therapist assistants licensed in the Commonwealth[4] would potentially be affected, as well as potential applicants for licensure by endorsement who have fewer than the current required hours of continuing education. By percentage, Virginia physical therapists work in the following sectors: 60% for-profit, 33% non-profit, 4.0% state or local government, 1.0% Veterans Health Administration, and 1.0% U.S. Military.[5,6] By percentage, Virginia physical therapist assistants work in the following sectors: 71% for-profit, 23% nonprofit, 3.0% state or local government, 1.0% Veterans Health Administration, and 2.0% U.S. Military.[7]

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[8] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[9] As there is no increase in net cost nor reduction in net benefit, an adverse impact is not indicated.

Small Businesses[10] Affected.[11] The proposed amendments do not adversely affect small businesses.

Localities[12] Affected.[13] The proposed amendments neither disproportionately affect any particular locality nor introduce costs for local governments.

Projected Impact on Employment. To the extent that there are physical therapists or physical therapist assistants who do not apply for licensure by endorsement in Virginia due to not meeting the continuing education requirement, repealing that requirement may have a very modest positive impact on employment.

Effects on the Use and Value of Private Property. The proposed elimination of the advertising recordkeeping requirements would provide a small cost savings for firms that provide physical therapy services and advertise. To the extent that there are physical therapists or physical therapist assistants who do not apply for licensure by endorsement in Virginia because they do not meet the continuing education requirement, repealing that requirement may very modestly increase the pool of potential applicants for firms to choose from, potentially enabling the hiring of more or better practitioners. Thus, there may be a small increase in the value of some firms that provide physical therapy services. The proposed amendments do not affect real estate development costs.

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

[2] See https://learningcenter.apta.org/catalog.

[3] See https://www.dhp.virginia.gov/Boards/PhysicalTherapy/PractitionerResources/ ContinuingEducation/.

[4] Data source: DHP. See https://www.dhp.virginia.gov/about/stats/2024Q2/04CurrentLicenseCountQ2FY2024.pdf.

[5] Source: DHP. See https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/pt/2305PT2022.pdf

[6] Due to rounding, the percentages do not add to 100.

[7] Source: DHP. See https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/pt/ 2306PTA2022.pdf.

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

[9] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

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

[12] "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[13] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The proposed amendments (i) repeal the current requirement that applicants for licensure by endorsement provide evidence of completion of 15 hours of continuing education for each year in which the applicant held a license in another United States jurisdiction or Canada or 60 hours obtained within the past four years; (ii) remove the list of approved continuing education providers from the regulation; (iii) eliminate specified recordkeeping requirements concerning advertising; and (iv) repeal obsolete language.

18VAC112-20-27. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Licensure by examination. ~~1.~~ The application fee shall be $140 for a physical therapist and $100 for a physical therapist assistant.

~~2. The fees for taking all required examinations shall be paid directly to the examination services.~~

C. Licensure by endorsement. The fee for licensure by endorsement shall be $140 for a physical therapist and $100 for a physical therapist assistant.

D. Licensure renewal and reinstatement.

1. The fee for active license renewal for a physical therapist shall be $135 and for a physical therapist assistant shall be $70 and shall be due by December 31 in each even-numbered year. ~~For renewal in 2020, the active license renewal fee for a physical therapist shall be $70 and for a physical therapist assistant shall be $35.~~

2. The fee for an inactive license renewal for a physical therapist shall be $70 and for a physical therapist assistant shall be $35 and shall be due by December 31 in each even-numbered year. ~~For renewal in 2020, the inactive license renewal fee for a physical therapist shall be $35 and for a physical therapist assistant shall be $18.~~

3. A fee of $50 for a physical therapist and $25 for a physical therapist assistant for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.

4. The fee for reinstatement of a license that has been expired for two or more years shall be $180 for a physical therapist and $120 for a physical therapist assistant and shall be submitted with an application for licensure reinstatement.

E. Other fees.

1. The fee for an application for reinstatement of a license that has been revoked shall be $1,000; the fee for an application for reinstatement of a license that has been suspended shall be $500.

2. The fee for a duplicate license shall be ~~$5~~ $5.00, and the fee for a duplicate wall certificate shall be $15.

3. The handling fee for a returned check or a dishonored credit card or debit card shall be $50.

4. The fee for a letter of good standing or verification to another jurisdiction shall be $10.

5. The application fee for direct access certification shall be $75 for a physical therapist to obtain certification to provide services without a referral.

6. The state fee for obtaining or renewing a compact privilege to practice in Virginia shall be $50.

18VAC112-20-65. Requirements for licensure by endorsement.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in the United States, its territories, the District of Columbia, or Canada may be licensed in Virginia by endorsement.

B. An applicant for licensure by endorsement shall submit:

1. Documentation of having met the educational requirements prescribed in 18VAC112-20-40 or 18VAC112-20-50. In lieu of meeting such requirements, an applicant may provide evidence of clinical practice consisting of at least 2,500 hours of patient care during the five years immediately preceding application for licensure in Virginia with a current, unrestricted license issued by another United States jurisdiction or Canadian province;

2. The required application, fees, and credentials to the board, including a criminal history background check as required by § 54.1-3484 of the Code of Virginia;

3. A current report from the National Practitioner Data Bank (NPDB);

~~4. Evidence of completion of 15 hours of continuing education for each year in which the applicant held a license in another United States jurisdiction or Canada, or 60 hours obtained within the past four years;~~

~~5.~~ 4. Documentation of passage of an examination equivalent to the Virginia examination at the time of initial licensure or documentation of passage of an examination required by another state or Canadian province at the time of initial licensure in that state or province; and

~~6.~~ 5. Documentation of active practice in physical therapy in another United States jurisdiction or Canada for at least 320 hours within the four years immediately preceding ~~his~~ application for licensure. A physical therapist who does not meet the active practice requirement shall successfully complete 320 hours in a traineeship in accordance with requirements in 18VAC112-20-140.

C. A physical therapist assistant seeking licensure by endorsement who has not actively practiced physical therapy for at least 320 hours within the four years immediately preceding ~~his~~ application for licensure shall successfully complete 320 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

18VAC112-20-81. Requirements for direct access certification.

A. An applicant for certification to provide services to patients without a referral as specified in § 54.1-3482.1 of the Code of Virginia shall hold an active, unrestricted license as a physical therapist in Virginia and shall submit evidence satisfactory to the board that ~~he~~ the applicant has one of the following qualifications:

1. Completion of a transitional program in physical therapy as recognized by the board; or

2. At least three years of postlicensure, active practice with evidence of 15 contact hours of continuing education in medical screening or differential diagnosis, including passage of a postcourse examination. The required continuing education shall be offered by a provider or sponsor ~~listed as~~ approved by the board as provided in 18VAC112-20-131 and may be face-to-face or online education courses.

B. In addition to the evidence of qualification for certification required in subsection A of this section, an applicant seeking direct access certification shall submit to the board:

1. A completed application as provided by the board;

2. Any additional documentation as may be required by the board to determine eligibility of the applicant; and

3. The application fee as specified in 18VAC112-20-27.

18VAC112-20-121. Practice of dry needling.

A. Dry needling is not an entry level skill but an advanced procedure that requires additional post-graduate training.

1. The training shall be specific to dry needling and shall include emergency preparedness and response, contraindications and precautions, secondary effects or complications, palpation and needle techniques, and physiological responses.

2. The training shall consist of didactic and hands-on laboratory education and shall include passage of a theoretical and practical examination. The hands-on laboratory education shall be face-to-face.

3. The training shall be in a course approved or provided by a sponsor ~~listed~~ approved by the board as provided in subsection B of 18VAC112-20-131.

4. The practitioner shall not perform dry needling beyond the scope of the highest level of the practitioner's training.

B. Prior to the performance of dry needling, the physical therapist shall obtain informed consent from the patient or the patient's representative. The informed consent shall include the risks and benefits of the technique. The informed consent form shall be maintained in the patient record.

C. Dry needling shall only be performed by a physical therapist trained pursuant to subsection A of this section and shall not be delegated to a physical therapist assistant or other support personnel.

18VAC112-20-131. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a physical therapist or a physical therapist assistant shall complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. In choosing continuing learning activities or courses, the licensee shall consider the following: (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

B. To document the required hours, the licensee shall maintain the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of the following:

1. A minimum of 20 of the contact hours required for physical therapists and 15 of the contact hours required for physical therapist assistants shall be in Type 1 courses. For the purpose of this section, "course" means an organized program of study, classroom experience, or similar educational experience that is directly related to the clinical practice of physical therapy and approved or provided by ~~one of the following organizations or any of its components:~~

~~a. The Virginia Physical Therapy Association;~~

~~b. The American Physical Therapy Association;~~

~~c. Local, state, or federal government agencies;~~

~~d. Regionally accredited colleges and universities;~~

~~e. Health care organizations accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation;~~

~~f. The American Medical Association – Category I Continuing Medical Education course;~~

~~g. The National Athletic Trainers' Association;~~

~~h. The Federation of State Boards of Physical Therapy;~~

~~i. The National Strength and Conditioning Association; or~~

~~j. Providers approved by other state licensing boards for physical therapy~~ an organization approved by the board.

One credit hour of a college course shall be considered the equivalent of 15 contact hours of Type 1 continuing education.

2. No more than 10 of the contact hours required for physical therapists and 15 of the contact hours required for physical therapist assistants may be Type 2 activities or courses, which may or may not be offered by an approved organization, but which shall be related to the clinical practice of physical therapy. For the purposes of this subdivision, Type 2 activities may include:

a. Consultation with colleagues, independent study, and research or writing on subjects related to practice.

b. Delivery of physical therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services for up to two of the Type 2 hours.

c. Attendance at a meeting of the board or disciplinary proceeding conducted by the board for up to two of the Type 2 hours.

d. Classroom instruction of workshops or courses.

e. Clinical supervision of students and research and preparation for the clinical supervision experience.

Forty hours of clinical supervision or instruction shall be considered the equivalent of one contact hour of Type 2 activity.

3. Documentation of specialty certification by the American Physical Therapy Association may be provided as evidence of completion of continuing competency requirements for the biennium in which initial certification or recertification occurs.

4. Documentation of graduation from a transitional doctor of physical therapy program may be provided as evidence of completion of continuing competency requirements for the biennium in which the physical therapist was awarded the degree.

C. A licensee shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure by examination in Virginia.

D. The licensee shall retain ~~his~~ records on the completed ~~form~~ Continued Competency Activity and Assessment Form with

all supporting documentation for a period of four years following the renewal of an active license.

E. The licensees selected in a random audit conducted by the board shall provide the completed Continued Competency Activity and Assessment Form and all supporting documentation within 30 days of receiving notification of the audit.

F. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

G. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

H. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters, upon a written request from the licensee prior to the renewal date.

18VAC112-20-200. Advertising ethics.

A. Any statement specifying a fee, whether standard, discounted, or free, for professional services that does not include the cost of all related procedures, services, and products that, to a substantial likelihood, will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising a discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment that is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bona fide emergency. This provision may not be waived by agreement of the patient and the practitioner.

C. No licensee or holder of a compact privilege of the board shall advertise information that is false, misleading, or deceptive. Advertisements of discounts shall disclose the full fee that has been discounted. The practitioner shall maintain documented evidence to substantiate the discounted fees and shall make such information available to a consumer upon request.

D. ~~A~~ No licensee or holder of a compact privilege shall ~~not~~ use the term "board certified" or any similar ~~words~~ word or phrase calculated to convey the same meaning in any advertising for ~~his~~ the practitioner's practice unless ~~he~~ the practitioner holds certification in a clinical specialty issued by the American Board of Physical Therapy Specialties.

~~E. A licensee or holder of a compact privilege of the board shall not advertise information that is false, misleading, or deceptive. For an advertisement for a single practitioner, it shall be presumed that the practitioner is responsible and accountable for the validity and truthfulness of its content. For an advertisement for a practice in which there is more than one practitioner, the name of the practitioner responsible and accountable for the content of the advertisement shall be documented and maintained by the practice for at least two years.~~

~~F. Documentation, scientific and otherwise, supporting claims made in an advertisement shall be maintained and available for the board's review for at least two years.~~

VA.R. Doc. No. R24-7423; Filed July 12, 2024, 3:52 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-26).**

Statutory Authority: §§ 54.1-2400 and 54.1-3474 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 11, 2024.

Effective Date: September 26, 2024.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

Basis: Regulations of the Board of Physical Therapy are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which authorizes health regulatory boards to promulgate regulations.

Purpose: The amendments benefit the public health, safety, and welfare by allowing agency subordinates to hear applications and credentials cases, which expedites the review process, getting practitioners into the workforce faster.

Rationale for Using Fast-Track Rulemaking Process: This action is noncontroversial because it is conforming to statutory change and will lead to faster adjudication of applicant cases.

Substance: The amendment deletes the phrase "upon determination that probable cause exists that a practitioner may be subject to disciplinary action," consistent with Chapter 191 of the 2023 Acts of Assembly.

Issues: There are no primary advantages or disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance

with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The current Regulations Governing the Practice of Physical Therapy (regulation) allows the Board of Physical Therapy (board) to delegate an informal fact-finding proceeding to an agency subordinate[2] only upon a determination that probable cause exists that a practitioner may be subject to a disciplinary action. Following a recent statutory change governing these proceedings, the board proposes to remove this restriction from the regulation.

Background. Section 54.1-2400 of the Code of Virginia authorizes the board to appoint a special conference committee to ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings. The statute provides that this may occur "upon receipt of information that a practitioner or permit holder of the appropriate board may be subject to disciplinary action or to consider an application for a license." Prior to legislation this year, the same statute indicated that the board may delegate to an appropriately qualified agency subordinate the authority to conduct informal fact-finding proceedings, but only "upon receipt of information that a practitioner may be subject to a disciplinary action." This effectively prevented delegation from occurring to "consider an application for a license." Chapter 191 of the 2023 Acts of Assembly[3] removed the requirement that a practitioner must be subject to a disciplinary action in order for the board to make such delegation. Accordingly, the board is now proposing to remove that same restriction from the regulation as it is no longer mandated by statute.

Estimated Benefits and Costs. The legislation newly permitted the delegation of an informal fact-finding proceeding to occur for nonroutine[4] applications for licensure. Currently, the regulation only allows such delegation to occur when there is information that a practitioner may be subject to a disciplinary action. When statute and regulation conflict, the statute prevails. Thus, amending the regulation to reflect the legislation would not affect what is permitted, but would be beneficial in accurately informing readers of the regulation concerning what is permitted.

Businesses and Other Entities Affected. According to the Department of Health Professions (DHP), there were no nonroutine applications for board licensure[5] that required evidentiary hearings in 2023. Credentials cases in general for this board are rare overall.[6] The provision for the agency subordinate would likely only be used in situations where applicants were trained in another country or through a nonaccredited educational program and the applicants challenge the board's use of a third-party credentials reviewer to assist in determination of whether licensure requirements are met.[7]

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[8] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[9] As there is no increase in net cost nor reduction in net benefit, an adverse impact is not indicated.

Small Businesses[10] Affected.[11] The proposed amendment does not adversely affect small businesses.

Localities[12] Affected.[13] The proposed amendment neither disproportionately affects any particular locality nor introduces costs for local governments.

Projected Impact on Employment. The proposed amendment does not appear to affect total employment.

Effects on the Use and Value of Private Property. The legislation may quicken the licensing of physical therapists and physical therapist assistants with nonroutine applications for licensure. As noted, nonroutine applications for licensure are rare for the board. In such rare situations, the licensees may start practicing in Virginia sooner. The proposed amendment does not affect the use and value of private property or real estate development costs.

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

[2] The current and proposed regulations state that an agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

[3] See https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0191+hil.

[4] Nonroutine applications may require evidentiary hearings. In contrast, routine applications for licensure do not require such proceedings.

[5] The two board licenses are for physical therapists and physical therapist assistants.

[6] Source: DHP.

[7] Ibid.

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

[9] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits

for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

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

[12] "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[13] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

Pursuant to Chapter 191 of the 2023 Acts of Assembly, the amendments remove a limitation that agency subordinates be used only for disciplinary matters and allow boards that use agency subordinates to employ those agency subordinates to hear credentials or applications cases as well as disciplinary cases.

18VAC112-20-26. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with subdivision 10 of § 54.1-2400 ~~(10)~~ of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate ~~upon determination that probable cause exists that a practitioner may be subject to a disciplinary action~~.

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate include~~, but are not limited to,~~ those that involve:

1. Intentional or negligent conduct that causes or is likely to cause injury to a patient;

2. Mandatory suspension resulting from action by another jurisdiction or a felony conviction;

3. Impairment with an inability to practice with skill and safety;

4. Sexual misconduct; and

5. Unauthorized practice.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of ~~their~~ training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

VA.R. Doc. No. R24-7805; Filed July 12, 2024, 4:04 p.m.

BOARD OF VETERINARY MEDICINE

Fast-Track Regulation

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-15).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 11, 2024.

Effective Date: September 26, 2024.

Agency Contact: Kelli Moss, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4133, FAX (804) 767-1011, or email kelli.moss@dhp.virginia.gov.

Basis: Regulations of the Board of Veterinary Medicine are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which authorizes health regulatory boards to promulgate regulations.

Purpose: The changes benefit the public health, safety, and welfare by allowing agency subordinates to hear applications and credentials cases, which expedites the review process, getting practitioners into the workforce faster.

Rationale for Using the Fast-track Rulemaking Process: This action is noncontroversial because it is conforming to statutory change and will lead to faster adjudication of applicant cases.

Substance: The amendment deletes the phrase "upon determination that probable cause exists that a practitioner may be subject to disciplinary action," consistent with Chapter 191 of the 2023 Acts of Assembly.

Issues: There are no primary advantages or disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The current Regulations Governing the Practice of Veterinary Medicine (regulation) allows the Board of Veterinary Medicine (board) to delegate an informal fact-finding proceeding to an agency subordinate[2] only upon a determination that probable cause exists that a practitioner may be subject to a disciplinary action. Following recent statutory changes governing these proceedings, the board proposes to remove this restriction from the regulation.

Background. Section 54.1-2400 of the Code of Virginia authorizes the board to appoint a special conference committee to ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings. The statute provides that this may occur "upon receipt of information that a practitioner or permit holder of the appropriate board may be subject to disciplinary action or to consider an application for a license." Prior to legislation this year, the same statute indicated that the board may delegate to an appropriately qualified agency subordinate the authority to conduct informal fact-finding proceedings, but only "upon receipt of information that a practitioner may be subject to a disciplinary action." This effectively prevented delegation from occurring to "consider an application for a license." Chapter 191 of the 2023 Acts of Assembly[3] removed the requirement that a practitioner must be subject to a disciplinary action in order for the board to make such delegation. Accordingly, the board is now proposing to remove that same restriction from the regulation as it is no longer mandated by statute.

Estimated Benefits and Costs. The legislation newly permitted the delegation of an informal fact-finding proceeding to occur for nonroutine[4] applications for licensure. Currently, the regulation only allows such delegation to occur when there is information that a practitioner may be subject to a disciplinary action. When statute and regulation conflict, the statute prevails. Thus, amending the regulation to reflect the legislation would not affect what is permitted, but would be beneficial in accurately informing readers of the regulation concerning what is permitted.

Businesses and Other Entities Affected. According to the Department of Health Professions (DHP), there were five nonroutine applications for board licensure[5] that required evidentiary hearings in 2023. Such applicants, as well as potential delegated agency subordinates, are particularly affected by the legislation.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[9] As there is no increase in net cost nor reduction in net benefit, an adverse impact is not indicated.

Small Businesses[6] Affected.[7] The proposed amendment does not adversely affect small businesses.

Localities[8] Affected.[9] The proposed amendment neither disproportionately affects any particular locality nor introduces costs for local governments.

Projected Impact on Employment. The proposed amendment does not appear to affect total employment.

Effects on the Use and Value of Private Property. The legislation may quicken the licensing of physical therapists and physical therapist assistants with nonroutine applications for licensure. As noted, nonroutine applications for licensure are rare for the board. In such rare situations, the licensees may start practicing in Virginia sooner. The proposed amendment does not affect the use and value of private property or real estate development costs.

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

[2] The current and proposed regulations state that an agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

[3] See https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0191+hil.

[4] Nonroutine applications may require evidentiary hearings. In contrast, routine applications for licensure do not require such proceedings.

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

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

[7] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a

description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[8] "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[9] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to the Economic Impact Analysis: The Board of Veterinary Medicine concurs with the economic impact analysis prepared by the Department of Planning and Budget with one clarification. Prior to the 2023, subdivision 10 of § 54.1-2400 of the Code of Virginia stated that "this subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings in accordance with § 2.2-4019, upon receipt of information that a practitioner may be subject to disciplinary action." The underlined language limited boards to only using agency subordinates for disciplinary matters. Chapter 191 of the 2023 Acts of Assembly removed the underlined language from the statute, thereby removing the limitation from the statute and allowing the boards to use agency subordinates to hear disciplinary cases and credentials cases.

Summary:

Pursuant to Chapter 191 of the 2023 Acts of Assembly, the amendments remove a limitation that agency subordinates be used only for disciplinary matters and allow boards that use agency subordinates to employ those agency subordinates to hear credentials or applications cases as well as disciplinary cases.

18VAC150-20-15. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with subdivision 10 of § 54.1-2400 ~~(10)~~ of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate ~~upon determination that probable cause exists that a practitioner may be subject to a disciplinary action~~.

B. Criteria for delegation. Cases that may be delegated to an agency subordinate are those that do not involve standard of care or those that may be recommended by a committee of the board.

C. Criteria for an agency subordinate. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding shall include current or former board members deemed knowledgeable by virtue of ~~their~~ training and experience in administrative proceedings involving the regulation and discipline of health professionals.

VA.R. Doc. No. R24-7687; Filed July 12, 2024, 4:10 p.m.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

Proposed Regulation

Title of Regulation: **18VAC155-20. Waste Management Facility Operators Regulations (amending 18VAC155-20-10, 18VAC155-20-40, 18VAC155-20-50, 18VAC155-20-110 through 18VAC155-20-190, 18VAC155-20-210 through 18VAC155-20-285).**

Statutory Authority: §§ 54.1-201 and 54.1-2211 of the Code of Virginia.

Public Hearing Information:

September 3, 2024 - 2:30 p.m. - Department of Health Professions, 9960 Mayland Drive, Second Floor Conference Center, Board Room 2, Richmond, VA 23233.

Public Comment Deadline: October 11, 2024.

Agency Contact: Cameron Parris, Regulatory Operations Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-9183, FAX (866) 350-5354, or email cameron.parris@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia authorizes the Board for Waste Management Facility Operators to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to ensure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system. Section 54.1-2211 A of the Code of Virginia states that the board shall promulgate regulations and standards for the training and licensing of waste management facility operators.

Purpose: The General Assembly has charged the board with the responsibility for regulating those who engage in the operation of waste management facilities by requiring that such individuals obtain the appropriate licensure and training. Waste management facilities are used for planned treatment, storage, or disposal of nonhazardous solid waste. The operating of waste management facilities by those who lack sufficient expertise poses a risk to the public health, safety, and welfare. These risks include the potential for environmental damage.

As mandated by the General Assembly, the board protects the public health, safety, and welfare, in part, by establishing through regulation the minimum qualifications for entry into the profession.

Substance: 18VAC155-20-10, the definitions section, is significantly revised to clarify the meaning of Class I, Class II, Class III, and Class IV licenses and to make the scope of licensure consistent with the types of facilities regulated by the Department of Environmental Quality (DEQ). Several definitions are removed as they are not used in the regulation or are no longer necessary.

18VAC115-20-110 is revised make the section clearer and in alignment with current DEQ regulations.

18VAC115-20-120 is revised to reduce the experience required to qualify for licensure.

18VAC115-20-120 is also revised to reduce the stringency of the disclosure requirement for an applicant's prior criminal history.

18VAC115-20-130 is revised to remove a duplicative provision located in section 18VAC115-20-280.

18VAC115-20-160 is revised reduce the hours of continuing education required for renewal of a license.

18VAC115-20-230 and 18VAC115-20-235 are revised to reduce the record retention period for providers of board-approved education courses.

18VAC115-20-280 is revised to eliminate a provision that bars an individual whose license is revoked from reapplying for licensure for one year.

18VAC115-20-285 is revised to provide a clearer and more objective standard for disciplinary action in cases where a licensee has committed a violation that resulted in harm or the threat of imminent and substantial harm to human health or the environment.

Issues: The primary advantages to the public and the regulated community are that the amendments will (i) reduce the stringency of entry qualifications for licensure while ensuring minimum competency and protection of the health, safety, and welfare of the public; (ii) allow for more individuals to enter the profession sooner; (iii) reduce the burden of continuing education requirements for individuals to renew licenses, while still ensuring licensees receive training to remain minimally competent; (iv) remove other regulatory burdens that are not necessary to protect the health, safety, and welfare of the public; (v) provide needed updating and clarification to the regulation; and (vi) ensure the regulation complements current Virginia law, is clearly written and understandable, and reflects current agency procedures. There are no identifiable disadvantages to the public or the Commonwealth. It is not anticipated that the regulatory change will create any substantial disadvantages to the regulated community.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. Pursuant to Executive Directive Number One (2022), the Board for Waste Management Facility Operators (board) proposes to (i) reduce the duration of the experience required for entry into the profession from one year to six months, (ii) reduce the continuing education requirement from eight hours to six hours, (iii) reduce the record retention period for providers of education courses from 10 years to five years, (iv) limit the look-back period for criminal convictions that must be disclosed to three years for any non-marijuana related misdemeanors and 10 years for felonies, (v) eliminate the one-year waiting period for relicensure following a revocation, and (vi) make numerous editorial changes to improve the clarity of the regulatory language.

Background. This regulation applies to those who engage in the operation of waste management facilities and establishes that such individuals obtain the appropriate licensure and training. Waste management facilities are used for planned treatment, storage, or disposal of nonhazardous solid waste. According to the board, the operation of waste management facilities by those who lack sufficient expertise poses a risk to the public health, safety, and welfare. These risks include the potential for environmental damage. As such, the rules in this regulation protect the public health, safety, and welfare, in part, by establishing the minimum qualifications for entry into the profession.

The impetus for this action is Executive Directive Number One (2022), which directs Executive Branch entities under the authority of the Governor "to initiate regulatory processes to reduce by at least 25% the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth."[2]

Consistent with the directive, the board proposes to reduce the duration of the experience required for entry into the profession from one year to six months; reduce the continuing education requirement from eight hours every two years to six hours every two years; reduce the record retention period for providers of education courses from 10 years to five years; limit the look-back period for criminal convictions that must be disclosed from an unlimited period of time (i.e., all convictions must be disclosed) to only requiring disclosure of non-marijuana related misdemeanors that occurred in the last three years, and felonies that occurred in the last 10 years; eliminate the one-year waiting period for relicensure following a revocation, thereby allowing the applicant to immediately reapply for licensure if all other requirements are met; and make numerous editorial changes to improve the clarity of the regulatory language.

Estimated Benefits and Costs. One of the proposed changes would reduce the minimum required amount of verified experience from one year to six months. This change could potentially allow individuals to enter the profession as much as six months earlier than currently allowed in the regulation, contingent upon passing the license examination. Such individuals may be able to earn income as a licensed professional more quickly than before.

The board reports that on average, it approves about 70 individuals per year to sit for the license examination. Such individuals must meet the training and experience requirements in the regulation in order to qualify for the examination. The board estimates that the reduced experience

requirement would result in a 25% increase per year in the number of individuals who would be approved for the license examination (equating to approximately 18 additional individuals per year). The median monthly salary for a licensed waste management worker is $3,640.[3] Assuming that the same individual without a license could earn the $12 per hour minimum wage[4] at another job and using 1,760 hours per year as constituting full-time employment per the board, the individual's monthly compensation would be $1,760. Thus, the monthly value of having the license could be estimated to be $1,880 or $11,280 over a period of six months. Considering the median monthly wage of $3,640 per month may be on the high end for a newly licensed professional, the total benefit in terms of higher earning capacity for all 18 additional licensed individuals could be up to $203,040.

Another proposed change would reduce the required continuing education hours from eight per license renewal cycle (every two years) to six, allowing licensees to save two hours of time biennially. The board reports that as of April 10, 2024, there were 615 licensed waste management facility operators; this translates to a time savings of 1,230 hours for all licensees per biennium, or 615 hours each year. The estimated value of 615 hours per year using the implied hourly wage of $24.82 (i.e., $3,640 * 12 months/1,760 hours) is $15,263. The board reports that most employers in this industry pay for the costs associated with obtaining and maintaining the licenses held by their employees and that most continuing education classes are provided by employers, non-profit organizations, or training providers at no cost. Thus, no savings in continuing education course charges are expected, but some providers may enjoy an additional 615 hours of productive time if their policy is to allow their employees to complete continuing education on company time.

The proposal also includes other reductions in regulatory burdens. For continuing education course providers, these include reduced recordkeeping costs from having to retain course participant records for only five years as opposed to 10 years. Additionally, waste management employees may directly benefit from not having to disclose any felony prior to the last 10 years and any non-marijuana misdemeanor prior to the last three years. This change reduces the stringency of the regulation and would allow individuals with older criminal histories to qualify for licensure. It may also indirectly benefit employers in this industry by expanding the pool of qualified employees. Similarly, the proposed change that would remove the one-year waiting period for relicensure following the revocation of a license would allow such individuals to immediately apply as a new applicant if they meet the other entry requirements without having to wait for a year; this may benefit the employee and employer (or a prospective employer) should a license revocation occur. However, the board reports that revocation of a license is highly infrequent in this profession as there have not been any revocations as far back as the staff can remember. The remaining changes are editorial in nature and are expected to improve the clarity and understandability of the regulatory language.

Businesses and Other Entities Affected. According to the board, as of April 10, 2024, there were 615 waste management facility operators. No operator appears to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[6] As noted, the proposal would provide direct benefits to waste management operators and indirect benefits to employers. Thus, no adverse impact is indicated.

Small Businesses[7] Affected.[8] According to the board, licenses issued under this regulation are issued to individuals and not to business entities. However, many licensees are likely employees of business entities that meet the definition of "small business" in § 2.2-4007.1 of the Code of Virginia, although the proposed amendments do not adversely affect any entity, including small businesses.

Localities[9] Affected.[10] The board reports that many waste management facilities are owned or operated by localities. Facility owners may provide their licensed operators with continuing education training. Such facility owners would likely benefit from the reduced record retention requirement in terms of facing lower costs associated with keeping records. The proposed amendments do not introduce costs for local governments.

Projected Impact on Employment. The projected impact on total employment is likely mixed. The proposed changes would allow potential licensees earn higher wages sooner. However, new licensees would likely quit other jobs to become licensed. The net impact on total employment largely depends on new persons entering the labor force to replace the workers who would become licensed waste management operators. Thus, the impact on total employment is not clear.

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

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

[2] https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/ed/ED-1-Regulatory-Reduction.pdf.

[3] Source: The board.

[4] Source: https://www.dol.gov/agencies/whd/minimum-wage/state.

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

[6] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

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

[9] "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[10] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board for Waste Management Facility Operators concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) reduce the duration of the experience required for entry into the profession from one year to six months; (ii) reduce the continuing education requirement from eight hours to six hours; (iii) reduce the record retention period for providers of education courses from 10 years to five years; (iv) limit the look-back period for criminal convictions that must be disclosed to three years for any non-marijuana related misdemeanors and 10 years for felonies; (v) eliminate the one-year waiting period for relicensure following a revocation; and (vi) make numerous editorial changes to improve clarity.

18VAC155-20-10. 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 Board for Waste Management Facility Operators.

"Class I license" means the authorization from the board to act as a waste management facility operator of a transfer station, a material recovery facility ~~receiving mixed waste~~, an experimental facility, ~~or~~ a composting facility, a centralized waste treatment facility, a surface impoundment or lagoon, a waste pile, a remediation waste management unit, or a miscellaneous unit.

"Class II license" means the authorization from the board to act as a waste management facility operator of a sanitary landfill, an industrial landfill, ~~a construction landfill,~~ or a ~~debris~~ construction/demolition/debris (CDD) landfill.

"Class III license" means the authorization from the board to act as a waste management facility operator of ~~an infectious waste incinerator or autoclave~~ a regulated medical waste management facility.

"Class IV license" means the authorization from the board to act as a waste management facility operator of a municipal waste ~~combustor~~ combustion unit, a waste-to-energy facility, or an incineration facility.

"Contact hour" means 50 minutes of participation in a group program or 60 minutes of completion time for a project.

"Department" means the Department of Professional and Occupational Regulation.

~~"Full-time employment" means 1,760 hours per year or 220 work days per year.~~

~~"License" means an authorization issued by the board to an individual to practice as a waste management facility operator who meets the provisions of this chapter.~~

"Municipal solid waste" means that waste that is defined as "municipal solid waste" in 9VAC20-81-10.

~~"Municipal waste combustor" means a mass burn or a refuse derived fuel incinerator or facility designed or modified for the purpose of noninfectious solid waste combustion.~~

"Operation" means any waste management facility that is under construction, treating, processing, storing, or disposing of solid waste, or in the act of securing a facility for closure as defined in 9VAC20-81-10.

~~"Organized program" means a formal learning process designed to permit a participant to learn a given subject or subjects through interaction with an instructor in a formal course, seminar or conference as approved by the board.~~

~~"Owner" means the person who owns a solid waste management facility or part of a solid waste management facility.~~

"Solid waste" means any of those materials ~~identified~~ defined as ~~nonhazardous~~ solid waste in 9VAC20-81-95.

18VAC155-20-40. Fees.

A. All fees are nonrefundable and ~~shall~~ will not be prorated.

B. An application ~~shall~~ is not ~~be deemed~~ complete and ~~shall~~ will not be processed without the required fee.

1. The application fee for licensure ~~shall be~~ is $75.

2. The fee for renewal of licensure ~~shall be~~ is $50.

3. The fee for late renewal of licensure ~~shall be~~ is $75.

4. The fee for reinstatement of licensure ~~shall be~~ is $125.

5. The examination fee is charged to the applicant by an outside vendor competitively negotiated and contracted for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the applicant in accordance with this contract.

C. All checks ~~shall~~ must be made payable to the Treasurer of Virginia.

D. Receipt and deposit of fees submitted with applications do not indicate licensure.

18VAC155-20-50. Change of status.

A. Each licensee ~~shall~~ must provide written notification of any change of address to the department within 30 days.

B. Each licensee ~~shall~~ must provide written notification and proof of any change of name to the department within 30 days.

C. The license issued by the board ~~shall~~ will not be transferred or otherwise reassigned.

18VAC155-20-110. License classification.

A. The applicant ~~shall~~ must apply for at least one classification of license as outlined in this subsection:

1. An individual operating a facility ~~that is defined in 9VAC20-81-10~~ regulated under Solid Waste Management Regulations (9VAC20-81), as a transfer station, a materials recovery facility ~~receiving mixed waste~~, an experimental facility, ~~or~~ a composting facility ~~shall~~, a centralized waste treatment facility, a surface impoundment or lagoon, a waste pile, a remediation waste management unit, or a miscellaneous unit must hold a Class I license. An individual who has obtained a Class II, III, or IV license may also operate a facility listed under Class I.

2. An individual operating a facility that is defined in 9VAC20-81-10 as a sanitary landfill, industrial waste landfill, or construction/demolition/debris (CDD) landfill~~,~~ ~~shall~~ must hold a Class II license.

3. An individual operating a facility regulated under ~~9VAC20-120~~, Regulated Medical Waste Management Regulations (9VAC20-121), ~~shall~~ must hold a Class III license.

4. An individual operating a facility defined in 9VAC5-40-6560 as a municipal waste combustion unit ~~shall~~ or a facility regulated under 9VAC20-81 as a waste-to-energy facility or incineration facility must hold a Class IV license.

B. A licensee may not operate a facility outside of ~~his~~ the licensee's classification other than that defined by subdivision A 1 of this section.

~~C. An individual operating a solid waste management facility that has been issued a permit by the Department of Environmental Quality but for which the board has not established training and licensure requirements shall hold a Class I license until the board establishes the training and licensing requirements by regulation.~~

18VAC155-20-120. Qualifications for licensure.

A. Every applicant to the Board for Waste Management Facility Operators for licensure ~~shall~~ must meet the requirements and have the qualifications provided in this subsection.

1. The applicant ~~shall~~ must be at least 18 years of age.

2. Unless otherwise exempt, the applicant ~~shall~~ must have successfully completed a basic training course approved by the board. Additionally, an applicant for a Class II, III, or IV license ~~shall~~ must complete a training course approved by the board specific to the license for which ~~he~~ the individual applies.

3. Unless exempt, the applicant ~~shall~~ must have passed the applicable examination provided by the board or by a testing organization acting on behalf of the board.

4. Each applicant ~~shall~~ must document a minimum of ~~one year~~ six months of verified operational experience with a waste management facility of the same class for which ~~he~~ the individual applies. Experience claimed on the application for licensure ~~shall~~ must be verified by the individual's supervisor or personnel officer. Individuals who are under contract with a facility owner may obtain a letter from the facility owner to verify experience.

5. Applicants certified or licensed as waste management facility operators by governing bodies outside of the Commonwealth of Virginia ~~shall be~~ are considered to be in compliance with this chapter if the board or ~~its~~ the board's designee has determined the certifying system to be substantially equivalent to the Virginia system.

6. In accordance with § 54.1-204 of the Code of Virginia, each applicant ~~shall~~ must disclose a conviction~~,~~ in any jurisdiction~~,~~ of any non-marijuana misdemeanor within the last three years or felony within the last 10 years. Any plea of nolo contendere shall be considered a conviction for the purpose of this subdivision. The record of conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

7. The applicant ~~shall~~ must report suspensions, revocations, or ~~surrendering~~ surrender of a certificate or license in connection with a disciplinary action. The applicant ~~shall~~ must report if a license has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. The board, at its discretion, may deny licensure to any applicant based on prior suspensions, revocations, or surrender of certifications or licenses based on disciplinary action by any jurisdiction.

B. The board may make further inquiries and investigations with respect to the qualifications of the applicant.

18VAC155-20-130. Application procedures.

Application ~~shall~~ must be made on forms supplied by the department, and application forms ~~shall~~ must be completed in accordance with the instructions on the forms. Failure to provide a complete application and all applicable addenda may result in a denial of ~~approval~~ the application. ~~The failure to provide complete information may be interpreted as misrepresentation and may result in disciplinary action as described in 18VAC155-20-280.~~

18VAC155-20-140. Examinations.

A. Applicants will be approved to sit for the examination for licensure once all training and experience requirements have been satisfied and documentation pertaining to all other qualifications has been received by the board.

B. An applicant must follow all rules established by the board or by the testing service acting on behalf of the board with regard to the conduct at the examination site. Such rules ~~shall~~ include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the exam.

18VAC155-20-160. Procedures for renewal.

A. Licenses issued under this chapter ~~shall~~ expire two years from the last day of the month in which ~~they were~~ the license was issued as indicated on the license.

B. The board will mail a renewal notice to the licensee at the address on file with the board outlining the fee and procedures for license renewal. Failure to receive written notice from the department does not relieve the licensee from the requirement to renew ~~his~~ the license. If the license holder fails to receive the renewal notice, a copy of the license may be submitted with evidence of completion of the continuing education requirements and the appropriate fee.

C. The date the required fee is received by the department or ~~its~~ the department's agent will be used to determine whether a penalty fee or the requirement for reinstatement of a license is applicable.

D. As a condition of renewal or reinstatement, all individuals holding a license ~~shall be required to~~ must satisfactorily complete ~~eight~~ six hours of continuing education from a provider approved by the board in accordance with the provisions of this chapter, except that no continuing education ~~shall be~~ is required for the first renewal after the issuance of the initial license to an individual.

18VAC155-20-180. Late renewal.

If the renewal fee, as provided for in 18VAC155-20-40 B 2, is not received by the department within 30 days after the expiration date noted on the license, the late renewal fee provided for in 18VAC155-20-40 B 3 ~~shall be~~ is required.

18VAC155-20-190. Reinstatements.

If the licensee fails to renew ~~his~~ the license within six months following the expiration date, the licensee ~~shall~~ will be required to apply for reinstatement of the license. The applicant will be required to present reasons that the license was allowed to expire, and the board may grant reinstatement of the license or require requalification or reexamination or both. The application fee for reinstatement of a license ~~shall~~ will be the amount provided for in 18VAC155-20-40 B 4. An individual who has not been reinstated within two years after expiration of the license must reapply as a new applicant. The new applicant ~~shall~~ must provide evidence of satisfactory completion of the training ~~course(s)~~ course required by this chapter and ~~shall~~ pass the examination as determined by the board.

18VAC155-20-210. Status of licensure during the period prior to reinstatement.

A. Reinstated licenses ~~shall~~ will continue to have the same license number and ~~shall~~ will be assigned an expiration date two years from the previous expiration date of the license.

B. Reinstated licenses ~~shall be~~ are regarded as having been continuously licensed without interruption. Therefore, the holder of the reinstated license ~~shall~~ will remain under the disciplinary authority of the board during this entire period and may be held accountable for ~~his~~ any activities during this period.

C. Licenses ~~which~~ that are not renewed or reinstated ~~shall be~~ are regarded as expired from the date of the expiration forward.

D. Nothing in this chapter ~~shall divest~~ divests the board of its authority to take disciplinary action for a violation of the law or regulations during the period of time for which an individual was licensed.

18VAC155-20-220. Education courses.

A. All training and continuing education courses must be completed through accredited colleges, universities, junior and community colleges, Virginia Apprenticeship Council programs, proprietary schools approved by the Virginia Department of Education, or other programs approved by the board.

B. All courses for which credit for pre-license education is sought ~~shall~~ must be related to the operation of the class of waste management facility for which the course is being offered and ~~shall~~ must be approved by the board.

C. All courses for which credit for continuing education is sought ~~shall~~ must be related to the operation of the class of waste management facility for which the course is being offered and may be reviewed by the board.

D. Each provider of a pre-license education course or person submitting a course for continuing education credit ~~shall~~ must submit an application for approval on a form provided by the board. The application ~~shall~~ must include~~, but is not limited to~~:

1. The name of the provider;

2. Provider contact person, address, and telephone number;

3. Course contact hours;

4. Schedule of courses, if established, including dates, times, and locations;

5. Course syllabus; and

6. Instructor information, including name, license number if applicable, education and training background, and a list of other appropriate trade designations or training certifications.

18VAC155-20-230. Training records.

An approved training provider ~~shall~~ must retain records for all participants for a period of ~~10~~ five years and shall maintain a written policy on the retention and release of records. All records pertaining to the approved training and participants ~~shall~~ must be made available to the board immediately upon request.

18VAC155-20-235. Denial or withdrawal of approval.

The board may deny or withdraw the approval of any training or continuing education course for the following reasons:

1. Courses being offered no longer meet the standards established by the board;

2. The course provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive way;

3. The course provider, instructor, or designee of the provider falsifies any information relating to the application for approval, course information, or student records or fails to produce records required by the ~~Board for Waste Management Facility Operators~~ board; or

4. The course provider fails to maintain student course completion records for a minimum of ~~10~~ five years.

18VAC155-20-280. Grounds for denial of application, denial of renewal, or discipline.

A. The board ~~shall have the authority to~~ may (i) deny an application for and ~~to~~ deny renewal of a license or training course approval, (ii) revoke or suspend ~~the~~ a license or training course approval, and (iii) discipline a licensee or an approved training provider who is found to be in violation of the statutes or regulations governing the practice of licensed waste management facility operators.

B. Any individual whose license is revoked under this section ~~shall not be eligible to apply for licensure for a period of one year from the effective date of the final order of revocation. After the one year period, the individual shall~~ must meet all education, examination, experience, and training requirements, complete the application, and submit the required fee for consideration as a new applicant.

C. The board ~~shall~~ will conduct disciplinary procedures in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

18VAC155-20-285. Prohibited acts.

Any of the following are cause for disciplinary action:

1. Violating or inducing another to violate any provisions of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), or 22.1 (§ 54.1-2209 et seq.) of Title 54.1 of the Code of Virginia~~,~~ or any provision of this chapter.

2. Obtaining or renewing a license through fraudulent means or misrepresentation.

3. Having been found guilty by the board, an administrative body, or ~~by~~ a court of ~~any material~~ misrepresentation in the course of performing ~~his~~ operating duties.

4. Subject to the provisions of § 54.1-204 of the Code of Virginia, having been convicted or found guilty, regardless of jurisdiction, of any felony or any violation that resulted in the ~~significant~~ harm or the imminent and substantial threat of ~~significant~~ harm to human health or the environment, there being no appeal pending therefrom, or the time of appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. A certified copy of the final order, decree, or case decision by a court or regulatory agency with lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such conviction.

5. Failing to inform the board in writing within 30 days of pleading guilty to, pleading nolo contendere to, being convicted of, or being found guilty of (i) any felony or (ii) any violation that resulted in the ~~significant~~ harm or the imminent and substantial threat of ~~significant~~ harm to human health or the environment.

6. Gross negligence~~,~~ or a continued pattern of incompetence~~,~~ in the practice of a waste management facility operator.

7. Violating the permit conditions for the facility, or violating federal, state, or local laws or regulations, which resulted in the ~~significant~~ harm or the imminent and substantial threat of ~~significant~~ harm to human health or the environment.

8. Failure to comply with all rules established by the board and the testing organization with regard to conduct at the examination.

VA.R. Doc. No. R23-7452; Filed July 24, 2024, 7:58 a.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

Title of Regulation: **19VAC30-20. Motor Carrier Safety Regulations (amending 19VAC30-20-80).**

Statutory Authority: § 52-8.4 of the Code of Virginia; 49 CFR Part 390.

Effective Date: October 1, 2024.

Agency Contact: Lieutenant Thomas Lambert, Director, Office of Legal Affairs, Department of State Police, Virginia State Police Headquarters, 7700 Midlothian Turnpike, Suite 1200, North Chesterfield, VA 232358, telephone (804) 674-6722, FAX (804) 968-0322, or email tom.lambert@vsp.virginia.gov.

Summary:

The amendment updates the effective date of the Federal Motor Carrier Safety Regulations promulgated by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration that are incorporated for compliance and enforcement purposes.

19VAC30-20-80. Compliance.

Every person and commercial motor vehicle subject to this chapter operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, with amendments promulgated and in effect as of October 1, ~~2023~~ 2024, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 366, 370 through 376, 379, 380 Subparts E and F, 382, 385, 386 Subpart G, 387, 390 through 397, and 399, which are incorporated in this chapter by reference, with certain exceptions.

VA.R. Doc. No. R24-7986; Filed July 23, 2024, 4:26 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

Title of Regulation: **19VAC30-140. Regulations Relating to Standards and Specifications for Back-Up Audible Alarm Signals (amending 19VAC30-140-30; repealing 19VAC30-140-10, 19VAC30-140-20, 19VAC30-140-40, 19VAC30-140-50).**

Statutory Authority: §§ 46.2-1005 and 46.2-1175.1 of the Code of Virginia.

Effective Date: September 11, 2024.

Agency Contact: Lieutenant Thomas Lambert, Director, Office of Legal Affairs, Department of State Police, Virginia State Police Headquarters, 7700 Midlothian Turnpike, Suite 1200, North Chesterfield, VA 232358, telephone (804) 674-6722, FAX (804) 968-0322, or email tom.lambert@vsp.virginia.gov.

Summary:

Pursuant to § 46.2-1157 of the Code of Virginia, the amendments (i) remove the requirement that the owner or operator of an impacted vehicle determines whether the audible alarm the owner or operator purchased or had installed meets the industry standards and (ii) clarify that audible alarms must be marked or certified as being in compliance with the Society of Automotive Engineers standards by the manufacturers, sellers, or installers of such audible alarms.

19VAC30-140-10. ~~Purpose.~~ (Repealed.)

~~The purpose of this standard is to establish specifications which define standards and identification of back-up audible alarm signals required on garbage and refuse collection and disposal vehicles and certain vehicles used primarily for highway repair and maintenance.~~

19VAC30-140-20. ~~Definition.~~ (Repealed.)

~~"Back-up audible alarm signal" means an electric powered device consisting of an alarm, alarm control circuitry and an activating switch required for use on vehicles used for garbage and refuse collection and disposal and on vehicles having a manufacturer's gross vehicle weight rating of 10,001 pounds or more and used primarily for highway maintenance and repair.~~

19VAC30-140-30. Description and identification.

The alarm mandated by § 46.2-1175 of the Code of Virginia will be an ~~electric powered~~ electric-powered device consisting of an alarm, alarm control circuitry, and an activating switch ~~which meets or exceeds Society of Automotive Engineers (SAE) Standard J994~~. The alarm shall be activated immediately when the transmission control mechanism is shifted into a reverse position~~,~~ and shall remain activated until

the mechanism is shifted out of the reverse position. The alarm ~~will be identified~~ must be marked as or certified by the manufacturer, seller, or installer as meeting or exceeding the Society of Automotive Engineers SAE Standard J994.

19VAC30-140-40. ~~Performance requirements.~~ (Repealed.)

~~Devices must meet or exceed standards as set forth in SAE J994 which includes the following tests:~~

~~1. Sound level test;~~

~~2. Vibration test;~~

~~3. Rain test;~~

~~4. Corrosion test;~~

~~5. Steam test;~~

~~6. Dust test;~~

~~7. Life cycle test.~~

19VAC30-140-50. ~~Proof of compliance.~~ (Repealed.)

~~Whenever the Superintendent of State Police deems it necessary, he may require the manufacturer or distributor of back up audible alarm signal devices to furnish proof that the alarm or any part of the alarm meets or exceeds the requirements of this chapter.~~

VA.R. Doc. No. R24-7985; Filed July 23, 2024, 4:39 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Emergency Regulation

Title of Regulation: **22VAC40-73. Standards for Licensed Assisted Living Facilities (amending 22VAC40-73-45, 22VAC40-73-50, 22VAC40-73-390).**

Statutory Authority: §§ 63.2-217, 63.2-1732, 63.2-1802, 63.2-1805, and 63.2-1808 of the Code of Virginia.

Effective Dates: July 26, 2024, through January 25, 2026.

Agency Contact: Kristopher Drew, Licensing Consultant, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (434) 443-0754, FAX (804) 726-7132, or email kristopher.drew@dss.virginia.gov.

Preamble:

Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation 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 580 of the 2023 Acts of Assembly, the amendments require every assisted living facility (ALF) to maintain a minimum amount of liability insurance, as determined by the State Board of Social Services on the basis of the number of residents for which the ALF is licensed, and provide notice of such insurance, upon request, to any resident or prospective resident.

22VAC40-73-45. ~~Minimum amount for liability~~ Liability insurance ~~disclosure~~.

A. ~~The minimum amount of liability insurance coverage to be maintained by an assisted living facility for purposes of disclosure in the statement required by 22VAC40-73-50 and the resident agreement required by 22VAC40-73-390 is as follows:~~ As of January 23, 2025, all assisted living facilities shall maintain liability insurance coverage according to the following licensed capacity tiers:

1. ~~$500,000 per occurrence to compensate residents or other individuals for injuries and losses from the negligent acts of the facility; and~~ Tier I: A minimum of $250,000 for facilities licensed for 25 residents or fewer;

2. ~~$500,000 aggregate to compensate residents or other individuals for injuries and losses from the negligent acts of the facility.~~ Tier II: A minimum of $400,000 for facilities licensed for more than 25 but no more than 75 residents;

3. Tier III: A minimum of $500,000 for facilities licensed for more than 75 but no more than 150 residents; or

4. Tier IV: A minimum of $1,000,000 for facilities licensed for 151 or more residents.

B. ~~No facility shall state that liability insurance is in place unless the insurance provides the minimum amount of coverage established in subsection A of this section.~~ Each facility shall prepare and provide, upon request of the prospective resident or resident and resident's legal representative, if any, a statement that the facility maintains liability insurance in force to compensate residents or other individuals for injuries and losses from the negligent acts of the facility. The statement shall be made on the liability insurance statement form provided by the department.

22VAC40-73-50. Disclosure.

A. The assisted living facility shall prepare and provide a statement to the prospective resident and ~~his~~ the prospective resident's legal representative, if any, that discloses information about the facility. The statement shall be on a form developed by the department and shall:

1. Disclose information fully and accurately in plain language;

2. Be provided in advance of admission and prior to signing an admission agreement or contract;

3. Be provided upon request; and

4. Disclose the following information, which shall be kept current:

a. Name of the facility;

b. Name of the licensee;

c. Ownership structure of the facility (e.g., individual, partnership, corporation, limited liability company, unincorporated association, or public agency);

d. Description of all accommodations, services, and care that the facility offers;

e. Fees charged for accommodations, services, and care, including clear information about what is included in the base fee and all fees for additional accommodations, services, and care;

f. Criteria for admission to the facility and restrictions on admission;

g. Criteria for transfer to a different living area within the same facility, including transfer to another level or type of care within the same facility or complex;

h. Criteria for discharge;

i. Categories, frequency, and number of activities provided for residents;

j. General number, position types, and qualifications of staff on each shift;

~~k. Whether or not the facility maintains liability insurance that provides at least the minimum amount of coverage established by the board for disclosure purposes set forth in 22VAC40-73-45 to compensate residents or other individuals for injuries and losses from negligent acts of the facility. The facility shall state in the disclosure statement the minimum amount of coverage established by the board in 22VAC40-73-45;~~

~~l.~~ k. Whether ~~or not~~ the facility has an onsite emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. If the facility does have an onsite emergency electrical power source, the statement must include (i) the items for which the source will supply power and (ii) whether ~~or not~~ staff of the facility have been trained to maintain and operate the power source. For the purposes of this subdivision k, an onsite emergency electrical power supply shall include both permanent emergency electrical power sources and portable emergency electrical power sources, provided that such temporary electrical power supply source remains on the premises of the facility at all times. Written acknowledgment of the disclosure shall be evidenced by the signature or initials of the resident or ~~his~~ the resident's legal representative immediately following the onsite emergency electrical power source disclosure statement;

~~m.~~ l. Notation that additional information about the facility that is included in the resident agreement is available upon request; and

~~n.~~ m. The department's website address, with a note that additional information about the facility may be obtained from the website.

B. Written acknowledgment of the receipt of the disclosure by the resident or ~~his~~ the resident's legal representative shall be retained in the resident's record.

C. The disclosure statement shall also be available to the general public, upon request.

22VAC40-73-390. Resident agreement with facility.

A. At or prior to the time of admission, there shall be a written ~~agreement/acknowledgment~~ agreement or acknowledgment of notification dated and signed by the resident or applicant for admission or the appropriate legal representative~~,~~ and by the licensee or administrator. This document shall include the following:

1. Financial arrangement for accommodations, services, and care that specifies:

a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;

b. Description of all accommodations, services, and care that the facility offers and any related charges;

c. For an auxiliary grant recipient, a list of services included under the auxiliary grant rate;

d. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment, except that recipients of auxiliary grants may not be charged an advance payment or deposit payment;

e. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;

f. If the ownership of any personal property, real estate, money, or financial investments is to be transferred to the facility at the time of admission or at some future date, it shall be stipulated in the agreement; and

g. The refund policy to apply when transfer of ownership, closing of facility, or resident transfer or discharge occurs.

2. Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions.

3. Those actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility.

4. Specific acknowledgments that:

a. Requirements or rules regarding resident conduct, other restrictions, or special conditions have been reviewed by the resident or ~~his~~ the resident's legal representative;

b. The resident or ~~his~~ the resident's legal representative has been informed of the policy regarding the amount of

notice required when a resident wishes to move from the facility;

c. The resident has been informed of the policy required by 22VAC40-73-840 regarding pets living in the facility;

d. The resident has been informed of the policy required by 22VAC40-73-860 K regarding weapons;

e. The resident or ~~his~~ the resident's legal representative or responsible individual, as stipulated in 22VAC40-73-550 H, has reviewed § 63.2-1808 of the Code of Virginia, Rights and Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained ~~to him~~;

f. The resident or ~~his~~ the resident's legal representative or responsible individual, as stipulated in 22VAC40-73-550 H, has reviewed ~~and had explained to him~~ the facility's policies and procedures for implementing § 63.2-1808 of the Code of Virginia;

g. The resident has been informed ~~and had explained to him that he~~ that the resident may refuse release of information regarding ~~his~~ the resident's personal affairs and records to any individual outside the facility, except as otherwise provided in law and except in case of ~~his~~ the resident's transfer to another caregiving facility, notwithstanding any requirements of this chapter;

h. The resident has been informed that interested residents may establish and maintain a resident council, that the facility is responsible for providing assistance with the formation and maintenance of the council, whether or not such a council currently exists in the facility, and the general purpose of a resident council (See 22VAC40-73-830);

i. The resident has been informed of the bed hold policy in case of temporary transfer or movement from the facility~~,~~ if the facility has such a policy (See 22VAC40-73-420 B);

j. The resident has been informed of the policy or guidelines regarding visiting in the facility~~,~~ if the facility has such a policy or guidelines (See 22VAC40-73-540 C);

k. The resident has been informed of the rules and restrictions regarding smoking on the premises of the facility, including ~~that which is~~ those required by 22VAC40-73-820;

l. The resident has been informed of the policy regarding the administration and storage of medications and dietary supplements;

m. The resident, upon request, has been notified in writing ~~whether or not~~ that the facility maintains liability insurance that provides ~~at least~~ the minimum amount of coverage ~~established by the board for disclosure purposes~~ set forth in 22VAC40-73-45 to compensate residents or other individuals for injuries and losses from negligent acts of the facility. ~~The facility shall state in the notification the minimum amount of coverage established by the board in 22VAC40-73-45.~~ The written notification must be on a form developed by the department; and

n. The resident has received written assurance that the facility has the appropriate license to meet ~~his~~ the resident's care needs at the time of admission, as required by 22VAC40-73-310 D.

B. Copies of the signed ~~agreement/acknowledgment~~ agreement or acknowledgment and any updates as noted in subsection C of this section shall be provided to the resident and, as appropriate, ~~his~~ the resident's legal representative and shall be retained in the resident's record.

C. The original ~~agreement/acknowledgment~~ agreement or acknowledgment shall be updated whenever there are changes to any of the policies or information referenced or identified in the ~~agreement/acknowledgment~~ agreement or acknowledgment and dated and signed by the licensee or administrator and the resident or ~~his~~ the resident's legal representative.

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

FORMS (22VAC40-73)

~~Report of Tuberculosis Screening (eff. 10/2011)~~

~~Virginia Department of Health Report of Tuberculosis Screening Form (undated)~~

~~Virginia Department of Health TB Control Program Risk Assessment Form, TB 512 (eff. 9/2016)~~

Assisted Living Facility Liability Insurance Statement, 032-05-0600-01-eng (eff. 7/2024)

VA.R. Doc. No. R25-7763; Filed July 24, 2024, 12:45 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF MOTOR VEHICLES

Fast-Track Regulation

Title of Regulation: **24VAC20-82. Overload and Hauling Permits Regulation (amending 24VAC20-82-20).**

Statutory Authority: § 46.2-203 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 11, 2024.

Effective Date: September 26, 2024.

Agency Contact: Nicholas Megibow, Senior Policy Analyst, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-6701, FAX (804) 367-4336, or email nicholas.megibow@dmv.virginia.gov.

Basis: Section 46.2-203 of the Code of Virginia provides the Department of Motor Vehicles (DMV) with specific and general authority to adopt reasonable administrative regulations necessary to carry out the laws administered by the DMV. Section 46.2-1139 of the Code of Virginia authorizes DMV to issue permits that allow certain vehicles that exceed statutory weight or size limits to operate on the highway and authorizes DMV to promulgate regulations governing such permits.

Purpose: The proposed amendments benefit the public health, safety, and welfare by reducing the regulatory burden on motor carrier businesses without detrimentally affecting citizens of the Commonwealth.

Rationale for Using Fast-Track Rulemaking Process: DMV concluded a review of its regulations as part of the ongoing regulatory reduction process mandated by Executive Order 19 (2022) and expects this action to be noncontroversial as it reduces the regulatory burden on motor carrier businesses while not detrimentally affecting citizens of the Commonwealth.

Substance: The proposed amendments eliminate the requirement that expired decals for overload permits be removed or destroyed and clarify the process for purchasing overload permits.

Issues: The proposed amendments do not present any disadvantages to the public or the Commonwealth. The advantages to the public and the Commonwealth are that this regulatory action would remove an unnecessary regulatory requirement from the regulation, add additional clarity to the steps required to obtain a permit, and lessen the regulatory burden on motor carrier companies.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Department of Motor Vehicles (DMV) proposes to eliminate the requirement that expired decals for overload permits be removed or destroyed.

Background. "Overload permit" is defined in the regulation as a permit issued by the Virginia Department of Motor Vehicles to allow Virginia-based and foreign-based vehicles or combinations of vehicles to exceed the weight limitations otherwise applicable to such vehicles by 5.0%.

Estimated Benefits and Costs. The current regulation requires that expired decals for overload permits be removed or destroyed. According to DMV, in practice, law-enforcement officers have not penalized motor carrier companies for failing to remove expired decals. If this proposal is finalized, permit holders who have been removing or destroying their expired decals, and who choose to no longer regularly do so, would benefit by a small reduction in required staff time.

Businesses and Other Entities Affected. The proposed amendment potentially affects the 2,418 distinct overload permit holders.[2] Permit holders who have been removing or destroying their expired decals, who choose to no longer regularly do so if the proposal is finalized, would be particularly affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[3] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[4] The proposed amendment neither increases costs nor reduces revenue. Thus, no adverse impact is indicated.

Small Businesses[5] Affected.[6] The proposed amendment does not adversely affect small businesses.

Localities[7] Affected.[8] The proposed amendment neither disproportionately affects particular localities nor introduces costs for local governments.

Projected Impact on Employment. The proposed amendment does not appear to affect total employment.

Effects on the Use and Value of Private Property. Some motor carrier companies who currently regularly remove or destroy expired decals may no longer do so. This would save a small amount of staff time but would not likely substantively affect the value of the firms. The proposed amendment does not affect real estate development costs.

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

[2] Data source: DMV.

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

[4] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

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

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

[8] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department of Motor Vehicles has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendments (i) clarify requirements for purchasing overload permits and (ii) eliminate the requirement that expired decals for overload permits be removed or destroyed.

24VAC20-82-20. Overload permit requirements.

A. Overload permits are ordinarily purchased at the time of vehicle registration. The fee for an overload permit purchased at the time of a quarterly vehicle registration shall be prorated.

B. Overload permits may be transferred from one vehicle to another if the license plates associated with the permit are also being transferred. The fee to transfer an overload permit is $2.00. This fee is in addition to any fee authorized to be collected for the transfer of the license plates associated with the permit. Permit decals shall be removed from the vehicle from which the permit is being transferred and shall either accompany the application for a new overload permit or be destroyed by the permit holder.

C. Overload permits will be issued in the same name and for the same vehicle as the vehicle registration.

D. Overload permit fees are not refundable. However, an applicant for a new permit may receive credit for the fee paid for a previously issued, unexpired permit that has been removed from a vehicle. Such credit shall not exceed (i) the prorated fee for the number of months remaining on the previously issued permit, or (ii) the amount of the fee for the new permit, whichever is less. The credit shall not be applied to the $2.00 permit transfer fee.

E. In order to purchase an overload permit, the owner of a motor vehicle shall:

~~1. Request the permit from DMV;~~

~~2. Pay the appropriate fee; and~~

~~3.~~ 1. Furnish, on an application supplied by DMV, the following information for the motor vehicle:

a. Make;

b. Identification number;

c. Current license plate number;

d. Expiration date;

e. State of issue; and

f. Registered gross weight; and

2. Pay the fee specified in § 46.2-1128 of the Code of Virginia.

F. The fee for an initial permit issued on a vehicle may be prorated to the month of the expiration of the vehicle registration.

G. Overload permits may be in the form of decals, issued in duplicate. Any decals issued shall be placed on the vehicle in the following locations:

1. One decal shall be placed on the driver side of the vehicle.

2. The second decal shall be placed on the passenger side in the same approximate area as the first decal.

~~H. Expired decals shall be removed or destroyed.~~

VA.R. Doc. No. R24-7859; Filed July 12, 2024, 3:41 p.m.

DEPARTMENT OF TRANSPORTATION

Forms

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

Title of Regulation: **24VAC30-120. Rules and Regulations Controlling Outdoor Advertising and Directional and Other Signs and Notices.**

Agency Contact: Rob Hofrichter, Director, Office of Land Use, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-0780, or email robert.hofrichter@vdot.virginia.gov.

FORMS (24VAC30-120)

~~Application for Outdoor Advertising Permit OA-105A (Rev. 7/1/93).~~

Application for Outdoor Advertising Permit OA-105A (rev. 2/2024)

VA.R. Doc. No. R24-7998; Filed July 18, 2024, 1:50 p.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

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

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Title of Document: Agricultural Stewardship Act Guidelines.

Public Comment Deadline: September 11, 2024.

Effective Date: September 12, 2024.

Agency Contact: Darrell Marshall, Agricultural Stewardship Program Manager, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-2658, or email darrell.marshall@vdacs.virginia.gov.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Titles of Documents: Guidance on Monitoring Devices.

Individual and Family Support Funding Guidelines FY2023.

Public Comment Deadline: September 11, 2024.

Effective Date: September 12, 2024.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, telephone (804) 225-2252, or email ruthanne.walker@dbhds.virginia.gov.

STATE BOARD OF HEALTH

Title of Document: Risk-Based Inspection Frequency for Food Establishments.

Public Comment Deadline: September 11, 2024.

Effective Date: September 12, 2024.

Agency Contact: Olivia McCormick, Director, Division of Food and General Environment, Virginia Department of Health, 109 Governor Street, Fifth Floor, Richmond, VA 23219, telephone (804) 864-8146, or email olivia.mccormick@vdh.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Documents: Developmental Disabilities Waivers Manual, Appendix D.

Developmental Disabilities Waivers Manual, Chapter 4.

Local Education Agency Manual, Chapter 5.

Mental Health Services Manual, Appendix C.

Public Comment Deadline: September 11, 2024.

Effective Date: September 12, 2024.

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

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Titles of Documents: Early Intervention Manual, Chapter 4.

Early Intervention Manual, Chapter 5.

Early Intervention Manual, Chapter 6.

Public Comment Deadline: September 11, 2024.

Effective Date: September 12, 2024.

Agency Contact: Emily McClellan, Policy Division Director, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-4300, or email emily.mcclellan@dmas.virginia.gov.

BOARD OF PHARMACY

Title of Document: Pharmacy Inspection Deficiency Monetary Penalty Guide.

Public Comment Deadline: September 11, 2024.

Effective Date: September 12, 2024.

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: Child and Family Services Manual Chapter A, Section 2, Family Engagement.

Public Comment Deadline: September 11, 2024.

Effective Date: September 12, 2024.

Agency Contact: Karin Clark, Regulatory Coordinator, Department of Social Services, 801 East Main Street, Room 1507, Richmond, VA 23219, telephone (804) 726-7017, or email karin.clark@dss.virginia.gov.

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Title of Document: Temporary Assistance for Needy Families Manual.

Public Comment Deadline: September 11, 2024.

Effective Date: September 12, 2024.

Agency Contact: Mark Golden, Temporary Assistance for Needy Families Program Manager, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 726-7385, or email mark.golden@dss.virginia.gov.

The following guidance documents have been submitted for deletion and the listed agencies have opened up a 30-day public comment period. The listed agencies had previously identified these documents as certified guidance documents, pursuant to § 2.2-4002.1 of the Code of Virginia. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to view the deleted document and comment. This information is also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Title of Document: Guidelines for the Virginia Ginseng Management Program.

Public Comment Deadline: September 11, 2024.

Effective Date: September 12, 2024.

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

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Titles of Documents: Handling of Diesel Exhaust Fluid Dispensed for Testing.

Office of Weights and Measures Technical Bulletin Number 2011-3 - Taxes Charged for the Purchase of Gasoline, Diesel, Off-Road Diesel, Heating Oil, and Kerosene.

Public Comment Deadline: September 11, 2024.

Effective Date: September 12, 2024.

Agency Contact: Gary Milton, Program Manager, Office of Weights and Measures, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1274, or email gary.milton@vdacs.virginia.gov.

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Title of Document: Health Spa Contract Requirements.

Public Comment Deadline: September 11, 2024.

Effective Date: September 12, 2024.

Agency Contact: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3983, or email michael.menefee@vdacs.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Greenlight Investments LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Greenlight Investments LLC for violations of the State Water Control Law and regulations in Mecklenburg County, Virginia. The proposed order is available from the DEQ contact listed or at https://www.deq.virginia.gov/permits/public-notices/enforcementorders. The DEQ contact will accept comments by email or postal mail from August 12, 2024, through August 14, 2024.

Contact Information: Matt Richardson, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, Virginia 23060, telephone (804) 659-2696, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for Oakwood Villas

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Oakwood Villas in Bedford, Virginia. The department proposes to issue a consent order to address noncompliance with the Virginia Pollutant Discharge Elimination System (VPDES) Permit regulation. The proposed order is available from the DEQ contact listed or at https://www.deq.virginia.gov/permits/public-notices/enforcementorders. The DEQ contact will accept comments by email or postal mail from August 12, 2024, through September 11, 2024.

Contact Information: Timothy Fletcher, Enforcement Specialist, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 524-0665, or email timothy.fletcher@deq.virginia.gov.

Proposed Enforcement Action for Om Shree Property Rehabilitation

The Virginia Department of Environmental Quality (DEQ) proposes to issue an enforcement action for Om Shree Property Rehabilitation to address noncompliance with the Virginia Pollutant Discharge Elimination System (VPDES) Permit regulation. The proposed order is available from the DEQ contact or at www.deq.virginia.gov/permits/public-notices/enforcement-orders. The DEQ contact will accept comments by email or postal mail from August 12, 2024, to September 11, 2024.

Contact Information: Timothy Fletcher, Enforcement Specialist, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 524-0665, or email timothy.fletcher@deq.virginia.gov.

Proposed Enforcement Action for Rheston Companies Inc.

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Rhetson Companies Inc. for violations in Spencer, Virginia. The department proposes to issue a consent order to address noncompliance with the Virginia Pollutant Discharge Elimination System (VPDES) Permit regulation. The proposed order is available from the DEQ contact listed or at https://www.deq.virginia.gov/permits/public-notces/enforcement-orders. The DEQ contact will accept comments by email or postal mail from August 12, 2024, to September 11, 2024.

Contact Information: Michael Puckett, Enforcement Specialist, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 577-6719, or email michael.puckett@deq.virginia.gov.

Proposed Enforcement Action for Robinette Scrap Metal Processing Corporation

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Robinette Scrap Metal Processing Corporation for violations of the State Water Control Law and regulations in Wise County, 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 August 12, 2024, through September 11, 2024.

Contact Information: Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Proposed Enforcement Action for Rock River Inc.

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Rock River Inc. for violations of the State Water Control Law and regulations in Nottoway County, 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 August 12, 2024, through September 11, 2024.

Contact Information: Matt Richardson, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, Virginia 23060, telephone (804) 659-2696, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for Summit Ridge Energy LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Summit Ridge Energy LLC for violations of the State Water Control Law and regulations in Lunenburg County, 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 August 12, 2024, through September 11, 2024.

Contact Information: Matt Richardson, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, Virginia 23060, telephone (804) 659-2696, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for Town of Appomattox

The Virginia Department of Environmental Quality (DEQ) proposes to issue a consent order to the Town of Appomattox, Appomattox water reclamation facility to address noncompliance with the Virginia Pollutant Discharge Elimination System (VPDES) Permit regulation. A description of the proposed action is available at the office listed or online at www.deq.virginia.gov. The DEQ contact will accept comments by email or postal mail from August 12, 2024, through September 11, 2024.

Contact Information: Timothy Fletcher, Department of Environmental Quality, 901 Russell Drive, Salem, VA 24153, telephone (540) 524-0665, or email timothy.fletcher@deq.virginia.gov.

Proposed Enforcement Action for Windswept Development LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Windswept Development LLC for violations of the State Water Control Law and regulations in Goochland County, 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 August 12, 2024, through September 11, 2024.

Contact Information: Matt Richardson, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, Virginia 23060, telephone (804) 659-2696, or email matthew.richardson@deq.virginia.gov.

BOARD OF PHARMACY

Opportunity for Public Comment and Public Hearing for a Scheduling Chemicals Public Hearing to Consider Placement of Chemical Substances in Schedule I

Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy is giving notice of a public hearing to consider placement of chemical substances in Schedule I of the Drug Control Act. The public hearing will be conducted at 9:05 a.m. on September 24, 2024. Instructions will be included in the agenda for the board meeting, also on September 24, 2024. Public comment may also be submitted electronically or in writing prior to September 24, 2024, to the contact listed.

Pursuant to § 54.1-3443 D of the Code of Virginia, the Virginia Department of Forensic Science (DFS) has identified two compounds for recommended inclusion into Schedule I of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

Based on its chemical structure, the following compound is expected to have depressant properties. Compounds of this type have been placed in Schedule I pursuant to subdivision 4 of § 54.1-3446 of the Code of Virginia in previous legislative sessions.

7-Bromo-5-(2-chlorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one (other name: phenazepam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The following compound is classified as a cannabimimetic agent. Compounds of this type have been placed in Schedule I pursuant to subdivision 6 of § 54.1-3446 of the Code of Virginia in previous legislative sessions.

Methyl N-[(5-methyl-1H-indazol-3-yl)carbonyl]-3-methyl-valinate (other name: MDMB-5Me-INACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

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

VIRGINIA CODE COMMISSION

Notice to State Agencies

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

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

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations:* Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.