



VIRGINIA

REGISTER OF REGULATIONS

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April 7, 2025

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

Members of the Virginia Code Commission: **Marcus B. Simon, Chair; Russet W. Perry, Vice Chair; Katrina E. Callsen; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Michael Mullin; Christopher R. Nolen; Steven Popp; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade.**

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

PUBLICATION SCHEDULE AND DEADLINES

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

April 2025 through May 2026

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
41:18	April 2, 2025	April 21, 2025
41:19	April 16, 2025	May 5, 2025
41:20	April 30, 2025	May 19, 2025
41:21	May 14, 2025	June 2, 2025
41:22	May 28, 2025	June 16, 2025
41:23	June 11, 2025	June 30, 2025
41:24	June 25, 2025	July 14, 2025
41:25	July 9, 2025	July 28, 2025
41:26	July 23, 2025	August 11, 2025
42:1	August 6, 2025	August 25, 2025
42:2	August 20, 2025	September 8, 2025
42:3	September 3, 2025	September 22, 2025
42:4	September 17, 2025	October 6, 2025
42:5	October 1, 2025	October 20, 2025
42:6	October 15, 2025	November 3, 2025
42:7	October 29, 2025	November 17, 2025
42:8	November 10, 2025 (Monday)	December 1, 2025
42:9	November 24, 2025 (Monday)	December 15, 2025
42:10	December 9, 2025	December 29, 2025
42:11	December 22, 2025 (Monday)	January 12, 2026
42:12	January 6, 2026 (Tuesday)	January 26, 2026
42:13	January 21, 2026	February 9, 2026
42:14	February 4, 2026	February 23, 2026
42:15	February 18, 2026	March 9, 2026
42:16	March 4, 2026	March 23, 2026
42:17	March 18, 2026	April 6, 2026
42:18	April 1, 2026	April 20, 2026
42:19	April 15, 2026	May 4, 2026

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Initial Agency Notice

Title of Regulation: 18VAC85-120. Regulations Governing the Licensure of Athletic Trainers.

Statutory Authority: §§ 54.1-2400 and 54.1-2957.4 of the Code of Virginia.

Name of Petitioner: Michael Kotelnicki.

Nature of Petitioner's Request: The petitioner requests that the Board of Medicine amend 18VAC85-120-110 to allow licensed athletic trainers to perform the modality of dry needling following training and screening by a physician.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on April 7, 2025. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which opens April 7, 2025, and closes May 7, 2025. 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 June 26, 2025. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: May 7, 2025.

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

VA.R. Doc. No. PFR25-33; Filed March 3, 2025, 9:22 a.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Agency Decision

Title of Regulation: 18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators.

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

Name of Petitioner: Ashley Pressman.

Nature of Petitioner's Request: The petitioner requests that the Board of Long-Term Care Administrators amend 18VAC95-20-380 to allow overseers of training facilities to serve as preceptors even if the potential preceptor has not served as the administrator of record for a minimum of two of the past three years prior to registration.

Agency Decision: Request denied.

Statement of Reason for Decision: At its March 11, 2025, meeting, the Board of Long-Term Care Administrators decided to take no action on the petition. The board has been engaged in an administrator-in-training support work group and has also held a regulatory advisory panel to recommend regulatory changes to the board for consideration. Those recommendations, which will come before the full board in June, contain changes that are in line with the petition. As a result, the recommended amendment will be rolled into the recommendations to the full board.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Henrico, VA 23233-1463, telephone (804) 367-4595, or email corie.wolf@dhp.virginia.gov.

VA.R. Doc. No. PFR25-36; Filed December 14, 2024, 3:40 p.m.

BOARD OF COUNSELING

Initial Agency Notice

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

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

Name of Petitioner: Sharon Toliver-Hardy.

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

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on April 7, 2025. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which opens April 7, 2025, and closes May 7, 2025. 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 July 25, 2025. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: May 7, 2025.

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

VA.R. Doc. No. PFR25-34; Filed March 7, 2025, 2:00 p.m.

Petitions for Rulemaking

BOARD OF SOCIAL WORK

Initial Agency Notice

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

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

Name of Petitioner: Khidhra Poole.

Nature of Petitioner's Request: The petitioner requests that the Board of Social Work amend 18VAC140-20-45 to require applicants for licensure by endorsement to take the national examination if the originating jurisdiction did not require examination for licensure.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on April 7, 2025. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which opens April 7, 2025, and closes April 28, 2025. 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 June 6, 2025. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: April 28, 2025.

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

VA.R. Doc. No. PFR25-35; Filed March 7, 2025, 2:37 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **8VAC20-441, Regulations Governing the Employment of Professional Personnel; 8VAC20-460, Regulations Governing Sick Leave Plan for Teachers; 8VAC20-510, Regulations Governing Superintendent of Public Instruction; 8VAC20-560, Regulations Governing Reporting of Acts of Violence and Substance Abuse in Schools; 8VAC20-620, Regulations Regarding School Guidance and Counseling Programs in the Public Schools of Virginia; 8VAC20-630, Standards for State-Funded Remedial Programs; 8VAC20-650, Regulations Governing the Determination of Critical Teacher Shortage Areas; 8VAC20-660, Regulations Governing the Reenrollment of Students Committed to the Department of Juvenile Justice; and 8VAC20-740, Regulations Governing Nutritional Standards for Competitive Foods Available for Sale in the Public Schools.** The reviews will be guided by the principles in Executive Order 19 (2022). The purpose of this review is to determine whether these regulations should be repealed, amended, or retained in their current forms. Public comment is sought on the review of any issue relating to the regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins April 7, 2025, and ends April 28, 2025.

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

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

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



TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-900, Certification of Nonpoint Source Nutrient Credits**, and determined that this regulation should be amended. The board is publishing its report of findings dated December 17, 2024, to support this decision.

This regulation effectively establishes a state-wide free market for nonpoint source (NPS) nutrient reductions. Through Department of Environmental Quality (DEQ) certification of NPS nutrient credits, these credits can be generated and transferred to construction general permit (CGP) holders for offsetting phosphorus loads from new development or redevelopment cost-effectively. NPS nutrient credits may also be utilized for meeting nutrient total maximum daily load (TMDL) wasteload allocations and Chesapeake Bay TMDL special conditions in municipal separate storm sewer system and industrial stormwater permits, providing a cost-effective strategy for meeting Virginia's Chesapeake Bay TMDL watershed implementation plan obligations.

Virginia's NPS nutrient trading program is the most robust NPS trading program in the country, with hundreds of credit transactions made annually to achieve compliance with Virginia Pollutant Discharge Elimination System (VPDES) permits. In 2023, approximately 2,123 pounds of phosphorus were sold. The estimated 2023 market value of the NPS nutrient trading program was over \$30 million. This market would not exist without 9VAC25-900 and the implementation of the NPS nutrient trading program. This regulation is necessary for the protection of economic welfare for both NPS nutrient credit generators and NPS nutrient credit users. This regulation establishes a state strategy for achieving cost-effective NPS nutrient reductions in order to protect state water quality and enhance Chesapeake Bay restoration efforts. This regulation is clearly written and easily understandable.

This regulation continues to be necessary; however, ambiguities regarding the responsibilities of the entities implementing NPS nutrient credit-generating activities for perpetual NPS nutrient credits (i.e., nutrient bank sponsors) have led to compliance issues related to certain individual credit-generating activities. The regulation will be amended to clarify the roles and responsibilities of nutrient bank sponsors and designated long-term stewards for properties containing NPS nutrient credit-generating activities. The amendments will also consider adopting a more recent baseline date for land use conversions.

No public comments were received during the periodic review.

Periodic Reviews and Small Business Impact Reviews

This regulation establishes procedures for obtaining NPS credit certification, and portions of the regulation may be viewed as complex due to the technical requirements included in the regulation. This regulation lacks necessary provisions for determining roles and responsibilities for long-term stewardship of credit-generating activities, but it is otherwise clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The board first issued this regulation in 2020. This is the first periodic review of this regulation since the regulation was enacted.

Technical criteria for NPS nutrient credit-generating practices, including stream restoration and shoreline stabilization, continue to be evaluated and clarified by DEQ through the issuance of guidance memoranda, such as GM23-2004 – Accelerated Release of Nonpoint Source Nutrient Credits for Stream Restoration Projects, in order to facilitate consistent implementation of practices. DEQ has seen a significant increase in NPS credit certification applications utilizing stream restoration and shoreline stabilization practices.

This regulation is consistent with § 62.1-44.19:20 of the Code of Virginia, as well as the U.S. Environmental Protection Agency Water Quality Trading Policy established January 13, 2003. Proposed amendments are intended to provide clarification on NPS nutrient credit certification requirements and, where applicable, ensure NPS nutrient credit certification meets the appropriate temporal basis of perpetual NPS credit certification pursuant to § 62.1-44.19:20 B 3 of the Code of Virginia. NPS nutrient credit generators include both large and small businesses alike. NPS nutrient credit-generating activities, such as land use conversions or stream restorations, may be voluntarily implemented on unregulated lands with higher nutrient pollution loads, such as agricultural lands, to achieve cost-effective nutrient reductions. These reductions can be transferred or sold to regulated entities within nutrient source sectors, such as new development, where the cost per pound of nutrient reduction for stormwater best management practices is often much higher than the cost per pound of typical credit-generating activities. The use of NPS nutrient credits for CGP compliance can provide small businesses with cost savings for CGP compliance.

Contact Information: Derick Winn, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 965-4875, or email derick.winn@deq.virginia.gov.



TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and small business impact review of **22VAC40-730, Investigation of Child Abuse and Neglect in Out of Family Complaints**. The fast-track rulemaking action, which is published in this issue of the Virginia Register, serves as the report of findings.

Agency Contact: Nicole Shipp, Department of Social Services, 801 East Main Street, Richmond, VA 23229, telephone (804) 726-7574, or email e.shipp@dss.virginia.gov.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and small business impact review of **24VAC30-151, Land Use Permit Regulations**. The proposed regulation, which is published in this issue of the Virginia Register, serves as the report of findings.

Agency Contact: Jo Anne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 11. GAMING

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, CHARITABLE GAMING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Agriculture and Consumer Services, Charitable Gaming intends to consider amending **11VAC20-20, Charitable Gaming Regulations**. The purpose of the proposed action is to (i) conform the regulation with amendments made to the Charitable Gaming Law by the 2023 and 2024 Sessions of the General Assembly, (ii) establish registration requirements for landlords, and (iii) establish requirements by which organizations that generate or anticipate generating \$40,000 or less in charitable gaming gross receipts may obtain a permit and sell instant bingo, pull-tabs, or seal cards exclusively to their members and guests.

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

Statutory Authority: §§ 18.2-340.15 and 18.2-340.19 of the Code of Virginia.

Public Comment Deadline: May 7, 2025.

Agency Contact: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, Charitable Gaming, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3983, or email michael.menefee@vdacs.virginia.gov.

VA.R. Doc. No. R25-8238; Filed March 7, 2025, 12:17 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Barbers and Cosmetology intends to consider amending **18VAC41-20, Barbering and Cosmetology Regulations**. The purpose of the proposed action is to fulfill Chapter 281 of the 2024 Acts of Assembly and facilitate participation by Virginia in the Cosmetology Compact that allows a cosmetologist who has obtained a multistate license through the Compact Commission the privilege to practice in the Commonwealth without a Virginia license. To comply with compact rules, all applicants for licensure are required to have criminal history checks, and holders of a multistate license are required to adhere to the laws and regulations governing practice in the compact state in

which they practice. A member state may set a fee to obtain and renew a multistate license in that state. An amendment will set the fee in Virginia at \$50, which is similar to the fee charged by other states.

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

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

Public Comment Deadline: May 7, 2025.

Agency Contact: Kelley Smith, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

VA.R. Doc. No. R25-8183; Filed March 13, 2025, 7:17 a.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 **22VAC40-61, Standards and Regulations for Licensed Adult Day Centers**. The purpose of the proposed action is to reduce burdensome requirements, simplify and clarify language, improve definitions, make technical edits for ease of understanding, and make any other changes deemed necessary after public comment and general periodic review of the regulation. The regulation provides criteria for the public and the Virginia Department of Social Services to evaluate the care, general supervision, and oversight of adults in licensed adult day centers, including rules for current practices in adult day centers that ensure the well-being of aged, infirm, or individuals with disabilities.

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

Statutory Authority: § 63.2-1733 of the Code of Virginia.

Public Comment Deadline: May 7, 2025.

Agency Contact: Samantha Fogt, Licensing Consultant, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 845-0308, or email samantha.fogt@dss.virginia.gov.

VA.R. Doc. No. R24-7830; Filed March 10, 2025, 1:01 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-80, General Procedures and Information for Licensure**. The purpose of the proposed action is to clarify language and existing

Notices of Intended Regulatory Action

requirements, improve definitions, make technical edits for ease of understanding, reduce burdensome requirements, and any other changes deemed necessary after public comment and review. The regulation provides licensure information and procedures that apply to all adult care facilities and child welfare agencies and allows applicants, licensees, and the public to locate information and requirements regarding the licensing process, allowable variances, problem solving conferences, complaint investigations, sanctions, and hearing procedures for adult care facilities and child welfare agencies.

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, 63.2-1733, and 63.2-1734 of the Code of Virginia.

Public Comment Deadline: May 7, 2025.

Agency Contact: Samantha Fogt, Licensing Consultant, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 845-0308, or email samantha.fogt@dss.virginia.gov.

VA.R. Doc. No. R25-8031; Filed March 7, 2025, 1:30 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Fast-Track Regulation

Title of Regulation: 9VAC20-121. Regulated Medical Waste Management Regulations.

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: May 7, 2025.

Effective Date: May 22, 2025.

Agency Contact: Rebecca Rathe, Regulatory Analyst, Department of Environmental Quality, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 830-7241, or email rebecca.rathe@deq.virginia.gov.

Basis: Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out the board's powers and duties and the purposes and provisions of Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia and compatible provisions in federal law.

Purpose: This action is essential to protect the health, safety, and welfare of citizens because the amendments will provide the most accurate and up-to-date information to the regulated community, including hospitals and health care facilities, emergency responders, waste management facilities, and other entities, on all aspects of the safe and proper management of Category A waste to prevent the spread of highly infectious disease. The federal guidance document provides critical information about the management of Category A waste, including key procedures and applicable regulations, considerations for waste management planning and decision making, and treatment and inactivation information for specific pathogens classified as Category A infectious substances.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the document incorporated by reference is a federal guidance document and neither creates new regulatory requirements nor removes the obligation to comply with existing applicable federal, state, and local laws and regulations.

Substance: The amendments update an existing document incorporated by reference to the most recent version. The

regulation currently incorporates by reference the federal interagency guidance document on management of Category A waste published in June 2022. The guidance document was updated and republished in April 2024. This action will amend the regulation to incorporate by reference the latest (2024) version of the document, which includes several technical changes as well as editorial changes.

Issues: The primary advantage of this regulatory action is that incorporating by reference the most recent version of the federal guidance document will ensure the clarity and certainty of information related to management standards for Category A waste. This regulatory action will make the regulation consistent with the latest federal guidelines and ensure that both regulatory requirements and federal guidelines for Category A waste are accessible to the public and regulated community in one central location. This will decrease confusion by the public and regulated community, increase ease of use of the regulation, and ultimately result in safer management of highly infectious regulated medical waste to prevent the spread of infectious disease. There are no disadvantages to the public or the Commonwealth associated with these amendments.

Department of Planning and Budget Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Virginia Waste Management Board (board) proposes to update the version of Managing Solid Waste Contaminated with a Category A Infectious Substance, which is a federal guidance document incorporated by reference in Regulated Medical Waste Management Regulations (9VAC20-121), to the current version dated April 2024. The Department of Environmental Quality (DEQ) reports that referencing the latest version of the document would ensure that the regulation remains consistent with federal requirements on managing medical waste that is contaminated with substances that could spread highly infectious diseases.

Background. DEQ reports that Category A waste is a subset of regulated medical waste that is contaminated with a Category A infectious substance, which can cause permanent disability or fatal disease to otherwise healthy persons who may become exposed to it. Accordingly, both federal and state regulations have more stringent management standards for Category A

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waste than for other types of regulated medical waste to prevent the spread of highly infectious disease. 9VAC20-121-160 of the regulation covers the specific requirements for the management of Category A waste and incorporates by reference the following sections of Managing Solid Waste Contaminated with a Category A Infectious Substance (June 2022):

1. Section 3: Overarching Planning Considerations
2. Section 5: Waste Generator Information & Responsibilities
3. Section 6: Waste Transporter Information & Responsibilities
4. Section 7: Waste Treatment Information & Responsibilities
5. Section 8: Final Disposal Information & Responsibilities

The board does not seek to amend 9VAC20-121-160 of the regulation; thus, under the proposed amendment, 9VAC20-121-160 would refer to the same sections of the April 2024 version of the federal guidance document. DEQ reports that this federal guidance document was updated in April 2024 by the National Security Council-led Countering Biological Threats Interagency Policy Committee, in collaboration with numerous federal agencies, including the Centers for Disease Control and Prevention, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Environmental Protection Agency, and Occupational Safety and Health Administration. Furthermore, the changes in the 2024 version of the document make it easier for patient waste contaminated by Mpox virus to be managed. Under the 2022 version of the document, patient waste contaminated by Mpox Clade I (formerly known as the Congo Basin clade) was considered Category A, which requires more stringent management than other types of regulated medical waste. However, under the 2024 version of the document, patient waste contaminated by Mpox Clade I (as well as other clades) is no longer considered Category A. Under the 2024 version of the document, Mpox is only considered Category A under limited circumstances, when Mpox Clade I viruses are intentionally propagated or cultured.

Estimated Benefits and Costs. The proposed amendments largely serve to clarify and update the requirements for the safe disposal of Category A waste. Because the changes to the 2024 version of the federal guidance document specifically make patient waste contaminated by Mpox virus easier to manage and does not add any new diseases to the Category A list or increase requirements for Category A waste, the proposed changes are not expected to create new costs. The proposed amendment would benefit medical or research facilities that generate Category A waste, as well as other entities that are involved in transporting, processing, and disposing of such waste, by ensuring that they can easily locate the current federal guidance and best management practices alongside the state regulatory requirements in one place.

Businesses and Other Entities Affected. The proposed amendments would affect all entities involved in generating, transporting, treating, and disposing Category A waste. DEQ has

not provided a count of such entities. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.² An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.³ As the proposed amendments neither increase net costs nor reduce net benefits, no adverse impact is indicated.

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

Localities⁶ Affected.⁷ The proposed amendments do not disproportionately affect particularly localities or affect costs for local governments.

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

Effects on the Use and Value of Private Property. The proposed amendments neither affect the use and value of private property nor real estate development costs.

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

² 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.

³ Statute does not define adverse impact, state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁴ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.

⁵ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁶ Locality can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁷ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Virginia Waste Management Board has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendments incorporate by reference the latest (2024) version of the federal interagency guidance document on the management of Category A waste in order to remain consistent with federal guidance and keep the regulated community apprised of the latest guidelines.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC20-121)

~~Managing Solid Waste Contaminated with a Category A Infectious Substance (June 2022), approved for publication by the National Security Council (NSC) led Homeland and Critical Infrastructure Resilience (HCIR) and Countering Biological Threats (CBT) Interagency Policy Committees on June 3, 2022~~

[Managing Solid Waste Contaminated with a Category A Infectious Substance \(April 2024\), approved for publication by the National Security Council-led Countering Biological Threats Interagency Policy Committee on March 13, 2024.](#)

VA.R. Doc. No. R25-7943; Filed March 12, 2025, 1:07 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Fast-Track Regulation

Title of Regulation: **12VAC5-381. Regulations for the Licensure of Home Care Organizations (amending 12VAC5-381-40, 12VAC5-381-70).**

Statutory Authority: §§ 32.1-12 and 32.1-162.12 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: May 7, 2025.

Effective Date: May 22, 2025.

Agency Contact: Val Hornsby, Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 875-1089, FAX (804) 527-4502, or email val.hornsby@vdh.virginia.gov.

Basis: Section 32.1-12 of the Code of Virginia gives the State Board of Health the responsibility to promulgate and enforce such regulations as may be necessary to carry out the provisions of Title 32.1 of the Code of Virginia. Section 32.1-162.12 of the Code of Virginia requires the board to adopt regulations governing the activities and services provided by home care organizations (HCOs).

Purpose: This regulatory change is essential to protecting the health, safety, and welfare of citizens because the Virginia Department of Health cannot provide adequate inspection and oversight for HCOs if the department loses funding equal to approximately three full-time HCO inspectors. The goal of the regulatory change is to preserve the department's current fee revenue and to eliminate inconsistencies in receiving and processing license changes and exemption requests.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the fee amount for the new three-year HCO license is the same amount on a per-year basis as the cost of a one-year license and because the vast majority of HCOs are already utilizing the forms created by the department to communicate changes to licenses or requests for an exemption.

Substance: The amendments (i) change HCO license terms from one to three years; (ii) increase the fee for an HCO license to \$1,500; and (iii) specify that the written request for an exemption or license change must be on the relevant application.

Issues: The primary advantage to the public is that the regulation will be consistent with statute and HCO licensees will have clarification on written requests for a license change or exemption. The primary advantages to the agency and the Commonwealth are that VDH will not be losing approximately \$300,000 in revenue annually and the data received from HCO licensees about license changes or request for an exemption will be consistent and more likely to be complete. There are no primary disadvantages to the public, the agency, or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The State Board of Health (board) proposes to incorporate in this regulation a legislative mandate² that changed the home care organization (HCO) license renewal cycle from annual to triennial, such that each license is valid for a three-year period, compared to the previous one-year period. The mandate also increased the annual renewal fee from \$500 for a one-year period to \$1,500 for a three-year period. The board also proposes a discretionary increase in the initial license fee from \$500 to \$1,500 to correspond to the new triennial license renewal cycle that became effective July 1, 2022.

Background. Chapter 172 of the 2022 Acts of Assembly changed the duration of HCO licenses from an annual license to a three-year license beginning on July 1, 2022; the mandate also adjusted the license renewal fee from \$500 per year to

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\$1,500 every three years. However, the legislation did not adjust the initial license application fee of \$500, which is now valid for a three-year period pursuant to the provisions of Chapter 172. The Virginia Department of Health (VDH) does not know why the initial license fee was not also increased in the legislation, but believes that it was an inadvertent omission. Thus, the board also proposes a discretionary increase in the initial license fee from \$500 to \$1,500 to correspond to the new three-year renewal cycle.

Estimated Benefits and Costs: The legislative increase of the renewal fee from \$500 per year to \$1,500 every three-years would require the regulated HCOs to provide \$1,500 in upfront costs in each three-year renewal cycle. Prior to the legislation, regulants had to expend \$500 annually for the one-year license fee, while under the new renewal cycle, they would have to set aside \$1,500 upfront for the next three years. The changes to the licensure fees, both the discretionary initial fee and the mandated renewal fee, would have certain economic effects, as follows. Some HCOs may incur licensure fees but subsequently cease operations. The Virginia HCO industry appears to experience high turnover. According to VDH, there were 1,580 licensed HCOs as of July 1, 2022, while the annual number of expected initial applications is 300.³ This indicates that, on average, an HCO operates in Virginia for about five years; in other words, every year about 20% of the existing HCOs (approximately 300) leave the industry. This high turnover rate means that some of the HCOs that would be going out of business in the next year and in the year after that would be paying renewal fees for the years they will not be in operation. Assuming 300 HCOs exit the industry annually, approximately \$300,000 per year would be paid by companies that would not be in operation the following year. Some HCOs may have liquidity problems and may not be able to fund the additional \$1,000 in upfront costs. This may result in the inability of some HCOs to renew their licenses and further exacerbate the already high turnover. All HCOs would lose the time-value of the additional \$1,000. Prior to the legislation, HCOs could use the \$1,000 to purchase other goods or services. Assuming a 3.0% simple discount rate, the time value of the additional \$1,000 would be \$45 (i.e., \$15 for paying \$500 a year earlier and \$30 for paying \$500 two years earlier). On the other hand, the new three-year renewal cycle is expected to reduce administrative costs for regulants and VDH as the licenses would be renewed less frequently. VDH expects \$60,204 in savings annually as a result of this effect. The likely impacts discussed so far directly stem from the legislation and are already in effect. The incorporation of the legislatively amended renewal cycle and adjusted fees in this regulation mainly have the benefit of aligning the regulatory text with the Code of Virginia and eliminating potentially conflicting information. However, VDH estimates that the \$1,000 increase in initial application fee would discourage about 60 HCOs from applying for an initial license because they tend to have less cash on hand and will not be able to pay the higher fee. As a result, VDH estimates that only 240 (out of the typical 300)

applications for initial licensure would be received. The proposed adjustment of the initial license fee from \$500 for a one-year period to \$1,500 for a three-year period is discretionary and has not yet been implemented. Unlike the legislatively mandated increase for the renewal licensure fee, the main impact of this proposed discretionary change to the initial licensure fee is avoidance of revenue that would otherwise be lost by the board. More specifically, the legislative increase of only one licensure fee had the unintended consequence of effectively reducing the revenues from initial applications by two-thirds, because an initial license is now effective for a three-year period. If not adjusted, VDH estimates that it would lose \$240,000 in fee revenues (i.e., a \$1,000 loss from each of the 240 expected applications for initial licensure). Thus, the proposal would help ensure VDH has adequate fee revenue to support sufficient staff to perform inspections and other oversight functions of HCOs. The legislation may have also inadvertently created an incentive for existing licensees to seek an initial license rather than a renewal; this would be addressed by increasing the fee for initial licensure. If this incentivized behavior occurs, it would result in additional decreases in fee revenue.

Businesses and Other Entities Affected. VDH reports that there are approximately 1,580 licensed HCOs in Virginia as of July 1, 2022. In addition, approximately 240 initial license applications are expected to be received and 60 potential applications are estimated would be discouraged after the increase in initial license fee. None of the HCOs appear to be disproportionately affected within the meaning of § 2.2-4007.04 of the Code of Virginia. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁴ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the discretionary proposal to increase the initial license fee would add \$1,000 to each licensee's compliance costs and would discourage some from applying for an initial license. Thus, an adverse impact is indicated.

Small Businesses⁵ Affected.⁶ The proposed amendments appear to adversely affect small businesses.

Types and Estimated Number of Small Businesses Affected: VDH estimates that the vast majority (i.e. 90%) of the 1,580 licensed HCOs in Virginia are small businesses.

Costs and Other Effects: The proposed increase in the initial license fee would add \$1,000 in compliance costs to each HCO, including those that are small businesses, and discourage some from becoming a licensed HCO. Thus, an adverse economic impact on small HCOs is indicated.

Alternative Method that Minimizes Adverse Impact: There does not appear to be an alternative method that both reduce adverse impact and meet the intended policy goals.

Localities⁷ Affected.⁸ The proposed amendments do not introduce costs for localities.

Projected Impact on Employment. The proposed fee increase is expected to discourage some HCOs from being licensed, which would have a negative impact on employment.

Effects on the Use and Value of Private Property. The expected \$1,000 one-time increase in compliance costs would likely reduce the profitability of HCOs and thus negatively affect asset values. No effect on real estate development costs is expected.

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

² <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0172&221+ful+CHAP0172>.

³ Data from VDH shows 242, 326, and 311 new applications per year for fiscal years 2020, 2021, and 2022, respectively. Similarly, there were 890, 1,235, and 919 renewal applications for fiscal years 2020, 2021, and 2022, respectively.

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

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

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

⁸ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The State Board of Health concurs with the analysis of the Department of Planning and Budget with the following exceptions:

Estimated Benefits and Costs: DPB states, "Some HCOs may incur licensure fees but subsequently cease operations. Virginia's HCO industry appears to experience high turnover. According to VDH, there were 1,580 licensed HCOs as of July

1, 2022, while the annual number of expected initial applications is 300. This indicates that, on average, an HCO operates in Virginia for about five years; in other words, every year about 20% of the existing HCOs (approximately 300) leave the industry. This high turnover rate means that some of the HCOs that would be going out of business in the next year and in the year after that would be paying renewal fees for the years they will not be in operation. Assuming 300 HCOs exit the industry annually, approximately \$300,000 per year would be paid by companies that would not be in operation the following year. Some HCOs may have liquidity problems and may not be able to fund the additional \$1,000 in upfront costs. This may result in the inability of some HCOs to renew their licenses and further exacerbate the already high turnover."

In response, the agency would like to clarify the following: DPB estimates the average number of years an HCO operates to be five years and that 20% of HCOs leave the industry every year. While some HCOs leave the industry every year, the number of applicants (approximately 300) is the number of new HCOs that join the industry every year. Many of the new HCOs are owned and operated by individuals who have closed a previous HCO, have moved addresses, and are opening an HCO in a new service area, have a change of ownership and HCO title, or have operated an HCO previously, closed, and then reopened. Therefore, the number of HCOs is not decreasing by 300 total each year. If, for any reason, an HCO ceases operation in less than three years, the HCO can notify the Office of Licensure and Certification and will not have to pay a fee beyond the initial licensure fee. VDH reports that there are approximately 2,061 licensed HCOs in Virginia as of March 10, 2025.

DPB states, "On the other hand, the new three-year renewal cycle is expected to reduce administrative costs for regulants and VDH as the licenses would be renewed less frequently. VDH expects \$60,204 in savings annually as a result of this effect."

In response, the agency would like to clarify the following: Given the number of change and exemption requests VDH receives annually, VDH expects \$21,435 in savings annually as a result of reduced administrative costs for regulants.

DPB states, "More specifically, the legislative increase of only one licensure fee had the unintended consequence of effectively reducing the revenues from initial applications by two-thirds, because an initial license is now effective for a three-year period. If not adjusted, VDH estimates that it would lose \$240,000 in fee revenues (i.e., a \$1,000 loss from each of the 240 expected applications for initial licensure). Thus, the proposal would help ensure VDH has adequate fee revenue to support sufficient staff to perform inspections and other oversight functions of HCOs. The legislation may have also inadvertently created an incentive for existing licensees to seek an initial license rather than a renewal; this would be addressed by increasing the fee for initial licensure. If this incentivized behavior occurs, it would result in additional decreases in fee revenue."

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In response, the agency would like to clarify the following: If the initial fee is not adjusted to reflect the change in the renewal fee, VDH estimates that it would lose \$240,000 annually in fee revenue. The proposal will contribute to VDH's ability to perform inspections and oversight functions of HCOs. Existing HCOs cannot seek initial licensure but only renewal of the current license, unless they close the HCO and choose to reopen.

Businesses and Other Entities Affected: DPB states, "VDH reports that there are approximately 1,580 licensed HCOs in Virginia as of July 1, 2022," and states "The discretionary proposal to increase the initial license fee would add \$1,000 to each licensee's compliance costs and would discourage some from applying for an initial license. Thus, an adverse impact is indicated."

In response, the agency would like to clarify the following: VDH reports that there are approximately 2,061 licensed HCOs in Virginia as of March 10, 2025. The proposed increase in initial license fee could discourage some from applying for an initial license, which would have a nominal adverse impact.

Small Businesses Affected: DPB states, "The proposed amendments appear to adversely affect small businesses. VDH estimates that the vast majority (i.e., 90%) of the 1,580 licensed HCOs in Virginia are small businesses. The proposed increase in the initial license fee would add \$1,000 in compliance costs to each HCO, including those that are small businesses, and discourage some from becoming a licensed HCO. Thus, an adverse economic impact on small HCOs is indicated. There does not appear to be an alternative method that both reduce adverse impact and meet the intended policy goals. The proposed amendments do not introduce costs for localities. The proposed fee increase is expected to discourage some HCOs from being licensed that would have a negative impact on employment. The expected \$1,000 one-time increase in compliance costs would likely reduce the profitability of HCOs and thus negatively affect their asset values. No effect on real estate development costs is expected."

In response, the agency would like to clarify the following: VDH estimates that the vast majority (i.e., 90%) of the 2,061 licensed HCOs in Virginia are small businesses. The proposed amendments appear to adversely affect small businesses to a nominal degree. The proposed increase in the initial license fee would restore \$1,000 in compliance costs for each HCO, including those that are small businesses. These are costs that were inadvertently omitted by the General Assembly in 2022. This could discourage some from becoming a licensed HCO. Thus, a nominal adverse economic impact on small HCOs is indicated. The proposed fee disbursement over three years could discourage some HCOs from being licensed, which would have a negative impact on employment. The expected \$1,000 one-time disbursement over three years of compliance costs could nominally reduce the profitability of HCOs and their asset values.

Summary:

Pursuant to Chapter 172 of the 2022 Acts of Assembly, the amendments (i) change home care organization (HCO) license terms from one to three years; (ii) increase the fee for an HCO license to \$1,500 for a three-year license; and (iii) specify that the written request for an exemption or license change must be on the relevant application.

12VAC5-381-40. License application; initial and renewal.

A. The OLC provides precicensure consultation and technical assistance regarding the licensure process. The purpose of such consultation is to explain the regulation and the survey process. Precicensure consultations are arranged after a completed initial application is on file with the OLC.

B. Licensure applications are obtained from the OLC. The OLC shall consider an application complete when all requested information and the appropriate fee, stated in 12VAC5-381-70, is submitted. If the OLC finds the application incomplete, the applicant will be notified in writing.

C. The activities and services of each applicant and licensee shall be subject to an inspection by the OLC to determine if the organization is in compliance with the provisions of this chapter and state law.

D. A completed application for initial licensure must be submitted at least 60 days prior to the organization's planned opening date to allow the OLC time to process the application. An incomplete application shall become inactive six months after it is received by the OLC. Applicants must then reapply for licensure with a completed application and application fee. An application for a license may be withdrawn at any time.

E. Licenses are renewed ~~annually~~ triennially. The OLC shall make renewal applications available at least 60 days prior to the expiration date of the current license.

F. It is the home care organization's responsibility to complete and return a renewal application to ~~assure~~ ensure timely processing. Should a current license expire before a new license is issued, the current license shall remain in effect, provided a complete and accurate application was filed on time.

12VAC5-381-70. Fees.

A. The OLC shall collect a fee of ~~\$500~~ \$1,500 for each initial and renewal license application. Fees shall accompany the licensure application and are not refundable.

B. An additional late fee of \$50 shall be collected for an organization's failure to file a renewal application by the date specified.

C. A processing fee of \$250 shall be collected for each reissuance or replacement of a license and shall accompany the ~~written request~~ application for reissuance or replacement.

D. A ~~one-time~~ one-time processing fee of \$75 for exemption from licensure shall accompany the ~~written~~ exemption request application.

VA.R. Doc. No. R25-6371; Filed March 10, 2025, 3:38 p.m.

Fast-Track Regulation

Title of Regulation: 12VAC5-391. Regulations for the Licensure of Hospice (amending 12VAC5-391-370).

Statutory Authority: §§ 32.1-12 and 32.1-162.5 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: May 7, 2025.

Effective Date: May 22, 2025.

Agency Contact: Val Hornsby, Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 875-1089, FAX (804) 527-4502, or email val.hornsby@vdh.virginia.gov.

Basis: Section 32.1-12 of the Code of Virginia gives the State Board of Health the responsibility to promulgate and enforce such regulations as may be necessary to carry out the provisions of Title 32.1 of the Code of Virginia. Section 32.1-162.5 of the Code of Virginia requires the board to adopt regulations governing the activities and services provided by hospices as may be necessary to protect the public health, safety, and welfare, including requirements for (i) the qualifications and supervision of licensed and nonlicensed personnel; (ii) the standards for the care, treatment, health, safety, welfare, and comfort of patients and families served by the program; (iii) the management, operation, staffing, and equipping of the hospice program or hospice facility; (iv) clinical and business records kept by the hospice or hospice facility; (v) procedures for the review of utilization and quality of care; and (vi) minimum standards for design and construction.

Purpose: This regulation is being amended due to the changes to § 32.1-162.5 of the Code of Virginia, which requires the board to promulgate regulations for the licensure of hospices in order to protect the health, safety, and welfare of citizens receiving care in hospices.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because it is being used to conform the regulation to statute, and no new requirements are being developed beyond what is mandated by statute.

Substance: The amendments require hospices to have a protocol to allow patients to receive visits from a rabbi, priest, minister, or clergy member of any religious denomination or sect during public health emergencies related to communicable diseases.

Issues: The primary advantage to the public, the agency, and the Commonwealth is that the regulation will be in compliance with statute. There are no disadvantages to the public, the agency, or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. Pursuant to a legislative mandate, the State Board of Health (board) proposes to amend this regulation to require all licensed hospices to establish a protocol allowing patients to receive visits from the clergy of any religious denomination or sect during a declared public health emergency related to a communicable disease of public health threat.

Background. This regulatory action is a result of a legislative mandate from Chapter 525 of the 2021 Acts of Assembly, Special Session I.² This mandate amended §§ 32.1-127, 32.1-162.5, and 63.2-1732 of the Code of Virginia pertaining to the regulations of hospitals, nursing homes, certified nursing facilities, assisted living facilities, and hospices. For these regulations, the board is required to include that during a declared public health emergency, related to a communicable disease of public health threat, each facility must establish a protocol allowing patients and residents to receive visits from a rabbi, priest, minister, or clergy of any religious denomination or sect. The mandate allows the protocol to restrict the frequency and duration of visits, require visits to be conducted virtually using interactive audio or video technology, and require the person visiting a patient under this protocol to comply with all reasonable requirements of the facility adopted to protect the health and safety of the person, patients, and staff of the facility. According to Virginia Department of Health (VDH), this legislative mandate occurred as a result of complaints received from the public during the COVID-19 pandemic. However, while VDH received numerous complaints about being unable to visit family and friends in hospitals and nursing homes, only a single complaint concerned denial of access to clergy.

Estimated Benefits and Costs: The proposed changes to the regulatory text are identical to the requirements established in the legislative mandates with the exception of some formatting and technical differences.³ Thus, any costs associated with implementing the mandated changes result from the legislation rather than these regulations. However, VDH has not identified any costs. Although the benefits are not quantified, VDH asserts that access to clergy provide spiritual support during end-of-life care, can improve patient well-being by alleviating or reducing anger, fear, or depression, and both patients and their family members can receive assistance in processing grief before, during, and after death. Federal regulations for hospices that are certified to participate in Medicare and Medicaid already require that visitation with clergy be facilitated, and that an infection control program be in place to protect visitors

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from communicable diseases (42 CFR 418.60 and 418.64(d)(3)(iii)); every licensed hospice in Virginia is certified, so they are already required to adhere to these requirements.⁴ Therefore, the changes being made by this regulatory action have no direct or indirect cost or benefit because Chapter 525 does not change the substance of any existing requirements that hospices are meeting. Because hospices are already required to allow visitation with clergy, and they are already required to comply with the Code of Virginia even in the absence of these regulations, the main impact of the proposed changes is to conform the regulatory text to the amended section of the Code of Virginia and eliminate a potential source for confusion among the regulated entities and the public about the requirements (e.g., obligations and rights regarding visitations during a public health emergency).

Businesses and Other Entities Affected. The proposed changes apply to 147 licensed hospices. 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. The proposed changes do not introduce any new requirements beyond those already mandated by the Code of Virginia. Thus, no adverse impact on any entity is indicated.

Small Businesses⁶ Affected.⁷ According to VDH, 20 of the licensed hospices are estimated to meet the definition of "small business." However, the proposed amendments to the regulatory text do not adversely affect small businesses.

Localities⁸ Affected.⁹ The proposed amendments to the regulatory text do not introduce costs for local governments.

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

Effects on the Use and Value of Private Property. The proposed amendments to the regulatory text do not appear to affect the use and value of property or the real estate development costs.

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 Response to Economic Impact Analysis: The State Board of Health concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

Pursuant to Chapter 525 of the 2021 Acts of Assembly, Special Session I, the amendment requires each hospice facility to establish a protocol to allow patients to receive visits from a rabbi, priest, minister, or clergy member of any religious denomination or sect when there is a declared public health emergency related to a communicable disease of public health threat.

12VAC5-391-370. Spiritual counseling and bereavement services.

A. The hospice program shall provide for the delivery of spiritual counseling and bereavement services that reflect the family's needs and desires and are delivered according to the overall plan of care.

B. Spiritual counseling may be provided through a working arrangement with individual clergy, clergy associations, and other religious programs in the community or by clergy employed by the hospice program.

C. The hospice program shall provide bereavement services to the family for a minimum of one year after the patient's death.

D. The hospice program shall maintain a list of individuals who provide spiritual and bereavement services. The list shall be made available, upon request to patients, families, hospice program employees, and contractors.

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://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0525>.

³ According to VDH, this regulatory package was first prepared as an exempt action under § 2.2-4006 A 4 a of the Code of Virginia, which requires regulations to be filed with the Registrar within 90 days of the law's effective date. Because the action was not filed within the required timeframe due to personnel changes in the Office of the Commissioner, the regulatory action does not qualify as an exempt action.

⁴ ORM Economic Impact Document.

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

E. Arrangements for and delivery of spiritual counseling and bereavement services shall be documented in the patient's record.

F. During a declared public health emergency related to a communicable disease of public health threat, each hospice facility shall establish a protocol to allow patients to receive visits from a rabbi, priest, minister, or clergy member of a religious denomination or sect. Such protocol shall be consistent with guidance from the Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services and subject to compliance with an executive order, order of public health, department guidance, or other applicable federal or state guidance having the effect of limiting visitation.

1. The protocol may restrict the frequency and duration of visits and may require visits to be conducted virtually using interactive audio or video technology.

2. The protocol may require the person visiting a patient pursuant to this subsection to comply with all reasonable requirements of the hospice facility adopted to protect the health and safety of the person, patients, and staff of the hospice program.

VA.R. Doc. No. R25-6876; Filed March 10, 2025, 3:36 p.m.

Fast-Track Regulation

Title of Regulation: 12VAC5-410. Regulations for the Licensure of Hospitals in Virginia (amending 12VAC5-410-10, 12VAC5-410-230, 12VAC5-410-280, 12VAC5-410-1170).

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: May 7, 2025.

Effective Date: May 22, 2025.

Agency Contact: Val Hornsby, Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 875-1089, FAX (804) 527-4502, or email val.hornsby@vdh.virginia.gov.

Basis: Section 32.1-12 of the Code of Virginia requires the State Board of Health to promulgate and enforce such regulations as may be necessary to carry out the provisions of Title 32.1 of the Code of Virginia. Section 32.1-127 of the Code of Virginia requires the board to adopt regulations that include minimum standards for (i) the construction and maintenance of hospitals, nursing homes, and certified nursing facilities to ensure the environmental protection and the life safety of patients, employees, and the public; (ii) the operation, staffing, and equipping of hospitals, nursing homes, and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes, and certified nursing facilities, except those professionals licensed or certified by the

Department of Health Professions; (iv) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence; and (v) policies related to infection prevention, disaster preparedness, and facility security of hospitals, nursing homes, and certified nursing facilities.

Purpose: The board is required by § 32.1-127 of the Code of Virginia to promulgate regulations for the licensure of hospitals in order to protect the health, safety, and welfare of citizens receiving care in hospitals.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because it is being used to conform the regulation to statute and does not add requirements beyond what is mandated by Chapters 219, 233, and 525 of the 2021 Acts of Assembly.

Substance: The amendments (i) add a definition for intelligent personal assistant; (ii) require general and surgical hospitals to have a protocol to allow patients to receive visits from a rabbi, priest, minister, or clergy member of any religious denomination or sect during public health emergencies related to communicable diseases; (iii) require general hospitals to establish policies governing the access and use of intelligent personal assistants; and (iv) require each hospital with an emergency department to establish a protocol for the treatment and discharge of individuals experiencing a substance use-related emergency.

Issues: The advantage to the public, the agency, and the Commonwealth is that the regulation will be in compliance with statute. There are no disadvantages to the public, the agency, or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. Pursuant to several legislative mandates, the State Board of Health (board) proposes to amend this regulation to require all licensed hospitals (i) to establish and implement policies to ensure patient access to and use of an intelligent personal assistant, provided by a patient, while receiving inpatient services; (ii) to establish a protocol allowing patients to receive visits from the clergy of any religious denomination or sect during a declared public health emergency related to a communicable disease of public health threat; and (iii) with an emergency department, to establish a protocol for the treatment and discharge of individuals experiencing a substance use-related emergency.

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Background. This regulatory action is a result of legislative mandates from Chapters 219, 233, and 525 of the 2021 Acts of Assembly, Special Session I. Chapter 219² amended § 32.1-127 of the Code of Virginia to require that the regulations, require each hospital, nursing home, and certified nursing facility to establish and implement policies to ensure the permissible access to and use of an intelligent personal assistant provided by a patient, in accordance with such regulations, while receiving inpatient services. According to the Virginia Department of Health (VDH), this legislative mandate occurred as the result of a complaint from a constituent, whose mother became seriously ill with COVID-19 and had to be transported to a hospital. The hospital refused to allow her to use her Amazon Echo to communicate with her family, claiming that they had a policy prohibiting its use, despite no such policy existing. Chapter 233³ amended § 32.1-127 of the Code of Virginia to require that each hospital with an emergency department establish a protocol for the treatment and discharge of individuals experiencing a substance use-related emergency. This protocol is required to include the following provisions: appropriate screening and assessment of individuals experiencing substance use-related emergencies, to identify medical interventions necessary for the treatment of the individual in the emergency department; and recommendations for follow-up care following discharge of certain patients, which may include dispensing or prescribing an opioid antagonist used for overdose reversal at discharge. In addition, Chapter 233 allows the protocol to provide for referrals of individuals experiencing a substance use-related emergency to peer recovery specialists and community-based providers of behavioral health services, or to providers of pharmacotherapy for the treatment of drug or alcohol dependence or mental health diagnoses. VDH is not aware of any constituent complaint or other background information regarding the impetus for Chapter 233. Chapter 525⁴ amended §§ 32.1-127, 32.1-162.5, and 63.2-1732 of the Code of Virginia pertaining to the regulations of hospitals, nursing homes, certified nursing facilities, assisted living facilities, and hospices. For these regulations, the board is required to include that during a declared public health emergency, related to a communicable disease of public health threat, each facility must establish a protocol allowing patients and residents to receive visits from a rabbi, priest, minister, or clergy of any religious denomination or sect. The mandate allows the protocol to: restrict the frequency and duration of visits; require visits to be conducted virtually using interactive audio or video technology; and require the person visiting a patient under this protocol to comply with all reasonable requirements of the facility adopted to protect the health and safety of the person, patients, and staff of the facility. According to VDH, this legislative mandate occurred as a result of complaints received from the public during the COVID-19 pandemic. However, while VDH received numerous complaints about being unable to visit family and friends in hospitals and nursing homes, only a single complaint concerned denial of access to clergy.

Estimated Benefits and Costs: The proposed changes to the regulatory text are identical to the requirements established in the legislative mandates with the exception of some formatting and technical differences.⁵ Thus, the costs associated with implementing the mandated changes result from the legislation rather than these regulations. VDH estimates that these legislative requirements amount to onetime compliance costs of \$867,000 to hospitals, which is broken down as follows: onetime cost of \$525,000 to 105 hospitals (\$5,000 per hospital) to establish and implement policies related to patient access and use of intelligent personal assistants; onetime cost of \$212,500 to 170 hospitals (\$1,250 per hospital) to develop a protocol to allow patients to receive visits from a clergy of any religious denomination or sect during public health emergencies related to communicable diseases; onetime cost of \$130,000 to 104 hospitals (\$1,250 per hospital) to amend protocols for substance use-related emergencies to incorporate new statutory minimums such as: referrals to providers of pharmacotherapy for the treatment of drug or alcohol dependence or mental health diagnoses, and expanding what information and access is provided about opioid antagonists.⁶ Although the benefits are not quantified, VDH asserts that intelligent personal assistants are often utilized by persons with disabilities and the elderly to access information or stay connected with friends and family; access to clergy provides spiritual support during end-of-life care and can improve patient well-being by alleviating or reducing anger, fear, or depression and that both patients and their family members can receive assistance in processing grief before, during, and after death; the changes to protocols for substance use-related emergencies improve the likelihood of positive outcomes for individuals experiencing a substance use-related emergency, as the changes are based on recommended best practices. However, all licensed hospitals are already required to comply with the Code of Virginia. Thus, the main impact of the proposed changes is to conform the regulatory text to the amended sections of the Code of Virginia and eliminate a potential source for confusion among the regulated entities and the public about the requirements (e.g., obligations and rights regarding intelligent personal assistants; visitation during a public health emergency; and the treatment and discharge of individuals experiencing a substance use-related emergency).

Businesses and Other Entities Affected. The proposed changes apply to 106 licensed general hospitals and 63 outpatient surgical hospitals. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁷ 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. The proposed changes do not introduce any new requirements beyond those already mandated by the Code of Virginia. Thus, no adverse impact on any entity is indicated on account of the proposed regulations.

Small Businesses⁸ Affected.⁹ According to VDH, three of the outpatient surgical hospitals are estimated to meet the

definition of small business. However, the proposed amendments to the regulatory text do not adversely affect small businesses as they do not impose any additional costs beyond what the legislation requires.

Localities¹⁰ Affected.¹¹ The proposed changes also apply to the Lee County Hospital Authority and the Chesapeake Hospital Authority. However, the proposed amendments to the regulatory text do not introduce costs for local governments as they do not impose any additional costs beyond what the legislation requires.

Projected Impact on Employment. The proposed amendments to the regulatory text do not appear to affect total employment as they do not impose any additional impacts beyond what the legislation requires.

Effects on the Use and Value of Private Property. The proposed amendments to the regulatory text do not appear to affect the use and value of property or the real estate development costs as they do not impose any additional impacts beyond what the legislation requires.

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://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0219&212+ful+CHAP0219>. Chapter 219 also defined personal digital assistant to mean, a combination of an electronic device and a specialized software application designed to assist users with basic tasks using a combination of natural language processing and artificial intelligence, including such combinations known as digital assistants or virtual assistants.

³ <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0233>.

⁴ <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0525>.

⁵ According to VDH, this regulatory package was first prepared as an exempt action under § 2.2-4006 A 4 a of the Code of Virginia, which requires regulations to be filed with the Registrar within 90 days of the law's effective date. Because the action was not filed within the required timeframe due to personnel changes in the Office of the Commissioner, the regulatory action does not qualify as an exempt action.

⁶ ORM Economic Impact Document.

⁷ 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.

⁸ 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."

⁹ 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.

¹⁰ "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.

¹¹ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget (DPB) with the following exceptions:

Estimated Benefits and Costs: DPB states, The Virginia Department of Health estimates that these legislative requirements amount to onetime compliance costs of \$867,000 to hospitals, which is broken down as follows: onetime cost of \$525,000 to 105 hospitals (\$5,000 per hospital) to establish and implement policies related to patient access and use of intelligent personal assistants; onetime cost of \$212,500 to 170 hospitals (\$1,250 per hospital) to develop a protocol to allow patients to receive visits from a clergy of any religious denomination or sect during public health emergencies related to communicable diseases; onetime cost of \$130,000 to 104 hospitals (\$1,250 per hospital) to amend protocols for substance use-related emergencies to incorporate new statutory minimums such as: referrals to providers of pharmacotherapy for the treatment of drug or alcohol dependence or mental health diagnoses, and expanding what information and access is provided about opioid antagonists. The agency has updated the ORM form, which was originally published on September 9, 2022, to reflect the current number of hospitals and hospitals with emergency departments in the Commonwealth, and thus the current costs. Those costs would be as follows: a total cost of \$863,750 to hospitals, a onetime cost of \$525,000 to 105 inpatient hospitals (\$5,000 per hospital) to establish and implement policies related to patient access and use of intelligent personal assistants; onetime cost of \$232,500 to 186 hospitals (\$1,250 per hospital) to develop a protocol to allow patients to receive visits from a clergy of any religious denomination or sect during public health emergencies related to communicable diseases; onetime cost of \$106,250 to 85 hospitals with an emergency department (\$1,250 per hospital) to amend protocols for substance use-related emergencies to incorporate new statutory minimums such as: referrals to providers of pharmacotherapy for the treatment of drug or alcohol dependence or mental health diagnoses, and expanding what information and access is provided about opioid antagonists.

Businesses and Other Entities Affected: DPB states, "The proposed changes apply to 106 licensed general hospitals and

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63 outpatient surgical hospitals." The agency has updated ORM form to reflect that the proposed changes apply to 105 inpatient hospitals and 81 outpatient surgical hospitals.

Summary:

Pursuant to Chapters 219, 233, and 525 of the 2021 Acts of Assembly, Special Session I, the amendments (i) add a definition for intelligent personal assistant; (ii) require general and surgical hospitals to have a protocol to allow patients to receive visits from a rabbi, priest, minister, or clergy member of any religious denomination or sect during public health emergencies related to communicable diseases; (iii) require general hospitals to establish policies governing the access and use of intelligent personal assistants; and (iv) require each hospital with an emergency department to establish a protocol for the treatment and discharge of individuals experiencing a substance use-related emergency.

12VAC5-410-10. Definitions.

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

"Board" means the State Board of Health.

"Chief executive officer" means a job descriptive term used to identify the individual appointed by the governing body to act ~~in~~ on its behalf in the overall management of the hospital. Job titles may include administrator, superintendent, director, executive director, president, vice-president, and executive vice-president.

"Commissioner" means the State Health Commissioner.

"Consultant" means one who provides services or advice upon request.

"Department" means an organized section of the hospital.

"Designated support person" means a person who is knowledgeable about the needs of a person with a disability and who is designated, orally or in writing, by the individual with a disability, the individual's guardian, or the individual's care provider to provide support and assistance, including physical assistance, emotional support, assistance with communication or decision-making, or any other assistance necessary as a result of the person's disability, to the person with a disability at any time during which health care services are provided.

"Direction" means authoritative policy or procedural guidance for the accomplishment of a function or activity.

"Facilities" means ~~building(s)~~ buildings, equipment, and supplies necessary for implementation of services by personnel.

"Full-time" means a 37-1/2 to 40 hour work week.

"General hospital" means institutions as defined by § 32.1-123 of the Code of Virginia with an organized medical staff; with permanent facilities that include inpatient beds; and with medical services, including physician services, dentist services, and continuous nursing services, to provide diagnosis and treatment for patients who have a variety of medical and dental conditions that may require various types of care, such as medical, surgical, and maternity.

"Home health care department/service/program" means a formally structured organizational unit of the hospital that is designed to provide health services to patients in their place of residence and that meets Part II (12VAC5-381-150 et seq.) of the regulations adopted by the board for the licensure of home care organizations in Virginia Regulations for the Licensure of Home Care Organizations.

"Intelligent personal assistant" means a combination of an electronic device and a specialized software application designed to assist users with basic tasks using a combination of natural language processing and artificial intelligence, including combinations known as digital assistants or virtual assistants.

"Medical" means pertaining to or dealing with the healing art and the science of medicine.

"Nursing care unit" means an organized jurisdiction of nursing service in which nursing services are provided on a continuous basis.

"Nursing home" means an institution or any identifiable component of any institution as defined by § 32.1-123 of the Code of Virginia with permanent facilities that include inpatient beds and whose primary function is the provision, on a continuing basis, of nursing and health related services for the treatment of patients who may require various types of long term care, such as skilled care and intermediate care.

"Nursing services" means patient care services pertaining to the curative, palliative, restorative, or preventive aspects of nursing that are prepared or supervised by a registered nurse.

"Office of Licensure and Certification" or "OLC" means the Office of Licensure and Certification of the Virginia Department of Health.

"Organized" means administratively and functionally structured.

"Organized medical staff" means a formal organization of physicians and dentists with the delegated responsibility and authority to maintain proper standards of medical care and to plan for continued betterment of that care.

"Outpatient hospital" means institutions as defined by § 32.1-123 of the Code of Virginia that primarily provide facilities for the performance of surgical procedures on outpatients. Such patients may require treatment in a medical environment

exceeding the normal capability found in a physician's office, but do not require inpatient hospitalization.

"Ownership/person" means any individual, partnership, association, trust, corporation, municipality, county, governmental agency, or any other legal or commercial entity that owns or controls the physical facilities ~~and/or~~ or manages or operates a hospital.

"Rural hospital" means any general hospital in a county classified by the federal Office of Management and Budget (OMB) as rural, any hospital designated as a critical access hospital, any general hospital that is eligible to receive funds under the federal Small Rural Hospital Improvement Grant Program, or any general hospital that notifies the commissioner of its desire to retain its rural status when that hospital is in a county reclassified by the OMB as a metropolitan statistical area as of June 6, 2003.

"Service" means a functional division of the hospital. ~~Also and is also~~ is also used to indicate the delivery of care.

~~"Special hospital" means institutions as defined by § 32.1-123 of the Code of Virginia that provide care for a specialized group of patients or limit admissions to provide diagnosis and treatment for patients who have specific conditions (e.g., tuberculosis, orthopedic, pediatric, maternity).~~

"Special care unit" means an appropriately equipped area of the hospital where there is a concentration of physicians, nurses, and others who have special skills and experience to provide optimal medical care for patients assigned to the unit.

"Special hospital" means institutions, as defined by § 32.1-123 of the Code of Virginia, that provide care for a specialized group of patients or limit admissions to provide diagnosis and treatment for patients who have specific conditions (e.g., tuberculosis, orthopedic, pediatric, maternity).

"Staff privileges" means authority to render medical care in the granting institution within well-defined limits, based on the individual's professional license and the individual's experience, competence, ability, and judgment.

"Unit" means a functional division or facility of the hospital.

12VAC5-410-230. Patient care management.

A. All patients shall be under the care of a member of the medical staff.

B. Each hospital shall have a plan that includes effective mechanisms for the periodic review and revision of patient care policies and procedures.

C. Each hospital shall establish a protocol relating to the rights and responsibilities of patients based on the Joint Commission on Accreditation of Healthcare Organizations' Organizations 2000 Hospital Accreditation Standards, January 2000. The protocol shall include a process reasonably designed to inform patients of ~~their~~ patient rights and responsibilities.

Patients shall be given a copy of ~~their~~ patient rights and responsibilities upon admission.

D. No medication or treatment shall be given except on the signed order of a person lawfully authorized by state ~~statutes~~ statute.

1. Hospital personnel, as designated in medical staff bylaws, rules and regulations, or hospital policies and procedures, may accept emergency telephone and other verbal orders for medication or treatment for hospital patients from physicians and other persons lawfully authorized by state statute to give patient orders.

2. As specified in the hospital's medical staff bylaws, rules and regulations, or hospital policies and procedures, emergency telephone and other verbal orders shall be signed within a reasonable period of time not to exceed 72 hours, by the person giving the order, or, when such person is not available, cosigned by another physician or other person authorized to give the order.

E. Each hospital shall have a reliable method for identification of each patient, including newborn infants.

F. Each hospital shall include in its visitation policy a provision allowing each adult patient to receive visits from any individual from whom the patient desires to receive visits, subject to other restrictions contained in the visitation policy, including the patient's medical condition and the number of visitors permitted in the patient's room simultaneously.

During a declared public health emergency related to a communicable disease of public health threat, each hospital shall establish a protocol to allow patients to receive visits from a rabbi, priest, minister, or clergy member of a religious denomination or sect. Such protocol shall be consistent with guidance from the Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services and subject to compliance with an executive order, order of public health, department guidance, or other applicable federal or state guidance having the effect of limiting visitation.

1. The protocol may restrict the frequency and duration of visits and may require visits to be conducted virtually using interactive audio or video technology.

2. The protocol may require the person visiting a patient pursuant to this subsection to comply with all reasonable requirements of the hospital adopted to protect the health and safety of the person, patients, and staff of the hospital.

G. If the Governor has declared a public health emergency related to the novel coronavirus (COVID-19), each hospital shall allow a person with a disability who requires assistance as a result of such disability to be accompanied by a designated support person at any time during which health care services are provided.

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1. In any case in which health care services are provided in an inpatient setting, and the duration of health care services in such inpatient setting is anticipated to last more than 24 hours, the person with a disability may designate more than one designated support person. However, no hospital shall be required to allow more than one designated support person to be present with a person with a disability at any time.

2. A designated support person shall not be subject to any restrictions on visitation adopted by such hospital. However, such designated support person may be required to comply with all reasonable requirements of the hospital adopted to protect the health and safety of patients and staff of the hospital.

3. Every hospital shall establish policies applicable to designated support persons and shall:

- a. Make such policies available to the public on a website maintained by the hospital; and
- b. Provide such policies, in writing, to the patient at such time as health care services are provided.

H. Each hospital that is equipped to provide life-sustaining treatment shall develop a policy to determine the medical or ethical appropriateness of proposed medical care, which shall include:

1. A process for obtaining a second opinion regarding the medical and ethical appropriateness of proposed medical care in cases in which a physician has determined proposed care to be medically or ethically inappropriate;

2. Provisions for review of the determination that proposed medical care is medically or ethically inappropriate by an interdisciplinary medical review committee and a determination by the interdisciplinary medical review committee regarding the medical and ethical appropriateness of the proposed health care of the patient;

3. Requirements for a written explanation of the decision of the interdisciplinary medical review committee, which shall be included in the patient's medical record; and

4. Provisions to ensure the patient, the patient's agent, or the person authorized to make the patient's medical decisions in accordance with § 54.1-2986 of the Code of Virginia is informed of the patient's right to obtain the patient's medical record and the right to obtain an independent medical opinion and afforded reasonable opportunity to participate in the medical review committee meeting.

The policy shall not prevent the patient, the patient's agent, or the person authorized to make the patient's medical decisions from obtaining legal counsel to represent the patient or from seeking other legal remedies, including court review, provided that the patient, the patient's agent, person authorized to make the patient's medical decisions, or legal counsel ~~provide~~ provides written notice to the chief executive officer of the

hospital within 14 days of the date of the physician's determination that proposed medical treatment is medically or ethically inappropriate as documented in the patient's medical record.

I. Each hospital shall establish a protocol requiring that, before a health care provider arranges for air medical transportation services for a patient who does not have an emergency medical condition as defined in 42 USC § 1395dd(e)(1), the hospital shall provide the patient or the patient's authorized representative with written or electronic notice that the patient (i) may have a choice of transportation by an air medical transportation provider or medically appropriate ground transportation by an emergency medical services provider and (ii) will be responsible for charges incurred for such transportation in the event that the provider is not a contracted network provider of the patient's health insurance carrier or such charges are not otherwise covered in full or in part by the patient's health insurance plan.

J. Each hospital shall provide written information about the patient's ability to request an estimate of the payment amount for which the participant will be responsible pursuant to § 32.1-137.05 of the Code of Virginia. The written information shall be posted conspicuously in public areas of the hospital, including admissions or registration areas, and included on any website maintained by the hospital.

K. Each hospital shall establish protocols to ensure that any patient scheduled to receive an elective surgical procedure for which the patient can reasonably be expected to require outpatient physical therapy as a follow-up treatment after discharge is informed that the patient:

1. Is expected to require outpatient physical therapy as a follow-up treatment; and
2. Will be required to select a physical therapy provider prior to being discharged from the hospital.

L. Each hospital shall establish and implement policies to ensure the permissible access to and use of an intelligent personal assistant provided by a patient while receiving inpatient services. The policies shall ensure protection of health information in accordance with the requirements of the federal Health Insurance Portability and Accountability Act of 1996 (42 USC § 1320d et seq.).

12VAC5-410-280. Emergency service.

A. Hospitals with an emergency department or service shall have 24-hour staff coverage and shall have at least one physician on call at all times. Hospitals without emergency service shall have written policies governing the handling of emergencies.

B. No fewer than one registered nurse shall be assigned to the emergency service on each shift. Such assignment need not be exclusive of other duties, but must have priority over all other assignments.

C. Those hospitals that provide ambulance services shall comply with Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia and 12VAC5-31.

D. The hospital shall provide equipment, drugs, supplies, and ancillary services commensurate with the scope of anticipated needs, including radiology and laboratory services and facilities for handling and administering of blood and blood products. Emergency drugs and equipment shall remain accessible in the emergency department at all times.

E. ~~Current~~ A current roster of medical staff members on emergency call, including alternates and medical specialists or consultants, shall be posted in the emergency department.

F. Hospitals shall make special training available, as required, for emergency department personnel.

G. Toxicology reference material and poison antidote information shall be available along with telephone numbers of the nearest poison control centers.

H. Each emergency department shall post notice of the existence of a human trafficking hotline to alert possible witnesses or victims of human trafficking to the availability of a means to gain assistance or report crimes. This notice shall be in a place readily visible and accessible to the public, such as the patient admitting area or public or patient restrooms. The notice shall meet the requirements of § 40.1-11.3 C of the Code of Virginia.

I. Every hospital with an emergency department shall establish a security plan for each emergency department that:

1. Is developed using standards established in the Healthcare Security Industry Guidelines, 13th Edition (International Association for Healthcare Security and Safety);
2. Is based on:
 - a. The results of a security risk assessment of each emergency department location of the hospital; and
 - b. Risks for the emergency department identified in consultation with the emergency department medical director and nurse director, including:
 - (1) Trauma level designation;
 - (2) Overall patient volume;
 - (3) Volume of psychiatric and forensic patients;
 - (4) Incidents of violence against staff;
 - (5) Level of injuries sustained from such violence; and
 - (6) Prevalence of crime in the community;
3. Includes the presence of one or more off-duty law-enforcement officers or trained security personnel in the emergency department at all times, except as provided in subsection L of this section, and as indicated to be necessary and appropriate by the security risk assessment; and
4. Outlines training requirements for security personnel in:

- a. The potential use of and response to weapons;
- b. Defensive tactics;
- c. De-escalation techniques;
- d. Appropriate physical restraint and seclusion techniques;
- e. Crisis intervention;
- f. Trauma-informed approaches; and
- g. Safely addressing situations involving patients, family members, or other persons who pose a risk of harm to themselves or others due to mental illness or substance abuse or who are experiencing a mental health crisis.

J. The hospital may:

1. Accept from its security personnel the satisfactory completion of the Department of Criminal Justice Services minimum training standards for auxiliary police officers as required by § 15.2-1731 of the Code of Virginia in lieu of the training prescribed by subdivision I 4 of this section; and
2. Request to use industry standards other than those specified in subdivision I 1 of this section by submitting a written request for alternative industry standards to the OLC that:
 - a. Specifies the title, edition if applicable, and author of the alternative industry standards; and
 - b. Provides an explanation of how the alternative industry standards are substantially similar to those specified in subdivision I 1 of this section.

K. Every hospital with an emergency department shall update its security plan, including its security risk assessment, for each emergency department location of the hospital as often as necessary but not to exceed two years.

L. The commissioner shall provide a waiver from the requirement that at least one off-duty law-enforcement officer or trained security personnel be present at all times in the emergency department if the hospital demonstrates that a different level of security is necessary and appropriate for any of its emergency departments based upon findings in the security risk assessment.

1. A hospital shall submit a written request for a waiver pursuant to this subsection and shall:
 - a. Specify the location of the emergency department for which the waiver is requested;
 - b. Provide a dated copy of the security risk assessment performed for the specified emergency department that has been reviewed and approved by the governing body or its designee; and
 - c. Indicate the requested duration of the waiver.
2. The commissioner shall specify in any waiver granted pursuant to this subsection:
 - a. The location of the emergency department for which the waiver is granted;

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- b. The level of security to be provided at the specified emergency department location;
 - c. The effective date of the waiver; and
 - d. The duration of the waiver, which may not exceed two years from the date of issuance.
3. A hospital granted a waiver pursuant to this subsection shall:
- a. Notify the commissioner in writing no less than 30 calendar days after its security risk assessment changes if such change impacts when or how many off-duty law-enforcement officers or trained security personnel should be present at the emergency department for which a waiver was granted;
 - b. Provide a dated copy of the changed security risk assessment performed for the specified emergency department that has been reviewed and approved by the governing body or its designee; and
 - c. Indicate whether the hospital is:
 - (1) Requesting a modification to its existing waiver; or
 - (2) Surrendering its existing waiver.
4. The commissioner may request additional information from the hospital in evaluating the requested waiver.
5. The commissioner may modify or rescind a waiver granted pursuant to this subsection if:
- a. Additional information becomes known that alters the basis for the original decision, including if the security risk assessment changes regarding how many off-duty law-enforcement officers or trained security personnel should be present at the emergency department for which a waiver was granted; or
 - b. Results of the waiver jeopardize the health or safety of patients, employees, contractors, or the public.
6. Pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia), the Virginia Department of Health:
- a. May not release to the public information that a hospital discloses pursuant to this subsection, the waiver request, or the response to the waiver to the extent those records are exempt from disclosure; and
 - b. Shall notify the Secretary of Public Safety and Homeland Security of any request for records specified in subdivision L 6 a of this section, the person making such request, and the Virginia Department of Health's response to the request.
- M. Each hospital with an emergency department shall establish a protocol for the treatment and discharge of individuals experiencing a substance use-related emergency ~~to, which shall include the completion of appropriate assessments or screenings provisions for:~~

1. Appropriate screening and assessment of individuals experiencing substance use-related emergencies to identify medical interventions necessary for the treatment of the individual in the emergency department. ~~The protocol may also include a process for patients who are discharged directly from the emergency department for the recommendation of; and~~

2. Recommendations for follow-up care following discharge for any patient identified as having a substance use disorder, depression, or mental health disorder, as appropriate. For patients who have been treated for substance use-related emergencies, including opioid overdose, or other high-risk patients, that recommendations may include:

~~1. Instructions for distribution a. The dispensing of naloxone; 2. Referrals or other opioid antagonist used for overdose reversal pursuant to § 54.1-3408 X of the Code of Virginia at discharge; or~~

b. Issuance of a prescription for and information about accessing naloxone or other opioid antagonist used for overdose reversal, including information about accessing naloxone or other opioid antagonist used for overdose reversal at a community pharmacy, including an outpatient pharmacy operated by the hospital, or through a community organization or pharmacy that may dispense naloxone or other opioid antagonist used for overdose reversal without a prescription pursuant to a statewide standing order.

The protocol may also provide for referrals of individuals experiencing a substance use-related emergency to peer recovery specialists and community-based providers of behavioral health services; or ~~3. Referrals for to providers of pharmacotherapy for the treatment of drug or alcohol dependence or mental health diagnoses.~~

12VAC5-410-1170. Policy and procedures manual.

A. Each outpatient surgical hospital shall develop a policy and procedures manual that shall include provisions covering the following items:

- 1. The types of emergency and elective procedures that may be performed in the facility.
- 2. Types of anesthesia that may be used.
- 3. Admissions and discharges, including:
 - a. Criteria for evaluating the patient before admission and before discharge; and
 - b. Protocols to ensure that any patient scheduled to receive an elective surgical procedure for which the patient can reasonably be expected to require outpatient physical therapy as a follow-up treatment after discharge is informed that the patient:
 - (1) Is expected to require outpatient physical therapy as a follow-up treatment; and

(2) Will be required to select a physical therapy provider prior to being discharged from the hospital.

4. Written informed consent of patient prior to the initiation of any procedures.
5. Procedures for housekeeping and infection control and prevention.
6. Disaster preparedness.
7. Facility security.

B. A copy of approved policies and procedures and revisions thereto shall be made available to the OLC upon request.

C. Each outpatient surgical hospital shall establish a protocol relating to the rights and responsibilities of patients based on the Joint Commission on Accreditation of Healthcare Organizations' Organizations Standards for Ambulatory Care (2000 Hospital Accreditation Standards, January 2000). The protocol shall include a process reasonably designed to inform patients of their patient rights and responsibilities. Patients shall be given a copy of their patient rights and responsibilities upon admission.

D. If the Governor has declared a public health emergency related to the novel coronavirus (COVID-19), each outpatient surgical hospital shall allow a person with a disability who requires assistance as a result of such disability to be accompanied by a designated support person at any time during which health care services are provided.

1. A designated support person shall not be subject to any restrictions on visitation adopted by such outpatient surgical hospital. However, such designated support person may be required to comply with all reasonable requirements of the outpatient surgical hospital adopted to protect the health and safety of patients and staff of the outpatient surgical hospital.
2. Every outpatient surgical hospital shall establish policies applicable to designated support persons and shall:
 - a. Make such policies available to the public on a website maintained by the outpatient surgical hospital; and
 - b. Provide such policies, in writing, to the patient at such time as health care services are provided.

E. Each outpatient surgical hospital shall obtain a criminal history record check pursuant to § 32.1-126.02 of the Code of Virginia on any compensated employee not licensed by the Board of Pharmacy whose job duties provide access to controlled substances within the outpatient surgical hospital pharmacy.

F. During a declared public health emergency related to a communicable disease of public health threat, each hospital shall establish a protocol to allow patients to receive visits from a rabbi, priest, minister, or clergy member of a religious denomination or sect. Such protocol shall be consistent with guidance from the Centers for Disease Control and Prevention

and the Centers for Medicare and Medicaid Services and subject to compliance with an executive order, order of public health, department guidance, or other applicable federal or state guidance having the effect of limiting visitation.

1. The protocol may restrict the frequency and duration of visits and may require visits to be conducted virtually using interactive audio or video technology.

2. The protocol may require the person visiting a patient pursuant to this subsection to comply with all reasonable requirements of the hospital adopted to protect the health and safety of the person, patients, and staff of the hospital.

VA.R. Doc. No. R25-6875; Filed March 10, 2025, 3:35 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Emergency Regulation

Title of Regulation: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-10, 18VAC41-20-100, 18VAC41-20-140, 18VAC41-20-160, 18VAC41-20-170, 18VAC41-20-180, 18VAC41-20-260, 18VAC41-20-270, 18VAC41-20-280; adding 18VAC41-20-35).**

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

Effective Dates: April 30, 2025, through October 29, 2026.

Agency Contact: Kelley Smith, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.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 281 of the 2024 Acts of Assembly, the amendments allow a cosmetologist who has obtained a multistate license through the Compact Commission the privilege to practice in the Commonwealth without a Virginia license. A member state may set a fee that is charged to obtain and renew a multistate license in that state. The amendments set the fee in Virginia at \$50, which is similar to the fee charged by other states.

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18VAC41-20-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. All terms defined in Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia are incorporated in this chapter.

"Barber school" means a place or establishment licensed by the board to accept and train students and that offers a barber, master barber, or dual barber/master barber curriculum approved by the board.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Compact" means the Cosmetology Compact (§ 54.1-700.1 of the Code of Virginia).

"Direct supervision" means that a Virginia licensed barber, cosmetologist, nail technician, or wax technician shall be present in the barbershop, cosmetology salon, nail salon, or waxing salon at all times when services are being performed by a temporary permit holder or registered apprentice.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Licensee" means any person, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law holding a license or multistate license issued by the Board for Barbers and Cosmetology, as defined in §§ 54.1-700 and 54.1-700.1 of the Code of Virginia.

"Post-secondary educational level" means an accredited college or university that is approved or accredited by the Southern Association of Colleges and Schools Commission on Colleges or by an accrediting agency that is recognized by the U.S. Secretary of Education.

"Reciprocity" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Reinstatement" means having a license, multistate license, or certificate restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license, multistate license, or certificate for another period of time.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;

3. The managing partners of a limited partnership;

4. The officers of a corporation;

5. The managers of a limited liability company;

6. The officers or directors of an association or both; and

7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under ~~his~~ the individual's own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Substantially equivalent exam" means an examination administered by the licensing entity which covers Virginia's scope of practice for that profession.

"Substantially equivalent training" means at least 80% of the required hours in Virginia and curriculum content covering Virginia's scope of practice for that profession.

"Virginia state institution" for the purposes of this chapter means any institution approved by the Virginia Department of Education or the Virginia Department of Corrections.

18VAC41-20-35. Multistate license.

After the date the compact becomes operational, to obtain a multistate cosmetology license in Virginia, an applicant must hold an active and unencumbered cosmetology license in Virginia and shall meet the requirements for a multistate license under the compact in effect at the time of the application. To renew a multistate cosmetology license in Virginia, a licensee must comply with rules adopted by the commission in effect at the time of renewal. The applicant must also meet the requirements set forth in 18VAC41-20-20 A.

18VAC41-20-100. General requirements for a barber instructor certificate, cosmetology instructor certificate, nail technician instructor certificate, or wax technician instructor certificate.

A. Any individual wishing to engage in barbering instruction, master barbering instruction, cosmetology instruction, nail care instruction, or waxing instruction shall meet the following qualifications:

1. The applicant shall be in good standing as a licensed barber, master barber, cosmetologist, nail technician, or wax technician, and instructor, respectively, in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as a barber, master barber, cosmetologist, nail technician, or wax technician, or in the practice of teaching any of those professions. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in

connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant has been previously licensed in Virginia as a barber instructor, master barber instructor, cosmetology instructor, nail technician instructor, or wax technician instructor.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or unsuited to engage in the instruction of barbering, cosmetology, nail care, or waxing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action;

2. The applicant shall hold a current Virginia cosmetology license, multistate cosmetology license, a current Virginia barber, master barber, ~~cosmetology~~, nail technician, or wax technician license, respectively;

3. The applicant shall:

- a. Pass a course in teaching techniques at the post-secondary educational level;
- b. Complete an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified barber, master barber,

cosmetologist, nail technician, or wax technician instructor in a barber, cosmetology, nail technician, or wax technician school, respectively; or

c. Pass an examination in barber, master barber, cosmetology, nail technician, or wax technician instruction respectively, administered by the board or by a testing service acting on behalf of the board; and

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within two years of the date of the application; and
- b. All felony convictions within 20 years of the date of application.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

B. Instructors shall be required to maintain a barber, master barber, cosmetology, multistate cosmetology, nail technician, or wax technician license, respectively.

18VAC41-20-140. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE September 1, 2022, through August 31, 2024	AMOUNT DUE September 1, 2024, and after	WHEN DUE
Individuals:			
Application	\$90	\$105	With application
License by Endorsement	\$90	\$105	With application
<u>Multistate License</u>	<u>N/A</u>	<u>\$50</u>	<u>With application</u>
Renewal:			
Barber	\$90	\$105	With renewal card prior to expiration date
Master Barber	\$90	\$105	With renewal card prior to expiration date

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Cosmetologist	\$90	\$105	With renewal card prior to expiration date
Nail Technician	\$90	\$105	With renewal card prior to expiration date
Wax Technician	\$90	\$105	With renewal card prior to expiration date
<u>Multistate License</u>	<u>N/A</u>	<u>\$55</u>	<u>With renewal card prior to expiration date</u>
Reinstatement:	\$180* *includes \$90 renewal fee and \$90 reinstatement fee	\$210* *includes \$105 renewal fee and \$105 reinstatement fee	With reinstatement application
<u>Multistate License</u>	<u>N/A</u>	<u>\$110*</u> <u>*includes \$55 renewal fee and \$55 reinstatement fee</u>	<u>With reinstatement application</u>
Instructors:			
Application	\$110	\$125	With application
License by Endorsement	\$110	\$125	With application
Renewal	\$110	\$150	With renewal card prior to expiration date
Reinstatement	\$220* *includes \$110 renewal fee and \$110 reinstatement fee	\$300* *includes \$150 renewal fee and \$150 reinstatement fee	With reinstatement application
Facilities:			
Application	\$165	\$190	With application
Renewal	\$165	\$190	With renewal card prior to expiration date
Reinstatement	\$330* *includes \$165 renewal fee and \$165 reinstatement fee	\$380* *includes \$190 renewal fee and \$190 reinstatement fee	With reinstatement application
Schools:			
Application	\$185	\$220	With application
Add Program	\$100	\$100	With application

Renewal	\$185	\$220	With renewal card prior to expiration date
Reinstatement	\$370* *includes \$185 renewal fee and \$185 reinstatement fee	\$440* *includes \$220 renewal fee and \$220 reinstatement fee	With reinstatement application

18VAC41-20-160. License renewal required.

A license or certificate issued under this chapter shall expire two years from the last day of the month in which it was issued. A multistate license expiration date shall run concurrently with the Virginia license.

18VAC41-20-170. Notice of renewal.

The Department of Professional and Occupational Regulation will mail a renewal notice to the licensee, multistate licensee, or certificate holder outlining the procedures for renewal. Failure to receive this notice, however, shall not relieve the licensee, multistate licensee, or certificate holder of the obligation to renew. If the licensee, multistate licensee, or certificate holder fails to receive the renewal notice, a copy of the old license or certificate may be submitted as evidence of intent to renew, along with the required fee.

18VAC41-20-180. Failure to renew.

A. When ~~a licensed or certified~~ an individual who holds a license, multistate license, or certificate or a business entity fails to renew ~~its~~ a license or certificate within 30 days following its expiration date, the licensee, multistate licensee, or certificate holder shall apply for reinstatement of the license, multistate license, or certificate by submitting to the Department of Professional and Occupational Regulation a reinstatement application and renewal fee and reinstatement fee.

B. When ~~a licensed or certified~~ an individual who holds a license, multistate license, or certificate or a business entity fails to renew ~~its~~ a license within two years following the expiration date, reinstatement is no longer possible. To resume practice:

1. The former licensee, multistate licensee, or certificate holder shall apply for licensure, multistate licensure, or certification as a new applicant and shall meet all current entry requirements for each respective license or certificate. An individual who holds an active multistate license in a member state is exempt from this requirement.
2. An individual initially granted licensure under any of the following examination or training waiver provisions, known as grandfathering, shall submit a new application showing the individual met the requirements of the applicable examination or training waiver provision, demonstrate five

years of licensed experience, and pass the required examination:

- a. Any person who was exempted from examination for licensure as a barber, as such person was engaged in the practice of barbering on or before July 1, 1966, in any establishment or place of business within which the practice of barbering was carried on by only one barber, and such person filed an application with the board on or before January 1, 1967.
- b. Any person exempted from examination as a registered professional hair dresser, as such person was substantially engaged as a hairdresser in Virginia for at least nine months prior to June 29, 1962, and such person filed an application satisfactory to the board on or before July 1, 1963.
- c. Any person exempted from training requirements for licensure as a nail technician, as such person had experience or training as a nail technician, and such person applied to the board for examination by October 1, 1991.
- d. Any person exempted from examination as a wax technician pursuant to § 54.1-703.1 of the Code of Virginia.

C. The application for reinstatement for a school shall provide (i) the reasons for failing to renew prior to the expiration date and (ii) a notarized statement that all students currently enrolled or seeking to enroll at the school have been notified in writing that the school's license has expired. All of these materials shall be called the application package. Reinstatement will be considered by the board if the school consents to and satisfactorily passes an inspection of the school and if the school's records are maintained in accordance with 18VAC41-20-240 and 18VAC41-20-250 by the Department of Professional and Occupational Regulation. Pursuant to 18VAC41-20-130, upon receipt of the reinstatement fee, application package, and inspection results, the board may reinstate the school's license or require requalification or both. If the reinstatement application package and reinstatement fee are not received by the board within six months following the expiration date of the school's license, the board will notify the testing service that prospective graduates of the unlicensed school are not acceptable candidates for the examination. Such notification will be sent to the school and must be displayed in a conspicuous manner by the school in an area that is accessible to the public. No student shall be disqualified from taking the examination because the school was not licensed for a portion

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of the time the student attended if the school license is reinstated by the board.

D. The date a renewal fee is received by the Department of Professional and Occupational Regulation, or its agent, will be used to determine whether the requirement for reinstatement of a license, multistate license, or certificate is applicable.

E. When a license or certificate is reinstated, the licensee or certificate holder shall be assigned an expiration date two years from the date of the last day of the month of reinstatement.

F. When a multistate license is reinstated, the multistate license shall be assigned an expiration date concurrent with the expiration of the home state or Virginia cosmetology license.

G. A licensee, multistate licensee, or certificate holder that reinstates ~~is~~ a license, multistate license, or certificate shall be regarded as having been continuously licensed or certified without interruption. Therefore, a licensee, multistate licensee, or certificate holder shall be subject to the authority of the board for activities performed prior to reinstatement.

~~G. H.~~ A licensee or certificate holder that fails to reinstate ~~is~~ a license or certificate shall be regarded as unlicensed or uncertified from the expiration date of the license or certificate forward. Nothing in this chapter shall divest the board of its authority to discipline a licensee, multistate licensee, or certificate holder for a violation of the law or regulations during the period of time for which the individual was licensed or certified.

18VAC41-20-260. Display of license.

A. Each shop, salon, or school shall ensure that all current licenses, multistate licenses, certificates, or permits issued by the board shall be displayed in plain view of the public either in the reception area or at individual work stations of the shop, salon, or school. Duplicate licenses, multistate licenses, certificates, or permits shall be posted in a like manner in every shop, salon, or school location where the regulant provides services.

B. Each shop, salon, or school shall ensure that no employee, licensee, student, or apprentice performs any service beyond the scope of practice for the applicable license.

C. All licensees, multistate licenses, certificate holders, and permit holders shall operate under the name in which the license, certificate, or permit is issued.

D. Unless also licensed as a cosmetologist, a barber or master barber is required to hold a separate nail technician or wax technician license if performing nail care or waxing.

E. All apprenticeship cards issued by the Virginia Department of Labor Workforce Development and Industry (DOLI) Advancement (VDWDA) shall be displayed in plain view of the public either in the reception area or at individual work stations of the shop or salon. The apprentice sponsor shall

require each apprentice to wear a badge clearly indicating ~~his~~ status as a ~~DOLI~~ VDWDA registered apprentice.

18VAC41-20-270. Sanitation and safety standards for shops, salons, and schools.

A. Sanitation and safety standards. Any shop, salon, school, or facility where barber, master barber, cosmetology, or nail or waxing services are delivered to the public must be clean and sanitary at all times. Compliance with these rules does not confer compliance with other requirements set forth by federal, state, and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health. Licensees and multistate licensees shall take sufficient measures to prevent the transmission of communicable and infectious diseases and comply with the sanitation standards identified in this section and shall ensure that all employees likewise comply.

B. Disinfection and storage of implements.

1. A wet disinfection unit is a container large enough to hold a disinfectant solution in which the objects to be disinfected are completely immersed. A wet disinfection unit must have a cover to prevent contamination of the solution. The solution must be an Environmental Protection Agency (EPA) registered disinfectant that is bactericidal, virucidal, and fungicidal. Disinfectant solutions shall be used according to manufacturer's directions.

2. Disinfection of multiuse items constructed of hard, nonporous materials, such as metal, glass, or plastic, that the manufacturer designed for use on more than one client, including clippers, scissors, combs, and nippers, is to be carried out in the following manner prior to servicing a client:

- a. Remove all foreign matter from the object, utilizing a brush if needed. Drill bits are to be soaked in acetone and scrubbed with a wire brush to remove all foreign matter;
- b. Wash thoroughly with hot water and soap;
- c. Rinse thoroughly with clean water and dry thoroughly with a clean paper towel;
- d. Fully immerse implements into solution for a minimum of 10 minutes; and
- e. After immersion, rinse articles, dry thoroughly with a clean paper towel, and store in a clean, pre-disinfected, and dry cabinet, drawer, or nonairtight covered container, or leave instruments in an EPA-registered disinfection storage solution used according to manufacturer's directions.

3. Single-use items designed by the manufacturer for use on no more than one client should be discarded immediately after use on each individual client, including powder puffs, lip color, cheek color, sponges, styptic pencils, or nail care implements. The disinfection and reuse of these items is not

permitted and the use of single-use items on more than one client is prohibited.

4. For the purpose of recharging, rechargeable clippers may be stored in an area other than in a closed cabinet or container. This area shall be clean and the cutting edges of any clippers are to be disinfected.

5. Electrical clipper blades shall be disinfected before and after each use. If the clipper blade cannot be removed, the use of a spray or foam used according to the manufacturer's instructions will be acceptable, provided that the disinfectant is an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal, and that the entire handle is also disinfected by wiping with the disinfectant solution.

6. All wax pots shall be cleaned and disinfected with an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal and with no sticks left standing in the wax at any time. The area immediately surrounding the wax pot shall be clean and free of clutter, waste materials, spills, and any other items that may pose a hazard.

7. Each barber, master barber, cosmetologist, nail technician, and wax technician must have a wet disinfection unit at his station.

8. Sinks, bowls, tubs, whirlpool units, air-jetted basins, pipeless units, and non-whirlpool basins used in the performance of nail care shall be maintained in accordance with manufacturer's recommendations. They shall be cleaned and disinfected immediately after each client in the following manner:

- a. Drain all water and remove all debris;
- b. Clean the surfaces and walls with soap or detergent to remove all visible debris, oils, and product residue and then rinse with water;
- c. Disinfect by spraying or wiping the surface with an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal; and
- d. Wipe dry with a clean towel.

C. General sanitation and safety requirements.

1. Service chairs, wash basins, shampoo sinks, workstations and workstands, and back bars shall be clean;

2. The floor surface in all work areas must be of a washable surface other than carpet. The floor must be kept clean and free of hair, nail clippings, dropped articles, spills, clutter, trash, electrical cords, other waste materials, and any other items that may pose a hazard;

3. All furniture, fixtures, walls, floors, windows, and ceilings shall be clean and in good repair and free of water seepage and dirt. Any mats shall be secured or shall lie flat;

4. A fully functional bathroom in the same building with a working toilet and sink must be available for clients. There

must be hot and cold running water. Fixtures must be in good condition. The bathroom must be lighted and sufficiently ventilated. If there is a window, it must have a screen. There must be soap and clean single-use towels or hand air-drying device for the client's use. Laundering of towels is allowed, space permitting. The bathroom must not be used as a work area or for the open storage of chemicals. For facilities newly occupied after January 1, 2017, the bathroom shall be maintained exclusively for client use or shared with other businesses in the same building. If the bathroom is shared, the bathroom shall be available for client use and within 200 feet of the entrance and must adhere to all sanitation requirements of this chapter;

5. General areas for client use must be neat and clean with a waste receptacle for common trash;

6. Electrical cords shall be placed to prevent entanglement by the client or licensee, and electrical outlets shall be covered by plates;

7. All sharp tools, implements, and heat-producing appliances shall be in safe working order at all times, safely stored, and placed so as to prevent any accidental injury to the client or licensee;

8. The salon area shall be sufficiently ventilated to exhaust hazardous or objectionable airborne chemicals, and to allow the free flow of air; and

9. Adequate lighting shall be provided.

D. Articles, tools, and products.

1. Clean towels, robes, or other linens shall be used for each patron. Clean towels, robes, or other linens shall be stored in a clean, pre-disinfected, and dry cabinet, drawer, or nonairtight covered container. Soiled towels, robes, or other linens shall be stored in a container enclosed on all sides including the top, except if stored in a separate laundry room;

2. Whenever a haircloth is used, a clean towel or neck strip shall be placed around the neck of the patron to prevent the haircloth from touching the skin;

3. Soiled implements must be removed from the tops of work stations immediately after use;

4. Lotions, ointments, creams, and powders shall be labeled and kept in closed containers. A clean spatula, other clean tools, or clean disposable gloves shall be used to remove bulk substances such as creams or ointments from jars. Sterile cotton or sponges shall be used to apply creams, lotions, and powders. Cosmetic containers shall be covered after each use;

5. For nail care, if a sanitary container is provided for a client, the sanitary container shall be labeled and implements shall be used solely for that specific client. Disinfection shall

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be carried out in accordance with subdivisions B 1 and B 2 of this section;

6. No substance other than a sterile styptic powder or sterile liquid astringent approved for homeostasis and applied with a sterile single-use applicator shall be used to check bleeding; and

7. Any disposable material making contact with blood or other body fluid shall be disposed of in a sealed plastic bag and removed from the shop, salon, school, or facility in accordance with the guidelines of the Virginia Department of Health.

E. Chemical storage and emergency information.

1. Shops, salons, schools, and facilities shall have in the immediate working area a binder with all Safety Data Sheets (SDS) provided by manufacturers for any chemical products used;

2. Shop, salons, schools, and facilities shall have a blood spill clean-up kit in the work area that contains at minimum latex gloves, two 12-inch by 12-inch towels, one disposable trash bag, bleach, one empty spray bottle, and one mask with face shield or any Occupational Safety and Health Administration (OSHA) approved blood spill clean-up kit;

3. Flammable chemicals shall be labeled and stored in a nonflammable storage cabinet or a properly ventilated room; and

4. Chemicals that could interact in a hazardous manner (e.g., oxidizers, catalysts, and solvents) shall be labeled and separated in storage.

F. Client health guidelines.

1. All employees providing client services shall cleanse their hands with a soap product prior to providing services to each client. Licensees shall require that clients for nail care services shall cleanse their hands immediately prior to the requested nail care service;

2. An artificial nail shall only be applied to a healthy natural nail;

3. A nail drill or motorized instrument shall be used only on the free edge of the nail;

4. No shop, salon, school, or facility providing cosmetology or nail care services shall have on the premises cosmetic products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products;

5. No product shall be used in a manner that is disapproved by the FDA; and

6. All regulated services must be performed in a facility that is in compliance with current local building and zoning codes.

G. In addition to any requirements set forth in this section, all licensees and temporary permit holders shall adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational Safety and Health Compliance Division of the Virginia Department of Labor and Industry.

H. All shops, salons, schools, and facilities shall immediately report the results of any inspection of the shop, salon, or school by the Virginia Department of Health as required by § 54.1-705 of the Code of Virginia.

I. All shops, salons, schools, and facilities shall maintain a self-inspection form on file to be updated on an annual basis, and kept for five years, so that it may be requested and reviewed by the board at its discretion.

18VAC41-20-280. Grounds for license revocation or suspension; denial of application, renewal, or reinstatement; or imposition of a monetary penalty.

The board may, in considering the totality of the circumstances, fine any licensee, certificate holder, or permit holder; ~~or~~ suspend ~~or~~, revoke, or refuse to renew or reinstate any license, multistate license issued in Virginia, certificate, ~~or~~ permit, or authorization to practice cosmetology through a multistate license; or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and this chapter if it finds that the licensee, multistate licensee, certificate holder, permit holder, or applicant:

1. Is incompetent, ~~or~~ negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as a barber, master barber, cosmetologist, nail technician, or wax technician; or to operate a shop, salon, or school;

2. Is convicted of fraud or deceit in the practice or teaching of barbering, master barbering, cosmetology, nail care, or waxing or fails to teach the curriculum as provided for in this chapter;

3. Attempts to obtain, ~~obtained~~ obtains, ~~renewed~~ renews, or ~~reinstated~~ reinstates a license, certificate, ~~or~~ temporary license, or multistate license issued in Virginia by false or fraudulent representation;

4. Violates ~~or~~, induces others to violate, or cooperates with others in violating, any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which any barber, master barber, cosmetologist, nail technician, or wax technician may practice or offer to practice;

5. Offers, gives, or promises anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance

of his duties, any federal, state, or local law, regulation, or ordinance governing barbering, master barbering, cosmetology, nail care, or waxing as defined in § 54.1-700 of the Code of Virginia;

6. Fails to respond to the board or any of ~~its~~ the board's agents or provides false, misleading, or incomplete information to an inquiry by the board or any of ~~its~~ the board's agents;

7. Fails or refuses to allow the board or any of ~~its~~ the board's agents to inspect during reasonable hours any licensed shop, salon, or school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) or this chapter;

8. Fails to produce, upon request or demand of the board or any of ~~its~~ the board's agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with these regulations;

9. Fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license, certificate, or permit;

10. Makes any misrepresentation or publishes or causes to be published any advertisement that is false, deceptive, or misleading;

11. Fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license, certificate, ~~or~~ permit, or authorization to practice cosmetology in a remote state, in connection with a disciplinary action in any jurisdiction or of any license, certificate, ~~or~~ permit, or authorization to practice cosmetology in a remote state, that has been the subject of disciplinary action in any jurisdiction;

12. Has been convicted or found guilty, regardless of the manner of adjudication in Virginia or any other jurisdiction of the United States, of a misdemeanor involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for 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 conviction or guilt;

13. Fails to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any convictions as stated in subdivision 12 of this section;

14. Allows, as responsible management of a shop, salon, or school, a person who has not obtained a license, multistate license, or a temporary permit to practice as a barber, master

barber, cosmetologist, nail technician, or wax technician unless the person is duly enrolled as a registered apprentice;

15. Allows, as responsible management of a school, a person who has not obtained an instructor certificate or a temporary permit to practice as a barber, master barber, cosmetologist, nail technician, or wax technician instructor;

16. Fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with sanitary requirements provided for in this chapter or any local, state, or federal law or regulation governing the standards of health and sanitation for the practices of barbering, master barbering, cosmetology, nail care, or waxing, or the operation of barbershops, cosmetology salons, nail salons, or waxing salons; or

17. Fails to comply with all procedures established by the board and the testing service with regard to conduct at any board examination.

VA.R. Doc. No. R25-8183; Filed March 13, 2025, 7:17 a.m.

BOARD FOR BRANCH PILOTS

Proposed Regulation

Title of Regulation: 18VAC45-20. Board for Branch Pilots Regulations (amending 18VAC45-20-10 through 18VAC45-20-50).

Statutory Authority: § 54.1-902 of the Code of Virginia.

Public Hearing Information:

May 20, 2025 - 10:30 a.m. - Virginia Port Authority, Waterside Conference Room, 600 World Trade Center, Norfolk, VA 23510.

Public Comment Deadline: June 6, 2025.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Branch Pilots, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email branchpilots@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia grants to each regulatory board of the Department of Professional and Occupational Regulation the power and duty to levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the department. Section 54.1-902 of the Code of Virginia enumerates the legal authority for the Board for Branch Pilots to administer the licensure program for branch pilots.

Purpose: The performance of branch pilot duties by those who lack sufficient expertise, competence, and integrity poses a risk to the public health, safety, and welfare. Risks include maritime incidents such as collisions and groundings, which can have significant economic consequences, including, in the case of ship groundings, (i) the costs of restoration of aquatic habitat; (ii) dredging a ship out of a waterway; (iii) costs to tug

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the grounded vessel; and (iv) labor hours and resources of federal, state, and local agencies to refloat a vessel; and, in the case of collisions, damage to bridges, ports, or equipment. In addition, there are also potential costs borne by shipping companies and the customers whose cargo, if any, are carried due to incidents. These include damage to vessels, lost cargo, and delayed loading or unloading of cargo. Moreover, incidents may result in personal injury to individuals or potential loss of life. The board protects the public health, safety, and welfare, in part, by establishing through regulation the minimum qualifications for entry into the profession.

Substance: The proposed amendments (i) remove an unnecessary requirement for applicants for a full branch pilot license to provide evidence of a satisfactory physical examination, including required chemical tests; (ii) update and reword provisions regarding U.S. Coast Guard licensure requirements for initial full branch pilot licensure and renewal of limited branch pilot and full branch pilot licenses; (iii) allow branch pilots who have a full pilot branch license for the branch of Sea to Wolf Trap to qualify for an extension of route for the waters of the Chesapeake Bay from Wolf Trap to Smith Point without requiring an additional Federal First Class Pilot endorsement; (iv) streamline provisions regarding prohibited acts, including eliminating duplicative prohibited acts and consolidating prohibited acts related to failure to comply with chemical testing requirements and performing piloting duties while impaired or under the influence of drugs or alcohol; and (v) provide that a licensee must ensure that the medical review officer performs the duties and responsibilities assigned by the regulation.

Issues: The primary advantages to the public and regulated community include providing clarification to provisions of the regulation, ensuring the regulation complements Virginia law and reflects current agency procedures, and reducing regulatory burdens by removing requirements that are not necessary to protect the health, safety, and welfare of the public. There are no identifiable disadvantages to the public or the Commonwealth. The proposed amendments are not anticipated to create any substantial disadvantages to the regulated community.

Department of Planning and Budget Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Board for Branch Pilots (board) proposes to (i) eliminate the requirement that applicants for a full branch pilot license provide evidence of a satisfactory physical examination, to include chemical tests, (ii) add a provision that would allow branch pilots who have a full branch pilot license for the branch

of "Sea to Wolf Trap" to qualify for an extension of route for the waters of the Chesapeake Bay from "Wolf Trap to Smith Point," without requiring a Federal First Class Pilot endorsement for the extended route, and (iii) specify that the licensee shall ensure that the medical review officer (MRO) performs various duties.

Background. Branch pilots are responsible for the safe passage of ships in Virginia's major shipping lanes and waterways, which are referred to as branches. According to the Department of Professional and Occupational Regulation (DPOR), the performance of duties by branch pilots who lack sufficient expertise, competence, and integrity poses a risk to public health, safety, and welfare. Risks include maritime incidents, including collisions and groundings, which can have significant economic consequences. These include, in the case of ship groundings, the costs of restoration of aquatic habitat, dredging a ship out of a waterway, costs to tug the grounded vessel, labor hours and resources of federal, state, and local agencies to refloat a vessel; and, in the case of collisions, damage to bridges, ports, or equipment. In addition, there are also potential costs borne by shipping companies and the customers whose cargo, if any, are delayed due to incidents. These include damage to vessels, lost cargo, and delayed loading or unloading of cargo. Moreover, incidents may result in personal injury to individuals, or potential loss of life.

Physical Examinations and Chemical Tests: Under both the current and proposed regulations, in order to renew a limited branch pilot license or a full branch pilot license, among other requirements, the licensee must provide evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. If the branch pilot has not been subject to random chemical testing² during the preceding 24 months, then this examination shall include the chemical test. In the current regulation, an individual with a limited license who is applying for full license must also provide evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. The examination must include the chemical test whether or not the branch pilot has been subject to random chemical testing during the preceding 24 months. The board proposes to eliminate the examination requirement when limited branch pilots apply for full licensure. The board does not believe this would put the public at risk since the applicant has already been subject to annual physicals to renew their limited license and random testing for chemicals.

Chesapeake Bay from Wolf Trap to Smith Point: Branch pilot licenses are for specific waters. In order to extend a license to cover an additional branch, the licensee must satisfactorily complete 12 or more round trips with a currently licensed pilot of the branch for which the applicant seeks licensure, receive a First Class Pilot License endorsement issued by the U.S. Coast Guard for that additional area and pass a practical examination approved by the board and administered by the board examination committee. The board proposes to introduce an exception. Specifically, branch pilots who have a full branch

license from Sea to Wolf Trap qualify to sit for a practical examination approved by the board and administered by the board's examination committee for the waters of Chesapeake Bay from Wolf Trap to Smith Point. Upon successful completion of the examination, the branch pilot obtains a full branch license from Wolf Trap to Smith Point and no Federal First Class Pilot endorsement is required. Thus, in this circumstance, 12 or more round trips with a currently licensed pilot of the branch and Federal First Class Pilot endorsement for this route would not be required. By eliminating the trips with current licensee for the branch requirement and also not requiring a Federal First Class Pilot endorsement for the route, DPOR believes some pilots may seek to extend their licensure to the Wolf Trap to Smith Point branch.

Medical Review Officer (MRO): Per the current regulation the medical review officer shall do a list of several duties, including that the MRO do the following: (i) be completely familiar with all duties of a Virginia pilot; (ii) receive, evaluate, and maintain records of all medications given to him by or on behalf of each Virginia pilot; (iii) receive, evaluate, and maintain a record of each random chemical test taken by a Virginia pilot; (iv) any time the MRO finds the presence of a drug, marijuana, or alcohol that may impair the safe discharge of any duty of a Virginia pilot such that he is unfit to perform those duties, report his written findings to the licensee and president or vice president of the board and to the board's administrator; (v) report in writing to the licensee, president, or vice-president of the board, and the board's administrator of any delay or refusal by a licensee in reporting to testing or being tested; (vi) to the extent consistent with state and federal law, protect the confidentiality of all licensee records; and (vii) judge fitness to safely perform duties in the context of the licensee's prescription medications and the licensee's available medical history. The Virginia Pilot Association, which consists of all licensed branch pilots,³ hires the MRO.⁴ Since the board does not have direct regulatory authority over the MRO, it proposes to amend the regulation to read that the licensee shall ensure the medical review officer fulfills duties.

Estimated Benefits and Costs: The proposal to eliminate the physical examination and chemical test requirements when limited branch pilots apply for full licensure would eliminate one physical examination and chemical test for such full licensure if they had not happened to already have such an examination and test within 60 days of application. This would save the applicant the time and cost of these activities. The applicant is responsible for obtaining the physical examination from the applicant's own physician and the chemical testing from an approved testing center. According to DPOR, there currently are no branch pilot licenses for Wolf Trap to Smith Point. The current requirement that the licensee seeking to extend licensure to cover an additional branch must satisfactorily complete 12 or more round trips with a currently licensed pilot of the branch for which the applicant seeks to extend their licensure thus cannot be done for Wolf Trap to Smith Point. With the proposed elimination of that

requirement, the applicant would still need to display mastery for the branch by passing a practical examination approved by the board and administered by the board's examination committee for the waters of Chesapeake Bay from Wolf Trap to Smith Point. Not requiring the Federal First Class Pilot endorsement would save the pilot the initial \$190 application fee and associated time costs, as well as the \$95 renewal fee (and associated time costs) every five years.⁵ According to the agency, other than the fee paying and filling out associated forms, there are no other requirements to renew the Federal First Class Pilot endorsement that the branch pilots. To the extent that the proposed elimination to barriers for Wolf Trap to Smith Point licensure does encourage a pilot to obtain such licensure and serve the route, there may be some positive economic development. The impact of the proposal to state that the licensee shall ensure that the MRO performs MRO-required various duties is unclear. Individual pilots do not have control over the MRO. If the MRO failed to perform required duties properly, after perhaps a warning it seems likely that the Virginia Pilot Association would replace the MRO. It is not clear that the proposed change in the regulation would have any impact on the likelihood of that occurring.

Businesses and Other Entities Affected. The proposed amendments potentially pertain to the 39 full branch pilots and three or four limited branch pilots licensed in the Commonwealth, all of whom work for small businesses. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁶ 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.⁷ Since there is no clear increase in net cost or reduction in net benefit for any entity, no adverse impact is indicated.

Small Businesses⁸ Affected.⁹ The proposed amendments do not appear to adversely affect small businesses.

Localities¹⁰ Affected.¹¹ The route for the waters of the Chesapeake Bay from Wolf Trap to Smith Point goes by the Counties of Mathews, Middlesex, Lancaster, and Northumberland. The proposed amendments do not appear to affect costs for local governments.

Projected Impact on Employment. The proposed amendments are not likely to substantively affect total employment.

Effects on the Use and Value of Private Property. The proposed reduction in barriers for Wolf Trap to Smith Point licensure may encourage one or more pilots to start serving that route. They likely would only do this if it increased the value of their businesses. The proposed amendments would not likely substantively 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

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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 chemical test is a comprehensive drug screen that includes testing for controlled substances in Schedules I through V of Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

³ Source: DPOR.

⁴ Ibid.

⁵ See https://www.dco.uscg.mil/Portals/9/NMC/pdfs/faq/fees_faq.pdf?ver=V.LrPINyU178Lhs9alQxVpw==×tamp=1713898023460.

⁶ 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.

⁷ 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.

⁸ 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."

⁹ 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.

¹⁰ "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.

¹¹ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Board for Branch Pilots concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) eliminate the requirement that applicants for a full branch pilot license provide evidence of a satisfactory physical examination, to include chemical tests; (ii) add a provision that would allow branch pilots who have a full branch pilot license for the branch of Sea to Wolf Trap to qualify for an extension of route for the waters of the Chesapeake Bay from Wolf Trap to Smith Point, without requiring a Federal First Class Pilot endorsement for the extended route; and (iii)

specify that the licensee shall ensure that the medical review officer performs various duties.

18VAC45-20-10. Initial licensing.

A. Any person wishing to obtain a license as a limited branch pilot shall meet the following qualifications:

1. Satisfactorily complete a two-year apprenticeship in a program approved by the board;
2. Satisfactorily complete a comprehensive examination ~~which that~~ shall be approved by the board and administered by the examining committee of the board. The examination shall be in two parts:
 - a. Written; and
 - b. Practical oral examination;
3. Comply with the board's regulations and Chapter 9 (§ 54.1-900 et seq.) of Title 54.1 of the Code of Virginia;
4. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. This examination shall include the chemical tests referred to in 18VAC45-20-5;
5. Notify the board of any chronic or acute physical or mental condition; and
6. Pay a licensing fee of \$60. Each check or money order shall be made payable to the Treasurer of Virginia. All fees shall be nonrefundable.

B. Any limited branch pilot wishing to obtain a full branch pilot license shall meet the following qualifications:

1. Satisfactorily complete a five-year apprenticeship in a program approved by the board;
2. Hold a limited branch pilot license in good standing;
3. Pass a practical examination approved by the board and administered by the board's examining committee;
4. Possess a valid unlimited Federal Inland Masters ~~License~~ credential with First Class Pilot endorsement issued by the ~~United States U.S.~~ United States U.S. Coast Guard, ~~which shall include radar observer endorsement, for the same waters as his branch of the Commonwealth. Any such federal license acquired after January 1994 shall include an Automated Radar Plotting Aids (ARPA) radar certificate. A copy of this license credential shall be filed with the clerk of~~ submitted to the board ~~immediately;~~
- ~~5. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. This examination shall include the chemical tests referred to in 18VAC45-20-50;~~
- ~~6. 5.~~ Qualify in accordance with § 54.1-905 of the Code of Virginia; and

7. ~~6.~~ Pay a licensing fee of \$60. Each check or money order is to be made payable to the Treasurer of Virginia. All fees shall be nonrefundable.

18VAC45-20-20. License renewal.

A. Each branch pilot seeking ~~renewal of his license~~ renewal shall complete a renewal application, comply with the provisions of this section, and appear before the board or ~~its License Renewal Committee~~ the board's license renewal committee, which shall determine if ~~he~~ the branch pilot possesses the qualifications to be renewed.

B. Any limited branch pilot seeking ~~to renew his license renewal~~ shall meet the following standards:

1. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. If the branch pilot has not been subject to random chemical testing during the preceding 24 months, then this examination shall include the chemical tests referred to in 18VAC45-20-50;

2. Furnish to the board evidence that ~~he~~ the branch pilot has transited the waters embraced by ~~his~~ the branch pilot's license during the preceding 12 months;

3. After three years of licensure as a limited branch pilot, possess a valid First Class Pilot ~~License endorsement~~, with radar observer endorsement, issued by the ~~United States U.S.~~ Coast Guard for ~~the same waters as his limited branch~~. Any ~~such federal license acquired after January 1994 shall include an Automated Radar Plotting Aids (ARPA) radar certificate of the Commonwealth;~~ and

4. Pay a license renewal fee of \$60. Each check or money order is to be made payable to the Treasurer of Virginia. All fees shall be nonrefundable.

C. Any full branch pilot seeking ~~to renew his license~~ renewal shall meet the following standards:

1. Possess a valid unlimited Federal Inland Masters ~~License credential~~ with First Class Pilot endorsement, ~~with radar observer endorsement~~, issued by the ~~United States U.S.~~ Coast Guard for ~~the same waters as his branch~~; any ~~such federal license renewed or acquired after January 1994 shall include an Automated Radar Plotting Aids (ARPA) radar certificate of the Commonwealth;~~

2. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. If the branch pilot has not been subject to random chemical testing during the preceding 24 months, then this examination shall include the chemical tests referred to in 18VAC45-20-50;

3. Furnish to the board evidence that ~~he~~ the branch pilot has transited the waters embraced by ~~his~~ the branch pilot's license during the preceding 12 months, and that ~~he~~ the branch pilot has piloted 12 or more ships during that time, at

least six trips as a pilot within the first six months of the calendar year and six trips as a pilot within the last six months of the calendar year. Upon the showing of good cause, the board may waive the requirements of this subdivision when, in its judgment, the pilot is otherwise qualified;

4. Qualify in accordance with § 54.1-906 of the Code of Virginia; and

5. Pay a license renewal fee of \$60. Each check or money order is to be made payable to the Treasurer of Virginia. All fees shall be nonrefundable.

18VAC45-20-30. Change of license.

In order to extend a license, an applicant shall satisfactorily complete 12 or more round trips with a currently licensed pilot of the branch for which the applicant seeks licensure, receive a First Class Pilot ~~License endorsement~~ issued by the ~~United States U.S.~~ Coast Guard, if applicable, for that additional area, and pass a practical examination approved by the board and administered by the board's ~~Examination Committee~~ examination committee.

Branch pilots who have a full branch license from Sea to Wolf Trap qualify to sit for a practical examination approved by the board and administered by the board's examination committee for the waters of Chesapeake Bay from Wolf Trap to Smith Point. Upon successful completion of the examination, the branch pilot obtains a full branch license from Wolf Trap to Smith Point and no additional Federal First Class Pilot endorsement is required.

18VAC45-20-40. Grounds for denial of licensure, denial of renewal, or discipline.

The board shall have the authority to deny initial licensure, deny an extension of license, or deny renewal as well as to discipline existing licensees, whether limited or not, for the following reasons:

1. ~~a. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude or any alcohol-related or drug-related offense, there being no appeal pending therefrom or the time for appeal having elapsed.~~

~~b. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor resulting from an arrest for any alcohol-related or drug-related offense, there being no appeal pending therefrom or the time for appeal having elapsed.~~

Any plea of 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 of the laws of the jurisdiction where

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convicted shall be admissible as prima facie evidence of such conviction;

2. Failing to inform the board in writing within seven calendar days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude or any alcohol-related or drug-related offense;

3. Failing to report to the board in writing any reports of the National Transportation Safety Board involving the licensee, or the results of any disciplinary action taken by the ~~United States~~ U.S. Coast Guard against the licensee within seven calendar days of that report or action;

4. Refusing or in any other way failing to carry out an order from the pilot officers for reasons other than the ~~public's~~ public health, safety, or welfare;

5. Negligence or misconduct in the performance of duties;

6. Violating or cooperating with others in violating any provision of Chapter 9 (§ 54.1-900 et seq.) of Title 54.1 of the Code of Virginia or any regulation of the board;

~~7. Failing to, as soon as possible under the circumstances, report to the pilot officers the licensee's finishing time and other required information relating to the particulars of the ship;~~

~~8. 7.~~ Failing to ~~file~~ file immediately with the president or vice president of the board, with a copy to the board administrator, a complete written account of any violation of the statutes of Virginia or of the United States relating to pilotage or failing to report in writing to the president or vice president of the board, with a copy to the board administrator, an account of all collisions, groundings, or other maritime mishaps of any description that may occur during the discharge of the pilot's duties. This report shall be received no later than seven days after such an incident;

~~9. 8.~~ Failing to report to the board any physical or mental condition that may affect the licensee's ability to perform the duties of a pilot. Such reports shall be provided within seven calendar days of the onset of the condition;

~~10. 9.~~ Refusing to comply with the board's requirement for a chemical test. Such test is required ~~immediately~~;

a. Immediately and no later than 12 hours after involvement in a collision, grounding, or other incident resulting in personal injury, death, environmental hazard, or property damage in excess of \$100,000;

b. In any instance in which the board has reasonable cause to believe there is evidence of impaired performance and a test is necessary to protect the public health, safety, or welfare; or

c. Under the provisions of 18VAC45-20-50.

Refusing to comply with this requirement of subdivisions 9 a or 9 b of this section may result in summary suspension of

the pilot's license in accordance with § 54.1-902 of the Code of Virginia.

~~11. Refusing to comply with any board requirement for chemical tests in any instance in which the board has cause to believe a test is necessary to protect the public health, safety, or welfare. Refusing to comply with this requirement may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;~~

~~12. 10.~~ Failing to send proof of any test required by subdivision ~~10 or 11~~ 9 of this section to the president or vice president of the board, with a copy to the board administrator, within 48 hours of the administration of the test;

~~13. A positive finding as a result of, or on, any substance abuse or chemical test as a result of which 11. Reasonable cause by the board believes to believe there is a threat to the public health, safety, or welfare based on evidence of impaired performance or substance abuse or a positive chemical test. Such a finding may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;~~

~~14. Evidence of impaired performance in any instance in which the board believes there is a threat to the public health, safety, or welfare. Such a finding may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;~~

~~15. 12.~~ Performing or attempting to perform any of the duties of the licensee's office or job while ~~under~~;

a. Under the influence of illegal drugs; ~~16. Performing or attempting to perform any of the duties of the licensee's office or job while under or~~

b. Under the influence of alcohol, marijuana, or any medication (controlled substance or otherwise) to the extent that the licensee was unfit for the performance of the duties or the licensee's office or job; ~~and~~

~~17. 13.~~ Failing to comply with any of the provisions of 18VAC45-20-50.

18VAC45-20-50. Random chemical testing.

A. All Virginia licensed branch pilots shall be subject to the random chemical testing as set forth in this chapter. Random chemical testing shall be conducted at an annual selection rate of not less than 30% and not more than 100% of total licensees. Licensees shall be responsible for all costs associated with random chemical testing. The chemical test shall be a comprehensive drug screen acceptable to the board that includes testing for controlled substances in Schedules I through V of Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Only licensees on duty may be selected for random testing. A licensee selected for random chemical testing shall report for

testing within two hours of notification. Failure to take a random chemical test is considered refusal to take the test.

B. Duties of licensee.

1. All licensees of ~~this~~ the board shall enroll and participate in a random chemical testing program that meets the criteria of this chapter.
2. An on-duty licensee selected for random chemical testing shall report for testing within two hours of notification that the licensee has been selected.
3. Licensees who receive a prescription for any medication from any health care provider shall have the following duties:
 - a. Give the health care provider a copy of the licensee's job description as a Virginia pilot;
 - b. Give the health care provider a complete list of medications used within the 30 days preceding the current visit;
 - c. Obtain a written statement from the health care provider stating if the new prescription is for a controlled substance (Schedules II through V of the Drug Control Act (§ 54.1-3400 of the Code of Virginia)) and obtain a written statement from the health care provider as to the licensee's fitness to safely perform the duties found in the job description; and
 - d. If prescribed any medication containing a Schedules II through V controlled substance that is to be used within 12 hours of being on duty, make certain the MRO received by hand delivery, email, or telefax each prescription written by any health care provider at the time such prescription is written along with a complete list of medications used by the licensee within the preceding 30 days.

C. ~~The medical review officer~~ licensee shall ensure that the MRO shall:

1. Be completely familiar with all duties of a Virginia pilot.
2. Receive, evaluate, and maintain records of all medications given to ~~him~~ the MRO by or on behalf of each Virginia pilot.
3. Receive, evaluate, and maintain a record of each random chemical test taken by a Virginia pilot.
4. Any time the MRO finds the presence of a drug, alcohol, or marijuana that may impair the safe discharge of any duty of a Virginia pilot such that the licensee is unfit to perform those duties, report the MRO's written findings to the licensee and president or vice president of the board and to the board's administrator.
5. Report in writing to the licensee, president or vice-president of the board, and the board's administrator of any delay or refusal by a licensee in reporting to testing or being tested.

6. To the extent consistent with state and federal law, protect the confidentiality of all licensee records.

7. Judge fitness to safely perform duties in the context of the licensee's prescription medications and the licensee's available medical history. Any time the MRO finds evidence that the Virginia pilot may be impaired in the safe discharge of any of the pilot's duties such that the pilot may be unfit to perform those duties, the MRO's written finding shall be reported to the licensee and president or vice president of the board and to the board's administrator.

VA.R. Doc. No. R24-7632; Filed March 18, 2025, 7:59 a.m.

BOARD OF MEDICINE

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.

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

18VAC85-50. Regulations Governing the Practice of Physician Assistants.

18VAC85-80. Regulations Governing the Practice of Occupational Therapy.

18VAC85-101. Regulations Governing the Practice of Radiologic Technology.

18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists.

18VAC85-120. Regulations Governing the Licensure of Athletic Trainers.

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

FORMS (18VAC85-20)

[Instructions for Completing an Application to Practice Medicine in Virginia for Graduates of Allopathic Medical Schools and Osteopathic Medical Schools \(rev. 12/2017\)](#)

[Instructions for Completing an Application to Practice Chiropractic in Virginia \(rev. 12/2017\)](#)

[Instructions for Completing an Application for Licensure by Endorsement \(rev. 8/2020\)](#)

[Instructions for Completing Podiatric Medicine Application \(rev. 12/2017\)](#)

Regulations

Form A, Intern/Resident, Memorandum from Associate Dean of Graduate Medical Education or Program Director (rev. 8/2007)

Form B, Intern/Resident Certificate of Professional Education (rev. 8/2007)

Form G, Intern Resident, Request for Status Report of ECFMG Certification (eff. 8/2007)

Intern/Resident, Transfer Request (rev. 6/2016)

Instructions for Completing an Application for a Limited License to Foreign Medical Graduates Pursuant to § 54.1-2936 (rev. 8/2007)

Application for a Limited License to Foreign Medical Graduates Pursuant to § 54.1-2936 (rev. 8/2007)

Form A, MD Reinstatement, Claims History Sheet (rev. 9/2009)

MD/DO Reinstatement Instructions and Application for MD and DO licenses in ~~EXPIRED status~~ Expired Status for more than two years ONLY Two Years Only (rev. 8/2020)

Instructions for Reinstatement of a Chiropractic Licensure Application (rev. 4/2018)

~~Application for Registration for Volunteer Practice (rev. 8/2015)~~

[Application for Registration for Volunteer Practice \(rev. 2/2025\)](#)

Sponsor Certification for Volunteer Registration (rev. 3/2018)

Application for Restricted Volunteer License (rev. 12/2007)

License Verification Request (rev. 2/2024)

FORMS (18VAC85-50)

Instructions for Completing an Application to Practice as a Physician Assistant in Virginia (rev. 11/2017)

ARRT Fluoroscopy Examination Application for a Physician Assistant (rev. 2/2014)

Physician Assistant Authorization to Use Fluoroscopy (rev. 1/2014)

Practice Agreement as a Physician Assistant (PA) (rev. 10/2019)

~~Application for Registration for Volunteer Practice (rev. 8/2015)~~

[Application for Registration for Volunteer Practice \(rev. 2/2025\)](#)

Sponsor Certification for Volunteer Registration (rev. 3/2018)

Application for Restricted Volunteer License (rev. 8/2015)

License Verification Request (rev. 2/2024)

FORMS (18VAC85-80)

Instructions for Completing an Application to Practice as an Occupational Therapist/Occupational Therapy Assistant in Virginia (rev. 12/2017)

Instructions and Application for Reinstatement of a License to Practice as an Occupational Therapist/Occupational Therapy Assistant (rev. 4/2018)

Application to Reactivate an Occupational Therapist Assistant License from Inactive Status (rev. 3/2024)

Application to Reactivate an Inactive License for an Occupational Therapist Pursuant to Virginia Regulations 18VAC85-80-72 (rev. 1/2018)

Board-Approved Occupational Therapy Practice to Reinstatement an Inactive License (rev. 3/2024)

Supervised Occupational Therapy Services (lapse six years or more) (rev. 5/2017)

Continued Competency Activity and Assessment Form (rev. 4/2000)

Application for Restricted Volunteer License (rev. 8/2015)

~~Application for Registration for Volunteer Practice (rev. 8/2015)~~

[Application for Registration for Volunteer Practice \(rev. 2/2025\)](#)

Sponsor Certification for Volunteer Registration (rev. 3/2018)

License Verification Request (rev. 2/2024)

FORMS (18VAC85-101)

Instructions for Completing an Application to Practice as a Radiologic Technologist in Virginia (rev. 12/2017)

Instructions for Completing an Application to Practice as a Limited Radiologic Technologist in Virginia (rev. 12/2017)

Instructions for Completing an Application to Practice as a Radiologist Assistant in Virginia (rev. 12/2017)

Form C, Radiologic Technologist/Radiologist Assistant, Clearance from Other States (rev. 11/2010)

Instructions and Application for Reinstatement of a License to Practice as a Radiologic Technologist/Limited Radiologic Technologist (rev. 12/2019)

~~Application for Registration for Volunteer Practice (rev. 8/2015)~~

[Application for Registration for Volunteer Practice \(rev. 2/2025\)](#)

Sponsor Certification for Volunteer Registration (rev. 7/2018)

[Continued Competency Activity and Assessment Form \(eff. 7/2008\).](#)

[License Verification Request \(rev. 2/2024\)](#)

FORMS (18VAC85-110)

[Instructions for Completing an Application to Practice as an Acupuncturist in Virginia \(rev. 3/2017\)](#)

[Form A, Claims History \(rev. 11/2010\)](#)

[Form C, Clearance from Other State Boards \(rev. 11/2010\)](#)

[Form L, Certificate of Professional Education \(rev. 8/2007\)](#)

[Verification of NCCAOM Certification \(rev. 3/2008\)](#)

[Recommendation for Examination by a Physician \(rev. 11/2006\)](#)

[License Verification Request \(rev. 2/2024\)](#)

~~[Application for Registration for Volunteer Practice \(rev. 8/2015\)](#)~~

[Application for Registration for Volunteer Practice \(rev. 2/2025\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 3/2018\)](#)

[Instructions and Application for Reinstatement of an Acupuncture Licensure \(rev. 4/2018\)](#)

[Application to Reactivate an Inactive License for a Licensed Acupuncturist \(rev. 1/2018\)](#)

FORMS (18VAC85-120)

[Instructions for Completing an Athletic Trainer Licensure Application \(12/2017\)](#)

~~[Application for Registration for Volunteer Practice \(rev. 8/2015\)](#)~~

[Application for Registration for Volunteer Practice \(rev. 2/2025\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 3/2018\)](#)

[Instructions and Application for Reinstatement of an Athletic Trainer Licensure \(rev. 4/2018\)](#)

[Certificate of Professional Education \(rev. 8/2007\)](#)

[License Verification Request \(rev. 2/2024\)](#)

VA.R. Doc. No. R25-8226; Filed March 7, 2025, 8:52 a.m.

BOARD OF PHARMACY

Notice of Extension of Emergency Regulation

Title of Regulation: 18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (amending 18VAC110-21-46).

Statutory Authority: §§ 54.1-2400 and 54.1-3303.1 of the Code of Virginia.

The Governor has approved the request of the Board of Pharmacy to extend the expiration date of the emergency regulation for 18VAC110-21 for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation is continued in effect through December 24, 2025. This extension is required for the board to continue

to meet the mandate of Chapters 171 and 172 of the 2023 Acts of Assembly, which expand the conditions for which a pharmacist can initiate treatment, to ensure patient care is not compromised prior to the effective date of the final regulatory amendments. The board will vote on final amendments for this action at its meeting on March 25, 2025. The emergency regulation was published in [40:11 VA.R. 1046-1047 January 15, 2024](#).

Effective Date Extended Through: December 24, 2025.

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

VA.R. Doc. No. R24-7530; Filed March 7, 2025, 11:26 a.m.

BOARD OF COUNSELING

Final Regulation

REGISTRAR'S NOTICE: The Board of Counseling is claiming an exemption from the Administrative Process Act in accordance with the second enactment of Chapter 595 of the 2024 Acts of Assembly, which exempts the board's initial adoption of regulations necessary to implement the provisions of the act, except that the board must provide an opportunity for public comment on the regulations prior to adoption.

Title of Regulation: 18VAC115-80. Regulations Governing the Registration of Qualified Mental Health Professionals (amending 18VAC115-80-10, 18VAC115-80-20, 18VAC115-80-30, 18VAC115-80-40, 18VAC115-80-70, 18VAC115-80-80, 18VAC115-80-100, 18VAC115-80-110; adding 18VAC115-80-65; repealing 18VAC115-80-35, 18VAC115-80-50).

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

Effective Date: May 7, 2025.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Summary:

Pursuant to Chapter 595 of the 2024 Acts of Assembly, the amendments (i) reduce requirements for qualified mental health professionals, (ii) merge requirements for qualified mental health professionals-adult with qualified mental health professionals-child, (iii) revise fees, and (iv) revise requirements for registration and experience for registration.

18VAC115-80-10. Definitions.

~~"Accredited" means a school that is listed as accredited on the U.S. Department of Education College Accreditation database found on the U.S. Department of Education website. If education was obtained outside the United States, the board~~

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may accept a report from a credentialing service that deems the degree and coursework is equivalent to a course of study at an accredited school.

~~"Applicant" means a person applying for registration as a qualified mental health professional.~~

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

"Board" means the Virginia Board of Counseling.

~~"Collaborative mental health services" means those rehabilitative supportive services that are provided by a qualified mental health professional, as set forth in a service plan under the direction of and in collaboration with either a mental health professional licensed in Virginia or a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure.~~

"DBHDS" means the Virginia Department of Behavioral Health and Developmental Services.

"Face-to-face" means the physical presence of the individuals involved in the supervisory relationship or the use of technology that provides real-time, visual, and audio contact among the individuals involved.

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health and development.

~~"Qualified mental health professional" or "QMHP" includes qualified mental health professionals adult and qualified mental health professionals child~~ means the same as that term is defined in § 54.1-3500 of the Code of Virginia.

~~"Qualified mental health professional adult" or "QMHP-A" means a qualified mental health professional who provides collaborative mental health services for adults. A qualified mental health professional adult shall provide such services as an employee or independent contractor of the Department of Behavioral Health and Developmental Services or the Department of Corrections, or as a provider licensed by the Department of Behavioral Health and Developmental Services.~~

~~"Qualified mental health professional child" or "QMHP-C" means a person who by education and experience is professionally qualified and registered by the board to provide collaborative mental health services for children and adolescents up to 22 years of age. A qualified mental health professional child shall provide such services as an employee or independent contractor of the Department of Behavioral~~

~~Health and Developmental Services or the Department of Corrections, or as a provider licensed by the Department of Behavioral Health and Developmental Services.~~

~~"Qualified mental health professional-trainee" or "QMHP-trainee" means a person who is receiving supervised training to qualify as a qualified mental health professional and is registered with the board the same as that term is defined in § 54.1-3500 of the Code of Virginia.~~

~~"Registrant" means a QMHP registered with the board.~~

18VAC115-80-20. Fees required by the board.

A. The board has established the following fees applicable to the registration of qualified mental health professionals:

Registration as a QMHP-A <u>QMHP</u>	\$50
Registration as a QMHP-C	\$50
Registration as a QMHP-trainee	\$25
Renewal of registration <u>as a QMHP</u>	\$30
<u>Renewal of registration as a QMHP-trainee</u>	<u>\$10</u>
Late renewal	\$20
Reinstatement of a lapsed registration	\$75
Duplicate certificate of registration	\$10
Returned check or dishonored credit card or debit card	\$50
Reinstatement following revocation or suspension	\$500

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC115-80-30. Current name and address.

~~Each registrant shall furnish a current name and address of record to the board his current name and address of record. Any change of name or address of record or public address if different from the address of record shall be furnished to the board within 60 days of such change. It shall be the duty and responsibility of each registrant to inform the board of his current address.~~

18VAC115-80-35. Requirements for registration as a qualified mental health professional-trainee. (Repealed.)

~~A. Prior to receiving supervised experience toward registration as a QMHP A, an applicant for registration as a QMHP-trainee shall provide a completed application, the fee prescribed in 18VAC115-80-20, and verification of one of the following:~~

- ~~1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family therapy verified by~~

~~an official transcript from an accredited college or university;~~

~~2. A master's or bachelor's degree in human services or a related field verified by an official transcript from an accredited college;~~

~~3. Current enrollment in a master's program in psychology, social work, counseling, substance abuse, marriage and family therapy, or human services with at least 30 semester or 45 quarter hours as verified by an official transcript;~~

~~4. A bachelor's degree verified by an official transcript from an accredited college in an unrelated field that includes at least 15 semester credits or 22 quarter hours in a human services field;~~

~~5. Licensure as a registered nurse in Virginia; or~~

~~6. Licensure as an occupational therapist.~~

~~B. Prior to receiving supervised experience toward registration as a QMHP-C, an applicant for registration as a QMHP trainee shall provide a completed application, the fee prescribed in 18VAC115-80-20, and verification of one of the following:~~

~~1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family therapy verified by an official transcript from an accredited college or university;~~

~~2. A master's or bachelor's degree in a human services field or in special education verified by an official transcript from an accredited college;~~

~~3. Current enrollment in a master's program in psychology, social work, counseling, substance abuse, marriage and family therapy, human services, or special education with at least 30 semester or 45 quarter hours as verified by an official transcript;~~

~~4. Licensure as a registered nurse in Virginia; or~~

~~5. Licensure as an occupational therapist.~~

~~C. An applicant for registration as a QMHP trainee shall have no unresolved disciplinary action against a mental health or health professional license, certification, or registration held in any jurisdiction. The board will consider a history of disciplinary action on a case-by-case basis as grounds for denial under 18VAC115-80-100.~~

~~D. Registration as a QMHP trainee shall expire five years from date of issuance.~~

18VAC115-80-40. Requirements for registration as a qualified mental health professional-adult.

A. An applicant for registration shall submit:

1. A completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-80-20;

2. A bachelor's degree from an institution of higher education listed as accredited on the U.S. Department of Education College Accreditation database found on the U.S. Department of Education website or accredited by another accrediting agency recognized by the board;

3. Evidence of completion of 80 hours of didactic education in a program recognized or approved by the board, unless such evidence was provided to the board to obtain a registration as a QMHP-trainee;

4. Evidence of 1,500 hours of supervised experience obtained within a five-year period immediately preceding application for registration;

5. A current report from the National Practitioner Data Bank (NPDB); and

3. 6. Verification of any other mental health or health professional license, certification, or registration ever held in Virginia or another jurisdiction. An applicant for registration as a QMHP-A QMHP shall have no unresolved disciplinary action. The board will consider a history of disciplinary action on a case-by-case basis as grounds for denial under 18VAC115-80-100.

~~B. An applicant for registration as a QMHP-A shall provide evidence of:~~

~~1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family therapy, as verified by an official transcript, from an accredited college or university with an internship or practicum of at least 500 hours of experience with persons who have mental illness;~~

~~2. A master's or bachelor's degree in human services or a related field, as verified by an official transcript, from an accredited college with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;~~

~~3. A bachelor's degree, as verified by an official transcript, from an accredited college in an unrelated field that includes at least 15 semester credits or 22 quarter hours in a human services field and with no less than 3,000 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;~~

~~4. A registered nurse licensed in Virginia with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section; or~~

~~5. A licensed occupational therapist with an internship or practicum of at least 500 hours with persons with mental illness or no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately~~

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~~preceding application for registration and as specified in subsection C of this section.~~

~~C.~~ B. Experience required for registration.

~~1. To be registered as a QMHP A QMHP, an applicant who does not have a master's degree as set forth in subdivision B 1 of this section shall provide documentation of experience in providing direct services to individuals as part of a population of adults or children with mental illness in a setting where mental health treatment, practice, observation, or diagnosis occurs. The services provided shall be appropriate to the practice of a QMHP A and under the supervision of a licensed mental health professional or a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure QMHP.~~

~~2. The following may serve as a supervisor for a QMHP-trainee:~~

~~a. A licensed mental health professional licensed by a board of the Department of Health Professions who has completed the required supervisor training;~~

~~b. A person under supervision who has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work and who has completed the required supervisor training; or~~

~~c. A registered QMHP who has (i) practiced for three years and (ii) completed the required supervisor training.~~

~~3. Supervision obtained in another United States jurisdiction shall be provided by a mental health professional licensed in Virginia or licensed in that jurisdiction.~~

~~2. 4. Supervision shall consist of face-to-face training in the services of a QMHP A QMHP until the supervisor determines competency in the provision of such services, after which supervision may be indirect in which the supervisor is either onsite on site or immediately available for consultation with the person being trained.~~

~~3. 5. Hours obtained in a bachelor's or master's level internship or practicum in a human services field may be counted toward completion of the required hours of experience.~~

~~4. Supervised experience obtained prior to meeting the education requirements of subsection B of this section shall not be accepted.~~

18VAC115-80-50. Requirements for registration as a qualified mental health professional-child. (Repealed.)

~~A.~~ An applicant for registration shall submit:

~~1. A completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-80-20;~~

~~2. A current report from the National Practitioner Data Bank (NPDB); and~~

~~3. Verification of any other mental health or health professional license, certification, or registration ever held in another jurisdiction. An applicant for registration as a QMHP C shall have no unresolved disciplinary action. The board will consider a history of disciplinary action on a case-by case basis as grounds for denial under 18VAC115-80-100.~~

~~B.~~ An applicant for registration as a QMHP C shall provide evidence of:

~~1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family therapy, as verified by an official transcript, from an accredited college or university with an internship or practicum of at least 500 hours of experience with persons who have mental illness;~~

~~2. A master's or bachelor's degree in a human services field or in special education, as verified by an official transcript, from an accredited college with no less than 1,500 hours of supervised experience to be obtained within a five year period immediately preceding application for registration and as specified in subsection C of this section;~~

~~3. A registered nurse licensed in Virginia with no less than 1,500 hours of supervised experience to be obtained within a five year period immediately preceding application for registration and as specified in subsection C of this section; or~~

~~4. A licensed occupational therapist with an internship or practicum of at least 500 hours with persons with mental illness or no less than 1,500 hours of supervised experience to be obtained within a five year period immediately preceding application for registration and as specified in subsection C of this section.~~

~~C.~~ Experience required for registration.

~~1. To be registered as a QMHP C, an applicant who does not have a master's degree as set forth in subdivision B 1 of this section shall provide documentation of 1,500 hours of experience in providing direct services to individuals as part of a population of children or adolescents with mental illness in a setting where mental health treatment, practice, observation, or diagnosis occurs. The services provided shall be appropriate to the practice of a QMHP C and under the supervision of a licensed mental health professional or a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure. Supervision obtained in another United States jurisdiction shall be provided by a mental health professional licensed in Virginia or licensed in that jurisdiction.~~

~~2. Supervision shall consist of face to face training in the services of a QMHP C until the supervisor determines competency in the provision of such services, after which supervision may be indirect in which the supervisor is either~~

~~onsite or immediately available for consultation with the person being trained.~~

~~3. Hours obtained in a bachelor's or master's level internship or practicum in a human services field may be counted toward completion of the required hours of experience.~~

~~4. Supervised experience obtained prior to meeting the education requirements of subsection B of this section shall not be accepted.~~

18VAC115-80-65. Requirements for registration as a qualified mental health professional-trainee.

Prior to receiving supervised experience toward registration as a QMHP, an applicant for registration as a QMHP-trainee shall provide a completed application, the fee prescribed in 18VAC115-80-20, and verification of the following:

1. Enrollment in or completion of a bachelor's degree program from an institution of higher education listed as accredited on the U.S. Department of Education College Accreditation database found on the U.S. Department of Education website or accredited by another accrediting agency recognized by the board;

2. Evidence of completion of 60 hours of didactic education in a program recognized or approved by the board; and

3. Verification of any other mental health or health professional license, certification, or registration ever held in Virginia or another jurisdiction. An applicant for registration as a QMHP-trainee shall have no unresolved disciplinary action. The board will consider a history of disciplinary action on a case-by-case basis as grounds for denial under 18VAC115-80-100.

18VAC115-80-70. Annual renewal of registration.

All registrants as a ~~QMHP A or a QMHP C~~ QMHP or QMHP-trainee shall renew ~~their registrations~~ registration on or before June 30 of each year. Along with the renewal form, the registrant shall submit the renewal fee as prescribed in 18VAC115-80-20.

18VAC115-80-80. Continued competency requirements for renewal of registration for qualified mental health professionals.

A. Qualified mental health professionals shall be required to have completed a minimum of eight contact hours of continuing education for each annual registration renewal. ~~Persons who hold registration both as a QMHP A and QMHP C shall only be required to complete eight contact hours. A minimum of one of these hours shall be in a course that emphasizes ethics.~~

B. Qualified mental health professionals shall complete continuing competency activities that focus on increasing knowledge or skills in areas directly related to the services provided by a QMHP.

C. The following organizations, associations, or institutions are approved by the board to provide continuing education, provided the hours are directly related to the provision of mental health services:

1. Federal, state, or local governmental agencies, public school systems, licensed health facilities, or an agency licensed by DBDHS; and
2. Entities approved for continuing education by a health regulatory board within the Department of Health Professions.

~~D. Attestation of completion~~ Completion of continuing education is not required for the first renewal following initial registration in Virginia.

E. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the registrant prior to the renewal date. Such extension shall not relieve the registrant of the continuing education requirement.

F. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the registrant, such as temporary disability, mandatory military service, or officially declared disasters, upon written request from the registrant prior to the renewal date.

G. All registrants shall maintain ~~original~~ documentation of official transcripts showing credit hours earned or certificates of participation for a period of three years following renewal.

H. The board may conduct an audit of registrants to verify compliance with the requirement for a renewal period. Upon request, a registrant shall provide documentation as follows:

1. Official transcripts showing credit hours earned; or
2. Certificates of participation.

I. Continuing education hours required by a disciplinary order shall not be used to satisfy renewal requirements.

18VAC115-80-100. Grounds for revocation, suspension, restriction, or denial of registration.

~~In accordance with subdivision 7 of § 54.1-2400 of the Code of Virginia,~~ The board may revoke, suspend, restrict, or decline to issue or renew a registration based upon the following conduct:

1. Conviction of a felony, or of a misdemeanor involving moral turpitude, or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of qualified mental health professionals, or any provision of this chapter;
2. Procuring, attempting to procure, or maintaining a registration by fraud or misrepresentation;

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3. Conducting ~~one's~~ practice in such a manner so as to make it a danger to the health and welfare of ~~one's~~ clients or to the public, or ~~if one is unable~~ lacking ability to conduct practice with reasonable skill and safety to clients by reason of illness or abusive use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

4. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of qualified mental health professionals or any regulation in this chapter;

5. Performance of functions outside the board-registered area of competency;

6. Performance of an act likely to deceive, defraud, or harm the public;

7. Intentional or negligent conduct that causes or is likely to cause injury to a client;

8. Action taken against a health or mental health license, certification, registration, or application in Virginia or other jurisdiction;

9. Knowingly allowing persons under supervision to jeopardize client safety or provide care to clients outside of such person's scope of practice or area of responsibility;

~~10.~~ 11. Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation; or

~~10.~~ 11. Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia.

18VAC115-80-110. Late renewal and reinstatement.

A. A person whose registration as a ~~QMHP A~~ or a ~~QMHP C~~ QMHP has expired may renew it within one year after its expiration date by paying the late renewal fee and the registration fee as prescribed in 18VAC115-80-20 for the year in which the registration was not renewed and by providing documentation of completion of continuing education as prescribed in 18VAC115-80-80.

B. A person who fails to renew registration as a ~~QMHP A~~ or a ~~QMHP C~~ after one year or more shall:

1. Apply for reinstatement;
2. Pay the reinstatement fee for a lapsed registration; ~~and~~
3. Provide a current report from the NPDB, if applicable; and
4. Submit evidence of completion of ~~20~~ eight hours of continuing education ~~consistent with requirements of 18VAC115-80-80~~ for each year in which the license has been inactive or lapsed, not to exceed 32 hours.

C. A person whose registration has been suspended or who has been denied reinstatement by board order, having met the terms of the order, may submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-80-20. Any person whose registration has been revoked by the board may, three years subsequent to such board action, submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-80-20. The board in its discretion may, after an administrative proceeding, grant the reinstatement sought in this subsection.

VA.R. Doc. No. R25-8015; Filed March 3, 2025, 9:00 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Counseling is claiming an exemption from the Administrative Process Act in accordance with the second enactment of Chapter 595 of the 2024 Acts of Assembly, which exempts the board's initial adoption of regulations necessary to implement the provisions of the act, except that the board must provide an opportunity for public comment on the regulations prior to adoption.

Title of Regulation: **18VAC115-100. Regulations Governing the Practice of Behavioral Health Technicians and Behavioral Health Technician Assistants (adding 18VAC115-100-10 through 18VAC115-100-90).**

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

Effective Date: May 8, 2025.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Summary:

Pursuant to Chapter 595 of the 2024 Acts of Assembly, the amendments create a new chapter that establishes a path for registration for behavioral health technicians and behavioral health technician assistants by (i) setting out definitions; (ii) setting out fees; (iii) creating requirements for registration; (iv) addressing the renewal and reinstatement of registrations; and (v) setting out standards of practice and grounds for the revocation, suspension, restriction, or denial of registrations.

Chapter 100

Regulations Governing the Practice of Behavioral Health Technicians and Behavioral Health Technician Assistants

Part I

General Provisions

18VAC115-100-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

"Behavioral health technician"

"Behavioral health technician assistant"

"Board"

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

"DBHDS" means the Virginia Department of Behavioral Health and Developmental Services.

"NPDB" means the National Practitioner Data Bank.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised.

"Supervisor" means an individual who assumes responsibility for the activities of a person under supervision and who provides supervision consistent with the training and experience of both the supervisor and the person under supervision and with the type of services being provided.

18VAC115-100-20. Fees required by the board.

A. The board has established fees for the following:

<u>Registration as a behavioral health technician</u>	<u>\$40</u>
<u>Registration as a behavioral health technician assistant</u>	<u>\$25</u>
<u>Renewal of registration</u>	<u>\$30</u>
<u>Late renewal</u>	<u>\$20</u>
<u>Reinstatement of a lapsed registration</u>	<u>\$75</u>
<u>Duplicate certificate of registration</u>	<u>\$10</u>
<u>Returned check or dishonored credit card or debit card</u>	<u>\$50</u>
<u>Reinstatement following revocation or suspension</u>	<u>\$500</u>

B. Unless otherwise established by the board, all fees shall be nonrefundable.

18VAC115-100-30. Current name and address.

A. Each registrant shall furnish a current name and address of record to the board.

B. Registrants shall notify the board in writing within 60 days of:

1. Any name change; or
2. Any change of address of record or of the registrant's public address if different from the address of record.

Part II

Requirements for Registration

18VAC115-100-40. Requirements for registration as a behavioral health technician.

An applicant for registration as a behavioral health technician shall submit:

1. A completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-100-20;
2. An associate's degree or higher verified by an official transcript from an institution of higher education accredited by the U.S. Department of Education or an accrediting agency recognized by the board;
3. Evidence of completion of 40 hours of didactic education in a program recognized or approved by the board;
4. A current report from the NPDB, if applicable; and
5. Verification of any other mental health or health professional license, certification, or registration ever held in Virginia or another jurisdiction. An applicant for registration as a behavioral health technician shall have no unresolved disciplinary action on any license, certification, or registration in any jurisdiction. The board will consider a history of disciplinary action on a case-by-case basis as grounds for denial under 18VAC115-100-80.

18VAC115-100-50. Requirements for registration as a behavioral health technician assistant.

An applicant for registration as a behavioral health technician assistant shall submit:

1. A completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-100-20;
2. Evidence of a high school diploma or equivalent;
3. Evidence of completion of 20 hours of didactic education in a program recognized or approved by the board;
4. A current report from the NPDB, if applicable; and
5. Verification of any other mental health or health professional license, certification, or registration ever held in Virginia or another jurisdiction. An applicant for registration as a behavioral health technician assistant shall have no unresolved disciplinary action on any license, certification, or registration in any jurisdiction. The board will consider a history of disciplinary action on a case-by-case basis as grounds for denial under 18VAC115-100-80.

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Part III

Renewal of Registration

18VAC115-100-60. Annual renewal of registration.

Each registrant as a behavioral health technician or a behavioral health technician assistant shall renew registration on or before June 30 of each year. The registrant shall submit:

1. A completed form for renewal of the registration;
2. An attestation to completion of two hours of continuing education in ethics; and
3. The renewal fee prescribed in 18VAC115-100-20.

Part IV

Standards of Practice, Disciplinary Action, and Reinstatement

18VAC115-100-70. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Each person registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.
2. Practice only within the competency area for which the person is qualified by training or experience and shall not provide clinical mental health services for which a license is required pursuant to Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.), and 37 (§ 54.1-3700 et seq.) of Title 54.1 of the Code of Virginia.
3. Report to the board known or suspected violations of the laws and regulations governing the practice of behavioral health technicians or behavioral health technician assistants.
4. Neither accept nor give commissions, rebates, or other forms of remuneration for the referral of clients for professional services and make appropriate consultations and referrals based on the interest of patients or clients.
5. Stay abreast of new developments, concepts, and practices that are necessary to providing appropriate services.

C. In regard to confidentiality and client records, persons registered by the board shall:

1. Not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered willful or negligent.
2. Disclose client records to others only in accordance with applicable law.
3. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the

destruction of records that are no longer useful in a manner that ensures client confidentiality.

4. Maintain timely, accurate, legible, and complete written or electronic records for each client, to include dates of service and identifying information to substantiate services provided, progress, and termination.

D. No person registered by the board shall:

1. Engage in dual relationships with clients or former clients that are harmful to the client's well-being, that would impair the practitioner's objectivity and professional judgment, or that would increase the risk of client exploitation. This prohibition includes such activities as providing services to close friends, former sexual partners, employees, or relatives or engaging in business relationships with clients.

2. Engage in sexual intimacies or romantic relationships with current clients. For at least five years after cessation or termination of professional services, no practitioner shall engage in sexual intimacies or romantic relationships with a client or those included in collateral therapeutic services. Sexual or romantic relationships are potentially exploitative; therefore, the practitioner shall bear the burden of demonstrating that there has been no exploitation. A client's consent to, initiation of, or participation in sexual behavior or involvement with a practitioner does not change the nature of the conduct nor lift the regulatory prohibition.

3. As necessary, persons registered by the board shall recognize conflicts of interest and inform all parties of obligations, responsibilities, and loyalties to third parties.

18VAC115-100-80. Grounds for revocation, suspension, restriction, or denial of registration.

The board may revoke, suspend, restrict, or decline to issue or renew a registration based upon the following conduct:

1. Conviction of a felony or of a misdemeanor involving moral turpitude, or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of behavioral health technicians, or any provision of this chapter;

2. Procuring, attempting to procure, or maintaining a registration by fraud or misrepresentation;

3. Conducting practice in such a manner so as to make it a danger to the health or welfare of clients or to the public, or lacking ability to conduct practice with reasonable skill and safety to clients by reason of illness or abusive use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

4. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of behavioral health technicians or behavioral health technician assistants, or of this chapter;

5. Performance of an act likely to deceive, defraud, or harm the public;

6. Intentional or negligent conduct that causes or is likely to cause injury to a client;

7. Action taken against a health or mental health license, certification, registration, or application in Virginia or other jurisdiction;

8. Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation; or

9. Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia.

18VAC115-100-90. Late renewal and reinstatement.

A. A person whose registration as a behavioral health technician or behavioral health technician assistant has expired may renew the registration within one year after the expiration date by paying the late renewal fee and the registration fee as prescribed in 18VAC115-100-20 for the year in which the registration was not renewed.

B. A person who fails to renew registration as a behavioral health technician or behavioral health technician assistant after one year or more shall:

1. Apply for reinstatement;
2. Pay the reinstatement fee for a lapsed registration;
3. Provide a current report from the NPDB, if applicable; and
4. Submit evidence of completion of two hours of continuing education for each year in which the license has been inactive or lapsed, not to exceed eight hours.

C. A person whose registration has been suspended or who has been denied reinstatement by board order, having met the terms of the order, may submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-100-20. Any person whose registration has been revoked by the board may, three years subsequent to such board action, submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-100-20. The board, in its discretion, may, after an administrative proceeding, grant the reinstatement sought in this subsection.

VA.R. Doc. No. R25-7831; Filed March 11, 2025, 8:28 a.m.



TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Fast-Track Regulation

Title of Regulation: **22VAC30-20. Provision of Vocational Rehabilitation Services (amending 22VAC30-20-10, 22VAC30-20-90, 22VAC30-20-120, 22VAC30-20-160).**

Statutory Authority: §§ 51.5-118 and 51.5-131 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: May 7, 2025.

Effective Date: May 22, 2025.

Agency Contact: Charlotte Arbogast, Senior Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Henrico, VA 23229, telephone (804) 662-7093, FAX (804) 662-7663, TDD (800) 464-9950, or email charlotte.arbogast@dars.virginia.gov.

Basis: Section 51.5-118 of the Code of Virginia authorizes the Department for Aging and Rehabilitative Services (DARS) to prescribe and provide services necessary for the rehabilitation of persons with disabilities, to provide for the supervision of such services, and to disburse and administer federal funds provided for the rehabilitation of such persons. Section 51.5-131 of the Code of Virginia authorizes the Commissioner of DARS to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by DARS.

Purpose: This action benefits vocational rehabilitation (VR) clients and provides improved clarity for DARS staff, the public, VR clients, and advocates. VR services assist individuals with disabilities to prepare for, secure, retain, or regain employment. The amendments ensure ongoing eligibility for receipt of federal funds for these services, thus protecting the health, safety, and welfare of VR clients who rely on VR services.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because most revisions are (i) designed to align with federal regulatory provisions and guidance that are already largely incorporated into agency operations and (ii) intended to clarify or update terminology. Further, DARS shared the potential revisions with the Virginia State Rehabilitation Council (SRC), which advises the agency on the delivery of VR services, and received SRC support for these revisions.

Substance: The amendments (i) change definitions to correspond to federal language and reflect federal guidelines; (ii) clarify the department's priority with regard to the provision of VR services to clients at risk of job loss or failing to maintain employment; (iii) update outdated references to

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"extended evaluations" by replacing the term with "trial work," which comports with the Workforce Innovation and Opportunity Act (WIOA) (29 USC § 3101 et seq.); (iv) add auxiliary aids or services and pre-employment transition (pre-ETS) services to the list of services exempt from client financial participation; (v) clarify that pre-ETS must be available to all students with disabilities; and (vi) exempt work experiences regardless of compensation status.

Issues: The primary advantages of the amendments to the public and the Commonwealth are alignment and compliance with relevant federal regulations and guidance, including the Commonwealth's WIOA Combined State Plan. This helps the Commonwealth continue to receive federal VR funding and to deliver consistent and appropriate VR services to eligible clients. There are no primary disadvantages to the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. Following a 2021 periodic review,² the Department for Aging and Rehabilitative Services (DARS) seeks to amend the regulation to clarify terminology and update certain provisions in response to federal requirements. DARS has confirmed that the proposed changes reflect current practice.

Background. DARS reports that the Vocational Rehabilitation (VR) program provides services to individuals with disabilities to help them prepare for, secure, regain, or retain employment.³ VR services are provided within each state pursuant to the federal Rehabilitation Act of 1973 (29 USC § 701 et seq., as amended most recently in 2014 by the Workforce Innovation and Opportunity Act (WIOA)) and the corresponding federal regulations found at 34 CFR Part 361. The proposed amendments would update definitions and terminology and clarify certain provisions in order to better reflect federal regulations and guidance and as summarized:

22VAC30-20-10: The definition of "Individual with a most significant disability" would be changed from federal regulatory language to a corresponding definition in the WIOA Combined State Plan for the Commonwealth of Virginia.⁴ The definition of "post-employment services" would be amended to specify the scope of such services in response to guidance promulgated by the US Department of Education on March 11, 2022.⁵

22VAC30-20-90: An amendment would add language to correspond to 34 CFR 361.36(a)(3)(v) and clarify department priority with regard to the provision of VR services to clients at risk of job loss or failing to maintain employment as federally

approved in the VR portion of the Virginia WIOA Combined State Plan.

22VAC30-20-120: Language would be amended to reflect the U.S. Department of Education guidance about providing post-employment services. Specifically, the proposed changes would specify that (i) individuals may be considered for post-employment services until their case is closed after attaining an employment outcome, and (ii) the department may take a new application if services are needed after each individual case is closed as achieving an employment outcome.

22VAC30-20-160: This section covers services that are exempt from required financial participation by beneficiaries. The proposed changes would add auxiliary aids or services and pre-employment transition services (pre-ETS) to the list of exemptions, and clarify the status of work experience. Auxiliary aids or services and job-related services are now exempt pursuant to 34 CFR 361.54(b)(3). Pre-ETS must be made available to all students with disabilities pursuant to 34 CFR 361.48(a)(1) whether they have been determined eligible for VR or are potentially eligible. Additionally, the changes would exempt work experiences regardless of whether the person is paid or not; only unpaid work experiences are exempt currently.

Estimated Benefits and Costs: The proposed changes serve to update and clarify the regulation. This would benefit individuals with disabilities who apply for or receive VR services through DARS, including any family members or other individuals who may assist them. DARS reports that the proposed amendments are not expected to change the number of applications received or the number of eligible beneficiaries. The proposed changes would clarify that paid work experiences would also be exempt from financial participation. DARS reports that at the time the current regulation was written, paid work experiences were not commonly used or available, and that from a practical perspective, it does not make sense to have someone pay to participate in a paid work experience. In addition, DARS reports that many of the individuals who participate in a paid work experience may already be exempt from financial participation. DARS does not anticipate increased participation in this service as a result of the exemption.

Businesses and Other Entities Affected. The following table provides the number of applications received by DARS, the number of applicants found to be eligible for services, and the number of individuals served for each year since state fiscal year 2019.

SFY	Applications	Eligible	Served	% served, as share of eligible
2019	7669	7162	4470	62.4%
2020	7048	6801	5009	73.7%
2021	5502	4691	3397	72.4%
2022	7245	6500	5626	86.6%
2023	8793	8047	6952	86.4%
2024	9276	8496	6904	81.3%

Further, DARS reports that in federal fiscal year (FY) 2022, there were nine clients participating in paid work experience. In federal FY 2023, there were two clients participating, and in federal FY 2024 (to date), there were three clients participating. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁶ 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.⁷ The proposed amendments would not create any new requirements or costs; thus, an adverse economic impact is not indicated.

Small Businesses⁸ Affected.⁹ The proposed amendments would not affect small businesses.

Localities¹⁰ Affected.¹¹ The proposed amendments would not affect local governments.

Projected Impact on Employment. The proposed amendments are not expected to affect total employment.

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

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/ViewPReview.cfm?PRid=2018>.

³ VR services for the blind or vision impaired are provided by the Department for the Blind and Vision Impaired.

⁴ See page 280 of the https://www.dars.virginia.gov/downloads/publications/VA_WIOA_combined_state_plan.pdf.

⁵ See Rehabilitation Services Administration FAQ 22-03 at https://rsa.ed.gov/sites/default/files/subregulatory/RSA-FAQ-22-03_0.pdf.

⁶ 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.

⁷ 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.

⁸ 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."

⁹ 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.

¹⁰ "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.

¹¹ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Department for Aging and Rehabilitative Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

As a result of a periodic review, the amendments (i) clarify terminology related to categories of eligible individuals; (ii) add language that corresponds to federal requirements and clarifies the department's priority with regard to the provision of vocational rehabilitation (VR) services to clients at risk of job loss or failing to maintain employment; (iii) update the list of services exempt from client financial participation by adding auxiliary aids or services and pre-employment transition services and clarifying exempt job-related services and work experience; and (iv) exempt work experiences regardless of compensation status.

22VAC30-20-10. 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 Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended.

"Applicant" means an individual who submits an application for vocational rehabilitation services.

"Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include the use of interpreters, ~~open open-caption~~ and ~~closed captioned closed-caption~~ videos, specialized telecommunications services and audio recordings, Brailled and large-print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

"Assessment for determining eligibility and vocational rehabilitation needs" means, as appropriate in each case, a review of existing data as described in 22VAC30-20-30 to

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determine if an individual meets the eligibility requirements for vocational rehabilitation services as described in 22VAC30-20-40, and to assign priority for an order of selection described in 22VAC30-20-90.

"Assistive technology" 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 an individual with a disability.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

1. ~~The evaluation of~~ Evaluating the needs of an individual with a disability, including a functional evaluation of the individual in ~~his~~ the individual's customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;
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 an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and
6. Training or technical assistance for professionals (, including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

"Audiological examination" means the testing of the sense of hearing.

"Clear and convincing evidence" means that the designated state unit shall have a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in ~~our~~ the U.S. civil system of law and is to be individually applied on a case-by-case basis. The term "clear" means unequivocal. Given these requirements, a review of existing information generally would not provide clear and convincing evidence. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence.

Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of clear and convincing evidence must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings. (S. Rep. No. 357, 102d Cong., 2d. Sess. 37-38 (1992))

"Client Assistance Program" means the program located within the disAbility Law Center of Virginia for the purpose of advising applicants or eligible individuals about all available services under the Act, and to assist applicants and eligible individuals in their relationship with programs, projects, and facilities providing vocational rehabilitation services.

"Commissioner" means the Commissioner of the Department for Aging and Rehabilitative Services.

"Community rehabilitation program" means a program that directly provides or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize ~~their~~ opportunities for employment, including career advancement:

1. Medical, psychiatric, psychological, social, and vocational services that are provided under one management;
2. Testing, fitting, or training in the use of prosthetic and orthotic devices;
3. Recreational therapy;
4. Physical and occupational therapy;
5. Speech, language, and hearing therapy;
6. Psychiatric, psychological, and social services, including positive behavior management;
7. Assessment for determining eligibility and vocational rehabilitation needs;
8. Rehabilitation technology;
9. Job development, placement, and retention services;
10. Evaluation or control of specific disabilities;
11. Orientation and mobility services for individuals who are blind;
12. Extended employment;
13. Psychosocial rehabilitation services;
14. Supported employment services and extended services;
15. Customized employment;

16. Services to family members, if necessary, to enable the applicant or eligible individual to achieve an employment outcome;

17. Personal assistance services; or

18. Services similar to the services described in subdivisions 1 through 17 of this definition.

For the purposes of this definition, the word "program" means an agency, organization, or institution; or unit of an agency, organization, or institution that directly provides or facilitates the provision of vocational rehabilitation services as one of its major functions.

"Comparable services and benefits" means services and benefits, including accommodations and auxiliary aids and services, that are provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits; available to the individual at the time needed to ensure the individual's progress toward achieving the employment outcome in the individual's individualized plan for employment; and commensurate to the services that the individual would otherwise receive from the vocational rehabilitation agency. For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

"Competitive integrated employment" means work that (i) is performed on a full-time or part-time basis (including self-employment), and for which an individual is compensated at or above the rate required under state or local minimum wage law for the place of employment but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities in comparable positions who have similar training, experience, and skills; (ii) in the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or similar tasks and who have similar training, experience, and skills; (iii) is typically found in the community where the employee with a disability interacts for the purpose of performing the duties of the position with other individuals without disabilities to the same extent that employees who do not have disabilities interact in comparable positions; and (iv) presents, as appropriate, opportunities for advancement that are similar to those for other individuals who are not individuals with disabilities and who have similar positions.

"Customized employment" means competitive integrated employment based on the unique strengths, needs, and interests of an individual with a significant disability, which is designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer and is carried out through flexible strategies, such as (i) job exploration by the individual; (ii) customizing a job description based on current employer needs or on previously unidentified and

unmet employer needs; (iii) developing a set of job duties, a work schedule and job arrangements, and specifics of supervision (including performance evaluation and reviews) and determining job location; (iv) using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and (v) providing services and supports at the job location.

"Department" means the Department for Aging and Rehabilitative Services. The department is considered the "designated state agency" or "state agency," meaning the sole state agency designated in accordance with 34 CFR 361.13(a) to administer or supervise local administration of the state plan for vocational rehabilitation services. The department also is considered the "designated state unit" or "state unit," meaning the state agency, vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the state agency as required under 34 CFR 361.13(b), or the state agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.

"Eligible individual" means an applicant for vocational rehabilitation services who meets the eligibility requirements of 22VAC30-20-40.

"Employment outcome" means, with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment, as defined in this section (including customized employment, self-employment, telecommuting, or business ownership), or supported employment as defined in this section, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (34 CFR 361.5(c)(15))

"Extended employment" means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act (29 USC § 201 et seq.). (34 CFR 361.5(c)(18))

"Extended services" as used in the definition of "supported employment" means ongoing support services and other appropriate services that are (i) needed to support and maintain an individual with a most significant disability in supported employment; (ii) organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment; (iii) based on the needs of an eligible individual, as specified in an individualized plan for employment; (iv) provided by a state agency, a private nonprofit organization, employer, or any other appropriate resource after an individual with a most significant disability has made the transition from support provided by the

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department; and (v) provided to a youth with a most significant disability by the department in accordance with requirements set forth in 22VAC30-20-110 and 22VAC30-20-120 of this chapter and 34 CFR Part 363 for a period of time not to exceed four years, or at such time a youth ~~reached age~~ reaches 25 years of age and no longer meets the definition of youth with a disability in this section, whichever occurs first.

"Extreme medical risk" means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

"Family member" or "member of the family" means an individual (i) who is either a relative or guardian of an applicant or eligible individual, or lives in the same household as an applicant or eligible individual; (ii) who has a substantial interest in the well-being of that individual; and (iii) whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

"Higher education" means training or training services provided by universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

"IDEA" means the federal Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

"Impartial hearing officer" means an individual who is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education); is not a member of the State Rehabilitation Council for the department; has not been involved previously in the vocational rehabilitation of the applicant or recipient of services; has knowledge of the delivery of vocational rehabilitation services, the vocational rehabilitation portion of the unified or combined state plan, and the federal and state regulations governing the provision of services; has received training with respect to the performance of official duties; and has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual. An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer. (34 CFR 361.5(c)(24))

"Individual who is blind" means a person who is blind within the meaning of applicable state law.

"Individual with a disability," except as provided in 34 CFR 361.5(c)(28), means an individual (i) who has a physical or mental impairment; (ii) whose impairment constitutes or results in a substantial impediment to employment; and (iii) who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. (34 CFR 361.5(c)(27))

"Individual with a most significant disability" means an individual with a significant disability who ~~meets the department's criteria for an individual with a most significant disability~~ has a severe physical or mental impairment that seriously limits three or more functional capacities, such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, and work skills, in terms of an employment outcome. (34 CFR 361.5(c)(29))

"Individual with a significant disability" means an individual with a disability (i) who has a severe physical or mental impairment that seriously limits one or more functional capacities, such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills; in terms of an employment outcome; (ii) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and (iii) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation. (34 CFR 361.5(c)(30))

"Individual's representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative. (34 CFR 361.5(c)(31))

"Integrated setting," with respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals. "Integrated setting," with respect to an employment outcome, means a setting typically found in the community where the employee with a disability interacts, for the purposes of performing the duties of the position, with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons. (34 CFR 361.5(c)(32))

"Local workforce development board" means a local board as defined in § 3 of the Workforce Innovation and Opportunity Act (~~20 USC § 3101 et seq.~~). (34 CFR 361.5(c)(33))

"Maintenance" means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment. (34 CFR 361.5(c)(34))

"Mediation" means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the program must be conducted in accordance with the requirements in 34 CFR 361.57(d) by a qualified impartial mediator. (34 CFR 361.5(c)(35))

"Nonprofit," with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1986. (34 CFR 361.5(c)(36))

"One-stop center" means a center established under the Workforce Innovation and Opportunity Act (~~20 USC § 3101 et seq.~~) and designed to provide a full range of assistance to job seekers. The centers offer training, career counseling, job listings, and similar employment related services.

"Ongoing support services," as used in the definition of "supported employment," means services that are needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment; identified based on a determination by the department of the individual's needs as specified in an individualized plan for employment; and furnished by the department from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement. These services shall include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on, at a minimum, twice-monthly monitoring at the worksite of each individual in supported employment, or if under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice-monthly meetings with the individual. These services shall consist of any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in subsection A of 22VAC30-

20-100; the provision of skilled job trainers who accompany the individual for intensive job skill training at the worksite; job development and training; social skills training; regular observation or supervision of the individual; follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors in order to reinforce and stabilize the job placement; facilitation of natural supports at the worksite; any other service identified in the scope of vocational rehabilitation services for individuals described in 22VAC30-20-120; or any service similar to the foregoing services. (34 CFR 361.5(c)(37))

"Personal assistance services" means a range of services, including, among other things, training in managing, supervising, and directing personal assistance services, provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services. (34 CFR 361.5(c)(38))

"Physical and mental restoration services" means corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment; diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws; dentistry; nursing services; necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services; drugs and supplies; prosthetic, orthotic, or other assistive devices, including hearing aids; eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids provided by the department in accordance with the cooperative agreement established with the Department for the Blind and Vision Impaired and prescribed by personnel that are qualified in accordance with state licensure laws; podiatry; physical therapy; occupational therapy; speech or hearing therapy; mental health services; treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment; special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis,

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artificial kidneys, and supplies; and other medical or medically related rehabilitation services.

"Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic, and lymphatic, skin, and endocrine; or any mental or psychological disorders such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (34 CFR 361.5(c)(40))

"Post-employment services" means one or more of the services identified in 22VAC30-20-120 that are provided subsequent to the achievement of an employment outcome but before case closure and that are necessary for an individual to maintain, regain, or advance in employment consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (34 CFR 361.5(c)(41))

"Pre-employment transition services" means the required activities and authorized activities specified in 34 CFR 361.48(a)(2) and (3). (34 CFR 361.5(c)(42))

"Prevocational training" means individual and group instruction or counseling, the controlled use of varied activities, and the application of special behavior modification techniques. Individuals or patients are helped to (i) develop physical and emotional tolerance for work demands and pressures, (ii) acquire personal-social behaviors ~~which that~~ would make them acceptable employees and coworkers on the job, and (iii) develop the basic manual, academic, and communication skills needed to acquire basic job skills.

"Qualified and impartial mediator" means an individual who is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a state office of mediators, or employee of an institution of higher education); is not a member of the State Rehabilitation Council for the department; has not been involved previously in the vocational rehabilitation of the applicant or recipient of services; is knowledgeable of the vocational rehabilitation program and the applicable federal and state laws, regulations, and policies governing the provision of vocational rehabilitation services; has been trained in effective mediation techniques consistent with any state approved or recognized certification, licensing, registration, or other requirements; and has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings. An individual serving as a mediator is not considered to be an employee of the department for the purposes of this definition solely because the individual is paid by the department to serve as a mediator. (34 CFR 361.5(c)(43))

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services. (34 CFR 361.5(c)(45))

"State" means the Commonwealth of Virginia.

"State plan" means the vocational rehabilitation services portion of the unified or combined state plan submitted under 34 CFR 361.10.

"State workforce development board" means a state workforce development board as established under § 3 of the Workforce Innovation and Opportunity Act (~~20 USC 3101 et seq.~~). (34 CFR 361.5(c)(49))

"Student with a disability" means an individual with a disability in secondary, postsecondary, or other recognized education program who (i) is not younger than the earliest age for the provision of transition services under § 614(d)(1)(A)(i)(VIII) of IDEA, or if the state elects to use a lower minimum age for the receipt of pre-employment transition services under IDEA, is not younger than that minimum age; (ii) is not older than the maximum age allowed by state law for receipt of services under IDEA; and (iii) is eligible for and receiving special education or related services under Part B of IDEA or is a student who is an individual with a disability for purposes of § 504 of the Act. (34 CFR 361.5(c)(51))

"Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with the individual's abilities and capabilities. (34 CFR 361.5(c)(52))

"Supported employment" means (i) competitive integrated employment, including customized employment, that is individualized and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including ongoing support services for individuals with the most significant disabilities, for whom competitive integrated employment has not historically occurred or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability, and who, because of the nature and severity of the individual's disabilities, needs intensive supported employment services and extended services after the transition from support by the department, in order to perform this work. (34 CFR 361.5(c)(53))

"Supported employment services" means ongoing support services, including customized employment, and other

appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are (i) organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment; (ii) based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; (iii) provided by the department for a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and (iv) following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment. (34 CFR 361.5(c)(54))

"Transition services" means a coordinated set of activities for a student or youth with a disability designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's or youth's needs, taking into account the student's or youth's preferences and interests, and must include instruction, 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 must promote or facilitate the achievement of the employment outcome identified in the student's or youth's individualized plan for employment and include outreach to and engagement of the parents, or as appropriate, the representative of such a student or youth with a disability. (34 CFR 361.5(c)(55))

"Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems. (34 CFR 361.5(c)(56))

"Vocational rehabilitation potential" means the ability of the individual with a disability to benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

"Vocational rehabilitation services" means those services listed in 22VAC30-20-120.

"WIOA" means the federal Workforce Innovation and Opportunity Act (29 USC § 3101 et seq.).

"Youth with a disability" means an individual with a disability who is not younger than 14 years of age and not older than 24 years of age.

22VAC30-20-90. Order of selection for services.

A. In the event that the full range of vocational rehabilitation services cannot be provided to all eligible individuals who apply for services because of insufficient resources, an order of selection system may be implemented by the commissioner following consultation with the State Rehabilitation Council. The order of selection shall determine those persons to be provided services. It shall be the policy of the department to encourage referrals and applications of all persons with disabilities and, to the extent resources permit, provide services to all eligible persons.

The following order of selection is implemented when services cannot be provided to all eligible persons:

1. Persons eligible and presently receiving services under an individualized plan for employment;
2. Persons referred and needing diagnostic services to determine eligibility; and
3. Persons determined to be eligible for services, but not presently receiving services under an individualized plan for employment, shall be served according to the following order of priorities:
 - a. Priority I. An individual with a most significant disability ~~in accordance with the definition in 22VAC30-20-10;~~
 - b. Priority II. An individual with a significant disability ~~that results in a serious functional limitation in at least one functional capacity; and~~
 - c. Priority III. Other persons determined to be disabled, in order of eligibility determination; and
 - d. Notwithstanding priority categories I, II, and III, an individual determined eligible for services may be served under an individualized plan for employment limited to specific services or equipment required to maintain employment.

B. An order of selection shall not be based on any other factors, including (i) any duration of residency requirement, provided the individual is present in the state; (ii) type of disability; (iii) age, gender, race, color, or national origin; (iv) source of referral; (v) type of expected employment outcome; (vi) the need for specific services or anticipated cost of services required by the individual; or (vii) the income level of an individual or an individual's family.

C. In administering the order of selection, the department shall (i) implement the order of selection on a statewide basis; (ii) notify ~~all each eligible individuals~~ individual of the priority categories in the order of selection, ~~their~~ the individual's assignment to a particular category, and ~~their~~ the individual's right to appeal ~~their~~ that category assignment; (iii) continue to provide all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of selection,

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irrespective of the severity of the individual's disability; and (iv) ensure that its funding arrangements for providing services under the state plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the department shall renegotiate these funding arrangements ~~so that they are~~ to be consistent with the order of selection.

D. Consultation with the State Rehabilitation Council shall include (i) the need to establish an order of selection, including any reevaluation of the need; (ii) priority categories of the particular order of selection; (iii) criteria for determining individuals with the most significant disabilities; and (iv) administration of the order of selection.

22VAC30-20-120. Scope of vocational rehabilitation services for individuals.

A. Pre-employment transition services. The department, in collaboration with the local education agencies involved, shall provide or arrange for the provision of pre-employment transition services for all students with disabilities as defined in 22VAC30-20-10 who are in need of such services regardless of whether the student has applied or been determined eligible for vocational rehabilitation service.

1. The department shall provide the following required pre-employment transition services:

- a. Job exploration counseling;
- b. Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), provided in an integrated environment to the maximum extent possible;
- c. Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;
- d. Workplace readiness training to develop social skills and independent living; and
- e. Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).

2. The department may provide the following authorized pre-employment transition services if funds are available and remaining after the provision of the required activities described in subdivision 1 of this subsection:

- a. Implement effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;
- b. Develop and improve strategies for individuals with intellectual disabilities and individuals with significant disabilities to (i) live independently, (ii) participate in

postsecondary education experiences, and (iii) obtain, advance in, and retain competitive integrated employment;

c. Provide instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;

d. Disseminate information about innovative, effective, and efficient ~~approaches~~ approaches to achieve the goals of this subsection;

e. Coordinate activities with transition services provided by local education agencies under ~~the~~ IDEA;

f. Apply evidence-based findings to improve policy, procedure, practice, and the preparation of personnel in order to better achieve the goals of this section;

g. Develop model transition demonstration projects;

h. Establish or support multistate or regional partnerships involving states, local educational agencies, designated state units, developmental disability agencies, private businesses, or other participants to achieve the goals of this section; and

i. Disseminate information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved and underserved populations.

3. Each local office of the department shall carry out the responsibilities of:

a. Attending individualized education program meetings for students with disabilities when invited;

b. Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment, other employment opportunities available throughout the school year, and apprenticeships;

c. Working with schools, including those carrying out activities under § 614(d) of IDEA, to coordinate and ensure the provision of pre-employment transition services under this section; and

d. When invited, attending person-centered planning meetings for individuals receiving services under Title XIX of the Social Security Act.

B. Services for individuals who have applied for or been determined eligible for vocational rehabilitation services. As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's individualized plan for employment, the department shall ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, advancing in, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

1. Assessment for determining eligibility and priority for services and assessment for determining vocational rehabilitation needs by qualified personnel including, if appropriate, an assessment by personnel skilled in rehabilitation technology in accordance with 22VAC30-20-10.

2. Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice.

3. Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce development system and to advise those individuals about the Client Assistance Program.

4. Physical and mental restoration services, in accordance with the definition in 22VAC30-20-10, to the extent that financial support is not readily available from a source other than the department (such as through health insurance or comparable services and benefits as defined in 22VAC30-20-10).

a. Eligibility requirements.

(1) Stable or slowly progressive. The physical or mental condition shall be stable or slowly progressive. The condition shall not be acute or transitory, or of such recent origin that the resulting functional limitations and the extent to which the limitations affect occupational performance cannot be identified.

(2) Refusal of service. When an individual has a physical or mental disability with resulting limitations that constitute a barrier to employment, and when in the opinion of licensed medical personnel these limitations can be removed by physical or mental restoration services without injury to the individual, the individual shall not be eligible for any rehabilitation services, except counseling, guidance, and placement if ~~he~~ the individual refuses to accept the appropriate physical or mental restoration services. A second opinion may be provided at the individual's request. In the event of conflicting medical opinions, the department shall secure a third opinion and the decision shall be made on the two concurring opinions.

b. Provision of physical and mental restoration services. These services shall be provided only when:

- (1) Recommended by a licensed practitioner;
- (2) Services are not available from another source; and
- (3) They are provided in conjunction with counseling and guidance, and other services, as deemed appropriate.

The department shall not make case expenditures for acute or intermediate medical care except for medical complications and emergencies that are associated with or arise out of the provision of vocational rehabilitation services under an individualized plan for employment and that are inherent in the condition under treatment.

c. Services not sponsored by the department. The department, in consultation with appropriate medical resources, shall determine those restoration services that shall be provided by the department. The following procedures shall not be provided:

- (1) Experimental procedures;
- (2) High risk procedures;
- (3) Procedures with limited vocational outcomes or procedures not related to the vocational outcome; and
- (4) Procedures with uncertain outcomes.

5. Vocational and other training services, including personal and vocational adjustment training, advanced training in, but not limited to, a field of science, technology engineering, mathematics (including computer science), medicine, law, or business; books, tools, and other training materials, except that no training or training services in institutions of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, hospital schools of nursing, or any other postsecondary education institution) may be paid for with funds under this section unless maximum efforts have been made by the department and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

All training services provided shall be related to attainment of the vocational objective or provide for the determination of eligibility for vocational rehabilitation services. Vocational training includes any organized form of instruction that provides the knowledge and skills essential for performing the tasks involved in an occupation. Vocational training may be obtained in institutions such as colleges, universities, business schools, nursing schools, and trade and technical schools. It may also be obtained by on-the-job training, apprenticeship programs, tutorial training, or correspondence study.

a. Approved training institutions. Only training institutions approved in accordance with the department's vendor approval process shall be used.

b. College and university academic training.

(1) Academic requirements. The individual shall take sufficient academic credit hours based on the requirement of the college attended for classification as a full-time student, unless this is, in the opinion of the department, contraindicated by the individual's disability. Courses shall meet the institution's requirement toward the obtainment of the degree or certificate. Continuation of financial assistance by the department shall be dependent upon the individual maintaining the grade average required by the institution for the particular course of study. When the institution has no grade requirement, continuation of financial assistance by the department shall be dependent upon the individual maintaining a "C" average calculated over the academic year. When the individual fails to maintain the required academic grade

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average, assistance may be discontinued. The department's assistance may be reinstated when the individual completes one semester or quarter with the minimum required grade average.

Each individual shall be advised that failure to provide grades to the department shall be grounds for termination of departmental financial assistance.

(2) Graduate degree program. The department shall assist eligible individuals in securing a graduate degree only when it is judged essential to achieving an employment goal agreed to by the department and the individual.

(3) Virginia colleges and universities. Vocational training, including college or university training, shall be provided by the department in department-approved institutions located within the boundaries of the Commonwealth, unless such training is not available within the Commonwealth. Institutions in the areas of Washington, D.C.; Bristol-Johnson City-Kingsport, Tennessee; the city of Bluefield, West Virginia; and other cities where the services may be provided more effectively and economically and shall be treated as if located in Virginia.

(4) Tuition and mandatory fees. The department may pay tuition for college and university training in an amount not in excess of the highest amount charged for tuition by a state-supported institution or the rate published in the catalog, whichever is less, except where out-of-state or private college is necessary. Published tuition costs in excess of the highest amount charged by a state-supported institution may be necessary and may be paid by the department if no state-supported institution is available that offers the degree program needed to achieve the established employment goal, if no state-supported program offers disability-related supports to enable the individual to achieve the established employment goal, or if an out-of-state or private program is more economical for the department.

(5) Scholarships and grants. Training services in institutions of higher education shall be paid for with departmental funds only after maximum efforts have been made by the individual to secure assistance in whole or in part from other sources; however, any individual eligible for vocational rehabilitation training services but not meeting the financial need test of the department may be provided an assistance grant annually in an amount not to exceed the equivalent of one quarter's tuition of a full-time community college student.

c. Correspondence study. The correspondence study training may be authorized only when:

(1) The individual requires specific preliminary training in order to enter a training program or training cannot be arranged by any other method; and

(2) Satisfactory progress is maintained.

d. On-the-job training. The department may enter into agreements with employers in the private or public sector to provide on-the-job training services. The terms and conditions of each individual agreement shall be established by the department.

e. Part-time training. Part-time training may be utilized only when the severity of the individual's disability shall not allow the individual to pursue training on a full-time basis. Part-time training shall be authorized only at department-approved facilities and schools.

f. Work adjustment training. Work adjustment training may be provided if needed for the individual to engage in subsequent vocational rehabilitation services as indicated by the thorough diagnostic study assessment of medical, vocational, psychological, and other factors. This service may be provided only by the department or approved vendors.

g. Prevocational training. Prevocational training may be provided if needed for the individual to engage in subsequent vocational rehabilitation services as indicated by the thorough diagnostic study assessment of medical, vocational, psychological, and other factors. This service may be provided only by the department or approved vendors.

h. Tutorial training. Tutorial training may be provided if needed for the individual to achieve a vocational goal as indicated by the thorough diagnostic study assessment of medical, vocational, psychological, and other factors. This service may be provided only by the department or approved vendors.

i. Other higher education training concerns.

(1) Required textbooks and supplies. The maximum amount of departmental financial assistance for required textbooks and supplies (e.g., pencils, and paper, etc.) shall not exceed the amount determined by the institution for books and supplies in the student's school budget.

(2) Required training materials. Training materials may be provided when required by the instructor.

6. Maintenance in accordance with the definition of that term in 22VAC30-20-10.

a. Clothes. Clothes shall be provided when specifically required for participation in a training program or for placement in a specialized job area as determined by the department.

b. Room, board, and utilities. The maximum rate paid for room, board, and utilities shall be established annually by the department.

(1) Training cases. The maximum amount of departmental financial assistance for room and board at a training institution (e.g., a college, vocational school, or rehabilitation center facility), when the institution is able to provide room and board, shall not exceed the published

room and board rates charged by the institution, or the actual cost, whichever is less.

(2) While living at home. Maintenance shall be provided for an individual living at home only when the individual's income supports the family unit of the individual, when it is more ~~cost-effective~~ cost-effective for the department, or when it is in the best interest of the individual's vocational rehabilitation program based on mutual agreement of the rehabilitation counselor and the individual.

7. Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the definition of that term in 22VAC30-20-10. Transportation may include relocation and moving expenses necessary for achieving a vocational rehabilitation objective.

a. Transportation costs. The department shall pay the most economical rate for accessible public transportation. When public transportation is not available, or the individual, because of disability, cannot travel by public transportation, transportation may be provided at a rate established by the department.

b. For and during training services. When the individual must live at the training location, the department may only pay for a one-way trip from the residence to the training location at the beginning of the training and a one-way trip from the training location to the residence or job site at the conclusion of the training program. Transportation may be paid to and from the residence in case of emergency (e.g., severe illness or death in family, acute business emergency, or prolonged school closing such as Christmas holidays). Local bus fare also may be provided. When the individual's physical condition is such that travel by public conveyance is impossible, taxi fare may be allowed from place of residence to training site and return. When the individual lives at home and the training site requires daily transportation, the cost of such transportation may be paid.

8. Vocational rehabilitation services to family members, as defined in 22VAC30-20-10, of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome. Services to family members of the individual may be provided when such services may be expected to contribute substantially to the determination of vocational rehabilitation potential or to the rehabilitation of the individual. In order for the department to furnish these services, they shall not be available from any other source. ~~a. Family member is defined in 22VAC30-20-10. b. Day care services for dependent children.~~ The department may pay up to the amount paid per child, per day, by the local social services department in the locality in which the child is located for day care services for dependent children. When more than one child is involved, rates for the additional children may be lower. When satisfactory accommodations can be secured at a rate lower than that paid by the local social services department, the lower rate shall be paid by the department.

9. Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing; tactile interpreting services for individuals who are deaf-blind provided by qualified personnel; and reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

a. Upon request of the individual or as needed, these services may be provided at any stage during the rehabilitation process. Interpreting may be primarily in the form of sign language (manual method) or oral interpretation (oral method).

b. The department shall pay for interpreting services when these services contribute to the individual's vocational rehabilitation program.

c. The interpreter shall hold at least one of the credentials approved by the Virginia Department for the Deaf and Hard-of-Hearing pursuant to § 51.5-113 of the Code of Virginia.

d. When individuals with deafness are in a training program, the department shall arrange for note taking or reader services, unless the individual indicates such service is not needed or desired.

10. Rehabilitation technology, in accordance with the definition of that term in 22VAC30-20-10, including vehicular modification, telecommunications, sensory, and other technological aids and devices.

a. Telecommunications system. Services related to use of a telecommunications system shall meet established federal or state health and safety standards and be consistent with written state policies.

b. Sensory and other technological aids and devices. The department may provide electronic or mechanical pieces of equipment or hardware intended to improve or substitute for one or more of the human senses, or for impaired mobility, or motor coordination.

Services related to use of sensory and other technological aids and devices shall meet established federal or state health and safety standards and be consistent with state law and regulations.

(1) An otological evaluation may be required, and an audiological examination shall be required before the department may purchase a hearing aid.

(2) The department shall purchase hearing aids only for those individuals identified as benefiting in terms of employability as a direct result of such aid.

11. Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce development system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

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12. ~~Job-related~~ Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services. Placement shall be in accordance with the mutually agreed upon vocational objective and is the responsibility of both the individual and the department.

13. Post-employment services, in accordance with the definition of that term in 22VAC30-20-10.

a. Selection criteria. All individuals ~~whose vocational rehabilitation cases have been closed as achieving who have achieved an employment outcome and whose vocational rehabilitation cases have not been closed~~ may be considered for post-employment services. The department may evaluate with each individual the need for such services.

b. All of the following criteria shall be met for an individual to receive post-employment services:

- (1) The individual shall have been determined to have achieved an employment outcome;
- (2) The disabling medical condition shall be stable or slowly progressive;
- (3) Post-employment services shall be necessary to assist the individual in maintaining employment; and
- (4) The problem interfering with the individual maintaining employment does not require a complex or comprehensive rehabilitation effort, that is, a new and distinct disabling condition has not occurred that requires a new application.

~~If needed services exceed any of the conditions in subdivisions 13 b (1) through 13 b (4) of this subsection are needed after an individual's case is closed as achieving an employment outcome,~~ the department may take a new application.

14. Supported employment services, as defined in 22VAC30-20-10.

a. An individual with a most significant disability, including a youth with a most significant disability, shall be eligible for supported employment services if:

- (1) Competitive integrated employment has not historically occurred; or
- (2) Competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and
- (3) The nature and severity of the disability results in the need for intensive supported employment services and extended services after the transition from support provided by the department in order to perform the work.

b. The following activities shall be authorized under the supported employment program:

(1) Evaluation of rehabilitation and career needs of individuals with the most significant disabilities in terms of a supported employment outcome;

(2) Development of and placement in jobs for individuals with the most significant disabilities; and

(3) Provision of time-limited services needed to support individuals with the most significant disabilities in employment, including:

(a) Intensive on-the-job skills training provided by skilled job trainers, coworkers, and other qualified individuals;

(b) Ongoing support services needed to support and maintain an individual's supported employment placement that shall include, at a minimum, twice monthly monitoring to assess the individual's employment stability;

(c) Extended services designed to reinforce and stabilize the job placement;

(d) Customized employment as appropriate; and

(e) Discrete post-employment services unavailable from the extended services provider that are necessary to maintain or regain the job placement or advance in employment, including job station redesign, repair and maintenance of assistive technology, and replacement of prosthetic and orthotic devices.

c. The department shall provide for the transition of an individual with the most significant disabilities to extended services no later than 24 months after placement in supported employment, unless a longer period is needed to achieve the employment outcome in the individualized plan for employment and the eligible individual and the department jointly agree to extend the time.

d. The department may provide extended services as defined in 22VAC30-20-10 to a youth with the most significant disability for a period of time not to exceed four years, or until such time that a youth reaches ~~the age of~~ 25 years of age and no longer meets the definition of youth with a disability under 22VAC30-20-10.

15. Occupational licenses, tools, equipment, initial stocks ~~(, including livestock),~~ and supplies.

a. Licenses. Licenses required for entrance into selected vocations may be provided. These may be occupational or business licenses as required by the local governing body, state board examinations required by the Department of Professional and Occupational Regulation, and motor vehicle operator's license.

b. Tools and equipment. Tools and equipment shall be provided for an individual when:

(1) They are required for a job or occupation that is best suited to the utilization of the individual's abilities and skills;

(2) The employer does not ordinarily furnish these articles; and

(3) They are for the exclusive use of the individual.

Such articles shall be for the individual's own use in the performance of ~~his~~ the individual's work and must remain in ~~his~~ the individual's possession and under ~~his~~ the individual's control as long as ~~he~~ the individual engages in the job or occupation for which ~~they~~ the articles are provided.

If the individual alleges that tools and equipment are stolen, the individual shall file a stolen property report with the local police.

Computer equipment and software shall be provided if required as indicated in subdivisions 15 b (1), 15 b (2), and 15 b (3) of this subsection, or if it is necessary for vocational training.

c. Title retention and release. The department shall comply with state laws and regulations on the retention of title and release of title of equipment to individuals.

d. Repossession of tools and equipment. The department shall repossess all occupational tools and equipment to which the department retains title when ~~they~~ the tools and equipment are no longer being used for the purposes intended by the individual for whom they were purchased.

16. Transition services for students and youth with disabilities that facilitate the transition from school to postsecondary life, such as achievement of an employment outcome in competitive integrated employment or pre-employment transition services for students.

17. Personal assistance services; in accordance with the definition of that term in 22VAC30-20-10.

18. Other goods and services determined necessary for the individual with a disability to achieve an employment outcome. These include such services as peer counseling, independent living skills training, attendant care, and attendant training. The department shall not purchase or participate in the purchase of automotive vehicles.

19. Customized employment in accordance with the definition of that term in 22VAC30-20-10.

20. Services to groups. The department may provide vocational rehabilitation services to groups of individuals with disabilities when the services may contribute substantially to the needs of the group; although the services are not related directly to the individualized employment plan of any one person with a disability.

22VAC30-20-160. Participation of individuals in the cost of services based on financial need.

A. A financial needs test is established because of the limited resources of the department.

B. A financial needs test shall be utilized to determine the extent of participation by eligible individuals or individuals

receiving services ~~during an extended evaluation~~ through a trial work plan in the cost of vocational rehabilitation services.

1. The department shall maintain written policies covering the determination of financial need.

2. ~~The state plan must specify the types of vocational rehabilitation services for which the department has established a financial needs test.~~ No financial needs test shall be applied and no financial participation shall be required as a condition for furnishing the following vocational rehabilitation services: assessment for determining eligibility and priority for services, except those nonassessment services that are provided ~~during an extended evaluation~~ for to an individual with a significant disability during an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences; assessment for determining vocational rehabilitation needs; counseling, guidance, and referral services; auxiliary aids or services, such as interpreter and reader services, that an individual with a disability requires under § 504 of the Rehabilitation Act or the Americans with Disabilities Act (42 USC § 12101 et seq.) in order to participate in the vocational rehabilitation program; personal assistance services; job related services, including search, placement, retention, follow-up, and follow-along services; on-the-job training; pre-employment transition services; and ~~unpaid work experience experiences~~. Also excluded from financial participation shall be services necessary to assist in the diagnostic and evaluation process, such as transportation, maintenance, and interpreter service for the deaf. Services that require a financial needs test are physical and mental restoration; training other than on-the-job training; maintenance; transportation; services to family members; telecommunications; recruitment and training services; post-employment services; occupational licenses; and other goods and services.

3. The policies shall (i) be applied uniformly to all individuals in similar circumstances; ~~the policies~~ (ii) may require different levels of need for different geographic regions in the state, but shall be applied uniformly to all individuals within each geographic region; and ~~the policies~~ (iii) shall ensure that the level of an individual's participation in the cost of vocational rehabilitation services is reasonable based on the individual's financial need, including consideration of any disability-related expenses paid by the individual, and not so high as to effectively deny the individual a necessary service.

C. Groups exempt from a financial needs test are:

1. Recipients of General Relief;

2. Recipients of Temporary Assistance for Needy Families (TANF) by the individual or family on which the individual is dependent; and

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3. Individuals determined eligible for Social Security benefits under ~~Titles~~ Title II or XVI of the Social Security Act.

D. Income and resources of the family are to be used when the client is a part of the family unit. The family unit is every person listed on the client's most recent federal income tax return.

E. The financial needs test shall consider the following income:

1. Annual taxable income (gross income).
2. Annual nontaxable income such as social security benefits, retirement benefits, workers' compensation, and veterans' benefits.
3. Total cash assets, including checking and savings accounts, certificates, stocks, and bonds.

F. The financial need test shall provide for the following allowances and exclusions:

1. The gross income shall be adjusted for annual taxes, health insurance, and retirement savings by the applicable percentage indicated in the table below:

Gross Income	Allowance
Under \$10,000	15%
\$10,000 to \$14,999	20%
\$15,000 to \$24,999	25%
\$25,000 to \$34,999	30%
Over \$34,999	35%

2. Income shall be excluded from consideration based upon family size using the federal poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 USC § 9902(2). The department shall use the federal poverty level for a family of four to determine the income exclusion for a family of one. The family income exclusion shall be increased by the amount established in the annual federal poverty guidelines for each additional dependent.

3. Excluded from income shall be estimated cost specifically related to the disabilities of family unit members not covered by comparable services and benefits.

4. Excluded from cash assets is \$5,000.

5. Individual retirement accounts shall be excluded from income considerations.

G. Determination of the annual client financial contribution results from an examination of (i) the number of persons in the family unit; (ii) annual taxable income minus allowances; (iii) annual nontaxable income; (iv) cash assets minus exclusions;

and (v) exceptional exclusions based on client cost specifically related to client's disability.

The financial resources to be considered shall be tabulated using the method noted in this section. The positive balance (resources exceeding exclusions) shall be determined to be available for participation in the rehabilitation program.

VA.R. Doc. No. R21-6754; Filed March 19, 2025, 9:57 a.m.

STATE BOARD OF SOCIAL SERVICES

Fast-Track Regulation

Title of Regulation: **22VAC40-730. Investigation of Child Abuse and Neglect in Out of Family Complaints (amending 22VAC40-730-20, 22VAC40-730-40, 22VAC40-730-70, 22VAC40-730-130).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: May 7, 2025.

Effective Date: May 22, 2025.

Agency Contact: Nicole Shipp, Department of Social Services, 801 East Main Street, Richmond, VA 23229, telephone (804) 726-7574, or email e.shipp@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia gives the State Board of Social Services the responsibility to promulgate rules and regulations to administer social services in the Commonwealth under Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 of the Code of Virginia. Sections 63.2-1505, 63.2-1511, and 63.2-1516.1 of the Code of Virginia provide additional legal mandates for Child Protective Services (CPS) investigations in out of family settings.

Purpose: This regulatory action is essential to protect the health, safety, and welfare of citizens because it clarifies and streamlines provisions that govern the investigation of child abuse and neglect in out of family settings.

Rationale for Using Fast-Track Rulemaking Process: This action is considered noncontroversial and appropriate for the fast-track rulemaking process because the changes being made are simple and intended to update and clarify language in the regulation.

Substance: This action clarifies language in Investigation of Child Abuse and Neglect in Out of Family Complaints (22VAC40-730) and reduces duplication. Specifically, the amendments remove (i) requirements in 22VAC40-730-20 regarding the qualifications for staff to conduct an investigation, which is redundant to 22VAC40-730-130; (ii) repetitive language regarding communication between CPS and other agencies in 22VAC40-730-40 and between CPS and facility administrators in 22VAC40-730-70; and (iii) a requirement that the Department of Social Services and each local department of social services maintain a roster of personnel qualified to conduct out of family investigations.

Issues: The advantage to the public and local departments of social services (LDSS) is that the amendments clarify existing language, which is used when an LDSS conducts investigations of child abuse or neglect in out of family settings. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. As a result of a periodic review of this regulation, the State Board of Social Services (board) proposes amendments that would remove duplicative or unnecessary language.²

Background. This regulation governs the investigation by local departments of social services (LDSS) of child abuse and neglect complaints in out of family (OOF) settings. The Department of Social Services (DSS) reports that OOF in this context includes public schools, private schools for children with disabilities, child day programs, foster homes, children residential facilities, children detention homes and correctional facilities, and children medical residential facilities. Most of these entities are licensed or operated by other state agencies, such as the Department of Health, the Department of Behavioral Health and Developmental Services, the Department of Education, or the Department of Juvenile Justice. The regulation on Child Protective Services (22VAC40-705) contains the bulk of the regulatory requirements and definitions regarding complaints of child abuse and neglect, whereas this regulation (22VAC40-730) is specific to complaints in OOF settings. DSS reports that in fiscal year 2024, 8,872 reports of child abuse and neglect resulted in an investigation by Child Protective Services (CPS), and that 1,585 of those investigations were conducted in OOF settings. The board proposes to strike language that it has determined is redundant. Specifically, the board proposes to remove (i) requirements in 22VAC40-730-20 regarding the qualifications for staff to conduct an investigation, since it is already covered in 22VAC40-730-130; (ii) repetitive language regarding communication between CPS and other agencies (in 22VAC40-730-40) and between CPS and facility administrators (in 22VAC40-730-70); and (iii) a requirement that DSS and each LDSS maintain a roster of personnel qualified to conduct out of family investigations, since they can do so without a regulatory requirement.

Estimated Benefits and Costs: Since the proposed amendments would remove redundant language, but not change requirements overall, they are not expected to generate any benefits or costs.

Businesses and Other Entities Affected. The proposed amendments would affect readers of the regulation, including the 120 LDSS, other state agencies with licensing or regulatory authority over children facilities, and facilities involved in an out of family investigation. 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 amendments remove redundant language. Thus, no adverse impact is indicated.

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

Localities⁷ Affected.⁸ The proposed amendments do not disproportionately affect particular localities or affect costs for local governments.

Projected Impact on Employment. The proposed amendments are not expected to affect total employment.

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

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/ViewPReview.cfm?PRid=2481>.

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

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the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

⁸ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Department of Social Services reviewed the economic impact analysis prepared by the Department of Planning and Budget and concurs.

Summary:

As a result of a periodic review, the amendments remove (i) requirements in 22VAC40-730-20 regarding the qualifications for staff to conduct an investigation, which is redundant to 22VAC40-730-130; (ii) repetitive language regarding communication between Child Protective Services (CPS) and other agencies in 22VAC40-730-40 and between CPS and facility administrators in 22VAC40-730-70; and (iii) a requirement that the Department of Social Services and each local department of social services maintain a roster of personnel qualified to conduct out of family investigations, which can be done without regulatory requirement.

22VAC40-730-20. General.

~~For the purpose of this chapter, valid complaints of child abuse or neglect involving complaints in a facility or foster home shall be investigated by qualified staff employed by local departments of social services.~~

~~Staff shall be determined to be qualified based on completion of an out of family training course as approved by the department.~~

This regulation is limited in scope to the topics contained in this chapter. All issues regarding investigations, findings, and appeals are found in Child Protective Services, (22VAC40-705;) and as such are cross referenced and incorporated into and apply to out of family cases to the extent that they are not inconsistent with this regulation.

22VAC40-730-40. Involvement of regulatory agencies.

The authority of the local department to investigate valid complaints of alleged child abuse or neglect in facilities or foster homes overlaps with the authority of the public agencies that have regulatory responsibilities for these facilities to investigate alleged violations of standards.

1. For valid complaints, the local department shall contact the appropriate regulatory authority and share the complaint information. The regulatory authority will appoint a staff person to participate in the investigation to determine if there are regulatory concerns.

~~2. The assigned child protective services (CPS) worker and the appointed regulatory staff person will discuss their preliminary joint investigation plan.~~

~~a. 1. The child protective services (CPS) worker and the regulatory staff person shall review their respective needs for information and plan the investigation based on when these needs coincide and can be met with joint interviews or with information sharing.~~

~~b. 2. The investigation plan must keep in focus the requirements to be met by the CPS worker and regulatory authority as well as the impact the investigation will have on the facility's staff, the victim child, and the other children at the facility.~~

22VAC40-730-70. Contact with the facility administrator.

~~A. The child protective services (CPS) worker shall initiate contact with the facility administrator or designee at the onset of the investigation.~~

~~B. A. The child protective services (CPS) worker shall inform the facility administrator or designee of the details of the valid complaint. When the administrator or designee chooses to participate in the joint investigation, he the administrator or designee will be invited to participate in developing the plan for investigation, including decisions about who is to be present in interviews. If the administrator or designee is the alleged abuser or neglecter, this contact should be initiated with the individual's superior, which may be the board of directors, or if there is no superior, the CPS worker may use discretion in sharing information with the administrator so long as such disclosure is consistent with and does not conflict with law or regulation.~~

~~C. B. Arrangements are to be made for:~~

1. Necessary interviews;
2. Observations, including the physical plant; and
3. Access to information, including review of pertinent policies and procedures.

~~D. C. The CPS worker shall keep the facility administrator or designee apprised of the progress of the investigation. In a joint investigation with a regulatory staff person, either party may fulfill this requirement.~~

22VAC40-730-130. Requirements.

~~A. In order to be determined qualified to conduct investigations in out of family settings, local child protective services (CPS) workers shall meet minimum education standards established by the department including completion of an out of family training course as approved by the department.~~

~~B. The department and each local department shall maintain a roster of personnel determined qualified to conduct these out of family investigations.~~

VA.R. Doc. No. R25-8106; Filed March 19, 2025, 11:05 a.m.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Proposed Regulation

Title of Regulation: 24VAC30-151. Land Use Permit Regulations (amending 24VAC30-151-10 through 24VAC30-151-50, 24VAC30-151-80, 24VAC30-151-90, 24VAC30-151-110, 24VAC30-151-240, 24VAC30-151-260, 24VAC30-151-270, 24VAC30-151-300 through 24VAC30-151-360, 24VAC30-151-380, 24VAC30-151-390, 24VAC30-151-400, 24VAC30-151-420, 24VAC30-151-430, 24VAC30-151-450, 24VAC30-151-460, 24VAC30-151-490, 24VAC30-151-500, 24VAC30-151-520, 24VAC30-151-550 through 24VAC30-151-580, 24VAC30-151-600, 24VAC30-151-620, 24VAC30-151-630, 24VAC30-151-670, 24VAC30-151-690 through 24VAC30-151-740; repealing 24VAC30-151-120, 24VAC30-151-220, 24VAC30-151-230, 24VAC30-151-280, 24VAC30-151-290, 24VAC30-151-440, 24VAC30-151-590, 24VAC30-151-760).

Statutory Authority: § 33.2-210 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: June 6, 2025.

Agency Contact: Jo Anne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Basis: Section 33.2-210 of the Code of Virginia gives the Commonwealth Transportation Board (CTB) the authority to promulgate regulations for the protection of, for covering traffic on, and for the use of systems of state highways. Federal law, including 23 USC § 111 and 23 CFR 710.403, requires states to restrict access to and use of certain highway rights-of-way.

Purpose: The proposed amendments are essential to protecting public health, safety, and welfare because the changes (i) ensure that permittees are able to better understand and comply with the appropriate standards for activities by incorporating those standards into the terms and conditions of the required land use permit that must be secured prior to any activity occurring in the right-of-way and (ii) implement improved procedures for the conduct of work within the highway right-of-way.

Substance: In addition to administrative updates, elimination of redundancy, adding clarifying language, and bringing the text in line with current practice, the CTB proposes to remove the documents incorporated by reference (DIBR) from this regulation and instead include the relevant documents in the terms of the land use permits. Other substantive changes include amendments related to insurance requirements and

permittee responsibilities, the broadening of crest stage gauges and water level recorder requirements to apply to all governmental agencies, the expansion of filming to include all commercial filming, and the addition of volunteer mowing or litter pickup to roadside management and landscaping.

Issues: The primary advantage to both the public and the Commonwealth of the removal of the DIBRs is improved clarity for regulated entities, ensuring that regulated entities are aware of the specific documents relevant to them by including the specific documents in the terms of the land use permits. There are no disadvantages to this proposed change, as the permit forms will be updated to correspond to this change and all permit forms are publicly available on VDOT's website. The primary advantage to the public of the proposed changes is the enhancement of statewide consistency and a reduction in permit processing time, as the requests submitted by the impacted applicants will no longer require approval from VDOT's Central Office prior to issuance by the residency. The other proposed changes to the regulation benefit the public by removing redundant or outdated language or providing additional clarity and are not expected to present disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below 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 Commonwealth Transportation Board (board) proposes to (i) remove the requirement that single use permits not be for a length greater than two miles; (ii) potentially increase insurance cost for some permittees by specifying that permittees maintain comprehensive general liability insurance with limits of at least \$1 million per occurrence and \$5 million in the aggregate, or in amounts otherwise required by the Virginia Department of Transportation (VDOT) and stated in the permit; (iii) increase the number of permittees that must assume full responsibility for any and all damages caused by improperly installed facilities, and for the continuing maintenance of installed facilities, by expanding it from permits related to utilities to all permittees; (iv) strengthen the indemnification and hold harmless language for the Commonwealth; (v) provide an option for suspension of a permit as an alternative to revocation; (vi) no longer require special permits for several activities; (vii) reduce refunds by no longer refunding any part of application fees for permits canceled prior to the beginning of the permitted activity; (viii) allow the VDOT central office permit manager to authorize unlimited time extensions at the full cost of the permit fee for each two-year term; and (ix) remove documents incorporated by reference (DIBRs) from the regulation to reflect the

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inclusion of the relevant manuals and specifications within the terms of the land use permits.

Background. The Land Use Permit Regulations set forth the rules that individuals, localities, businesses, and other entities must follow to conduct activities other than travel on right-of-way (such as highway systems) that are under VDOT's jurisdiction. These include activities such as installation of utilities, construction of private and commercial entrances, landscaping, the temporary use of the right-of-way, as well as numerous other types of activities. The regulation sets forth criteria used by VDOT when determining whether to issue a permit and are intended to preserve the integrity of the highway system and protect the safety of motorists, pedestrians, and highway workers. Land use permits address safety issues such as proper procedures for temporarily closing travel lanes, standards for entrances and access points onto highways, affixing signs and other objects to structures in the right-of-way, and location and protection of utility lines.

Estimated Benefits and Costs. Single Use Permits: The current regulation states that "Where work is of a continuous nature along one route, or on several routes within one jurisdiction, it may be consolidated into one permit application. For single use permits, such consolidation shall not be for a length greater than two miles." The board proposes to eliminate the second quoted sentence. The general application fee for a single permit is \$100. There are also specific additive fees for specific attributes such as commercial entrance, street connection, temporary logging entrance, turn lane, traffic signal, curb and gutter, sidewalk, tree trimming, storm sewer, underground utility, etc.² The elimination of the second sentence would mean that the application fee would be reduced by \$100 per each two miles that qualify under the first sentence, when the total length exceeds two miles. For example, the (non-additive) application fee for work of a continuous nature along one route, or on several routes within one jurisdiction that add up to six miles, would be \$100 under the proposed regulation, versus \$300 for three separate single use permits under the existing regulation. The additive fees would not change.

Insurance and Responsibility: The board proposes three changes regarding insurance and responsibility. First, the current regulation states that the permittee shall secure and carry sufficient insurance to protect against liability for personal injury and property damage that may arise from the work performed under the authority of a land use permit and from the operation of the permitted activity. The text does not specify amounts. According to VDOT, in practice the amounts are set out in contract for comparable construction activities by vendors pursuant to contracts with VDOT. The board proposes to specify in the regulation that comprehensive general liability insurance with limits of at least \$1 million per occurrence and \$5 million aggregate, or in amounts otherwise required by VDOT as stated in the permit, shall be maintained at all times. The agency has stated that by setting required minimum insurance amounts, some (but not most) permittees may need to obtain higher levels of coverage than they would otherwise

obtain under the current requirements. Thus, insurance cost for some permittees may increase. VDOT does not have an estimate for the cost increase. Second, under the proposed regulation, the text indicates that all permittees would assume full responsibility for all damages caused by facilities installed or uses undertaken under a permit. This is broader than the current regulation, which applies this to utility installations only and is restricted to improperly installed facilities, not all facilities. Third, the board proposes to strengthen the indemnification and hold harmless language for the Commonwealth by adding that "A permittee shall indemnify and hold harmless the Commonwealth, the Commonwealth Transportation Board, the Commissioner of Highways, VDOT, and their consultants, representatives, agents and employees from and against any and all claims, causes of action, losses, costs, attorney's fees, expenses, and damages that directly or indirectly results from or arises out of the permittee's activities or violations in the right-of-way or from any of the permittee's contractors, subcontractors, consultants, representatives, agents or employees, or from anyone for whose acts or violations the permittee is or may be liable. A permittee shall be civilly liable to the Commonwealth for all already actual damage caused by a violation of the terms of a permit or this chapter. Injunctive remedies available to VDOT include providing private property access to VDOT to rectify concerns to public safety in the right-of-way caused by violations of the permit or this chapter." Referring to these three changes, the agency states that, "These changes are intended to protect the Commonwealth by ensuring permittees are adequately covered against liability for personal injury and property damage in connection with all activities undertaken under a permit and by clarifying that the Commonwealth is not liable for costs related to permittee violations and actions." To the extent that the additional regulatory text prompts some permittees to put greater time and effort into installation and maintenance, to purchase additional insurance, or increases their legal liability, costs for some permittees may increase.

Suspension as an Alternative to Revocation: Under the proposed regulation, permits could be suspended or revoked upon a written finding of a violation. The current regulation only allows permits to be revoked, which requires the permittee to reapply, which includes the \$100 general application fee plus the various additive fees.³ According to VDOT, "Under a suspension, an existing permit can be reactivated at no cost to the permittee."

Fewer Special Permits: There are several activities that require a special permit under the current regulation that would be covered by a regular permit under the proposed regulation. According to the agency, there would not be any cost savings for applicants, but this change would reduce permit issuance time by about a day. Additionally, there would be about 20 minutes of VDOT staff saved per application. The agency reports that the total number of special permit applications would be reduced by about 12 applications annually. In total, approximately four hours of VDOT staff time would be saved

per year (20 minutes times 12 applications = 240 minutes), and the 12 applicants would each receive their permit (if approved) about a day earlier. Activities that would only need a regular permit rather than a special permit include installation of hydrological study equipment within highway rights-of-way by non-state governmental agencies (state agencies already do not need a special permit); non-movie filming activity within the right-of-way that may affect the safety, use, or operation of the highway (movie filming activity already does not need a special permit); and volunteer mowing and litter pickup.

Elimination of Refunds: The board proposes to amend the regulation to state that VDOT will retain the entire application fee, including the full additive fee, for permits cancelled prior to the beginning of the permitted activity. Under the current regulation, one half of the additive fees are refunded. According to the agency, this would reduce the burden on VDOT permit and fiscal staff processing the refunds. It would also be costly to the applicants as they would no longer receive refunds when their permit is cancelled prior to the beginning of the permitted activity.

Unlimited Time Extensions: Under both the current and proposed regulations, districtwide permits are valid for a period of two years. The biennial fee for a districtwide permit for utilities and logging operations is \$750 per district. The biennial fee for a districtwide permit for surveying is \$200 per district. The central office permit manager may exercise discretion in combining requests for multijurisdictional districtwide permits. The board proposes to allow the VDOT central office permit manager to authorize unlimited time extensions at the full cost of the permit fee for each two-year term. This would reduce the paperwork burden on permittees as the paperwork required for a permit extension is less than that for a new permit request.

Eliminate DIBRs: The board proposes to repeal the entire DIBR section of the regulation. Instead, VDOT would treat each permit as a binding contract, such that the regulation does not (according to VDOT) need to specify the requirements. In addition, requirements to perform certain activities in accordance with these DIBRs under the current regulation would be replaced throughout the text with requirements to perform these activities in accordance with one of the following: (i) standards and specifications as set forth in the terms of the permit; (ii) any applicable requirements of the State Water Control Board, all federal, state, and local requirements and all applicable VDOT requirements, standards, and specifications and as otherwise required by the terms of the permit; and (iii) VDOT policies and standards as specified in the terms of the permit. In practice, the agency does not expect there would be a substantive impact on requirements, costs, etc. in the short run. In the long run, this proposal would help ensure that the most updated versions of the documents are being followed.

Businesses and Other Entities Affected. The proposed amendments affect land use permit holders and applicants,

VDOT, and the public. According to VDOT, in fiscal year 2024 there were 19,070 permits issued to applicants. Typical land use permits are for installation of utilities, construction of private and commercial entrances, landscaping, the temporary use of the right-of-way, as well as numerous other types of activities. 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 above, some permittees are likely to face higher insurance costs and others would no longer receive any refund when their permit is cancelled prior to the beginning of the permitted activity. Thus, an adverse impact is indicated.

Small Businesses⁶ Affected.⁷ Types and Estimated Number of Small Businesses Affected: According to VDOT, in fiscal year 2024 there were 19,070 land use permits issued to applicants, some but not all of which will have been to small businesses. Contractors and landscapers would very likely be among such small businesses. The agency does not have an estimate of the number of small businesses.

Costs and Other Effects: As described above, some small businesses would likely have higher insurance costs, and some may no longer receive refunds that they would receive under the current regulation.

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

Localities⁸ Affected.⁹ The proposed amendments potentially affect all localities, but may particularly affect localities that are disproportionately more active in work on highway systems that are under VDOT's jurisdiction. As described above, some proposed amendments potentially reduce dollar or time costs for local governments, while others potentially increase them.

Projected Impact on Employment. The proposed amendments are unlikely to have a substantive impact on total employment.

Effects on the Use and Value of Private Property. As described above, some proposed amendments potentially reduce dollar or time costs for businesses, while others potentially increase them. Thus, changes in the value of businesses doing work involving land use permits may moderately increase or decrease, depending on their particular situation. Construction of private and commercial entrances can be part of real estate development. As described above, the proposed amendments may either moderately increase or decrease real estate development costs, depending on their particular situation.

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

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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 24VAC30-151-710 for the specific additive fees, which are not changing under the proposed regulation: <https://law.lis.virginia.gov/admincode/title24/agency30/chapter151/section710/>.

³ Ibid.

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.

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, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁸ Locality can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁹ Section 2.2-4007.04 defines particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Commonwealth Transportation Board accepts the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

As a result of a periodic review, the proposed amendments (i) remove the requirement that single use permits not be for a length greater than two miles; (ii) potentially increase insurance cost for some permittees by specifying that permittees must maintain comprehensive general liability insurance with limits of at least \$1 million per occurrence and \$5 million in the aggregate, or in amounts otherwise required by the Virginia Department of Transportation (VDOT) and stated in the permit; (iii) increase the number of permittees that must assume full responsibility for all damages caused by improperly installed facilities and for the continuing maintenance of installed facilities by expanding this responsibility from permits related to utilities to all permittees; (iv) strengthen the indemnification and hold harmless language for the Commonwealth; (v) provide an option for suspension of a permit as an alternative to

revocation; (vi) no longer require special permits for several activities; (vii) reduce refunds by no longer refunding any part of application fees for permits canceled prior to the beginning of the permitted activity; (viii) allow the VDOT central office permit manager to authorize unlimited time extensions at the full cost of the permit fee for each two-year term; and (ix) remove certain documents incorporated by reference from the regulation to reflect the inclusion of the relevant manuals and specifications within the terms of the land use permits.

24VAC30-151-10. Definitions.

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

"Backfill" means replacement of suitable material compacted as specified around and over a pipe, conduit, casing, or gallery.

"Boring" means a method of installation that is done underground and by which a carrier or casing is jacked through an oversize bore. The bore is carved progressively ahead of the leading edge of the advancing pipe as soil is forced back through the pipe. Directional drilling, coring, jacking, ~~etc.~~, and other similar trenchless digging methods are also considered boring.

"Carrier" means a pipe directly enclosing a transmitted liquid or gas.

"Casing" means a larger pipe enclosing a carrier.

~~"Central Office Permit Manager~~ office permit manager" means the VDOT employee assigned to provide management, oversight, and technical support for the ~~state-wide~~ VDOT land use permit program.

~~"Chief Engineer"~~ means the VDOT employee in overall supervision of engineering functions for VDOT or that employee's designee.

"Clear zone" means the total border area of a roadway, including, ~~if any~~, parking lanes or planting strips, that is sufficiently wide for an errant vehicle to avoid a serious accident. ~~Details on the clear zone are in VDOT's Road Design Manual (see 24VAC30-151-760).~~

~~"Code of Federal Regulations" or "CFR" means the regulations promulgated by the administrative and regulatory agencies of the federal government.~~

"Commercial entrance" means any entrance ~~other than two or fewer individual private residences, agricultural operations to obtain access to fields, or civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.~~ (See "private entrance.") other than a private entrance.

"Commissioner of Highways" means the individual serving as the chief executive officer of the Virginia Department of Transportation or a designee.

~~"Commonwealth" means the Commonwealth of Virginia.~~

"Conduit" means an enclosed tubular runway for carrying wires, cable, or fiber optics.

"Cover" means the depth of the top of a pipe, conduit, or casing below the grade of the roadway, ditch, or natural ground.

"Crossing" means any utility facility that is installed across the roadway, either perpendicular to the longitudinal axis of the roadways or at a skew of no less than 60 degrees to the roadway centerline.

"District administrator" means the VDOT employee assigned the overall supervision of the departmental operations ~~in~~ for one of ~~the Commonwealth's nine~~ VDOT's construction and maintenance districts.

"District administrator's designee" means the VDOT employee assigned by the district administrator to supervise land use permit activities ~~by the district administrator.~~

"District roadside manager" means the VDOT employee assigned to provide management, oversight, and technical support for ~~district-wide~~ districtwide vegetation program activities.

"Drain" means an appurtenance to discharge liquid contaminants from casings.

"Encasement" means a structural element surrounding a pipe.

"Erosion and sediment control" means the control of soil erosion or the transport of sediments caused by the natural forces of wind or water.

"Grounded" means connected to earth or to some extended conducting body that serves instead of the earth, whether the connection is intentional or accidental.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Limited access highway" means a highway especially designed for through traffic, over which abutters have no easement or right of light, air, or access by reason of the fact that their property abuts upon such limited access highway.

"Longitudinal installations" means any utility facility that is installed parallel to the centerline of the roadway or at a skew of less than 60 degrees to the roadway centerline.

~~"Manhole" means an opening in an underground system that workers or others may enter for the purpose of making installations, inspections, repairs, connections and tests.~~

"Median" means the portion of a divided highway that separates opposing traffic flows.

~~"Nonbetterment~~ Non-betterment cost" means the cost to relocate an existing facility as is with no improvements.

"Permit" means a document that, in conjunction with the laws of the Commonwealth, sets the requirements, terms, and conditions under which VDOT allows ~~its~~ a right-of-way to be used or changed by a permittee.

"Permit agreement" means an agreement supplementary to a permit that sets out additional conditions for the enjoyment of the permit that have been agreed to by the permittee and VDOT.

"Permittee" means the person ~~or persons,~~ firm, corporation, entity, or government entity that has been issued a ~~land use~~ permit.

"Pipe" means a tubular product or hollow cylinder made for conveying materials.

"Pole line" means poles or a series or line of supporting structures, such as towers, cross arms, ~~guy~~ guy wires, racks (conductors), ground wires, insulators, and other materials assembled and in place for the purpose of transmitting or distributing electric power or communication, signaling, and control. It includes appurtenances such as transformers, fuses, switches, grounds, regulators, instrument transformers, meters, equipment platforms, and other devices supported by poles.

~~"Power line" means a line for electric power or communication services.~~

"Pressure" means relative internal pressure in pounds per square inch gauge (psig).

"Private entrance" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants of those residences or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil ~~and~~ or communication infrastructure facilities that generate 10 or fewer trips per day, such as cell towers, pump stations, and stormwater management basins.

"Professional engineer" means a person who is qualified to practice engineering by reason of ~~his~~ special knowledge and use of mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Relocate" means to move or reestablish existing facilities.

"Right-of-way" means that property within the system of state highways that is open or may be opened for public travel or use or both in the Commonwealth. This definition includes those

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~~public~~ rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel. The property within a right-of-way includes the travel way and associated boundary lines and the area in between, the subsurface below and air above the property, parking and recreation areas, rest and service areas, and other permanent easements for a specific purpose appurtenant to the right-of-way.

"Roadside" means the area adjoining the outer edge of the roadway. The median of a divided highway may also be considered a "roadside."

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

"Service connections" means any utility facility installed overhead or underground between a distribution main, pipelines, conduits, lines, wires, or other sources of supply and the premises of the individual customer.

"Shared resource agreement" means an agreement or permit allowing one or more utilities to occupy the limited access right-of-way consistent with the requirements of 24VAC30-151-30 and 24VAC30-151-740.

"Site plan" means the engineered or surveyed drawings depicting proposed development of land.

"Storm sewer" means the system containing and conveying roadway drainage.

"Stormwater management" means the engineering practices and principles used to intercept stormwater runoff, remove pollutants, and slowly release the runoff into natural channels to prevent downstream flooding.

"Structure" means that portion of the transportation facility that spans space, supports the roadway, or retains soil. This definition includes, ~~but is not limited to,~~ bridges, tunnels, drainage structures, retaining walls, sound walls, signs, and traffic signals, etc.

"System of state highways" means all highways, streets, and roads under the ownership, control, or jurisdiction of VDOT, including ~~but not limited to,~~ the primary, secondary, and interstate systems.

"Telecommunication service" means the offering of telecommunications for a fee directly to the public or to privately owned, investor- ~~investor-owned,~~ or cooperatively owned entities.

"Transportation project" means a ~~public~~ project in development or under construction to provide a new public transportation facility or to improve or maintain the existing system of state highways.

"Traveled way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

"Trenched" means installed in a narrow, open excavation.

"Underground utility facilities" means any item of public or private property placed below ground or submerged for use by the utility.

"Utility" means a privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing telecommunications, cable television, electricity, gas, oil, petroleum products, water, steam, ~~storm-water~~ stormwater not connected with highway drainage, or any other similar commodity, including any fire or police signal system.

"VDOT" means the Virginia Department of Transportation ~~or the Commissioner of Highways.~~

"Vent" means an appurtenance to discharge gaseous contaminants from a casing or carrier pipe.

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

"Wireless support structure agreement" means a permit agreement, a shared resource agreement, or a permit complying with the requirements of Chapter 15.1 (§ 56-484.26 et seq.) of Title 56 of the Code of Virginia concerning the construction of wireless support structures, communication pedestals, nodes, and amplifiers.

24VAC30-151-20. Authority.

The General Rules and Regulations of the Commonwealth Transportation Board (~~see 24VAC30-151-760~~ 24VAC30-21) are adopted pursuant to the authority of §§ 2.2-1151.1, 33.2-118, 33.2-210, 33.2-240, 33.2-241, 33.2-245, 33.2-266, 33.2-338, 33.2-357, 56-458, 56-460, 56-484.28, 56-484.30, 56-484.31, and 56-484.32 of the Code of Virginia, and in accordance with the Virginia Administrative Process Act (Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia). These rules and regulations provide that no work or nontransportation uses of any nature shall be allowed or performed on the system of state highways or any right-of-way or real property under the ownership, control, or jurisdiction of VDOT until written permission has been obtained from VDOT. Real property includes, ~~but is not limited to,~~ the right-of-way ~~of any highway in~~ and the system of state highways ~~system.~~ Written permission is granted either by permit pursuant to this chapter or a state-authorized contract let by VDOT or the Commonwealth Transportation Board. ~~By~~ issuing a permit, VDOT is giving permission only for A permit grants the permittee only those rights set forth in the permit and only to the extent of whatever rights # VDOT has in the right-

of-way; ~~the~~. The permittee is responsible for obtaining permission from others who may also have an interest in the property or right-of-way and for satisfying all other applicable legal requirements, whether federal, state, or local. Employees of VDOT are authorized to issue permits only as described in this chapter. This chapter prescribes the specific requirements of such permits.

24VAC30-151-30. Permits Types of permits and permit agreements.

~~A. The following shall apply to all authorized use or occupancy of the right-of-way:~~

- ~~1. A permit is required for any type of utility activity occurring within the right of way.~~
- ~~2. A permit is required to install any entrance onto a state highway.~~
- ~~3. A permit is required to perform surveying operations within the right of way.~~
- ~~4. A permit is required for any agricultural and commercial use and occupancy of the right of way.~~
- ~~5. A permit is required for any miscellaneous activity or use of the right of way except for mailboxes and newspaper boxes (see 24VAC30-151-560) and public service signs (see 24VAC30-151-570).~~

~~B. A. Single use permits. A single use permit allows the permittee to perform any approved specific activities within limited access or nonlimited access right-of-way or VDOT property at a specific location that are not otherwise covered by a districtwide permit held by the permittee within limited access and nonlimited access rights of way at a specific location.~~

The district administrator's designee shall be responsible for the issuance of all single use permits, except that ~~those~~ requests for a permit for tree trimming and tree removal may be issued by the district roadside manager in consultation with the district administrator's designee. The size of the specific location covered by a single use permit shall be at the discretion of the district administrator's designee and may cover work up to two miles along the right of way (see 24VAC30-151-40). The land use permit issued for the original installation of facilities also allows the permittee to repair or perform routine maintenance operations to existing those facilities after installation. A single use permit shall be required when obtained prior to the undertaking of the following actions are proposed, even if the activities being conducted are normally may be allowed under a districtwide permit:

1. Stopping or impeding highway travel in excess of 15 minutes or implementing traffic control that varies from the standard, or any combination of these, as outlined in the Virginia Work Area Protection Manual Standards for Use of Traffic Control Devices to Classify, Designate, Regulate,

and Mark State Highways (see 24VAC30-151-760 24VAC30-315).

2. Performing work within limited access right-of-way.
3. Trimming or cutting any trees located within the right-of-way.
4. Applying any pesticide or landscaping within the right-of-way.
5. Construction of a permanent entrance to a state highway.
6. Cutting or disturbing highway pavement, shoulders, or ditches.
7. Installing electrical lines that exceed 34.5 kV.
8. Installing telecommunication services that exceed 100-pair copper cable or the fiber-optic cable diameter equivalent.
9. Making permanent upgrades to an existing entrance. Temporary improvements to an existing entrance that will be removed upon the completion of the permitted activity will not require a separate single use permit.
10. Grading within the right-of-way beyond the immediate area of a temporary entrance.

~~C. B. Districtwide permits. A districtwide permit allows the permittee to perform multiple occurrences of certain activities on nonlimited access right-of-way without obtaining a single use permit for each occurrence. The central office permit manager shall be responsible for the issuance of all districtwide permits. VDOT may authorize districtwide permits covering multiple districts (see 24VAC30-151-710).~~

~~The following is a list of acceptable activities under the jurisdiction of districtwide permits:~~

1. Utilities.
 - a. ~~Districtwide permits may be issued granting cities, towns, counties, public agencies, or utility companies the authority to install and maintain service connections to their existing main line facilities. Work under a districtwide permit will allow the permittee to install a service connection across a nonlimited access primary or secondary highway above or below ground, provided the installation can be made from the side of the roadway without impeding travel for more than 15 minutes to pull or drop a service line across a highway, and provided no part of the roadway pavement, shoulders and ditch lines will be disturbed. The installation of parallel utility service connections, not to exceed 500 feet in length, shall be placed along the outer edge of the right-of-way with a minimum of 36 inches of cover. Telecommunications and cable television service connections may be placed with a minimum of 18 inches of cover; however the permittee assumes full responsibility for any and all damages caused by VDOT or VDOT contractors resulting from a service~~

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connection buried with less than 30 inches of cover within the right of way.

~~A districtwide permit allows for the overlapping of telecommunication lines onto existing lines or strand.~~

~~b. A separate single use permit will be required when the following activities associated with the installation and maintenance of utility service connections are proposed:~~

~~(1) Cutting highway pavement or shoulders, or both, to locate underground utilities.~~

~~(2) Working within the highway travel lane on a nonemergency basis.~~

~~(3) Constructing a permanent entrance.~~

~~(4) Installing electrical lines that exceed 34.5 KV.~~

~~(5) Installing telecommunication services that exceed 100 pair copper cable or the fiber optic cable diameter equivalent.~~

~~(6) Installing new pole, anchors, parallel lines, or casing pipe extensions to existing utilities where such installation necessitates disturbance to the pavement, shoulder, or ditch line.~~

~~(7) Installing underground telephone, power, cable television, water, sewer, gas, or other service connections or laterals where the roadway or ditch lines are to be disturbed.~~

~~e. The installation of parallel utility service connections, not to exceed 500 feet in length, shall be placed along the outer edge of the right of way with a minimum of 36 inches of cover. Telecommunications and cable television service connections may be placed with a minimum of 18 inches of cover; however the permittee assumes full responsibility for any and all damages caused by VDOT or VDOT contractors resulting from a service connection buried with less than 30 inches of cover within the right of way.~~

~~d. A districtwide permit allowing the installation and maintenance of utility service connections may be revoked for a minimum of 30 calendar days upon written finding that the permittee violated the terms of the permit or any of the requirements of this chapter, including but not limited to any, all, or a combination of the following:~~

~~(1) The permittee shall implement all necessary traffic control in accordance with the Virginia Work Area Protection Manual (see 24VAC30-151-760). When warranted, the appropriate Regional Traffic Engineer should be consulted to select or tailor the proper traffic control devices. Each flag person must be certified by VDOT and carry a certification card when flagging traffic and have it readily available for inspection when requested by authorized personnel.~~

~~(2) The permittee shall not perform any activity under the jurisdiction of a districtwide permit that requires the issuance of a single use permit.~~

~~e. The permittee must obtain single use permits from the district administrator's designee to continue the installation and maintenance of utility service connections during this revocation period.~~

~~2. Temporary logging entrances.~~

~~a. Districtwide permits may be issued for the installation, maintenance, and removal of temporary entrances onto nonlimited access primary and secondary highways for the purpose of harvesting timber.~~

~~b. A separate single use permit is required when the following activities associated with timber harvesting operations are proposed:~~

~~(1) Installing a permanent entrance.~~

~~(2) Making permanent upgrades to an existing entrance. Improvements to existing entrances that are not permanent upgrades will not require a separate single use permit.~~

~~(3) Cutting pavement.~~

~~(4) Grading within the right of way beyond the immediate area of the temporary entrance.~~

~~c. A logging entrance permit may be revoked for a minimum of 30 calendar days upon written finding that the permittee violated the terms of the permit or any of the requirements of this chapter, including but not limited to any, all, or a combination of the following:~~

~~(1) The permittee shall implement all necessary traffic control in accordance with the Virginia Work Area Protection Manual (see 24VAC30-151-760). When warranted, the appropriate district traffic engineer should be consulted to select or tailor the proper traffic control measures. Each flag person must be certified by VDOT and carry a certification card and have it available for inspection upon request by authorized VDOT personnel.~~

~~(2) The permittee shall contact the appropriate district administrator's designee prior to installing a new logging entrance or initiating the use of an existing entrance for logging access.~~

~~(3) The permittee shall contact the appropriate district administrator's designee for final inspection upon completion of logging activities and closure of the temporary entrance.~~

~~(4) The permittee shall restore all disturbed right-of-way at the temporary entrance, including but not limited to ditches, shoulders, and pavement, to pre-activity condition subject to acceptance by the appropriate district administrator's designee.~~

~~(5) The permittee shall remove excessive mud and any debris that constitutes a hazardous condition from the highway pursuant to a request from the appropriate district administrator's designee. Noncompliance may also result in the issuance of a separate citation from the Virginia State Police or a local law enforcement authority.~~

~~(6) The permittee shall not perform any activity under the jurisdiction of a districtwide permit that requires the issuance of a single use permit.~~

~~d. The permittee must obtain single use permits from the appropriate district administrator's designee to continue accessing state maintained highways for the purpose of harvesting timber during this revocation period.~~

~~3. Surveying.~~

~~a. Districtwide permits may be issued for surveying operations on nonlimited access primary and secondary highways subject to the following:~~

~~(1) No trees are to be trimmed or cut within the right of way.~~

~~(2) No pins, stakes, or other survey markers that may interfere with mowing operations or other maintenance activities are to be placed within the right of way.~~

~~(3) No vehicles shall be parked so as to create a traffic hazard. Parking on through lanes is strictly prohibited.~~

~~b. A separate single use permit is required when the following surveying activities are proposed:~~

~~(1) Entering onto limited access right of way. Consideration for the issuance of such permits will be granted only when the necessary data cannot be obtained from highway plans, monuments, triangulation, or any combination of these, and the applicant provides justification for entry onto the limited access right of way.~~

~~(2) Stopping or impeding highway travel in excess of 15 minutes or varying the implementation of standard traffic control, or any combination of these, as outlined in the Virginia Work Area Protection Manual (see 24VAC30-151-760).~~

~~(3) Trimming or cutting any trees located within the right of way.~~

~~(4) Cutting highway pavement or shoulders to locate underground utilities.~~

~~e. A districtwide permit for surveying activities may be revoked for a minimum of 30 calendar days upon written finding that the permittee violated the terms of the permit or any of the requirements of this chapter, including but not limited to any, all, or a combination of the following:~~

~~(1) The permittee shall implement all necessary traffic control in accordance with the Virginia Work Area Protection Manual (see 24VAC30-151-760). When warranted, the appropriate Regional Traffic Engineer should be consulted to select or tailor the proper traffic control devices. Each flag person must be certified by VDOT and carry a certification card when flagging traffic and have it readily available for inspection when requested by authorized personnel.~~

~~(2) The permittee shall not perform any activity under the jurisdiction of a districtwide permit that requires the issuance of a single use permit.~~

d. The permittee must obtain single use permits from the district administrator's designee to continue surveying activities during this revocation period.

1. Utility service connections. Districtwide permits may be issued granting cities, towns, counties, public agencies, or utility providers the authority to install and maintain service connections to existing main line facilities. Work under a districtwide permit will allow the permittee to install a service connection across a nonlimited access primary or secondary highway above ground or below ground, provided the installation can be made from the side of the roadway without impeding travel for more than 15 minutes to pull or drop a service line across a highway and provided that no part of the roadway pavement, shoulders, or ditch lines will be disturbed. The installation of longitudinal utility service connections, not to exceed 500 feet in length, may be accomplished under a districtwide permit upon satisfaction of the following conditions: (i) the service connection shall be placed along the outer edge of the right-of-way, (ii) the service connection shall have a minimum of 36 inches of cover, and (iii) an as-built plan of such longitudinal installation shall be provided to the district administrator's designee. Notwithstanding the provisions of this subdivision, telecommunications and cable television service connections may be placed with a minimum of 18 inches of cover, provided the permittee accepts and assumes full responsibility and liability for all damages caused by VDOT, VDOT contractors, or third parties disturbing a service connection buried with less than 30 inches of cover within the right-of-way. A districtwide permit allows for the overlash of telecommunication lines onto existing lines or strands, unless such overlash activities trigger the requirements for utilizing a single use permit.

2. Temporary logging entrances. Districtwide permits may be issued for the installation, maintenance, and removal of temporary entrances onto nonlimited access primary and secondary highways for the purpose of harvesting timber. The permittee shall contact the appropriate district administrator's designee (i) prior to installing a new logging entrance or initiating the use of an existing entrance for logging access and (ii) for final inspection upon completion of logging activities and closure of the temporary entrance. The permittee shall remove excessive mud and any debris that constitutes a hazardous condition from the highway at the permittee's sole cost upon a request from the district administrator's designee.

3. Surveying. Districtwide permits may be issued for surveying operations on nonlimited access primary and secondary highways if such activity does not involve (i) tree trimming or cutting within the right-of-way; (ii) the installation of pins, stakes, or other survey markers that may interfere with mowing operations or other maintenance activities within the right-of-way; or (iii) the parking of vehicles so as to create a traffic hazard. Parking on the traveled way is strictly prohibited.

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~~D. C.~~ In-place permits. In-place permits allow utilities to remain within the right-of-way of newly constructed secondary streets. These utilities shall be installed according to ~~VDOT approved~~ VDOT-approved street plans and shall be in place prior to VDOT street acceptance.

~~E. D.~~ Prior-rights permits. Prior-rights permits allow ~~existing utilities with existing facilities within the right-of-way~~ to remain in place ~~that as long as those facilities~~ are not in conflict with a transportation ~~improvements authorized under the auspices of a land-use permit project or other use of the right-of-way by the public or the Commonwealth.~~

~~F. E.~~ As-built permits. ~~Agreements for the relocation of utilities found to be in~~ Utility facilities required to be relocated within a right-of-way due to a conflict with a transportation project or other use of the right-of-way by the public or the Commonwealth may stipulate that be issued an as-built permit will be issued upon completion of the project and the mutual agreement between VDOT and the utility for such relocation.

~~G. F.~~ Agreements. In addition to obtaining a single use permit, a utility may be required to enter an agreement with VDOT allowing the utility to use the limited access right-of-way in exchange for monetary compensation, the mutually agreeable exchange of goods or services, or both.

1. Permit agreement. A permit An agreement is required for:

a. Any new longitudinal occupancy of the limited access right-of-way or median where none have existed before, as allowed for in 24VAC30-151-300 and 24VAC30-151-310.

b. Any ~~new communication tower or small site facilities installed within the right of way, as allowed for in 24VAC30-151-350~~ occupancy of a VDOT-owned wireless support structure.

c. Any perpendicular crossing of limited access right of way, as allowed for in 24VAC30-151-310.

All ~~permit~~ agreements shall specify the terms and conditions required in conjunction with work performed within the right-of-way. ~~If appropriate, all agreements~~ Agreements shall provide for the payment of monetary compensation as may be in the amount deemed proper appropriate by the Commissioner of Highways for the privilege of utilizing the right-of-way.

2. Shared resource agreement. A Consistent with the requirements of 24VAC30-151-740, a shared resource agreement allows the utility one or more utilities to occupy the limited access right-of-way in exchange for the each such utility providing the needed VDOT facility or a combination of goods, facilities, services, or monetary compensation to VDOT. VDOT The Commissioner of Highways and the each such utility will agree upon the appropriate goods, facilities, or services to be provided and will establish, the length of the term that will be compensated through the infrastructure needs, and compensation through the

provision of a particular service, facility, or monetary compensation, or both a combination thereof. Any shared resource agreement shall also provide for compensation as may be deemed ~~proper~~ appropriate by the Commissioner of Highways in any renewal term. The shared resource agreement shall specify the initial and renewal terms of the lease.

G. Notwithstanding the provisions of this section, no permit shall be required for placement of mailboxes and newspaper boxes in accordance with 24VAC-30-151-560 and placement of certain signs in accordance with 24VAC-30-151-570.

24VAC30-151-40. General rules, regulations, and requirements.

A. A ~~land-use permit~~ is valid only on highways and rights-of-way right-of-way under VDOT's jurisdiction and on VDOT-owned property. ~~This permit neither implies nor grants otherwise.~~ County and city permits must be secured for work on roads and streets under ~~their~~ the county or city jurisdictions. A ~~land-use permit~~ covers the actual performance of work within highway rights-of-way right-of-way and the subsequent maintenance, adjustments, or removal of the work as approved by the central office permit manager or the district administrator's designee. ~~Permits for communications facility towers may only be issued by the Commissioner of Highways.~~ The Commissioner of Highways Chief Engineer shall approve all activities within limited access right-of-way prior to permit issuance. ~~All permits shall be issued to~~ A permit must be obtained by the owner of the facility to be used or located within highway rights-of-way right-of-way or VDOT-owned property or the adjacent property owner in the case of entrance permits. A permit may be issued jointly to the owner and his contractor as if the contractor is the owner's authorized agent. The applicant permittee and the permit's contractors and agents shall comply with all applicable federal, state, county and municipal and local laws and requirements. The terms of every permit include and incorporate by reference this chapter as well as all federal, state, and local requirements applicable to a permittee's activities under the permit.

B. Application shall be made for a ~~district-wide~~ districtwide permit through the central office permit manager and for single use permits ~~from~~ through the district administrator's designee responsible for the county where the work is to be performed. The applicant shall submit site plans or sketches for proposed installations within the right-of-way to VDOT for review, with studies necessary for approval. VDOT may require electronic submission of these documents. Where work is of a continuous nature along one route, or on several routes within one jurisdiction, it may be consolidated into one permit application. ~~For single use permits, such consolidation shall not be for a length greater than two miles.~~ The applicant shall also submit any required certifications for staff performing or supervising the work, and certification that applicable stormwater management requirements are being met. The plans shall

include the ultimate development and also any applicable engineering design requirements. VDOT retains the authority to deny an application for or revoke a land use permit to ensure the safety, use, or maintenance of the highway right-of-way, or in cases where a law has been violated relative to the permitted activity.

~~C. The proposed installation granted by this permit permittee shall be constructed exactly as shown on the permit or accompanying sketch. Distances from edge of pavement, existing and proposed right-of-way line, depths below existing and proposed grades, depths below ditch line or underground drainage structures, or other features shall be shown. Any existing utilities within close proximity of the permittee's work shall be shown. Location of poles, guys, pedestals, relief valves, vent pipes, etc. shall be shown. Height of wires or cables above the crown of the roadway shall be shown. comply with the terms of the permit. The permittee shall construct and use each facility proposed to be used or installed pursuant to a permit exactly as shown on the approved permit application, including:~~

1. Showing distances from edge of pavement, existing and proposed right-of-way lines, depths below existing and proposed grades, depths below ditch line or underground drainage structures, or other features.
2. Showing any existing utilities within close proximity of the applicant's proposed work or use.
3. Showing the location of poles, guy wires, pedestals, relief valves, vent pipes, and other equipment or structures.
4. Showing the height of wires or cables above the crown of the roadway.

D. In the event of an emergency situation that requires immediate action to protect persons or property, work may proceed within the right-of-way without authorization from the district administrator's designee; however, the permittee must contact the VDOT Emergency Operations Center as soon as reasonably possible but no later than 48 hours after the end of the emergency situation.

E. The ~~land use~~ permit is not valid unless signed by the central office permit manager or the district administrator's designee.

F. The permittee shall secure and ~~carry sufficient~~ maintain commercial general liability insurance to protect against liability for personal injury and property damage ~~that may arise from the work performed in connection with all activities undertaken under the authority of a land use permit and from the operation of the permitted activity.~~ Comprehensive general liability insurance with limits of at least \$1 million per occurrence and \$5 million aggregate or in amounts otherwise required by VDOT as stated in the permit shall be maintained at all times. Insurance must be obtained prior to start of permitted work and shall remain valid through the permit completion date. The central office permit manager or the

district administrator's designee may require a valid certificate ~~or letter~~ of insurance or policy documents from the issuing insurance agent or agency prior to issuing ~~the land use~~ a permit.

G. The permittee assumes full responsibility for all damages caused by facilities installed or uses undertaken under a permit. The permittee must make every effort to install facilities in a manner to preclude the possibility of damage.

H. The permittee is responsible for the continued maintenance of facilities placed within a right-of-way.

I. VDOT and the Commonwealth shall be absolved from all responsibilities, damages, and liabilities associated with granting the permit and the permittee's activities in the right-of-way, including activities performed by the permittee's contractors or agents. All facilities shall be placed and maintained in a manner to preclude the possibility of damage to ~~VDOT-owned~~ VDOT-owned facilities or other facilities placed within the highway right-of-way by permit. A permittee shall indemnify and hold harmless the Commonwealth, the Commonwealth Transportation Board, the Commissioner of Highways, VDOT, and the consultants, representatives, agents, and employees of those agencies from and against any and all claims, causes of action, losses, costs, attorney fees, expenses, and damages that directly or indirectly result from or arise out of the permittee's activities or violations in the right-of-way; from any of the permittee's contractors, subcontractors, consultants, representatives, agents, or employees; or from anyone for whom acts or violations the permittee is or may be liable. A permittee shall be civilly liable to the Commonwealth for all actual damage caused by a violation of the terms of a permit or this chapter. Injunctive remedies available to VDOT include providing private property access to VDOT to rectify concerns to public safety in the right-of-way caused by violations of the permit or this chapter.

H. J. A copy of the ~~land use~~ permit and approved site plans or sketches shall be maintained at every job site and such items made readily available for inspection when requested by VDOT or any authorized personnel. Strict adherence to the permit is required at all times. Any activity other than that described in the permit shall render the permit null and void. Any changes to the permit shall be coordinated and approved by the district administrator's designee prior to construction.

I. K. For permit work within the limits of a ~~VDOT construction~~ transportation project, the permittee applicant must obtain the ~~contractor's~~ consent of the project's general contractor in writing before the permit will be issued. The permittee shall coordinate with VDOT and the project's general contractor and schedule all ~~permitted~~ work within the limits of a ~~VDOT construction~~ transportation project to avoid conflicts with ~~contracted~~ work of the transportation project.

J. L. All activity associated with the permit shall be in accordance with all federal, state, and local requirements and

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all applicable VDOT requirements, standards, and specifications and as otherwise required by the terms of the permit.

M. Disturbances within the right-of-way shall be kept to a minimum during permitted activities. Permit applications for proposed disturbances within the right-of-way that include disturbance on property directly adjacent to the right-of-way, in which the combined area of disturbance constitutes a land-disturbing activity as defined in § 10.1-560 § 62.1-44.15:24 of the Code of Virginia and the Virginia Erosion and Stormwater Management Program (VSMP) Permit Regulations (see 24VAC30-151-760 Part II (9VAC25-875-40 et seq.) of 9VAC25-875), must be accompanied by documented approval of erosion and sediment control plans and stormwater management plans for the activity, if as applicable, from the corresponding jurisdictional local or state government plan approving authority.

~~K. N.~~ Restoration shall be made in accordance with VDOT Road and Bridge Specifications; VDOT Road and Bridge Standards; Virginia Erosion and Sediment Control Handbook, 3rd Edition, a technical guide to the Erosion and Sediment Control Regulations; standards and specifications as set forth in the terms of the permit and the Virginia Stormwater Management Handbook, 1st edition, Volumes 1 and 2, a technical guide to the Virginia Stormwater Management Program (VSMP) Permit Regulations (see 24VAC30-151-760) Part II of 9VAC25-875.

Additionally, the permittee shall:

1. Ensure compliance with the Virginia Erosion and Sediment Control Regulations and the Virginia Stormwater Management Program (VSMP) Permit Regulations Program (see 24VAC30-151-760 Part III (9VAC25-875-210 et seq.) of 9VAC25-875).
2. Ensure copies of approved erosion and sediment control plans, stormwater management plans, if applicable, and all related non-VDOT issued permits are available for review and posted at every job site at all times.
3. Take all necessary precautions to ensure against siltation of adjacent properties, streams, ~~etc.~~ or other bodies of water in accordance with VDOT's policies and standards as specified in the terms of the permit and the Virginia Erosion and Sediment Control Handbook, 3rd edition, and the Virginia Stormwater Management Manual (see 24VAC30-151-760) any applicable laws or regulations enforced by the State Water Control Board.
4. Keep dusty conditions to a minimum by using VDOT-approved methods.
5. Cut pavement only as approved by the district administrator's designee. Pavement cuts, restoration, and compaction efforts, to include all materials, shall be accomplished in accordance with VDOT Road and Bridge

Specifications (see 24VAC30-151-760) specifications as set forth in the terms of the permit.

6. Ensure that an individual certified by VDOT in erosion and sediment control is present whenever any land-disturbing activity ~~governed by~~ under the permit is performed. All land disturbance activities performed under a ~~VDOT land use~~ permit shall be in accordance with all local, state, and federal regulations requirements. The installation of underground facilities by a boring method shall only be deemed as a land-disturbing activity at the entrance and exit of the bore hole and not the entire length of the installation.

7. Stabilize all disturbed areas immediately upon the end of each day's work and reseed in accordance with VDOT Road and Bridge Specifications (see 24VAC30-151-760) specifications as set forth in the terms of the permit. Temporary erosion and sediment control measures shall be installed in areas not ready for permanent stabilization.

8. Ensure that no debris, mud, water, or other material is allowed on the highways. Permission, documented in writing or electronic communication, must be obtained from VDOT prior to placing excavated materials on the pavement. When so permitted, the pavement shall be cleaned only by approved VDOT methods.

~~L. O.~~ Accurate "as built" plans and profiles of work completed under permit shall be furnished to VDOT upon request, unless waived by the district administrator's designee. For utility permits, the owner shall maintain "as built" plans, profiles, and records for the life of the facility that describe the utility usage, size, configuration, material, location, height or depth, and special features, such as encasement.

~~M. P.~~ All work shall be performed in accordance with the Underground Utility Damage Prevention Act (Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia) and the Rules for Enforcement of the Underground Utility Damage Prevention Act (~~see 24VAC30-151-760~~ 20VAC5-309). For work within 1,000 feet of traffic signals or adjacent to other VDOT utilities, the permittee shall contact the ~~district administrator's designee prior to excavation~~ VDOT Customer Service Center. The permittee shall notify VDOT on the business day preceding 48 hours before excavation.

~~N. Q.~~ Permission, documented in writing or electronic communication, must be obtained from the district administrator's designee prior to blocking or detouring traffic. Additionally, the permittee shall:

- ~~1. Employ safety measures including, but not limited to, certified flaggers, adequate lights and signs.~~
- ~~2. Conduct all permitted activities in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) and related special provisions (see 24VAC30-151-760) and the typical traffic control figures~~

from the Virginia Work Area Protection Manual (see 24VAC30-151-760).

~~3.~~ 1. Plan construction and maintenance operations with regard to safety and minimum traffic interference.

~~4.~~ 2. Coordinate notification with all county or municipal officials.

~~5.~~ 3. Ensure that permitted work does not interfere with traffic during periods of peak flow on heavily traveled highways.

~~6.~~ 4. Plan work so that closure of intersecting streets, road approaches, and other access points is held to a minimum and as noted and approved in the permit documents.

~~7.~~ 5. Maintain safe access to all entrances and normal shoulder slope of the roadway across the entire width of the entrance.

~~O.~~ All construction activities shall conform to Occupational Safety & Health Administration (OSHA) requirements.

~~P.~~ R. The permittee shall be responsible for any settlement in the backfill or pavement for a period of two years after the completion date of work activities under the permit, and for the continuing maintenance of the facilities placed within the highway right-of-way. A one year restoration warranty period may be considered, provided the permittee adheres to the following criteria: 1. The permittee retains the services of a professional engineer (or certified technician under the direction of the professional engineer) to observe the placement of all fill embankments, pavement, and storm sewer and utility trench backfill. 2. The professional engineer (or certified technician under the direction of the professional engineer) performs any required inspection and testing in accordance with all applicable sections of VDOT's Road and Bridge Specifications (see 24VAC30-151-760). 3. The professional engineer submits all testing reports for review and approval, and provides written certification that all restoration procedures have been completed in accordance with all applicable sections of VDOT's Road and Bridge Specifications (see 24VAC30-151-760) prior to completion of the work authorized by the permit or for any settlement caused by the installed facility.

~~Q.~~ S. The permittee shall immediately notify the nearest VDOT official who approved the land use permit district administrator's designee of involvement in any personal or vehicular accident at the work site.

~~R.~~ T. Stormwater management facilities or wetland mitigation sites shall not be located within VDOT rights-of-way unless the Commonwealth Transportation Board has agreed to participate in the use of a regional facility authorized by the local government. Stormwater management facilities or wetlands mitigation sites shall be designed and constructed to minimize impact within VDOT right-of-way. VDOT's share of participation in a regional facility will be the use of the right-

of-way where the stormwater management facility or wetland mitigation site is located.

~~S.~~ U. The permittee shall notify, by telephone, ~~voice mail~~ voicemail message, or email; the VDOT office where the ~~land use~~ permit was obtained prior to commencement of the permitted activity or any nonemergency excavation within the right-of-way.

~~T.~~ V. Upon completion of the work under permit, the permittee shall provide notification, documented in writing or electronic communication, to the district administrator's designee requesting final inspection. This request shall include the permit number, ~~county name, route number,~~ and name of the party ~~or parties~~ to whom the permit was issued. The district administrator's designee shall promptly schedule an inspection of the work covered under the permit and advise the permittee of any necessary corrections. The permittee may not rely upon any act, statement, or failure to act on the part of VDOT with respect to inspection. The failure of VDOT to fully or properly inspect any work shall not excuse in any way the permittee from any of the permittee's duties or obligations under the permit, law, or regulation.

24VAC30-151-50. Violations of rules and regulations Objects in the right-of-way.

~~A.~~ Objects placed on, above, or under the right-of-way in violation of the general rules and regulations shall be removed within 10 calendar days of receipt of notice from VDOT. Objects not removed within 10 calendar days shall be moved at the owner's expense. Objects requiring immediate removal for public safety, use, or maintenance of any highway shall be moved immediately at the owner's expense. The provisions of § 33.2-1224 of the Code of Virginia shall govern the removal of advertisements from within the right-of-way. The provisions of § 33.2-1227 of the Code of Virginia shall govern the removal of other signs from within the right-of-way.

~~B.~~ The permittee will be civilly liable to the Commonwealth for expenses and damages incurred by VDOT as a result of violation of any of the rules and regulations of this chapter. Violators shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided for in § 33.2-210 of the Code of Virginia.

~~C.~~ Failure to implement proper traffic control and construction standards mandated by the permit shall be cause for the district administrator's designee to remove the permittee from the right-of-way or revoke the permit, or both.

~~D.~~ See 24VAC30-151-30 for violations related to specific district wide permit types.

24VAC30-151-80. Permit time limits and cancellations.

A. The permittee shall provide an estimate of the number of days needed to accomplish the work or use under permit. The district administrator's designee shall determine the actual time limit of all work or uses being accomplished under permit;

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~~which shall not normally be less than six months in duration.~~ Weather conditions and seasonal operations, such as seeding, ~~and paving, etc.,~~ will be considered when determining a realistic time limit for work to be completed.

~~B. It shall be the responsibility of the permittee to ensure that the permitted activity will be completed within the time limit established with the original permit issuance.~~ If it is anticipated that the work ~~or use~~ covered by ~~the a single use~~ permit cannot be completed during the original permit term, the permittee shall provide a request, documented in writing or electronic communication, for an extension of time to the district administrator's designee prior to the expiration of the permit. The request shall provide reasonable justification for granting the extension. A one-time extension of time may be granted if the request is received at least 10 calendar business days prior to the ~~original~~ permit expiration date. Should the original time limit or the one-time permit extension expire, the permittee shall provide a written request for reinstatement to the district administrator's designee. The request shall provide reasonable justification for granting the reinstatement. At the time of reinstatement, the district administrator's designee shall notify the permittee that no additional extensions of the permit will be allowed and that the work must be completed within the time limits indicated in the reinstatement notice. Consideration will not be given to an extension request for a permit that has been reinstated after an extension.

C. The permittee shall make every effort to ensure that work begins within 30 calendar days of permit issuance. If the permitted work cannot commence within 30 calendar days of permit issuance, the permittee shall notify the district administrator's designee of the delay. Upon request by the permittee, the permit may be ~~cancelled~~ cancelled if no work has started within 30 days of issuance or such additional time as authorized by the district administrator's designee.

24VAC30-151-90. Hours and days work authorized; holiday schedule.

A. Normal hours for work under the authority of a permit, ~~single use or districtwide,~~ are from 9 a.m. to 3:30 p.m. Monday through Friday for all highways classified as arterial or collector. All highways classified as local roads will have unrestricted work hours and days.

~~Permitted nonemergency~~ B. Nonemergency work will not be allowed on arterial and collector highway classifications from noon on the preceding weekday through ~~the following all~~ state observed holidays: ~~New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.~~

C. If the observed holiday falls on a Monday, the ~~permit nonemergency work~~ will not be ~~valid~~ allowed from noon on the preceding Friday through noon on Tuesday. The district administrator's designee may establish alternate time restrictions in normal working hours and days for ~~single use~~

permits other than districtwide permits. The central office permit manager may establish alternate time restrictions in normal working hours and days for districtwide permits.

24VAC30-151-110. Denial; revocation; refusal to renew; violations.

A. A ~~land use~~ permit may be revoked or suspended upon written finding that the permittee or the permittee's contractors or agents have violated the terms or are in violation of any term of the a permit, which shall incorporate by reference these rules, as well as or of any federal, state and, or local laws and ordinances regulating activities within the right-of-way. ~~Repeated violations may result in a permanent denial of the right to work within~~ requirement applicable to work or use under a permit, or that the work or use affects the safety, use, or maintenance of the right-of-way. Any permit may be revoked and the facility for which it was issued required to be removed or relocated at the direction of the Commissioner of Highways if the facility or use obstructs or otherwise interferes with a transportation project or the safety, improvement, maintenance, or operation of a right-of-way. Unless otherwise specifically provided for by a law shifting the costs to another person or entity, all costs to remove or relocate the facilities or uses or otherwise resulting from the permit revocation shall be incurred and paid by the permittee. A permit may also be revoked for misrepresentation of information on the application, fraud in obtaining a permit, alteration of a permit, unauthorized use of a permit, or violation of a water quality permit. Upon revocation, the permit shall be surrendered without consideration for refund of fees. ~~Upon restoration of A permit privileges a new land use permit that has been suspended shall be obtained prior to performing any noted as such for the suspension period and no work or use shall be allowed under a suspended permit.~~ Any misrepresentations, fraudulent actions, or repeated violations may result in a permanent denial of the right to work within or use the right-of-way.

B. ~~Land use permits~~ In addition to all other available remedies, a districtwide permit may be revoked for a minimum of 30 calendar days if the permittee violates the terms of the permit or any other law or regulation related to the permit or the permittee's activities in the right-of-way. A permittee will be provided written notice of the violation prior to revocation. During the revocation period, the permittee must satisfy all requirements for and obtain single use permits from the district administrator's designee to undertake any activities within the right-of-way.

C. Permits may be denied to any applicant or ~~company, or both, joint applicant~~ for a period not to exceed six months when the applicant or ~~company, or both,~~ has been notified in writing by the joint applicant or its contractors or agents have violated or are in violation of any term of a permit or of any federal, state, or local requirement applicable to work or use under a permit. Permits may also be denied to ensure the safety, use, or

~~maintenance of the right-of-way. The Commissioner of Highways, the central office permit manager, district administrator, or district administrator's designee that shall provide the applicant and joint applicant with a written explanation of the violations have occurred under the jurisdiction of a districtwide or previously issued single use upon which a permit. Any denial is based and the actions required to cure the denial. A violation of a water quality permit held by a person, firm, or corporation violating a water quality permit shall permanently be denied a land use permit be a basis for denial of any future permit application by that person, firm, or corporation.~~

~~Furthermore, these violators D. Violations of the terms of a permit or this chapter may also be subject to criminal prosecution as provided for by § 33.2-210 of the Code of Virginia.~~

~~24VAC30-151-120. Provisions governing entrances. (Repealed.)~~

~~VDOT's authority to regulate highway entrances is provided in §§ 33.2-240, 33.2-241, and 33.2-245 of the Code of Virginia and its authority to make regulations concerning the use of highways generally is provided in § 33.2-210 of the Code of Virginia.~~

~~Regulations regarding entrances are set forth in VDOT's regulations promulgated pursuant to § 33.2-245 of the Code of Virginia (see 24VAC30-151-760).~~

~~24VAC30-151-220. Commercial use agreements. (Repealed.)~~

~~A. Where wider rights of way are acquired by VDOT for the ultimate development of a highway at such time as adequate funds are available for the construction of the highway, including such preliminary features as tree planting, the correction of existing drainage conditions, etc., the Commissioner of Highways does not consider it advisable to lease, rent, or otherwise grant permission for the use of any of the land so acquired except in extreme or emergency cases, and then only for a limited period.~~

~~When the land adjoining the highway is used for commercial purposes and where the existing road is located on the opposite side of the right of way, thereby placing the business from 65 feet (in the case of 110 feet right of way) to 100 feet or more (in the case of 160 feet right of way) away from the main traveled road, the owner of the business may continue to locate his driveways and pumps, in the case of a filling station, within the state right of way, provided that the driveways and pumps are at least as far from the edge of the existing pavement as existing driveways and pumps in evidence on the road are from the nearest edge of the pavement to their similar structures. No additional driveways or pumps may be constructed within the right of way. In such cases, agreements for "commercial uses" may be entered into for use of portions of the right of way for~~

~~temporary or limited periods under the following policies and conditions:~~

~~1. Until such time as the Commissioner of Highways deems it necessary to use right of way acquired for future construction on a project for road purposes, agreements may be made with adjoining property owners for the temporary use of sections thereof. The use of this land shall be limited to provisions as set forth in the agreement, which shall cover commercial pursuits consistent with similar operations common to the highway. These operations and special conditions may include gasoline pumps, but not gasoline tanks.~~

~~2. The area of right of way designated for use of the landowner must not be used for the storing of vehicles, except while the vehicles are being serviced at the gasoline pumps. The area must be kept in a clean and orderly condition at all times.~~

~~B. Agreements may be revoked for cause or as outlined in subdivision A 1 of this section, either in whole or for any portion of the prescribed area that may be required for highway purposes, which may include one or more of the following:~~

- ~~1. The storage of road materials when other nearby suitable areas are not available;~~
- ~~2. The planting of trees and shrubs for permanent roadside effects;~~
- ~~3. The correction or improvement of drainage;~~
- ~~4. Development of wayside, parking or turnout areas; or~~
- ~~5. For other purposes as may be deemed necessary by the Commissioner of Highways.~~

~~C. Applications for agreements for commercial uses shall be made to the district administrator's designee. Agreements must be accompanied by a sketch showing the location of the roadway, shoulders, ditches and conditions existing within the right of way, together with description and plat of the area to be covered by it. The text of the application should describe the specific use for the site.~~

~~D. Agreements shall be issued only to owners of property adjoining the area to be used. Agreements may be made for terms not to exceed one year, subject to the cancellation terms in subsection C of this section. VDOT shall not be responsible in any way for the policing of areas subject to commercial agreements. No structures are to be erected on areas subject to commercial agreements without written approval of the Commissioner of Highways.~~

~~24VAC30-151-230. Agriculture use agreements. (Repealed.)~~

~~A. In cases where wider rights of way are acquired by VDOT for the ultimate development of a highway at such time as adequate funds are available for the construction of the same,~~

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~~including such preliminary features as tree planting, the correction of existing drainage conditions, etc., the Commissioner of Highways does not consider it advisable to lease, rent, or otherwise grant permission for the use of any of the land so acquired except in extreme or emergency cases, and then only for a limited period.~~

~~When this land is being used for agricultural purposes, which would necessitate the owner preparing other areas for the same use, agreements for agricultural uses may be entered into for use of portions of the right of way for temporary or limited periods.~~

~~B. Agreements for agricultural uses may be made with adjoining property owners, until such time as the Commissioner of Highways deems it necessary to use right-of-way acquired for future construction on a project for road purposes. Agricultural use is not permitted on limited access highways. The use of this land will be limited to provisions as set forth in the agreement, which, in general, will cover agricultural pursuits the same as those carried out on adjoining lands and thereby made an integral part of the agreement. Operations and special conditions covering such operations may include one or more of the following:~~

- ~~1. Grazing of cattle and other livestock is permitted provided the area is securely enclosed by appropriate fence to eliminate any possibility of animals getting outside of the enclosure.~~
- ~~2. Forage crops such as hay, cereals, etc. are permitted provided that their growth will not interfere with the safe and orderly movement of traffic on the highway, and that, after crops are harvested, the land is cleared, graded and seeded with cover crop in such a manner as to prevent erosion and present a neat and pleasing appearance.~~
- ~~3. Vegetable crops are permitted provided that its growth will not interfere with the safe and orderly movement of traffic on the highway, and that all plants will be removed promptly after crops are harvested and the land cleared, graded and seeded with cover crop in such a manner as to prevent erosion and present a neat and pleasing appearance.~~
- ~~4. Fruit trees are permitted to maintain existing fruit trees, provided that they are sprayed to control insects and diseases; fertilized and the area is kept generally clear of weeds, etc., but no guarantee of longevity may be expected.~~
- ~~5. Small fruits are permitted, but no guarantee of longevity may be expected.~~
- ~~6. Other uses as may be specifically approved.~~

~~C. Agricultural use agreements will be subject to revocation for cause or as outlined in subsection B of this section, either in whole or for any portion of the prescribed area that may be required for highway purposes, which may include one or more of the following:~~

- ~~1. Storage of road materials when other nearby suitable areas are not available;~~
- ~~2. The planting of trees and shrubs for permanent roadside effects;~~
- ~~3. The correction or improvement of drainage;~~
- ~~4. The development of wayside, parking or turnout areas; or~~
- ~~5. For other purposes as may be deemed necessary by the Commissioner of Highways.~~

~~D. Applications for agreements for agricultural uses shall be made to the district administrator's designee. Agreements must be accompanied by a sketch showing the location of the roadway, shoulders, ditches and conditions existing within the right of way, together with a description and plat of the area to be covered by it. The text of the application should describe in detail the specific use for which the area is to be utilized.~~

~~Agreements shall be issued only to owners of property adjoining the area to be used. Agreements may be made for terms not to exceed one year, subject to the cancellation terms in subsection C of this section. VDOT shall not be held responsible in any way for the policing of areas subject to agricultural use agreements. No structures are to be erected on areas subject to agricultural use agreements without written approval of the Commissioner of Highways.~~

24VAC30-151-240. Dams.

~~A. VDOT may permit dams for farm ponds within the right-of-way. The local Soil and Water Conservation District soil and water conservation district, as defined in § 10.1-500 of the Code of Virginia, will coordinate the approval of all requests to establish farm ponds, including existing or proposed roadway occupation of the dam, with the district administrator's designee. For the purpose of this section, a roadway will be considered to accommodate a farm pond dam if:~~

- ~~1. Any part of the fill for the roadway and the fill for the dam overlap;~~
- ~~2. The area between the two embankments is filled in so that the downstream face of the dam is obscured; or~~
- ~~3. A closed drainage facility from a dam extends under a roadway fill.~~

~~B. Permittee responsibility. The permittee acknowledges that VDOT's liability is limited to the maintenance of the roadway and that VDOT has no responsibility or liability due to the presence of the dam, the maintenance of which shall remain the responsibility of the permittee.~~

~~C. All other roadway occupation of dams shall be in accordance with the Secondary Street Acceptance Requirements (see 24VAC30-151-760 24VAC30-92).~~

24VAC30-151-260. Railroad crossing permit requests from railroad companies.

~~A. Operations by the railroad company shall conform to applicable statutes of the Code of Virginia in regard to construction and maintenance of the crossing surface, signing and other warning devices, blocking of crossing, etc. VDOT may permit railway crossings.~~

B. In the event of future widening of the highway, the permittee shall lengthen the crossing surface, relocate signs and signals, ~~etc.,~~ and make other adjustments as may be necessary, at no expense to the Commonwealth.

C. ~~Suitable construction bond~~ surety shall be required when the construction work is to be performed by a contractor for the railroad.

24VAC30-151-270. Railroad crossing permit requests by other companies.

Where a person, firm, or chartered company engaged in mining, manufacturing, or lumber getting, as defined in § 33.2-252 of the Code of Virginia, applies directly for a permit to construct a tramway or railroad track across the right-of-way, a permit may be issued under the following conditions:

~~1. Operations by the permittee shall conform to applicable statutes of the Code of Virginia in regard to construction and maintenance of the crossing surface, signing and other warning devices, blocking of crossing, etc.~~

~~2. 1.~~ In the event of future widening of the highway, the permittee shall lengthen the crossing surface, relocate signs and signals, ~~etc.,~~ and make other adjustments as may be necessary, at no expense to the Commonwealth.

~~3. 2.~~ The permittee shall furnish a ~~performance and indemnifying bond~~ suitable surety of such amounts as VDOT deems necessary and agree to continue the same in force so long as the crossing is in place.

~~4. 3.~~ The permittee shall notify VDOT prior to the permittee transferring ownership of a crossing so that proper arrangement can be made for the transfer of permitted responsibilities.

24VAC30-151-280. Springs and wells. (Repealed.)

~~In the acquiring of right of way, it is often necessary for VDOT to acquire lands where springs, wells and their facilities are located. It is the policy of VDOT to acquire these springs, wells and their facilities along with the land on which they are located. When so acquired, the landowner having previous use of these springs, wells and their facilities may be granted a permit to use these springs, wells and their facilities until the Commissioner of Highways shall, by written notice, advise that the permit is terminated. The issuing of the permit shall in no way obligate VDOT to maintain the springs, wells or facilities.~~

24VAC30-151-290. Public telephones. (Repealed.)

~~Public telephone booths may be allowed at rest areas and other locations as provided in 23 CFR 752.5 and allowed at other locations when a definite need is documented. Telephone booths may be allowed when a definite need exists to serve the traveling public, such as:~~

~~1. At wayside areas, if well removed from access to off right-of-way public telephone stations.~~

~~2. At other isolated areas sufficiently removed from existing off right-of-way public telephone stations as to impair the safety and convenience of traffic, provided that:~~

~~a. No private land is available or suitable for location of booth;~~

~~b. The location meets all safety requirements as to sight distance, access roads and parking; and~~

~~c. All costs incidental to providing turnout and parking area are borne by the telephone company.~~

24VAC30-151-300. General provisions governing utilities.

Utility installations on all highway rights-of-way shall comply with the following provisions:

~~1. Overhead or underground utilities may be installed across any right of way by a utility under a permit. Requests for accommodations of utility facilities within the right-of-way shall be submitted to and reviewed by the district administrator's designee. These regulations govern all rights of way and apply to public and private utilities. These regulations also govern the location, design, methods and financial responsibility for installing, adjusting, accommodating and maintaining utilities.~~

2. Utility lines shall be located to minimize the need for later adjustments, to accommodate future highway improvements and transportation projects, and to allow servicing of the lines with minimum interference to highway traffic. VDOT retains the right to reject installations that do not address these factors. Utility lines residing within the highway right-of-way facilities shall conform to the type of highway and specific conditions for the highway section involved. Utility installations facilities within the highway right-of-way and utility attachments to highway structures shall be of durable materials, designed for long service life, and be relatively free from the need for routine servicing and maintenance. All temporary attachments to highway structures must be approved in advance by VDOT.

~~3. The permittee assumes full responsibility for any and all damages caused by improperly installed facilities within the right of way under permit (single use or districtwide); therefore, the permittee must make every effort to install its facilities properly so as to preclude the possibility of damage.~~

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~~4. The permittee is responsible for the continuing maintenance of its facilities placed within the right-of-way under permit.~~

~~5. 3.~~ Any conflicts with existing utility or other facilities shall be resolved between the permittee and the ~~existing utility~~ owner of the other utility or facility.

~~6. Utilities 4.~~ No utility shall ~~not~~ be attached to a ~~bridge or other~~ structure unless the ~~utility owner applicant or permittee~~ can demonstrate that the installation and maintenance ~~methods of the utility~~ will not interfere with VDOT's ability to maintain the ~~bridge or other~~ structure, will not impact the durability and operational characteristics of the ~~bridge or other~~ structure, and, except for installation, will not require access to the facility from a limited access highway. The attachment method must be approved by VDOT (see 24VAC30-151-430).

~~7. 5.~~ The encasement of underground utility crossings shall be in accordance with 24VAC30-151-370.

24VAC30-151-310. Utility installations within limited access highways.

Utility installations on all limited access highways shall comply with the following additional provisions:

1. Requests for all utility installations within limited access right-of-way shall be reviewed and, if appropriate, be approved by the ~~Commissioner of Highways~~ Chief Engineer prior to permit issuance.

2. New utilities will not be permitted to be installed parallel to the roadway longitudinally within the controlled or limited access right-of-way lines of any highway, except that ~~in special cases where other alternative locations are not in the public interest~~ or under resource sharing agreements, such installations may be permitted under strictly controlled conditions and ~~then~~ only with approval ~~from~~ of the Commissioner of Highways. ~~However, in each such case the utility owner must show~~ The applicant must satisfy the following conditions, at a minimum:

a. That the installation will not adversely affect the safety, design, construction, operation, maintenance, or stability of the highway.

b. That the accommodation will not interfere with or impair the present use or future expansion of the highway.

c. That any alternative location would be contrary to the public interest. This determination would include an evaluation of the direct and indirect environmental and economic effects that would result from the disapproval of the use of such right-of-way for the accommodation of such utility.

d. ~~In no case will parallel installations within limited access right-of-way be permitted that involve~~ No tree removal or severe tree trimming is required for the installation.

3. Overhead and underground utilities may only be installed within limited access right-of-way ~~by a utility company under an agreement that provides for a shared resource arrangement agreement~~ subject to VDOT's need for the shared resource.

4. All authorized longitudinal utility installations within limited access right-of-way, ~~excluding communication tower facilities,~~ shall be located in a utility area established along the outer edge of the right-of-way. Special exceptions must be approved by the ~~Commissioner of Highways~~ Chief Engineer.

5. Authorized overhead utility installations within limited access right-of-way shall maintain a minimum of 21 feet of vertical clearance.

6. Authorized underground utility installations within limited access right-of-way shall have a minimum of 36 inches of cover.

7. Service connections to adjacent properties shall not be permitted from authorized utility installations within limited access right-of-way.

8. Overhead crossings shall be located on a line that is perpendicular to the highway alignment.

9. A utility access control line will be established between the proposed utility installation, the through lanes, and ramps.

24VAC30-151-330. Overhead utility installations within nonlimited access highways.

A. Overhead utility crossings shall be located on a line that is perpendicular to the highway alignment. Longitudinal installations shall be located on a uniform alignment as near as possible to the right-of-way line to provide a safe environment and space for future highway improvements and other utility installations.

B. Overhead longitudinal utilities may be installed on all nonlimited access highways by a public or private utility company under a permit, except in scenic areas, as follows:

1. Overhead utilities may be installed within nonlimited access right-of-way ~~by a utility company~~ under permit, including a districtwide permit as allowed under ~~24VAC30-151-30-C-1~~ 24VAC30-151-30 B 1.

2. All overhead installations, excluding ~~communication tower~~ wireless support structure facilities, shall be located adjacent to the right-of-way line and in accordance with clear zone requirements. Repairs and replacement of similar installations may be performed in existing locations under the existing permit ~~providing, provided~~ the work shall not impede the traveled way. Additional poles, taller poles, or cross-arms require a separate permit.

C. Longitudinal installations of overhead lines within the right-of-way shall be limited to single-pole construction. Joint-use, single-pole construction will be encouraged at locations where more than one utility or type of facility is involved, especially where the right-of-way widths approach the minimum needed for safe operations or maintenance requirements, or where separate installations may require extensive removal or alteration of trees.

D. Consideration will not be given to poles placed on a highway right-of-way of less than 40 feet in width. ~~Longitudinal pole line installation shall be located on the outer 15 feet of the right-of-way greater than 40 feet in width.~~

E. Highway crossings should be grouped at one location whenever practical, and as near as possible to right angles to the center of the road.

F. New overhead installations crossing existing or proposed nonlimited access highways shall provide a minimum of 18 feet of vertical clearance or at a minimum height as established by the ~~National Electric Safety Code (see 24VAC30-151-760)~~ standards and specifications set forth in the terms of the permit, whichever is greater. The overlashing of telecommunications lines onto existing lines or strand is not considered a new overhead installation.

G. Existing overhead utilities that are found to be in horizontal or vertical conflict, ~~or both~~, with proposed traffic control devices or signage, ~~or both~~, shall be adjusted, ~~at no cost to VDOT~~ the permittee's expense, to provide an unobstructed view for the traveling public and the appropriate clearance from traffic control devices or signage.

H. The vertical clearance for all new overhead installations parallel to an existing or proposed highway and within nonlimited access rights-of-way shall be in compliance with standards as specified in the ~~National Electric Safety Code (see 24VAC30-151-760)~~ terms of the permit. The overlashing of telecommunications lines onto existing lines or strand is not considered a new overhead installation.

I. When crossing a median, all poles or other overhead facilities shall be placed to maintain an adequate clear zone in each direction.

J. Longitudinal pole line installation will not be allowed in the median.

24VAC30-151-340. Underground utility installations within nonlimited access highways.

Underground longitudinal utilities may be installed under permit on all nonlimited access highways, except in scenic areas, as follows:

1. Underground utilities may be installed within nonlimited access right-of-way by a public or private utility company under a permit, including a districtwide permit as allowed under 24VAC30-151-30 ~~€ B~~ 1.

2. All underground utilities within ~~VDOT~~ rights-of-way will require a minimum of 36 inches of cover, except that underground cables that provide cable or telecommunications services shall be at a minimum of 30 inches of cover. The district administrator's designee has the discretion to grant an exception to depth of cover requirements if the permittee encounters obstacles preventing the installation of main line facilities at the minimum depth of cover, as long as installation at the minimum depth of cover is resumed when the installation passes by the obstacle.

3. An underground utility shall not be attached to a ~~bridge or other~~ structure unless the ~~utility owner~~ applicant or permittee can demonstrate that the installation and maintenance methods will not interfere with VDOT's ability to maintain the ~~bridge or other~~ structure, will not impact the durability and operational characteristics of the ~~bridge or other~~ structure, and will not require access from the roadway or interfere with roadway traffic. The attachment method must be approved by VDOT (see 24VAC30-151-430).

4. The proposed method for placing an underground facility requires approval from the district administrator's designee. All underground facilities shall be designed to support the load of the highway and any superimposed loads. All pipelines and encasements shall be installed in accordance with 24VAC30-151-360 and 24VAC30-151-370.

5. ~~Underground utilities~~ No underground utility shall ~~not~~ be installed within the median area except, ~~in special cases or~~ under shared resource agreements; ~~or~~ with approval from the Commissioner of Highways.

6. Underground utilities may be installed under sidewalk areas with approval from the district administrator's designee.

24VAC30-151-350. ~~Nonlimited access highways: communication towers~~ Wireless support structures and site installations.

~~Communication tower structures and other types of surface mounted or underground utility facilities may be installed by a utility company under an agreement providing for a shared resource arrangement or the payment of appropriate compensation, or both. The Commissioner of Highways may grant an exception for a nonshared resource arrangement, under strictly controlled conditions. The utility owner must show that any alternative location would be contrary to the public interest. This determination would include an evaluation of the direct and indirect environmental and economic effects that would result from the disapproval of the use of such right-of-way for the accommodation of such utility. Communication In accordance with Chapter 15.1 (§ 56-484.26 et seq.) of Title 56 of the Code of Virginia, wireless support structures, communication pedestals, nodes, and amplifiers may be installed in the right-of-way pursuant to permit unless the~~

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district administrator's designee reasonably concludes that safety concerns at a specific location require placement of wireless support structures, communication pedestals, nodes, or amplifiers elsewhere in the right-of-way. The placement of communication pedestals, nodes, or amplifiers between the edge of pavement or back of curb and the sidewalk shall not be permitted. All requirements and regulations applicable to permits that do not conflict with Chapter 15.1 of Title 56 of the Code of Virginia must be followed to obtain and maintain a permit for wireless support structures, communication pedestals, nodes, and amplifiers.

24VAC30-151-360. Pipelines.

The permittee shall maintain minimum cover for any underground facility as established by the VDOT standards and specifications set forth in the terms of the permit or as otherwise required by applicable law, whichever is greater. Where pavement exists, the permittee shall bore, push, or jack and maintain a minimum cover of 36 inches.

The vertical and horizontal clearance between a pipeline and a structure or other highway facility shall be sufficient to permit maintenance of the pipeline and facility. Longitudinal pipeline installations shall be kept out of the ditch line where practical. When locating the utilities outside of the pavement area is not practical, such as in high density developments ~~incorporating the principles of new urbanism~~ as described in § 15.2-2223.1 of the Code of Virginia, utilities may be placed under the pavement. When utilities are proposed to be placed within the ditch line or under highway pavement, the permit applicant shall provide the justification for such installations to the district administrator's designee as part of the permit application.

All water, gas, sewer, electrical, communications, and any pressurized pipelines carrying hazardous material shall conform to all applicable industry codes, including materials, design, and construction requirements. No asbestos cement conduit or pipe shall be used for any installation. The permittee may be required to certify in writing that this restriction has been observed, if requested by VDOT.

Pipelines four inches in diameter or larger and no longer in use shall be cleaned of debris and plugged at open ends with Class A3 concrete. The district administrator's designee may also require such pipes to be filled prior to being plugged.

24VAC30-151-380. Appurtenances.

A. When vents are required, they shall be located at the high end of casings less than 150 feet in length and generally at both ends of casings longer than 150 feet. Vent standpipes shall be on or beyond the right-of-way line to prevent interference with maintenance or pedestrian traffic.

B. A permit may be granted to install drains for any underground facility. The permittee shall ensure the achievement of positive drainage.

C. National uniform color codes for identification of utilities shall be used to place permanent markers.

D. ~~Manholes~~ Utility access points (e.g., manholes and handholes) shall be placed in the shoulders, utility strips, or other suitable locations. When no other alternative is available, consideration will be given to placement of manholes in the pavement surface. Every effort should be made to minimize ~~manhole utility access point~~ installations at street intersections and in the normal wheel path of the travel lanes. ~~Manholes~~ Utility access points shall be designed and located in such a manner that shall cause the least interference to other utilities and future highway expansion.

E. ~~Manhole~~ Utility access point frames and covers, valve boxes, and other castings located within the paved roadway, shoulder, or sidewalk shall be constructed flush with the finished grade. ~~Manhole~~ Utility access point frames and covers, valve boxes, and other castings located within sidewalk areas shall be constructed in accordance with the Americans with Disabilities Act (42 USC § 12101 et seq.).

F. The permittee shall install shutoff valves, preferably automatic, in lines at or near the ends of structures and near unusual hazards, unless other sectionalizing devices within a reasonable distance can isolate hazardous segments.

24VAC30-151-390. In-place and prior-rights permits.

A. Prior to VDOT's acceptance of a secondary street into the VDOT system, the ~~public~~ utility owner shall quitclaim ~~its~~ all prior rights within the right-of-way to the Commonwealth in exchange for a an in-place permit for in-place utilities on new subdivision streets. ~~The utility may allowing the permittee's utility facilities to~~ continue to occupy such street in ~~its~~ the existing condition and location. The ~~public utility owner~~ permittee shall be responsible for the utility facilities and resulting damages to persons and property that might result from the presence of the utility. Should VDOT later require the ~~public utility owner~~ permittee to alter, change, adjust, or relocate ~~any~~ the utility facilities subject to the in-place permit, the ~~non-betterment~~ nonbetterment cost will be the responsibility of the Commonwealth and all other costs will be the responsibility of the permittee.

B. In cases where existing utilities are not in conflict with transportation improvements authorized under the auspices of a land use permit, but would be located beneath transportation facility features, a ~~prior-rights~~ prior-rights permit may be issued that allows the existing utilities to remain in place.

C. Utilities without prior rights but located within the right-of-way of new subdivision streets shall obtain an ~~in-place~~ in-place permit to occupy that portion of the right-of-way. Should VDOT later require the permittee to alter, change, adjust, or relocate any utility, the cost will be the responsibility of the permittee.

24VAC30-151-400. Utility adjustments in conjunction with a VDOT project.

~~A permit is required for Where facilities are directed to be relocated in conjunction with a VDOT transportation project. For specific information, see the Right of Way Utilities Relocation Policies and Procedures Manual (see 24VAC30-151-760), the permittee must obtain a new permit for any facilities relocated within or to right-of-way. Unless otherwise specifically provided by the Code of Virginia or this chapter, all relocation is to be done in a timely manner so as to not interfere with the project and at the permittee's sole expense, and relocation must be done in accordance with the VDOT policies and procedures included in the terms of the permit. Utilities may be placed within the highway right-of-way by permit, including adjustments and work performed in connection with utilities agreements. Utilities placed within the right-of-way shall conform to the requirements of this chapter.~~

24VAC30-151-420. Lighting facilities.

~~A. A permit is required for any lighting that will be on or overhanging the right-of-way. Lighting on or overhanging the right of way is classified as roadway lighting or nonroadway lighting. Roadway lighting is lighting intended to improve visibility for users of the roadway. Nonroadway lighting and that is lighting intended designed to improve visibility or to enhance safety for pedestrians or illuminate the pavement or adjacent properties pedestrian or bicycle facilities. Lighting facilities are not considered a utility.~~

~~B. Design of roadway lighting facilities systems or fixtures shall be based upon the specifications developed by the Illuminating Engineering Society in the manual, American National Standard Practice for Roadway Lighting (see 24VAC30-151-760). The Roadway Lighting Design Guide by the American Association of State Highway and Transportation Officials (AASHTO) (see 24VAC30-151-760) may be used as a supplemental guide in accordance with § 2.2-1111 of the Code of Virginia and the terms of the permit.~~

~~C. The permittee applicant shall submit to the district administrator's designee two copies of scale drawings in electronic format depicting lighting pole locations, mounting heights, pole and base type (breakaway or nonbreakaway), photometric calculations, type and wattage, lumens of luminaries, and arm lengths. Roadway lighting Lighting shall be installed in accordance with VDOT's Road and Bridge Specifications (see 24VAC30-151-760) the terms of the permit.~~

~~D. Nonroadway lighting may be allowed within the right-of-way, provided such lighting does not adversely affect the visibility of roadway users, and lighting supports and support locations do not compromise VDOT clear zone and safety standards VDOT reserves the right to require modification or removal of luminaries if they are determined to be providing excessive light trespass into adjacent properties.~~

24VAC30-151-430. Attachments to bridge structures.

A. Utilities may be located on highway grade separation structures across interstate or other controlled access highways, over crossroads, and across major streams or valleys only in extreme cases; and with approval of the district structure and bridge engineer in accordance with VDOT specifications.

B. ~~Communication and electric power lines~~ Lines carrying electricity shall be insulated, grounded, and installed in a conduit or pipe to manholes or poles at either end of the structure, as applicable.

C. If a utility is placed on a structure, the installation shall be located beneath the structure's floor between the girders or beams; and at an elevation above the bottom flange of the beam. The utility shall not be attached to the outside of the exterior beam, parapets, or sidewalks.

D. Water and sewer attachments shall follow general controls previously listed for providing encasement and allied mechanical protection. In addition, shut-off valves shall be provided outside the limits of the structure.

E. Utilities attached to structures crossing waterways may require a water quality permit.

F. Natural gas and petroleum mains may not be attached to highway structures.

24VAC30-151-440. Miscellaneous permits. (Repealed.)

~~In accordance with the General Rules and Regulations of the Commonwealth Transportation Board (see 24VAC30-151-760), no use of any real property under the ownership, control or jurisdiction of VDOT shall be allowed until written permission is first obtained from VDOT. A permit, which shall constitute such permission, is required for the uses of right of way described in this part.~~

24VAC30-151-450. Banners and decorations.

A county, town, ~~or~~ religious or civic organization, or other individual or entity shall obtain a single use permit to hang banners or erect holiday decorations ~~(, such as lights),~~ across state highways. Banners and decorations shall not remain in place more than 30 calendar days and shall be a minimum of 21 feet above the center of the road. They shall not detract from, interfere with, or conflict with any existing highway signs or signals.

24VAC30-151-460. Building movements.

A single use permit shall be obtained for ~~all building movements~~ on right-of-way for all buildings over 16 feet wide. All requests for building movements require the approval of the district administrator's designee in the district where the move initiates after the ~~move~~ applicant provides the required investigative report and route certification documents. All building movements shall be covered by a performance bond

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that is commensurate with the type of move requested. ~~Application for a building movement shall be made through the district administrator's designee in the district where the move initiates.~~

24VAC30-151-490. Construction or reconstruction of roads, entrances, bridges, ~~or other~~ drainage structures, or other transportation facilities.

A permit is required for construction or reconstruction of roads, private or commercial entrances, bridges ~~or other~~, drainage structures, or other transportation facilities. Such activities may be permitted based upon evaluation, an engineering analysis provided by the applicant, and approval of the district administrator's designee. Approval by the relevant county board of supervisors may also be necessary.

24VAC30-151-500. Crest stage gauges, water level recorders.

Permits may be issued to any governmental ~~state~~ agency to install hydrological study equipment within ~~highway~~ rights-of-way. Maintenance of these facilities is the responsibility of the permittee.

24VAC30-151-520. Filming ~~for movies.~~

A single use permit shall be obtained for any filming activities within the right-of-way that may affect the safety, use, or operation of the highway. Additionally, a single use permit shall be obtained for any movie, television, or other commercial filming within the ~~highway~~ rights-of-way and shall be coordinated through the Film Office of the Virginia Tourism Corporation.

24VAC30-151-550. Roadside memorials.

~~A. Section 33.2-216 of the Code of Virginia directs the Commonwealth Transportation Board to establish regulations regarding the authorized location and removal of roadside memorials. Roadside memorials shall not be placed on state right-of-way without first obtaining a permit. At the site of fatal crashes or other fatal incidents, grieving families or friends often wish for a roadside memorial to be placed within the highway right of way. The following rules shall be followed in processing applications to place roadside memorials within the highway right of way. A roadside memorial permit requires compliance with the following requirements as well as all other applicable permit regulations:~~

1. Applications for a memorial shall be submitted to the district administrator's designee. The district administrator's designee will review, ~~and if necessary, amend or reject any application~~ applications for compliance with applicable requirements and has the authority to issue or deny a permit or request amendment of the application.
2. If construction or major maintenance work is scheduled in the vicinity of the proposed memorial's location, the district administrator's designee may identify an acceptable location

for the memorial beyond the limits of work, or the applicant may agree to postpone installation.

~~3. If the~~ The applicant requests an appeal to may request review of the district administrator's designee's decision regarding amendment or ~~rejection~~ denial of an application; ~~this appeal will be forwarded to by~~ the district administrator.

4. Criteria used to review applications shall include, ~~but not be limited to,~~ the following factors:

- a. Potential hazard of the proposed memorial to travelers, the bereaved, VDOT personnel, or others;
- b. The effect on the proposed site's land use or aesthetics; and installation or maintenance concerns; and
- c. Circumstances surrounding the accident or incident.

~~5. Approval of a memorial does not give the applicant, family, or friends of the victim permission to park, stand, or loiter at the memorial site. It is illegal to park along the interstate system, and because of safety reasons and concerns for the public and friends and family of the deceased, parking, stopping, and standing of persons along any highway is not encouraged.~~

~~B. The following rules will be followed concerning requirements and limitations apply to applications for roadside memorial participation permits:~~

1. Any human fatality that occurs on the state highway system is eligible for a memorial. Deaths of animals or pets are not eligible.
2. The applicant must provide a copy of the accident report or other form of information to the district administrator's designee so that the victim's name, date of fatality, and location of the accident can be verified. This information may be obtained by contacting the local or state police. The district administrator's designee may also require that the applicant supply a copy of the death certificate.
3. Only family members of the victim may apply for a memorial.
4. The applicant will confirm on the application that approval has been obtained from the immediate family of the victim and ~~the~~ any adjacent property ~~owner or~~ owners to locate the memorial in the designated location. If any member of the immediate family objects in writing to the memorial, the application will be denied or the memorial will be removed if it has already been installed.
5. If the adjacent property owner objects in writing, the memorial will be relocated and the applicant will be notified.
6. Memorials will remain in place for two years from the date of installation, at which time the permit shall expire. The Commissioner of Highways may, upon receipt of a written request, grant an extension of the permit. An extension may be granted for a period of one year, and requests for further extensions must be submitted for each

subsequent year. The applicant or the family of the victim may request that the memorial be removed less than two years after installation.

7. The applicant shall be responsible for the fabrication of the memorial. VDOT will install, maintain, and remove the memorial, but the cost of these activities shall be paid by the applicant to VDOT.

C. Roadside memorial physical requirements.

1. The memorial shall be designed in accordance with Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 and § 46.2-831 of the Code of Virginia and the Rules and Regulations Controlling Outdoor Advertising and Directional and Other Signs and Notices (24VAC30-120) and Vegetation Control Regulations on State Rights-Of-Way (see ~~24VAC30-151-760~~ 24VAC30-200). The use of symbols, photographs, drawings, logos, advertising, or similar forms of medium is prohibited on or near the memorial.

2. Only one memorial per fatality shall be allowed.

3. VDOT reserves the right to install a group memorial in lieu of individual memorials to commemorate a major incident where multiple deaths have occurred.

4. The memorial shall be located as close as possible to the crash site, but location of the memorial may vary depending on the site and safety conditions.

- a. Memorials shall be installed outside of the mowing limits and ditch line and as close to the right-of-way line as reasonably possible.
- b. Memorials shall be located in such a manner as to avoid distractions to motorists ~~or pose~~ and safety hazards to the traveling public.
- c. Memorials shall not be installed in the median of any highway, on a bridge, or within 500 feet of any bridge approach.
- d. Memorials shall not be permitted in a construction or maintenance work zone. VDOT reserves the right to temporarily remove or relocate a memorial at any time for highway maintenance or construction operations or activities.
- e. If ~~VDOT's~~ the right-of-way is insufficient for a memorial to be installed at the crash site, the district administrator's designee ~~will~~ may locate a more suitable location ~~as close as possible~~ to the incident vicinity to locate the memorial where sufficient right-of-way exists.

D. ~~Removal~~. After the two-year term or any extension of the term approved in accordance with this section, the memorial shall be removed by VDOT personnel. The memorial nameplate will be returned to the applicant or the designated family member, if specified on the application. If the applicant does not wish to retain the nameplate, the nameplate will be reused, recycled, or disposed at VDOT's discretion.

24VAC30-151-560. Mailboxes and newspaper boxes.

Mailboxes and newspaper boxes may be placed within VDOT right-of-way without a permit; however, placement ~~should~~ shall not interfere with safety, maintenance ~~and~~ or use of the roadway. Lightweight newspaper boxes may be mounted on the side of the support structure. Breakaway structures will be acceptable as a mailbox post. Breakaway structures are defined as a single four-inch by four-inch square or four-inch diameter wooden post or a standard strength, metal pipe post with no greater than a two-inch diameter.

24VAC30-151-570. Miscellaneous signs and devices.

A. In cooperation with local, state, and federal organizations, certain public service signs may be placed within the right-of-way without a permit. The district administrator's designee shall determine the appropriate location for the following signs.

- 1. Forestry. Authorized representatives of the ~~National U.S. Forest Service~~ and ~~State Forest Service~~ Virginia Department of Forestry may place forest fire warning signs within the right-of-way without a permit. ~~Fire~~ A limited number of fire warning signs will be placed near forest reservations or wooded areas; ~~however, only a limited number of the small~~ ~~cardboard or metal signs should be allowed within the right-~~ ~~of-way within the forest reservations.~~ The Department of Forestry may utilize other types of signs to more forcibly impress the public with the need for protecting forest areas. Sign placement shall be accomplished under an agreement, subject to the following conditions:
 - a. No highway sign should carry more than one message; and no other signs shall appear on posts bearing highway signs;
 - b. No signs shall be erected that would restrict sight distance; or are close to highway warning and directional signs;
 - c. Signs regarding forest fires should be placed by fire wardens; and
 - d. Signs shall be maintained by the Department of Forestry.

In all cases, the forest warden is to coordinate the desired location of these signs with the district administrator's designee prior to placement.

2. Garden week. These signs are erected and removed by employees of VDOT. The appropriate committee of the Garden Club of Virginia will designate the gardens and places that are to be officially opened during Garden Week and notify the district administrator's designee accordingly, who will ensure the appropriate placement of these signs.

3. Roadside ~~acknowledgement~~ acknowledgment. These signs acknowledge the name and logo of businesses, organizations, communities, or individuals participating in the landscape of a segment of the right-of-way in accordance

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with the Comprehensive Roadside Management Program (see ~~24VAC30-151-760~~ 24VAC30-121). As the landscaping is accomplished under a land use permit, the signs are considered to be covered by that permit.

~~4. Rescue squad. These signs are fabricated, erected, and maintained by VDOT. The signs may be used on the approaches to the rescue squad headquarters as shown in the Virginia Supplement to the Manual on Uniform Traffic Control Devices (see 24VAC30-151-760).~~

~~5. Fire station. These signs are fabricated, erected, and maintained by VDOT. The signs may be used on the approaches to fire station headquarters as shown in the Virginia Supplement to the Manual on Uniform Traffic Control Devices (see 24VAC30-151-760).~~

~~6. 4. Bird sanctuary. Upon receipt of a request from a town or city, VDOT will fabricate and erect these signs, at the expense of the municipality, at the corporate limits of the town or city under the municipality name sign as shown in the Virginia Supplement to the Manual on Uniform Traffic Control Devices (see 24VAC30-151-760). In order for a municipality to be designated as a bird sanctuary, the municipality must pass a resolution to that effect. The municipality shall be responsible for maintenance of bird sanctuary signs.~~

~~7. 5. Historical highway markers. Information regarding the historical highway marker program may be obtained from the Virginia Department of Historic Resources. Applications for historical highway markers shall be obtained from and submitted to the Virginia Department of Historic Resources.~~

B. The district administrator's designee may authorize the placement of the following miscellaneous signs within right-of-way under the auspices of a single use permit:

1. Locality identification or "welcome to" signs. Requests for locality identification or "welcome to" signs to be located within nonlimited access right-of-way. These signs shall not be placed on limited access right-of-way. Locality identification or "welcome to" signs that interfere with roadway safety, traffic capacity, or maintenance shall not be permitted. A permit application requesting placement of a locality identification or "welcome to" sign within the right-of-way must be accompanied by a formal resolution from the local governing body or a letter from the chief executive officer of the local government. Such signs shall meet all VDOT breakaway requirements (~~see Road Design Manual, 24VAC30-151-760~~) specified in the terms of the permit or be erected outside of the clear zone. No advertising shall be placed on these signs. The local governing body shall be responsible for maintenance of the locality's identification or "welcome to" signs in perpetuity.

2. VDOT may authorize any individual, group, local government, and other entities to place storm drain pollution prevention markers or stenciling on VDOT storm drain inlet

structures accessible by pedestrian facilities. A local government, through coordination with the district administrator's designee, may apply for a countywide permit to enable this type of activity ~~of~~ on behalf of clubs, citizens groups, and other entities. The permit application must include, at a minimum, a graphic sample ~~or samples~~ of the proposed markers, structure locations and a comprehensive list of streets; if a wide distribution of marker placement is anticipated. Stencil measurements shall not exceed ~~15" L x 20" W~~ 15 inches in length by 20 inches in width.

3. VDOT may authorize a local government to install "no loitering" signs within the right-of-way. The district administrator's designee shall determine the appropriate location for these signs.

C. The Commissioner of Highways or the commissioner's designee may authorize the placement of various automated traffic enforcement devices for the Commonwealth or its political subdivisions as may be allowed by law.

24VAC30-151-580. Ornamental posts, walls, residential and commercial development identification signs, or other nontransportation-related elements.

Ornamental posts, walls, residential and commercial development identification signs, or other nontransportation elements, such as ~~pedestrian-oriented~~ pedestrian-oriented trash cans, or any combination of these, that do not interfere with roadway safety, traffic capacity, or maintenance may be authorized under ~~the auspices of~~ a single use permit. These nontransportation related elements shall not be placed on limited access rights-of-way. ~~Requests for the placement of ornamental posts, walls, residential and commercial development identification signs, or other nontransportation related elements, or any combination of these, may be permitted as authorized by the district administrator's designee.~~ Permit applications requesting placement of ornamental posts, walls, residential and commercial development identification signs, other nontransportation related elements, or any combination of these, within the right-of-way must be accompanied by documentation indicating the issuance of all required approvals and permissions from the local jurisdictional authority. Such ornamental posts, walls, residential and commercial development identification signs, and other nontransportation related elements shall meet all VDOT breakaway requirements (~~see Road Design Manual, 24VAC30-151-760~~) specified in the terms of the permit or be erected outside of the clear zone. No advertising shall be placed on these nontransportation related elements permitted within the right-of-way. The permittee shall be responsible for maintenance of these nontransportation related elements in perpetuity.

24VAC30-151-590. Outdoor advertising adjacent to the right-of-way. (Repealed.)

~~Permits for outdoor advertising located off the right of way are obtained through the roadside management section at any VDOT district office or the Maintenance Division in accordance with Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 of the Code of Virginia. Selective pruning permits for outdoor advertising shall be issued in accordance with § 33.2-1221 of the Code of Virginia.~~

24VAC30-151-600. Pedestrian and bicycle facilities.

~~The installation of sidewalks, steps, curb ramps, shared use paths, pedestrian underpasses, and overpasses within right-of-way may be authorized under the auspices of a single use permit. VDOT, at its discretion, shall maintain those facilities that meet the requirements of the Commonwealth Transportation Board's Policy for Integrating Bicycle and Pedestrian Accommodations (see 24VAC30-151-760) are open for general public use, built in the right-of-way to VDOT standards, and accepted by VDOT for maintenance. The maintenance of sidewalks, steps, curb ramps, shared use paths, pedestrian underpasses, and overpasses not meeting these requirements shall be subject to permit requirements, and the permittee shall be responsible for maintenance of these facilities.~~

The installation of pedestrian or bicycle facilities within limited access right-of-way shall be considered a change in limited access control and requires approval of the Commonwealth Transportation Board prior to permit issuance (see Change of Limited Access Control, 24VAC30-151-760 24VAC30-401). The installation of pedestrian or bicycle facilities parallel to and within the right-of-way of nonlimited access highways crossing limited access highways by way of an existing bridge or underpass shall not be considered a change in limited access but shall require the approval of the Commissioner of Highways Chief Engineer prior to issuance of a permit for such activity.

24VAC30-151-620. Roadside management, landscaping.

Placement and maintenance of plant materials by individuals or organizations may be allowed under a single use permit in strict accordance with VDOT Road and Bridge Specifications (see 24VAC30-151-760), VDOT Road and Bridge Standards (see 24VAC30-151-760) specifications as set forth in the terms of the permit, § 33.2-265 of the Code of Virginia, and the Comprehensive Roadside Management Program (see 24VAC30-151-760 24VAC30-121). The applicant permittee shall maintain any altered roadside area in perpetuity for the duration of the permit. All related permit applications shall be accompanied by a corresponding maintenance agreement. If permit conditions, including the maintenance agreement, are violated at any time, VDOT reserves the right to reclaim and may revoke the permit and restore such permitted the roadside area to its original condition or otherwise establish turf in

accordance with VDOT Road and Bridge Specifications (see 24VAC30-151-760) standards and specifications. The costs of reclamation and restoration activities shall be paid by the permittee. Tree pruning or removal may be allowed on right-of-way for maintenance purposes for utility facilities or as part of a roadside beautification project sponsored by the local government or to daylight an outdoor advertising structure or business in accordance with Vegetation Control Regulations on State Rights-of-Way (see 24VAC30-151-760 24VAC30-200). See VDOT's Tree and Brush Trimming Policy (see 24VAC30-151-760) for further information.

All pesticide applicators shall meet the applicable requirements established by the Department of Agricultural and Consumer Services in Rules and Regulations for Enforcement of the Governing Pesticide Product Registration, Handling, Storage, and Disposal under Authority of the Virginia Pesticide Law Control Act (2VAC5-670) (see 24VAC30-151-760). Pesticide activities shall comply with all applicable federal and state regulations.

Permits for volunteer mowing or litter pickup shall be issued only under conditions that ensure reasonable safety for all participants and other highway users and that will not cause unreasonable interference with normal traffic flow. All volunteer mowing operations on highway segments with speed limits greater than 45 mph shall be performed only by licensed, bonded, and insured persons. A copy of the permit and all safety requirements included in the permit must be maintained at the mowing site. No lane closures will be allowed for mowing, and the mower operator and mowing equipment shall not encroach into the travel way while in operation. Participants of a one-time litter pickup shall be adults or shall be supervised by an adult. The ratio shall be one adult per no more than six children. No participants 10 years of age or younger will be allowed to participate. All participants must view an Adopt-a-Highway safety video prior to participating.

24VAC30-151-630. Transit and school bus shelters.

School bus shelters, public transit shelters, or share ride stations may be authorized under the auspices of a single use permit. Approval of such structures the shelter or station design must be obtained in accordance with from the Virginia Department of General Services requirements set forth in the Construction and Professional Services Manual (see 24VAC30-151-760) prior to the issuance of a permit. Shelters shall be located in accordance with all clear zone requirements described in Appendix A-2 of VDOT's Road Design Manual (see 24VAC30-151-760) specified in the terms of the permit.

24VAC30-151-670. Prohibited use of right-of-way.

~~No~~ The following uses of the right-of-way are prohibited and no permit shall be issued for the following uses of the right-of-way:

1. Signs. Signs not otherwise allowed in this chapter or by law, including temporary signs, banners, inflatable and air-

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blown signs, and decorations, shall not be placed, located, or displayed on the highway right-of-way or overhang the right-of-way.

2. Vendors on right-of-way. ~~Permits will not be issued to vendors for~~ Vendor activities and the operation of business within ~~state~~ the rights-of-way, except that a permit may be issued for the following activities:

a. As may be allowed for waysides and rest areas under the Rules and Regulations for the Administration of Waysides and Rest Areas (~~see 24VAC30-50-10 and 24VAC30-151-760~~ 24VAC30-50) and the Rules and Regulations for the Administration of Parking Lots and Environs (24VAC30-100-10 24VAC30-100).

b. ~~Vendors~~ Commercial vendors of newspapers and written materials ~~enjoy constitutional protection under the First Amendment to~~ may place or operate ~~their~~ services within rights-of-way, provided ~~they~~ services neither impede traffic nor impact the safety of the traveling public. Newspaper vending machine size, placement, and location shall be as directed by the district administrator's designee ~~for that area~~.

c. ~~To localities to~~ Localities may administer mobile food vending on nonlimited access highways, where the vending operations are regulated by local ordinances, operated consistent with such ordinances, and in accordance with the Commonwealth Transportation Board's regulations and policies.

d. Bike share or other micromobility system operators for placement of stations.

e. Electric vehicle charging stations as allowed by law.

3. Dwellings. No private dwellings, garages, or similar structures shall be placed or constructed within the right-of-way, except support buildings as may be allowed under ~~24VAC30-151-220 and 24VAC30-151-230~~ 24VAC30-151-350 in connection with wireless communication facilities.

24VAC30-151-690. Permitted discharge to VDOT right-of-way.

A. Permits to discharge to ~~VDOT~~ the right-of-way may be issued upon written approval of the local public health department or the Virginia Department of Environmental Quality, or both, and this written approval shall be made part of the permit application. Discharges made to ~~VDOT~~ the right-of-way pursuant to a Virginia Pollutant Discharge Elimination System (VPDES) Permit shall demonstrate prior to discharge that no feasible alternative discharge point exists. If discharge is made to ~~VDOT~~ the right-of-way, the permittee shall notify the district administrator's designee of any instances where the regulated discharge limits are exceeded and take immediate corrective action to ensure future excursions are prevented, and any damage to ~~VDOT property the right-of-way~~ is remediated. Any discharges made pursuant to the ~~General~~ Virginia Pollutant Discharge Elimination System (VPDES) General

Permit for Discharges from ~~Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests~~ (see 24VAC30-151-760) Groundwater Remediation of Contaminated Sites, Dewatering Activities of Contaminated Sites, and Hydrostatic Tests (9VAC25-120) shall be prohibited from containing any water exhibiting visible oil sheen.

B. Any damages to ~~VDOT property~~ the right-of-way, regardless of authorization implied by any non-VDOT issued permit, shall be remedied or repaired immediately by the permittee.

24VAC30-151-700. General provisions for fees, surety, and other compensation.

Except as otherwise provided in this part, the applicant shall pay an application fee to cover the cost of permit processing, pay additive fees to offset the cost of plan review and inspection, and provide surety to guarantee the satisfactory performance of the work or use under permit. For locally administered VDOT projects, the permit fees are waived and in lieu of a surety, the locality may (i) provide a letter that commits to using the surety in place or (ii) have the contractor execute a dual obligation rider that adds VDOT as an ~~additional~~ obligee to the surety bond provided to the locality, with either of these options guaranteeing the work performed within ~~state-maintained~~ state-maintained right-of-way under the terms of the land use permit for that purpose. A copy of the original surety and letter or rider shall be attached to the land use permit. Except as provided in 24VAC30-151-740, utilities within the right-of-way shall pay an annual accommodation fee as described in 24VAC30-151-730. In the event of extenuating circumstances, the Commissioner of Highways may waive all or a portion of any of the fees or surety.

24VAC30-151-710. Fees.

A. Single use permit. A nonrefundable application fee shall be charged to offset the cost of reviewing and processing the permit application and inspecting the project work, in accordance with the requirements in this subsection:

1. The application fee for a single permit is \$100. Public rights-of-way use fees may be charged in lieu of permit fees in certain situations in accordance with law.

2. Additive costs shall be applied as indicated in this subdivision. The district administrator's designee will determine the total permit fees using the following schedule:

Activity	Fee
Private Entrances	none
Commercial Entrance	\$150 for first entrance \$50 for each additional entrance
Street Connection	\$150 for first connection \$50 for each additional connection

Temporary Logging Entrance	\$10 for each entrance
Temporary Construction Entrance	\$10 for each entrance
Turn Lane	\$10 per 100 linear feet
Crossover	\$500 per crossover
Traffic Signal	\$1,000 per signal installation
Reconstruction of Roadway	\$10 per 100 linear feet
Curb and Gutter	\$10 per 100 linear feet
Sidewalk	\$10 per 100 linear feet
Tree Trimming (for outdoor advertising)	in accordance with § 33.2-1221 of the Code of Virginia
Tree Trimming (all other activities)	\$10 per acre or 100 feet of frontage
Landscaping	\$10 per acre or 100 feet of frontage
Storm Sewer	\$10 per 100 linear feet
Box Culvert or Bridge	\$5 per linear foot of attachment
Drop Inlet	\$10 per inlet
Paved Ditch	\$10 per 100 linear feet
Under Drain or Cross Drain	\$10 per crossing
Above-ground Structure (including poles, pedestals, fire hydrants, towers, etc.)	\$10 per structure
Pole Attachment	\$10 per structure
Span Guy	\$10 per crossing
Additive Guy and Anchor	\$10 per guy and anchor
Underground Utility - Parallel	\$10 per 100 linear feet
Overhead or Underground Crossing	\$10 per crossing
Excavation Charge (including Test Bores and Emergency Opening)	\$10 per opening
Two Month Commuter Lot Mobile Food Vending (available in Planning District 8 only) (weekdays and weekends)	\$150

Single Weekend Commuter Lot Mobile Food Vending (available in Planning District 8 only) (per weekend)	\$10
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3. ~~Time Permit term~~ extensions for active permits shall incur a monetary charge ~~equal to one half the application fee charged to the initial permit of \$50~~. Expired permits may be reinstated; however, fees for reinstatement of expired permits shall ~~equal the application fee~~ be \$100. Notwithstanding 24VAC30-151-80, commuter lot mobile food vending permits may not be extended or reinstated.

4. If a permit is ~~cancelled~~ canceled prior to the beginning of the permitted activity, the application fee and ~~one half of the~~ additive fee will be retained as compensation for costs incurred by VDOT during plan review.

5. The district administrator's designee, in accordance with 24VAC30-151-70, may establish an account to track plan review and inspection costs and may bill the permittee not more often than every 30 calendar days. If an account is established for these costs, the permittee shall be responsible for the nonrefundable application fee and the billed costs. When actual costs are billed, the district administrator's designee shall waive the additive fees in subdivision 2 of this subsection.

B. Districtwide permits. Districtwide permits, as defined in 24VAC30-151-30, are valid for a period of two years. The biennial fee for a districtwide permit for utilities and logging operations is \$750 per district. The biennial fee for a districtwide permit for surveying is \$200 per district. The central office permit manager may exercise discretion in combining requests for multijurisdictional districtwide permits and to authorize unlimited time extensions at the full cost of the permit fee for each two-year term.

~~C. Miscellaneous permit fees. To connect the facility to the transmission grid pipeline, the operator of a nonutility renewable energy facility that produces not more than two megawatts of electricity from a renewable energy source, not more than 5,000 mmBtus/hour of steam from a renewable energy source, or landfill gas from a solid waste management facility, shall remit to VDOT a one-time permit fee of \$1,500 per mile as full compensation for the use of the right-of-way in accordance with § 56-617 of the Code of Virginia.~~

~~D. C.~~ No-fee permits. The following permits shall be issued at no cost to the applicant:

1. In-place permits as defined in 24VAC30-151-30 and 24VAC30-151-390.
2. Prior-rights permits as defined in 24VAC30-151-30 and 24VAC30-151-390.
3. As-built permits as defined in 24VAC30-151-30.
4. ~~Springs and wells as defined in 24VAC30-151-280.~~

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~~5.~~ Crest stage gauges and water level recorders as defined in 24VAC30-151-500.

~~6.~~ 5. Filming for movies as defined in 24VAC30-151-520.

~~7.~~ 6. Roadside memorials as defined in 24VAC30-151-550.

~~8.~~ 7. No loitering signs as defined in 24VAC30-151-570.

8. Litter pickup and volunteer mowing as defined in 24VAC30-151-620.

24VAC30-151-720. Surety.

A. Performance surety. The permittee applicant shall provide surety to guarantee the satisfactory performance of the work or use for which a permit is requested. Surety shall be based on the estimated cost of work to be performed within the right-of-way or as otherwise stated in this chapter. Surety may be in the form of a check, cash, irrevocable letter of credit from a financial or banking institution, insurance performance bond, or any other VDOT-approved method. An applicant for a districtwide permit for utilities shall provide a continuous surety in the amount of \$10,000 per county. An applicant for a districtwide permit for logging entrances shall provide a continuous surety in the amount of \$10,000 per district. There is no surety requirement for districtwide permits for surveying. Under no circumstances shall VDOT or any agency of the Commonwealth be named the escrow agent, ~~nor shall~~. No funds deposited with VDOT as surety shall be subject to the payment of interest. The surety will be refunded or released upon completion of the work and inspection by VDOT subject to the provisions of § 2.2-1151.1 of the Code of Virginia in accordance with the law. VDOT shall be named as an obligee on the bond or a payee for a check, cash, or revocable letter of credit. If a permit is ~~cancelled~~ canceled prior to the beginning of work, the surety shall be refunded or released.

Should the permittee fail to complete the work to the satisfaction of the district administrator's designee, then all or whatever portion of the surety that is required to complete work covered by the permit or to restore the right-of-way to its original condition shall be retained by VDOT.

B. Continuous surety Structure bond. Permittees installing, operating, and maintaining facilities within the highway right-of-way shall secure and maintain a continuous bond. Governmental customers may use a resolution in lieu of a continuous bond. The continuous surety shall be in an amount sufficient to restore the right-of-way in the event of damage or failure. The surety shall remain in full force as long as the work facility covered by the permit remains within the right-of-way. A private or commercial entrance does not require a continuous surety. Any other installation may require a continuous surety as determined by the district administrator's designee. ~~An applicant for a districtwide permit for utilities shall provide a continuous surety in the amount of \$10,000 per county. An applicant for a districtwide permit for logging entrances shall provide a continuous surety in the amount of \$10,000 per~~

~~district. There is no surety requirement for districtwide permits for surveying.~~

24VAC30-151-730. Accommodation fees.

The Commissioner of Highways or a designee shall determine the annual compensation for the use of the right-of-way by a utility, except as provided in 24VAC30-151-740. The rates shall be established on the value of the right-of-way being used to accommodate the utility facility. The rates for wireless facility installations shall be established on the following basis:

~~1. Limited Access Crossings—\$50 per crossing.~~

~~2. Limited Access Longitudinal Installation—\$250 per mile annual use payment.~~

~~3. Wireless Communication Facility Sites (limited and nonlimited access):~~

~~a. \$24,000 annual use payment for a wireless support structure permitted prior to July 1, 2018, until the permit expires or is terminated~~ 1. Small cell attachments to VDOT-owned towers and poles and placement of associated equipment shall be in accordance with § 56-484.31 of the Code of Virginia;

~~b. \$14,000 annual use payment for non-small cell collocation on a wireless support structure. This payment does not include equipment mounted to an existing wooden utility pole~~ 2. Wireless facility attachments and emplacements at VDOT-owned towers shall be negotiated in the same manner as resource sharing as set out in 24VAC30-151-740; and

~~e. 3. A wireless support structure installed under a land use permit issued on or after July 1, 2018, shall have an annual use payment based upon the following, which shall be adjusted every five years set in accordance with § 56-484.32 of the Code of Virginia:~~

~~(1) \$1,000 for any wireless support structure at or below 50 feet in height;~~

~~(2) \$3,000 for any wireless support structure above 50 feet and at or below 120 feet in height;~~

~~(3) \$5,000 for any wireless support structure above 120 feet in height; and~~

~~(4) \$1.00 per square foot for any other equipment, shelter, or associated facilities constructed on the ground.~~

24VAC30-151-740. Exceptions and provisions to the payment of fees and compensation.

A. Pursuant to §§ 56-462 and 56-468.1 of the Code of Virginia, a certificated provider of telecommunication service shall collect and remit to VDOT a Public Right-of-Way Use Fee as full compensation for the use of the right-of-way by those utilities.

B. Pursuant to §§ 15.2-2108.1:1 and 56-468.1 of the Code of Virginia, a cable television operator subject to the public right-

of-way use fee shall not be charged an annual use payment for the use of ~~public~~ the right-of-way.

C. Pursuant to § 56-468.1 of the Code of Virginia, certified providers of telecommunications service shall not be charged ~~land use~~ permit application and additive fees or an annual payment under a resource sharing agreement for the use of ~~public~~ the right-of-way.

D. Municipal or authority owned sewer and water facilities and renewable energy generation transmission facilities shall not be charged an accommodation fee pursuant to 24VAC30-151-730 ~~of this chapter~~ for the use of public right-of-way.

E. At ~~VDOT's~~ the discretion of the Commissioner of Highways, under the provisions of resource sharing as ~~defined~~ described in 24VAC30-151-30, compensation for the use of the limited access right-of-way may be negotiated and agreed upon through ~~one~~ any of the following methods:

1. The mutually agreeable exchange of goods, facilities, or services only;
2. ~~Cash~~ Monetary compensation only; or
3. A combination of both.

~~VDOT~~ The Commissioner of Highways will ensure that the goods or services provided in any mutually agreeable exchange are equal to the monetary compensation amount established for the use and occupancy of the right-of-way.

F. VDOT may enter into wireless support structure agreements to permit the construction of wireless support structures or a wireless facility's occupancy of the right-of-way, consistent with applicable law.

~~24VAC30-151-760. Listing of documents (publications) incorporated by reference. (Repealed.)~~

~~Requests for information pertaining to the availability and cost of any of these publications should be directed to the address indicated below the specific document. Requests for documents available from VDOT may be obtained from the department's division and representative indicated; however, department documents may be available over the Internet at www.VirginiaDOT.org. Documents with a Virginia Administrative Code (VAC) number may be accessed from the Internet at: <http://leg1.state.va.us/000/srr.htm>.~~

- ~~1. Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC30-73)~~

~~Maintenance Division Administrator (VDOT)
1401 E. Broad St.
Richmond, VA 23219~~

- ~~2. Access Management Regulations: Principal Arterials (24VAC30-72)~~

~~Maintenance Division Administrator (VDOT)~~

~~1401 E. Broad St.~~

~~Richmond, VA 23219~~

- ~~3. Change of Limited Access Control (24VAC30-401)~~

~~State Right of Way Director (VDOT)~~

~~1401 E. Broad St.~~

~~Richmond, VA 23219~~

- ~~4. Comprehensive Roadside Management Program (24VAC30-121)~~

~~Maintenance Division Administrator (VDOT)~~

~~1401 E. Broad St.~~

~~Richmond, VA 23219~~

- ~~5. Construction and Professional Services Manual~~

~~Department of General Services~~

~~Division of Engineering and Buildings~~

~~Bureau of Capital Outlay Management (BCOM)~~

~~1100 Bank Street, 6th Floor~~

~~Richmond, VA 23219~~

- ~~6. Erosion and Sediment Control Regulations (4VAC50-30)~~

~~Department of Conservation and Recreation~~

~~Division of Soil and Water Conservation~~

~~203 Governor Street, Suite 206~~

~~Richmond, VA 23219~~

- ~~7. General Rules and Regulations of the Commonwealth Transportation Board (24VAC30-20)~~

~~Maintenance Division Administrator (VDOT)~~

~~1401 E. Broad St.~~

~~Richmond, VA 23219~~

- ~~8. General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests (9VAC25-120)~~

~~Regulatory Coordinator~~

~~State Water Control Board~~

~~P. O. Box 10009~~

~~Richmond, VA 23240~~

- ~~9. Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) (effective December 22, 2003, revised November 2004)~~

~~Federal Highway Administration~~

Regulations

Superintendent of Documents

U.S. Government Printing Office

P.O. Box 371954

Pittsburgh, PA 15250-7954

10. National Electric Safety Code (2007 edition)

Institute of Electrical and Electronics Engineers, Inc.

10662 Los Vaqueros Circle

P.O. Box 3014

Los Alamitos, CA 90720-1264

11. Policy for Integrating Bicycle and Pedestrian Accommodations (effective 2004)

Transportation and Mobility Planning Division (VDOT)

1401 E. Broad St.

Richmond, VA 23219

12. Right of Way Utilities Relocation Policies and Procedures Manual (effective November 2003)

State Right of Way Director (VDOT)

1401 E. Broad St.

Richmond, VA 23219

13. Road and Bridge Specifications 2007 (revised 2008)

Scheduling and Contract Division (VDOT)

State Contract Engineer

1401 E. Broad Street

Richmond, VA 23219

14. Road and Bridge Standards (effective 2009)

Location and Design Engineer (VDOT)

1401 E. Broad Street

Richmond, VA 23219

15. Road Design Manual (effective 2005, revised 2009)

Location and Design Engineer (VDOT)

1401 E. Broad Street

Richmond, VA 23219

16. Roadway Lighting, American National Standard Practice for Roadway Lighting (effective 2000, reaffirmed 2005)

The Standard Practice Subcommittee of the IESNA Roadway Lighting Committee

The Illuminating Engineering Society of North America

120 Wall Street

New York, NY 10005

17. Roadway Lighting Design Guide (effective 2005)

American Association of State Highway and Transportation Officials (AASHTO)

444 North Capitol St. N.W., Suite 225

Washington, D.C. 20001

18. Rules and Regulations Controlling Outdoor Advertising and Directional and Other Signs and Notices (24VAC30-120)

Maintenance Division Administrator (VDOT)

1401 E. Broad St.

Richmond, VA 23219

19. Rules and Regulations for the Administration of Waysides and Rest Areas (24VAC30-50)

Maintenance Division Administrator (VDOT)

1401 E. Broad St.

Richmond, VA 23219

20. Rules and Regulations for Enforcement of the Virginia Pesticide Law (2VAC20-20)

Virginia Department of Agricultural and Consumer Services

Office of Pesticide Services

102 Governor Street, 1st Floor

Richmond, VA 23219

21. Rules for Enforcement of the Underground Utility Damage Prevention Act (20VAC5-309)

State Corporation Commission

Department of Energy Regulation

P. O. Box 1197

Richmond, VA 23218

22. Secondary Street Acceptance Requirements (24VAC30-92)

Maintenance Division Administrator (VDOT)

1401 E. Broad St.

Richmond, VA 23219

23. Vegetation Control Regulations on State Rights of Way (24VAC30-200)

Maintenance Division Administrator (VDOT)

1401 E. Broad St.

Richmond, VA 23219

24. VDOT Tree and Brush Trimming Policy (effective 2004)

Maintenance Division Administrator (VDOT)

1401 E. Broad St.

Richmond, VA 23219

25. Virginia Erosion and Sediment Control Handbook, 3rd edition (effective 1992), a Technical Guide to The Virginia Erosion and Sediment Control Law and Regulations (4VAC50-30)

Department of Conservation and Recreation

Division of Soil and Water Conservation

203 Governor Street, Suite 206

Richmond, VA 23219

26. Virginia Stormwater Management Handbook, 1st edition, Volumes 1 and 2, (effective 1999), a Technical Guide to the Virginia Stormwater Management Program Permit Regulations (4VAC50-60)

Department of Conservation and Recreation

Division of Soil and Water Conservation

203 Governor Street, Suite 206

Richmond, VA 23219

27. Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60)

Department of Conservation and Recreation

Division of Soil and Water Conservation

203 Governor Street, Suite 206

Richmond, VA 23219

28. Virginia Supplement to the Manual on Uniform Traffic Control Devices (24VAC30-310, includes the Virginia Work Area Protection Manual)

Traffic Engineering Division (VDOT)

1401 E. Broad St.

Richmond, VA 23219

FORMS (24VAC30-151)

Land Use Permit LUP-HRIPE, Land Use Permit Application for Photo Enforcement of High Risk Intersection Segments (eff. 8/2024)

Land Use Permit LUP-SZSL, Land Use Permit Application for School Zone Speed Limit (eff. 8/2024)

Land Use Permit LUP-SZPE, Land Use Permit Application for School Zone Photo Enforcement (eff. 8/2024)

Land Use Permit LUP-STL, Land Use Permit Application for Small Transit Shelter (eff. 8/2024)

Land Use Permit LUP-LRSL, Land Use Permit Application for Locality Reduced Speed Limits as per § 46.2-1300 (eff. 8/2024)

Land Use Permit LUP-A, Land Use Permit Application (rev. 9/2014)

Land Use Permit LUP-AUA, Agricultural Use Agreement (rev. 8/2014)

Land Use Permit LUP-BMA, Land Use Permit Application—Building Movement (rev. 8/2014)

Land Use Permit LUP-BMI, Building Movement—Investigator's Report (rev. 8/2014)

Land Use Permit LUP-BMR, Building Movement—Route Certification (rev. 8/2014)

Land Use Permit LUP-BMQ, Building Movement—Prequalification Questionnaire (rev. 8/2014)

Land Use Permit LUP-BMV, Building Movement—VDOT Recommendation (rev. 8/2014)

Land Use Permit LUP-CCV, Chemical Control of Vegetation (rev. 7/2015)

Land Use Permit LUP-CS, Cash Surety Affidavit (rev. 8/2014)

Land Use Permit LUP-CSB, Corporate Surety Bond (rev. 8/2014)

Land Use Permit LUP-CUA, Commercial Use Agreement (rev. 8/2014)

Land Use Permit LUP-ESCCC, Erosion & Sediment Control Contractor Certification (rev. 8/2014)

Land Use Permit LUP-IPP, Land Use Permit Application—In Place Utility, New Street Acceptance (rev. 8/2014)

Land Use Permit LUP-LC, Bank Irrevocable Letter of Credit (rev. 8/2014)

Land Use Permit LUP-MFV, Local Program for the Temporary Occupation of Right of Way by Mobile Food Vendors, (eff. 9/2015)

Land Use Permit LUP-OC, Open Cut Pavement Restoration Requirements (rev. 8/2014)

Land Use Permit LUP-PA, Permit Agreement for Occupation of Right of Way (rev. 8/2014)

Land Use Permit LUP-PRU, Land Use Permit Application—Prior Rights Utility (rev. 8/2014)

Land Use Permit LUP-SB, Surety Bond (rev. 8/2014)

Land Use Permit LUP-SEA, Special Events Approvals (rev. 8/2014)

Regulations

[Land Use Permit LUP-SEI, Special Event Information \(rev. 8/2014\)](#)

[Land Use Permit LUP-SPG, Special Provisions—General \(rev. 8/2014\)](#)

[Land Use Permit LUP-WZTCC, Work Zone Traffic Control Certification \(rev. 8/2014\)](#)

[Land Use Permit Resolution \(rev. 8/2014\)](#)

[Land Use Permit LUP-A, Land Use Permit Application \(rev. 5/2023\)](#)

[Land Use Permit LUP-BM, Land Use Permit Application for Building Movements \(rev. 10/2024\)](#)

[Land Use Permit LUP-BR, Land Use Permit Application for Bicycle Race Events \(rev. 11/2024\)](#)

[Land Use Permit LUP-CFV, Land Use Permit Application for Mobile Food Vending in Commuter Lots \(rev. 10/2024\)](#)

[Land Use Permit LUP-CRI, Land Use Permit Application for Regional Cultural Resource Investigation \(rev. 10/2024\)](#)

[Land Use Permit LUP-CWOFC, Land Use Permit Application for Countywide Permit Overhead Fiber Co-Location \(rev. 10/2024\)](#)

[Land Use Permit LUP-DWSCF, Land Use Permit Application for Districtwide Wireless Small Cell Facilities \(rev. 10/2024\)](#)

[Land Use Permit LUP-DWSV, Land Use Permit Application for Districtwide Surveying Operations \(rev. 10/2024\)](#)

[Land Use Permit LUP-DWTLE, Land Use Permit Application for Districtwide Temporary Logging Entrances \(rev. 10/2024\)](#)

[Land Use Permit LUP-DWUSC, Land Use Permit Application for Districtwide Utility Service Connections \(rev. 10/2024\)](#)

[Land Use Permit LUP-EVTCS, Land Use Permit Application for Emergency Vehicle Traffic Control Signal \(rev. 10/2024\)](#)

[Land Use Permit LUP-GC, Land Use Permit Application for Golf Cart and Utility Vehicle Accommodation \(rev. 10/2024\)](#)

[Land Use Permit LUP-HRPE, Land Use Permit Application for Photo Enforcement of High-Risk Intersection Segments \(rev. 10/2024\)](#)

[Land Use Permit LUP-IPP, Land Use Permit Application In Place Utility \(New Street Acceptance\) \(rev. 8/2014\)](#)

[Land Use Permit LUP-IR, Land Use Permit Application for Private Irrigation System Installation \(rev. 10/2024\)](#)

[Land Use Permit LUP-LRSL, Land Use Permit Application for Locality Reduced Speed Limits \(rev. 10/2024\)](#)

[Land Use Permit LUP-LS, Land Use Permit Application for Landscape Installation and Maintenance \(rev. 10/2024\)](#)

[Land Use Permit LUP-LT, Land Use Permit Application for Lighting Installation \(rev. 10/2024\)](#)

[Land Use Permit LUP-MFV, Land Use Permit Application for Local Program for the Temporary Occupation of Right-of-Way by Mobile Food Vendors \(rev. 10/2024\)](#)

[Land Use Permit LUP-OAVC, Land Use Permit Application for Outdoor Advertising Vegetation Control \(rev. 10/2024\)](#)

[Land Use Permit LUP-OC, Land Use Permit Application Open Cut Pavement Restoration Requirements \(rev. 4/2017\)](#)

[Land Use Permit LUP-OTLP, Land Use Permit Application for One Time Litter Pickup \(rev. 12/2024\)](#)

[Land Use Permit LUP-PRC, Land Use Permit Application for Photo-Red Camera System Installation \(rev. 10/2024\)](#)

[Land Use Permit LUP-PRU, Land Use Permit Application Prior Rights Utility \(rev. 8/2014\)](#)

[Land Use Permit LUP-PSMD, Land Use Permit Application for Sign Installation for the Prohibition of Specific Mobility Devices \(rev. 10/2024\)](#)

[Land Use Permit LUP-PU, Land Use Permit Application for Private Utility Service Crossing \(rev. 10/2024\)](#)

[Land Use Permit LUP-RM, Land Use Permit Application for Roadside Memorial Installation \(rev. 10/2024\)](#)

[Land Use Permit LUP-RWZU, Land Use Permit Application for Regional Work Zone Traffic Control for Utility Work Located off Right-of-Way \(rev. 10/2024\)](#)

[Land Use Permit LUP-SDS, Land Use Permit Application for Storm Drain Stenciling \(rev. 10/2024\)](#)

[Land Use Permit LUP-SE, Land Use Permit Application for Special Events \(rev. 11/2024\)](#)

[Land Use Permit LUP-STS, Land Use Permit Application for Small Transit Shelter \(rev. 10/2024\)](#)

[Land Use Permit LUP-SUSCF, Land Use Permit Application for Single-Use Permit Wireless Small Cell Facilities Co-Location \(rev. 11/2024\)](#)

[Land Use Permit LUP-SUSO, Land Use Permit Application for Surveying Operation \(rev. 11/2024\)](#)

[Land Use Permit LUP-SUTLE, Land Use Permit Application for Single-Use Temporary Logging Entrances \(rev. 11/2024\)](#)

[Land Use Permit LUP-SUWFC, Land Use Permit Application for Installation of Wireless Facility Co-Location \(rev. 11/2024\)](#)

[Land Use Permit LUP-SUWSS, Land Use Permit Application for Single Use Wireless Support Structure \(rev. 11/2024\)](#)

[Land Use Permit LUP-SWCD, Land Use Permit Application for Soil and Water Conservation District Sign Installation \(rev. 10/2024\)](#)

[Land Use Permit LUP-SZPE, Land Use Permit Application for School Zone Photo Enforcement \(rev. 10/2024\)](#)

[Land Use Permit LUP-SZSL, Land Use Permit Application for School Zone Speed Limit \(rev. 10/2024\)](#)

[Land Use Permit LUP-UT, Land Use Permit Application for Utility Installations \(rev. 10/2024\)](#)

[Land Use Permit LUP-UTT, Land Use Permit Application for Biennial Utility Tree Trimming Operations \(rev. 10/2024\)](#)

[Land Use Permit LUP-VCSB, Land Use Permit Application for Vegetation Control Single Business \(rev. 10/2024\)](#)

[Land Use Permit LUP-VM, Land Use Permit Application for Volunteer Mowing Activities \(rev. 10/2024\)](#)

[Land Use Permit LUP-WSP, Land Use Permit Application for Wayfinding Sign Program \(rev. 10/2024\)](#)

[Land Use Permit LUP-WZSSC, Land Use Permit Application for Work Zone Speed Safety Cameras \(rev. 10/2024\)](#)

VA.R. Doc. No. R23-7620; Filed March 7, 2025, 11:31 a.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

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

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Document: [Guidance on Student Embalming Assistance Performed by Persons Enrolled in Online Funeral Service or Mortuary Education Programs.](#)

Public Comment Deadline: May 7, 2025.

Effective Date: May 8, 2025.

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

STATE BOARD OF HEALTH

Title of Document: [Advisory Guidelines for Fish with Perfluorooctane Sulfonate.](#)

Public Comment Deadline: May 7, 2025.

Effective Date: May 8, 2025.

Agency Contact: Dwight Flammia, State Public Health Toxicologist, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8127, or email dwight.flammia@vdh.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [Nursing Facility Manual, Chapter 11.](#)

Public Comment Deadline: May 7, 2025.

Effective Date: May 8, 2025.

Agency Contact: Syreeta Stewart, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3863, or email syreeta.stewart@dmas.virginia.gov.

COMMONWEALTH TRANSPORTATION BOARD

Title of Document: [Transportation Alternatives Program Guide.](#)

Public Comment Deadline: May 7, 2025.

Effective Date: May 8, 2025.

Agency Contact: Steven P. Jack, Regulatory Manager, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-3885, or email steven.jack@vdot.virginia.gov.

The following guidance documents have been submitted for deletion and the listed agency has opened up a 30-day public comment period. The listed agency 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.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Titles of Documents: [Fall Risk Assessments.](#)

[Guidance on Ceiling Height Requirements.](#)

[Guidance for Certificate of Use and Occupancy.](#)

[Guidance for Counseling in Medication-Assisted Opioid Treatment Services.](#)

[Guidance for Selected Licensing Regulations.](#)

[Nutrition Guidelines and Nutrition Monitoring Form.](#)

Public Comment Deadline: May 7, 2025.

Effective Date: May 8, 2025.

Agency Contact: Susan Puglisi, Regulatory Research Specialist, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, or email susan.puglisi@dbhds.virginia.gov.

**DEPARTMENT OF MEDICAL ASSISTANCE
SERVICES**

Title of Document: Chapters 2, 4, 5, 6, and 7 of the Technology-Assisted Waiver and Private Duty Nursing Services Manual.

Public Comment Deadline: May 7, 2025.

Effective Date: May 8, 2025.

Agency Contact: Syreeta Stewart, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3863, or email syreeta.stewart@dmas.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF CONSERVATION AND RECREATION

Public Comment Opportunity for Virginia K-12 Environmental Literacy Strategic Plan

Purpose of Notice: The Department of Conservation and Recreation (DCR) is accepting public comment on the Virginia K-12 Environmental Literacy Strategic Plan. This inaugural plan outlines a blueprint to support environmental literacy across the Commonwealth.

After reviewing public comment and making any necessary and appropriate amendments, DCR will finalize the plan by the summer of 2025. The finalized plan will serve as a guiding tool to enhance environmental literacy among Virginia students by fostering partnerships, supporting educators, and optimizing resources.

Public Comment Period: March 10, 2025, to April 9, 2025. Comments may be submitted to the Department of Conservation and Recreation, Office of Environmental Education, 600 East Main Street, 24th Floor, Richmond, VA, 23219, or email environmentaleducation@dcr.virginia.gov.

Document for Public Comment: The document may be accessed at <https://www.dcr.virginia.gov/environmental-education/document/OEE-Strategic-Plan.pdf>.

Contact Information: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-4378, FAX (804) 786-6141, or email lisa.mcgee@dcr.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Gloucester County

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Gloucester County for violations of State Water Control Law and regulations at the Gloucester County Water treatment plant in Gloucester County, Virginia. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept written comments from April 7, 2025, to May 7, 2025.

Contact Information: Matthew Richardson, Regional Enforcement and Construction Stormwater Program Manager, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 659-2696, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for Islamic Jinazha Services Incorporated

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Islamic Jinazha Services Incorporated for violations of State Water Control Law and regulations and applicable permit at Parcel IDs 67-26A and 67-26B located in Culpeper, Virginia. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept written comments from April 7, 2025, to May 7, 2025.

Contact Information: Katherine Mann, Regional Enforcement Specialist, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (571) 866-6095, or email katherine.mann@deq.virginia.gov.

Proposed Enforcement Action for Military Highway Recycling

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Military Highway Recycling for violations of State Water Control Law and regulations at the Military Highway Recycling facility in Chesapeake, Virginia. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept written comments from April 7, 2025, to May 7, 2025.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, or email russell.deppe@deq.virginia.gov.

Proposed Enforcement Action for Town of Chase City

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for the Town of Chase City for alleged violation of the State Water Control Law at 1328 High Street, Chase City, Virginia. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept comments by email or postal mail from April 7, 2025, through May 7, 2025.

Contact Information: Cara Witte, Department of Environmental Quality, 4949 Cox Road, Suite A, Glen Allen, VA 23060, telephone (804) 712-4192, or email cara.witte@deq.virginia.gov.

Public Comment Opportunity for a Cleanup Study of Crooked Run, Stony Creek, and Pughs Run in Shenandoah County

Purpose of notice: The Department of Environmental Quality (DEQ) seeks public comment on the development of a cleanup study, also known as a total maximum daily load (TMDL) report for Crooked Run, Stony Creek, and Pughs Run in Shenandoah County. These streams are listed as impaired since monitoring data does not meet Virginia's water quality standards for aquatic life (benthic impairment). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia requires DEQ to develop cleanup studies to address pollutants responsible for causing waters to be on Virginia's § 303(d) list of impaired waters. A component of a cleanup study is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Code of Virginia for adoption of the WLA into the Water Quality Management Planning Regulation (9VAC25-720) after completion of the study. The adoption of the WLA may require new or additional requirements for entities holding a Virginia Pollutant Discharge Elimination System (VPDES) permit in these watersheds.

A study has been completed for Crooked Run, Stony Creek, and Pughs Run to identify pollutant sources and recommend reductions needed from the sources to meet water quality standards. At the meeting, DEQ will present the results of the study and provide an overview of the draft report. Citizens are invited to provide comment on the study.

Cleanup study location: The cleanup study addresses the following impaired stream segments: the Crooked Run stream segment, located in Shenandoah County, is 4.08 miles long, begins at the headwaters of Crooked Run, and continues to its confluence with the Mill Creek. The Stony Creek stream segment, located in Shenandoah County, is 9.29 miles long, begins at its confluence with Yellow Spring Run, and continues to the confluence with the North Fork Shenandoah River. The Pughs Run stream segment, also located in Shenandoah County, is 7.00 miles long, and begins at the headwaters extending to the confluence with the North Fork Shenandoah River.

TMDL community engagement meetings: TMDL community engagement meetings to assist in development of this cleanup study were convened on August 19, 2024, December 16, 2024, and February 4, 2025.

Public meeting: The final public meeting on the development of the cleanup study will be held at the Shenandoah County Office Building, 600 North Main Street, Woodstock, VA 22664, on April 9, 2025, at 5:30 p.m. In the event of inclement weather, the meeting will be held on April 14, 2025, at the same time and location.

Public comment period: April 9, 2025, to May 9, 2025.

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

The public may review the cleanup study at <https://www.deq.virginia.gov/our-programs/water/water-quality/tmdl-development/tmdls-under-development>.

Contact Information: Nesha McRae, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 217-7173, or email nesha.mcrae@deq.virginia.gov.

Yadkins Energy Center LLC Notice of Intent for a Small Renewable Energy Project (Energy Storage) - City of Chesapeake

Yadkins Energy Center LLC has provided the Department of Environmental Quality (DEQ) a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (energy storage) in the City of Chesapeake, pursuant to 9VAC15-100. The proposed Yadkins Energy Center Project, DEQ Registration Number RE0000347, will be located at 2905 Yadkins Road in the City of Chesapeake with a geographic information system centroid of Latitude 36.764498, Longitude -76.348436. The project will have a rated power capacity of 100 megawatts comprised of 127 battery storage modules and a project area of approximately 34.3 acres.

Contact Information: Melissa Porterfield, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, or email melissa.porterfield@deq.virginia.gov.

STATE WATER CONTROL BOARD

Public Comment Opportunity for Amendment of Water Quality Management Planning Regulation

Notice of action: The State Water Control Board (board) is considering amending the regulation on water quality management planning in accordance with the public participation procedures for water quality management planning.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality (DEQ) on the proposed amendment. The amendment to the Water Quality Management Planning Regulation (9VAC25-720) adopts seven new total maximum daily load (TMDL) wasteload allocations.

Public comment period: April 7, 2025, to May 7, 2025.

General Notices

Description of the proposed action: DEQ staff proposes amendments of the Water Quality Management Planning Regulation for the James River Basin (9VAC25-720-60 A) and the Tennessee-Big Sandy River Basin (9VAC25-720-90). Statutory authority for promulgating these amendments can be found in § 62.1-44.15 of the Code of Virginia.

Staff intends to recommend that the board adopt seven new TMDL wasteload allocations in accordance with § 2.2-4006 A 14 and § 2.2-4006 B of the Code of Virginia.

The TMDL reports were developed in accordance with federal regulations (40 CFR § 130.7) and are exempt from the provisions of Article II (§ 2.2-4006 et seq.) of Chapter 40 of the Code of Virginia. The reports were subject to the TMDL public participation process contained in DEQ's public participation procedures for water quality management planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDL.

As of July 1, 2014, TMDL wasteload allocations can receive State Water Control Board approval prior to Environmental Protection Agency (EPA) approval due to amendments outlined in § 2.2-4006 A 14 of the Code of Virginia. The TMDL reports in this public notice have been reviewed by EPA for required TMDL elements; however, the reports remain in draft form awaiting State Water Control Board approval.

Affected waterbodies and localities for the seven new TMDL wasteload allocations:

James River Basin (9VAC25-720-60): TMDL report titled "PCB Total Maximum Daily Load Development for the James River, Maury River, and Jackson River Watersheds" located in Albemarle, Amherst, Appomattox, Bedford, Botetourt, Buckingham, Campbell, Chesterfield, Cumberland, Fluvanna, Goochland, Henrico, Nelson, Powhatan, and Rockbridge Counties and Buena Vista, Lynchburg, and Richmond Cities. This TMDL report proposes polychlorinated biphenyls (PCB) reductions for the Upper James River, Lower James River, Maury River, and Jackson River Watersheds and provides PCB wasteload allocations of 190,000 mg per year, 160,000 mg per year, 4,100 mg per year, and 170,000 mg per year, respectively.

Tennessee-Big Sandy River Basin (9VAC25-720-90): TMDL report titled "Benthic TMDL Development for Greendale Creek and Unnamed Tributary to Fleenor Branch located in Washington County, VA." This TMDL report proposes sediment reductions for Greendale Creek and an unnamed tributary to Fleenor Branch and provides sediment wasteload allocations of 14 ton per year and 0.22 ton per year, respectively. This TMDL report also proposes phosphorous reductions for the unnamed tributary to Fleenor Branch and provides phosphorous wasteload allocation of 1.2 tons per year.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens

who submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: The TMDL reports are available on the DEQ website at <https://www.deq.virginia.gov/our-programs/water/water-quality/tmdl-development/draft-tmdls>, respectively, and by contacting the DEQ representative listed at the end of this notice for any report. The electronic copies are in PDF or Word format and may be read online or downloaded.

How to comment: DEQ accepts comments orally at the public meeting and by email, fax, or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization represented (if any), mailing address, and telephone number of the commenter or requester.

Contact Information: Anthony Cario, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 814-7774, or email anthony.cario@deq.virginia.gov.

VIRGINIA CODE COMMISSION Notice to State Agencies

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

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

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.