VIRGINIA REGISTER OF REGULATIONS

VOL. 43 ISS. 1 | PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION | August 24, 2026

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THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for $923.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Easton, MD and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

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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 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; Travis Hill, Ryan T. McDougle; Matthew McGuire; Johnny Morrison; Michael Mullin; Christopher R. Nolen; 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).

September 2026 through September 2027

Volume: Issue	Material Submitted By Noon*	Will Be Published On
43:2	August 19, 2026	September 7, 2026
43:3	September 2, 2026	September 21, 2026
43:4	September 16, 2026	October 5, 2026
43:5	September 30, 2026	October 19, 2026
43:6	October 14, 2026	November 2, 2026
43:7	October 28, 2026	November 16, 2026
43:8	November 10, 2026 **(Tuesday)**	November 30, 2026
43:9	November 23, 2026 **(Monday)**	December 14, 2026
43:10	December 9, 2026	December 28, 2026
43:11	December 21, 2026 **(Monday)**	January 11, 2027
43:12	January 5, 2027 **(Tuesday)**	January 25, 2027
43:13	January 20, 2027	February 8, 2027
43:14	February 3, 2027	February 22, 2027
43:15	February 17, 2027	March 8, 2027
43:16	March 3, 2027	March 22, 2027
43:17	March 17, 2027	April 5, 2027
43:18	March 31, 2027	April 19, 2027
43:19	April 14, 2027	May 3, 2027
43:20	April 28, 2027	May 17, 2027
43:21	May 12, 2027	May 31, 2027
43:22	May 26, 2027	June 14, 2027
43:23	June 9, 2027	June 28, 2027
43:24	June 23, 2027	July 12, 2027
43:25	July 7, 2027	July 26, 2027
43:26	July 21, 2027	August 9, 2027
44:1	August 4, 2027	August 23, 2027
44:2	August 18, 2027	September 6, 2027
44:3	September 1, 2027	September 20, 2027

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

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 Health intends to consider amending **12VAC5-371, Regulations for the Licensure of Nursing Facilities**. Pursuant to Chapters 254 and 265 of the 2025 Acts of Assembly, the purpose of the proposed action is to establish fees for the issuance, change, or renewal of a hospital or nursing home license. Funds generated from fees are deposited into the Hospital and Nursing Home Licensure and Inspection Program Fund created by the act to be used for the purposes of supporting the activities of the licensure and inspections requirements.

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

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

Public Comment Deadline: September 23, 2026.

Agency Contact: Geoff Garner, Senior Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-2157, or email geoff.garner@vdh.virginia.gov.

VA.R. Doc. No. R27-8377; Filed July 27, 2026, 4:58 p.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Safety and Health Codes Board intends to consider promulgating **16VAC25-210, Heat Illness Prevention Standard**. As required by Chapters 731 and 732 of the 2026 Acts of Assembly, the purpose of the proposed action is to establish heat illness prevention standards to protect workers from heat illness during indoor and outdoor work. The standards will include requirements for an employer to (i) provide water, access to shade or climate-controlled environments when practicable, rest periods, acclimatization to working in heat, and effective training regarding heat illness prevention; (ii) implement heat and high-heat procedures when the temperature equals or exceeds heat thresholds set by the board; and (iii) establish effective emergency response procedures. Additionally, the regulation will include exemptions for heat exposure during certain emergency situations and for heat exposure lasting no longer than 15 consecutive minutes.

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

Statutory Authority: §§ 40.1-22 and 40.1-44.2 of the Code of Virginia.

Public Comment Deadline: September 23, 2026.

Agency Contact: Cristin Bernhardt, Regulatory Coordinator, Department of Labor and Industry, 6606 West Broad Street, Suite 500, Richmond, VA 23230, telephone (804) 786-2392, fax (804) 786-8418, or email cristin.bernhardt@doli.virginia.gov.

VA.R. Doc. No. R27-8774; Filed August 3, 2026, 10:21 a.m.

TITLE 3. ALCOHOLIC BEVERAGE AND CANNABIS CONTROL

VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY BOARD OF DIRECTORS

Proposed Regulation

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

Title of Regulation: **3VAC5-10. Procedural Rules for the Conduct of Hearings before the Virginia Alcoholic Beverage Control Authority and Its Administrative Law Judges (amending 3VAC5-10-30, 3VAC5-10-40, 3VAC5-10-50, 3VAC5-10-90 through 3VAC5-10-120, 3VAC5-10-140, 3VAC5-10-150, 3VAC5-10-160, 3VAC5-10-190, 3VAC5-10-220, 3VAC5-10-250, 3VAC5-10-260, 3VAC5-10-290, 3VAC5-10-410, 3VAC5-10-460).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 24, 2026.

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

Summary:

Pursuant to Chapters 1021 and 1044 of the 2026 Acts of Assembly, which provides a more comprehensive structure for the current licensing and enforcement responsibilities related to liquid nicotine and retail tobacco products, the Virginia Alcoholic Beverage Control Authority Board of Directors proposes a new regulation, Retail Tobacco Permittees (3VAC5-90) - also published in this issue of the Virginia Register. The proposed amendments to Procedural Rules for the Conduct of Hearings before the Virginia Alcoholic Beverage Control Authority and Its Administrative Law Judges (3VAC5-10) make technical changes to incorporate retail tobacco permits and permittees where applicable.

3VAC5-10-30. Attorneys; representation.

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

3VAC5-10-40. Communications.

Communications regarding hearings before administrative law judges upon licenses ~~and~~, applications for licenses, retail tobacco permits, and applications for retail tobacco permits should be addressed to the Chief Clerk, Hearings, Appeals, and Judicial Services Division.

3VAC5-10-50. Complaints.

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

3VAC5-10-90. Evidence.

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

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

2. Secondary evidence of the contents of a document shall be received only if the original is not readily available. In deciding whether a document is readily available, the administrative law judge shall balance the importance of the

evidence against the difficulty of obtaining it, and the more important the evidence, the more effort should be made to have the original document produced.

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

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

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

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

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

D. Subpoenas, depositions, and ~~request~~ requests for admissions. Subpoenas, depositions de bene esse, and requests for admissions may be taken, directed, and issued in accordance with § 2.2-4022 and subdivision 21 of § 4.1-103 of the Code of Virginia.

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

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

3VAC5-10-100. Hearings; penalty.

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

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

3VAC5-10-110. Administrative law judges.

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

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

1. Administer oaths and affirmations;

2. Issue subpoenas as authorized by law;

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

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

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

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

7. Dispose of procedural requests and similar matters;

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

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

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

11. Conduct mediation between interested parties; and

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

3VAC5-10-120. Interested parties.

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

1. The applicant;

2. The licensee;

3. The retail tobacco permittee;

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

~~4.~~ 5. For purposes of appeal pursuant to 3VAC5-10-240, interested parties shall be only those persons who appeared at and asserted an interest in the hearing before an administrative law judge.

Where in this chapter reference is made to "licensee," the term likewise shall be applicable to a permittee ~~(i.e., a person~~ that holds or ~~held~~ a permit issued by the authority~~)~~ pursuant to § 4.1-212 of the Code of Virginia or a designated manager to the extent that this chapter is not inconsistent with the statutes and regulations relating to such persons. Where in this chapter reference is made to "applicant," the term shall be applicable to all applicants applying for any license or permit issued by the authority.

3VAC5-10-140. Notice of hearings.

Interested parties shall be afforded reasonable notice of a pending hearing. The notice shall state the time, place, and issues involved.

3VAC5-10-150. Consent settlement.

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

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

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

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

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

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

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

A. Following notice of a disciplinary proceeding, a licensee or retail tobacco permittee may be afforded opportunity for the submission of an offer in compromise in lieu of suspension or in addition thereto, or in lieu of revocation of the license or retail tobacco permit, where, in the discretion of the Virginia Alcoholic Beverage Control Authority (authority), the nature of the proceeding and the public interest permit. Such offer should be addressed to the chief administrative law judge. Acceptance of the offer in compromise shall constitute an admission of the alleged violation of the Alcoholic Beverage Control Act (§ 4.1-100 et seq. of the Code of Virginia) or authority regulations and shall result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges. The reason for the acceptance of such an offer shall be made a part of the record of the proceeding. Unless good cause is shown, continuances for purposes of considering an offer in compromise will not be granted. Offers in compromise may be submitted anytime following notice of a disciplinary proceeding and before the authority issues a final decision in an appeal. The authority may waive any provision of this section for good cause shown.

B. Following notice of a disciplinary proceeding or objection from the authority to the issuance of a license, a licensee, retail tobacco permittee, or applicant in conjunction with the authority may agree to a negotiated resolution in lieu of a suspension or in addition thereto, in lieu of revocation of the license or retail tobacco permit, or in lieu of a denial of the application where, in the discretion of the authority, the nature of the proceeding and the public interest permit. Such negotiation shall be handled by the interested party and the authority. Acceptance of a negotiated resolution may constitute an admission of the alleged violation of the Alcoholic Beverage Control Act or authority regulations and shall result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges or objections. Unless good cause is shown, continuances for purposes of finalizing a negotiated resolution will not be granted. Negotiated resolutions may be submitted anytime following notice of a disciplinary proceeding or objections hearing and before the authority issues a final decision in an appeal.

3VAC5-10-190. Self-incrimination.

If any witness subpoenaed to appear on behalf of the Virginia Alcoholic Beverage Control Authority (authority) shall testify in a hearing before an administrative law judge on complaints against a licensee or retail tobacco permittee as to any violation in which the witness, as a licensee, retail tobacco permittee, or an applicant, has participated, such testimony shall not be used against the witness. The authority shall take no administrative action against the witness for the offense to which the witness testifies.

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

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

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

3VAC5-10-250. Attorneys; representation.

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

3VAC5-10-260. Communications.

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

3VAC5-10-290. Evidence.

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

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

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

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

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

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

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

3VAC5-10-410. Applicability.

The Virginia Alcoholic Beverage Control Authority (authority) and its administrative law judges may conduct hearings by telephone only when the applicant ~~or,~~ licensee, or retail tobacco permittee expressly waives the in-person hearing. The authority will determine whether or not certain

hearings might practically be conducted by telephone. The provisions of Part I (3VAC5-10-10 through 3VAC5-10-230) of this chapter shall apply only to Part IV (3VAC5-10-410 through 3VAC5-10-470) of this chapter where applicable.

3VAC5-10-460. Notice of hearing.

Interested parties shall be afforded reasonable notice of a pending hearing. The notice shall state the time, issues involved, and the telephone number where the ~~applicant/licensee~~ applicant, licensee, or retail tobacco permittee can be reached.

VA.R. Doc. No. R27-8765; Filed August 5, 2026, 7:59 a.m.

Proposed Regulation

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

Title of Regulation: **3VAC5-90. Retail Tobacco Permittees (adding 3VAC5-90-10 through 3VAC5-90-110).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 24, 2026.

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

Summary:

Pursuant to Chapters 1021 and 1044 of the 2026 Acts of Assembly, the proposed action establishes requirements for the licensing and enforcement responsibilities related to liquid nicotine and retail tobacco products, including sale, retail permittee licensure and management of employees, retail space, recordkeeping and reporting, violations and penalties, and Internet and out-of-state sellers.

Chapter 90

Retail Tobacco Permittees

3VAC5-90-10. Restrictions upon sale and use of retail tobacco products.

A. No retail tobacco permittee shall sell to or allow the use of any retail tobacco product on the permitted premises by any person whom the retail tobacco permittee knows or has reason at the time to believe is younger than 21 years of age.

B. The following conduct upon any retail tobacco establishment is prohibited: sale, distribution, importation for resale, or offering for sale a liquid nicotine or nicotine vapor product for retail sale in the Commonwealth, unless such liquid nicotine or nicotine vapor product is included in the directory established by the Attorney General pursuant to § 59.1-293.15 of the Code of Virginia.

3VAC5-90-20. Determination of legal age of purchaser for retail tobacco products.

A. In determining whether a retail tobacco permittee or the retail tobacco permittee's employee or agent has reason to believe that a purchaser is not of legal age, the Virginia Alcoholic Beverage Control Authority will consider:

1. Whether an ordinary and prudent person would have reason to doubt that the purchaser is of legal age based on the general appearance, facial characteristics, behavior, and manner of the purchaser; and

2. Whether the purchaser presented valid identification as defined in subsection B of this section.

B. Bona fide evidence of legal age shall include a valid motor vehicle driver's license issued by any state of the United States or the District of Columbia, an armed forces identification card, a United States passport or foreign government visa, a valid special identification card issued by the Virginia Department of Motor Vehicles, or any valid identification issued by any other federal or state government agency, excluding student university and college identification cards, provided such identification contains a photograph and signature of the subject and the subject's date of birth.

C. It shall be incumbent upon the retail tobacco permittee or the retail tobacco permittee's employee or agent to scrutinize carefully the identification if presented and determine it to be authentic and in proper order. Identification that has been altered so as to be apparent to observation or has expired shall be deemed not in proper order.

3VAC5-90-30. Designated managers of retail tobacco permittees; appointment generally; disapproval by the authority; restrictions upon employment.

A. Each retail tobacco permittee, except a permitted individual who is on the premises, shall have a designated manager present and in actual charge of the business being conducted under the retail tobacco permit at any time the permitted establishment is kept open for business, whether or not the privileges of the retail tobacco permit are being exercised. The name of the retail tobacco permittee's designated manager shall be kept posted in a conspicuous place in the establishment, in letters not less than one inch in size, during the time the designated manager is in charge.

The posting of the name of a designated manager shall qualify such person to act in that capacity until disapproved by the Virginia Alcoholic Beverage Control Authority (authority).

B. The authority reserves the right to disapprove any person as a designated manager if the authority has reasonable cause to believe that any condition exists that would justify the authority in refusing to issue such person a retail tobacco permit or in suspending or revoking a retail tobacco permit granted to such person.

Before disapproving a designated manager, the authority shall accord the designated manager the same notice and opportunity to be heard and follow the same administrative procedures accorded a retail tobacco permittee cited for a violation of Title 4.1 (§ 4.1-100 et seq.) of the Code of Virginia.

C. No retail tobacco permittee of the authority shall knowingly permit a person younger than 21 years of age or a person who has been disapproved by the authority within the preceding 12 months to act as designated manager of the retail tobacco permittee's business.

D. The authority will not take action to suspend or revoke a retail tobacco permit if a retail tobacco permittee knowingly employs a person who has been convicted in any court of a felony or of any crime or offense involving moral turpitude, except in the following two categories:

1. The authority may suspend or revoke a retail tobacco permit if a retail tobacco permittee knowingly employs in the business conducted under such permit, as agent, servant, or employee in a position that is involved in the selling of retail tobacco products to customers, any person who has been convicted of a felony violation of the laws of the Commonwealth prohibiting the manufacture, sale, distribution, use, or possession of controlled substances, imitation controlled substances, counterfeit controlled substances, cannabis, or synthetic cannabinoids; driving under the influence of alcohol or other self-administered intoxicants; or a similar offense under the laws of any state or the United States; or

2. The authority may suspend or revoke a retail tobacco permit if a retail tobacco permittee knowingly employs in the business conducted under such permit, as agent, servant, or employee in a position that is involved in the creation or maintenance of records required to be kept by the retail tobacco permittee under the provisions of Title 4.1 of the Code of Virginia or authority regulations or in the preparation or filing of any tax return or report required under Title 4.1 or Title 58.1 (§ 58.1-100 et seq.) of the Code of Virginia or authority regulations, any person who has been convicted of a felony violation of the laws of the Commonwealth prohibiting robbery, burglary, larceny, embezzlement, computer crimes, forgery, false pretenses, issuing bad checks, false representations to obtain property or credit, credit card forgery or fraud, or money laundering, or a similar offense under the laws of any state or the United States.

E. If a retail tobacco permittee wishes to employ a person whose employment would be covered by subdivision D 1 or D 2 of this section or who has violated the laws of the Commonwealth, of any other state, or of the United States applicable to the manufacture, transportation, possession, use, or sale of retail tobacco products, the retail tobacco permittee may (i) immediately employ the individual if the offenses occurred more than five years preceding the date of employment or (ii) apply to the authority for approval of such employment if the offense occurred within five years preceding the date of employment. The authority will cause the Bureau of Law Enforcement Operations to conduct an investigation into the suitability of the person for employment and recommend approval or disapproval. Before disapproving the employment of a person, the authority shall accord the person the same notice and opportunity to be heard and follow the same administrative procedures accorded a retail tobacco permittee cited for a violation of Title 4.1 of the Code of Virginia.

3VAC5-90-40. Restrictions on construction, arrangement, and lighting of retail tobacco permitted premises; inspections; obstruction; "reasonable hours".

A. The construction, arrangement, and illumination of the retail tobacco permitted establishment shall permit ready access and reasonable observation by law-enforcement officers and by special agents of the Virginia Alcoholic Beverage Control Authority (authority). The interior lighting shall be sufficient to permit ready discernment of the appearance and conduct of patrons in all portions of the establishment.

B. The authority and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth where retail tobacco products are offered for sale or sold for the purpose of examining and inspecting such place.

C. In addition to special agents, other law-enforcement officers in the performance of official duties shall be allowed free access to any retail tobacco permitted establishment for the purpose of observation of activities on those retail tobacco permitted premises during reasonable hours.

D. Any person who by use of threats, force, or intimidation or otherwise impedes or obstructs any special agent or other law-enforcement officer in the performance of the agent's or officer's official duties from entering or remaining upon any retail tobacco permitted establishment shall be guilty of a violation of this chapter and shall be subject to the penalty prescribed by § 4.1-349 of the Code of Virginia.

E. For the purposes of this regulation, the term "reasonable hours" shall be deemed to include all business hours of operation and any other time at which there exists any indication of activity upon the retail tobacco permitted premises.

3VAC5-90-50. Interests in the businesses of retail tobacco permittees.

Persons to whom retail tobacco permits have been issued shall not allow any other person to receive a percentage of the income of the retail tobacco permitted business or have any beneficial interest in such business; provided, however, that nothing in this section shall be construed to prohibit:

1. The payment by the retail tobacco permittee of a franchise fee based in whole or in part upon a percentage of the entire gross receipts of the business conducted upon the retail tobacco permitted premises, where the fee is reasonable compared to prevailing franchise fees of similar businesses;

2. Where the retail tobacco permitted business is conducted upon leased premises, and the lease when construed as a whole does not constitute a shift or device to evade the requirements of this section:

a. The payment of rent based in whole or in part upon a percentage of the entire gross receipts of the business, where the rent is reasonable compared to prevailing rentals of similar businesses; and

b. The landlord from imposing standards relating to the conduct of the business upon the leased premises, where the standards are reasonable compared to prevailing standards in leases of similar businesses and do not unreasonably restrict the control of the retail tobacco permittee over the sale retail tobacco products; or

3. The payment by the retail tobacco permittee of a management fee based in whole or in part upon a percentage of the entire gross receipts of the business conducted under the retail tobacco permit where the retail tobacco permittee has contracted with a management company or promoter to perform operational duties on behalf of the retail tobacco permittee, provided that:

a. All payments to any management company or promoter are less than 10% in aggregate of the gross receipts of the business conducted under the retail tobacco permit; and

b. The retail tobacco permittee provides the Virginia Alcoholic Beverage Control Authority (authority) a copy of the contract between the retail tobacco permittee and the management company or promoter that identifies the management company or promoter as an agent of the retail tobacco permittee for the purposes of exercising the privileges of the retail tobacco permit and holds the retail tobacco permittee liable for any violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq. of the Code of Virginia) or authority regulation committed by the management company or promoter.

3VAC5-90-60. Records to be kept by retail tobacco permittees generally; additional requirements; reports.

A. All retail tobacco permittees shall keep complete, accurate, and separate records for a period of three years. The records shall include all invoices of the purchases and sales of retail tobacco products and other merchandise. The records shall be available for inspection and copying by any member of the Virginia Alcoholic Beverage Control Authority (authority) or its special agents during reasonable hours. Retail tobacco permittees may use any available technologies for the storage of records and may store the records off site, provided the records are readily subject to retrieval and made available for viewing on a screen or in hard copy by the authority or its special agents at the retail tobacco permitted premises between the hours of 9 a.m. and 5 p.m. or any time the retail tobacco permittee is open to the public. At any other time of day, if the retail tobacco permittee's records are not available for inspection, the retail tobacco permittee shall provide the records to a special agent of the authority within 24 hours after a request is made to inspect the records.

The authority and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth where retail tobacco products are offered for sale or sold for the purpose of examining and inspecting all records, invoices, and accounts.

"Reasonable hours" include all business hours of operation and any other time at which there exists any indication of activity upon the retail tobacco permittee's premises.

B. The records of retail tobacco products shall be kept separate and apart from other records and shall include all purchases of the retail tobacco products, the dates of the purchases, the kinds and quantities of retail tobacco products purchased, the prices charged for the retail tobacco products, and the names and addresses of the persons from whom purchased.

Additionally, each retail tobacco permittee shall keep accurate accounts of daily sales showing quantities of retail tobacco products sold and the prices charged for such items.

C. Any changes in the officers, directors, or shareholders owning 10% or more of the outstanding capital stock if the retail tobacco permittee is a corporation, or if the retail tobacco permittee is a limited liability company, any changes in member-managers or any members owning 10% or more of the membership interest of the limited liability company shall be reported to the authority within 30 days; provided, however, that corporations or their wholly owned subsidiaries whose corporate common stock is publicly traded and owned shall not be required to report changes in shareholders owning 10% or more of the outstanding capital stock.

3VAC5-90-70. Manner of compensation of employees of retail tobacco permittees.

Employees of a retail tobacco permittee shall not receive compensation based directly, in whole or in part, upon the volume of retail tobacco product sales only; provided, however, that nothing in this section shall be construed to prohibit a bona fide compensation plan based upon the total volume of sales of the business, including receipts from the sale of retail tobacco products.

3VAC5-90-80. Schedule of penalties for first-offense violations.

A. For any retail tobacco permittee charged with any violation of Virginia Alcoholic Beverage Control Authority (authority) regulations or statutes listed in this subsection, if the retail tobacco permittee has no other pending charges and has not had any substantiated violations of regulation or statute within the three years immediately preceding the date of the violation, the retail tobacco permittee may accept an offer by the authority extended in writing to enter a written waiver of hearing and (i) accept the period of retail tobacco permit suspension set forth in this subsection for the violation or (ii) pay the civil charge set forth in this subsection for the violation in lieu of suspension.

VIOLATION	SUSPENSION	CIVIL CHARGE
Sale of retail tobacco products to a person at least 18 years of age but younger than 21 years of age.	25 days	$2,500
Sale, distribution, importation for resale, or offering for sale a liquid nicotine or nicotine vapor product for retail sale in the Commonwealth not included in the directory established by the Attorney General pursuant to § 59.1-293.15 of the Code of Virginia.	25 days	$2,500
Aiding and abetting the purchase of retail tobacco products by a person at least 18 years of age but younger than 21 years of age.	15 days	$1,500
Sale or offering for retail sale a liquid nicotine container that does not meet child-resistant packaging standards.	15 days	$1,500
Distributing or offering for distribution a liquid nicotine container that does not meet child-resistant packaging standards for use inside the Commonwealth.	15 days	$1,500
Keeping unauthorized retail tobacco products on the premises.	10 days	$1,000
No designated manager on premises.	10 days	$1,000
Inadequate illumination.	10 days	$1,000
Authority retail tobacco permit not posted.	10 days	$1,000
Designated manager not posted.	10 days	$1,000
Sale of retail tobacco products in unauthorized place or manner.	10 days	$1,500
Failure to place signage in a conspicuous manner and place indicating that sale of retail tobacco products to any person younger than 21 years of age is prohibited by law.	10 days	$1,000

B. For a retail tobacco permittee that operates more than one retail establishment, each establishment shall be considered a separate retail tobacco permittee for the purpose of this section.

3VAC5-90-90. Waiver of penalty for certain first-time violations.

A. In accordance with § 4.1-250 D 4 of the Code of Virginia, whenever the Virginia Alcoholic Beverage Control Authority (authority) finds that (i) a charge against a retail tobacco permittee for a violation listed in this subsection is substantiated, (ii) the retail tobacco permittee has had no prior violations within five years immediately preceding the date of the subject violation, and (iii) the subject violation was not willful and knowing, the authority may enter an order substantiating the violation without imposing a penalty. The provisions of this subsection shall apply to the following violations:

1. Keeping unauthorized retail tobacco products on the premises;

2. No designated manager on premises;

3. Inadequate illumination;

4. Designated manager not posted;

5. Person younger than 18 years of age selling retail tobacco products;

6. Sale of retail tobacco products in unauthorized place or manner; and

7. Failure to place signage in a conspicuous manner and place indicating that sale of retail tobacco products to any person younger than 21 years of age is prohibited by law.

B. Whenever any retail tobacco permittee who has not had any substantiated violations of regulation or statute within the

previous five years is charged with a violation, the authority may defer further proceedings and place the retail tobacco permittee on probation upon terms and conditions, with the consent of the retail tobacco permittee, if the facts found by the authority would justify a finding that the charge is substantiated but is not a willful and knowing violation.

As a term or condition, the authority shall require the retail tobacco permittee to comply with all retail tobacco laws and regulations during the period of probation. Upon violation of a term or condition, the authority may enter an adjudication that the charge is substantiated and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the authority shall dismiss the proceedings against the retail tobacco permittee. Dismissal under this section shall be without adjudication of the charge and is a substantiated violation only for the purposes of applying this section in subsequent proceedings.

3VAC5-90-100. Required training and education for retail tobacco permittees.

A. At the time of application, each applicant for a retail tobacco permit must certify that the permittee has conducted education and training for its employees related to:

1. The provisions of § 59.1-293.12 of the Code of Virginia;

2. The prohibitions on the sale of retail tobacco products to persons younger than 21 years of age and other restrictions prescribed by §§ 18.2-246.8, 18.2-246.10, and 18.2-371.2 of the Code of Virginia;

3. Forms of identification that are acceptable as proof of age; and

4. The legal penalties that may be incurred for violation of the provisions of law identified in subdivisions 1 and 2 of this subsection.

B. At the time of permit renewal, each retail tobacco permittee must recertify that the permittee has conducted education and training for its employees related to the provisions outlined in subsection A of this section.

3VAC5-90-110. Internet retailer tobacco permittees and out-of-state sellers.

A. "Internet Retail Tobacco Permittee" means an entity, whether in state or out of state, that sells retail tobacco products as defined in § 4.1-100 of the Code of Virginia, where in consideration of payment, Internet or telephone orders are taken and shipped directly to consumers.

B. A retail tobacco permit is necessary prior to making sales into or within the Commonwealth via Internet or telephone orders. Any out-of-state entity that wishes to sell retail tobacco products within the Commonwealth must first obtain a retail tobacco permit from the authority.

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

FORMS (3VAC5-90)

Retail Tobacco Permit Application (rev. 7/2026)

VA.R. Doc. No. R27-8767; Filed August 5, 2026, 7:59 a.m.

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TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Fast-Track Regulation

Title of Regulation: **9VAC15-60. Small Renewable Energy Projects (Solar) Permit by Rule (amending 9VAC15-60-10).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 23, 2026.

Effective Date: October 8, 2026.

Agency Contact: Bettina Rayfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 659-1915, or email bettina.rayfield@deq.virginia.gov.

Basis: Section 10.1-1197.6 of the Code of Virginia requires the Department of Environmental Quality to develop by regulation a permit by rule when necessary for the construction and operation of small renewable energy projects, including any conditions and standards necessary to protect the Commonwealth's natural resources.

Purpose: This action is necessary to make corrections to the regulation to improve clarity and avoid confusion concerning the definition of "mitigation district." Updates have also been made to the names of planning district commissions to be consistent with the legal names as provided by the Virginia Department of Housing and Community Development (DHCD). The regulatory action is essential to protect the health, safety, and welfare of citizens of the Commonwealth from potential impacts from the construction and operation of small renewable energy projects.

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

amendment will improve clarity and certainty for the regulated community and the department by correcting the definition of "mitigation district."

Substance: The amendments (i) correct the omission of the Crater Planning District Commission and the erroneous placement of the Commonwealth Regional Council in the definition of "mitigation district" and (ii) add the legal names of planning district commissions as provided by DHCD.

Issues: The primary advantage to the public, the Commonwealth, and the regulated community is that the amendments improve clarity concerning the membership of mitigation districts. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Department of Environmental Quality (DEQ) seeks to correct the definition of "mitigation districts" to prevent confusion regarding the mitigation requirements contained in this regulation.

Background. The definition of mitigation districts groups the Commonwealth's 21 planning district commissions into seven mitigation districts; it was added by a 2025 action that introduced specific requirements for conservation easements for solar projects.[2] DEQ reports that the current definition inadvertently omitted one planning district commission and listed another twice. The proposed corrections are necessary to address this error and thereby ensure that the required conservation easements are located in the same mitigation districts as the proposed solar projects. Specifically, DEQ seeks to add the Crater Planning District Commission to the Richmond-Hampton Roads mitigation district, and remove the Commonwealth Regional Council from the Richmond-Hampton Roads mitigation district so that it is only listed under the Southside mitigation district. Lastly, the names of the planning district commissions would be corrected to match their official names as provided by the Virginia Department of Housing and Community Development.

Estimated Benefits and Costs. The proposed amendments would improve the clarity of the regulation and ensure that land purchased for a conservation easement is in the same mitigation district as the land that would be impacted by the solar development. This correction would reduce confusion for solar developers and remove the administrative burden of clarifying the definition on an ongoing basis. The proposed amendments would not increase net costs or reduce net benefits. Thus, an adverse impact is not indicated.

Businesses and Other Entities Affected. The proposed amendments would benefit solar developers seeking a permit by providing an accurate definition of mitigation districts. 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] Since the proposed changes do not create any new costs or reduce benefits, an adverse impact is not indicated.

Small Businesses[5] Affected.[6] The proposed amendments would not adversely affect small businesses. Solar developers that are small businesses would benefit from the increased clarity resulting from the proposed changes.

Localities[7] Affected.[8] The proposed amendments could affect the localities represented by the Crater Planning District Commission and the Commonwealth Regional Council since the former had been omitted from the definition and the latter had been erroneously included under two mitigation districts. These localities may be affected to the extent the proposed corrections lead to increased solar development or land purchases for the purposes of conservation easement as a result of being included in the correct mitigation district. The Crater Planning District, which would be included in the Richmond-Hampton Roads mitigation district, includes the Counties of Charles City, Chesterfield, Dinwiddie, Greensville, Prince George, Surry, and Sussex, and the cities of Colonial Heights, Emporia, Petersburg, and Hopewell. The Commonwealth Regional Council, which would be removed from the Richmond-Hampton Roads mitigation district and would remain in the Southside mitigation district, includes the Counties of Amelia, Buckingham, Charlotte, Cumberland Lunenburg, Nottoway, and Prince Edward. The proposed amendments do not introduce costs for local governments.

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

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

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

[2] See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=6246.

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

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

[5] Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii)

employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

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

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

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

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

Summary:

The amendments correct errors in the definition of "mitigation district" by (i) adding the Crater Planning District Commission and (ii) moving the Commonwealth Regional Council. Additionally, the amendments update the names of the planning district commissions to legal names.

9VAC15-60-10. Definitions.

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

"Active cropping including hayland" means annual management of disturbed areas for row crops or cut hay, including at least one row crop harvest or two hay cuttings per year for the lifetime of project. Row crops shall use approved conservation tillage practices.

"Administratively complete application" means an application the department has determined meets the requirements of this chapter.

"Applicant" means the developer, owner, or operator that submits an application to the department for a permit by rule pursuant to this chapter.

"Archive search" means a search of DHR's cultural resource inventory for the presence of previously recorded archaeological sites and for architectural structures and districts.

"Brownfield" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant as defined in § 10.1-1230 of the Code of Virginia.

"Coastal Avian Protection Zones" or "CAPZ" means the areas designated on the map of "Coastal Avian Protection Zones" generated on the department's Coastal GEMS geospatial data system.

"Commencement of commercial operation" means the date when the project has commenced to generate electricity for sale, excluding the sale of test generation.

"Concentrating photovoltaics" or "CPV" means PV systems with equipment to focus or direct sunlight on the PV cells. For purposes of this chapter, CPV is included in the definition of PV.

"Conservation easement" means a perpetual easement complying with the requirements of 9VAC15-60-60 F.

"Conserved land" means land subject to a conservation easement in accordance with 9VAC15-60-60 F.

"Contiguous forest land" means forest land that is adjoining, including areas separated by (i) any waterbody less than 200 feet in width; (ii) roads, driveways, or impervious surfaces, including compacted gravel, 40 feet or less in width; and (iii) clearings for utilities 200 feet or less in width.

"Department" or "DEQ" means the Department of Environmental Quality, its director, or the director's designee.

"DCR" means the Department of Conservation and Recreation.

"DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard" means the assessment tool used to establish target conditions for pollinator-friendly habitat.

"DHR" means the Department of Historic Resources.

"Disturb" means to act in such a way as to create land disturbance.

"Disturbance zone" means the area within the site directly impacted by land-disturbing activity, including construction and operation of the small solar energy project. For purposes of the DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard, the disturbance zone shall include the panel zones, open areas, and screening zones of the project.

"Document certification" means the statement as prescribed in 9VAC15-60-30 B 2 a, signed by the responsible person and submitted with the application documents or any supplemental information submitted to the department for a PBR.

"DOF" means the Department of Forestry.

"DWR" means the Department of Wildlife Resources.

"Establishment and maintenance of pollinator smart habitat/vegetation" means establishment and maintenance of pollinator smart vegetation in accordance with the DCR/DEQ

POLLINATOR–SMART Comprehensive Manual. This shall meet short-term and long-term erosion and sediment control (ESC) standards and may require change of cover type or species mix following initial ESC stabilization. Pollinator habitat shall cover at least 30% of the disturbed area claimed for this credit.

"Forest land" has the same meaning as provided in § 10.1-1178 of the Code of Virginia, except that any parcel shall be considered forest land if it was forested at least two years prior to the department's receipt of a permit application. For the purposes of defining forest land in this context, forest trees shall not be limited to commercial timber trees.

"Forest lands enrolled in a program for forestry preservation" means any forest land enrolled in a program for forestry preservation pursuant to subdivision 2 of § 58.1-3233 of the Code of Virginia, including forest land that has been withdrawn from a forestal district with approval of the local governing body pursuant to § 15.2-4314 of the Code of Virginia as part of the local governing body's approval of the solar project.

"Historic resource" means any prehistoric or historic district, site, building, structure, object, or cultural landscape that is included or meets the criteria necessary for inclusion in the Virginia Landmarks Register pursuant to the authorities of § 10.1-2205 of the Code of Virginia and in accordance with 17VAC5-30-40 through 17VAC5-30-70.

"Integrated PV" means photovoltaics incorporated into building materials, such as shingles.

"Interconnection point" means each point where the solar energy project connects to a project substation for transmission to the electrical grid.

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

"Managed grazing" means active grazing by sheep or other livestock for the project lifetime, using appropriate management (e.g., rotational grazing), and maintaining greater than 75% living vegetative cover.

"Megawatt" or "MW" means a measurement of power; 1,000 kilowatts equals one MW.

"Mitigation district" means the following groups of planning districts as defined in § 15.2-4202 of the Code of Virginia: Chesapeake, including the George Washington Regional Commission, Middle Peninsula Planning District Commission, and Northern Neck ~~districts~~ Planning District Commission; Eastern Shore, including the Accomack-Northampton ~~district~~ Planning District Commission; Northern Piedmont, including the Northern Virginia Regional Commission, Rappahannock-Rapidan Regional Commission, and Thomas Jefferson ~~districts~~ Planning District Commission; Richmond-Hampton Roads, including the ~~Commonwealth Regional~~ Crater Planning District Commission, Hampton Roads Planning District Commission, and ~~Plan RVA districts~~ Richmond Regional Planning District Commission; Shenandoah Valley, including the Central Shenandoah Planning District Commission and Northern Shenandoah Valley ~~districts~~ Regional Commission; Southside, including the Commonwealth Regional Council, ~~Central Virginia~~ Region 2000 Local Government Council, Southside Planning District Commission, and West Piedmont ~~districts~~ Planning District Commission; and Southwest, including the Cumberland Plateau Planning District Commission, ~~LENOWISCO~~ Lenowisco Planning District Commission, Mount Rogers Planning District Commission, New River Valley Regional Commission, and Roanoke Valley-Alleghany ~~districts~~ Regional Commission.

"Mitigation ratio" means the ratio of the area conserved to the area disturbed. For example, a ratio of one to two would require one-half acre conserved for each acre of disturbance.

"Natural heritage resource" means the habitat of rare, threatened, or endangered plant and animal species; rare or state-significant natural communities or geologic sites; and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth as defined in § 10.1-209 of the Code of Virginia.

"Notice of intent" or "NOI" means notification, in a manner acceptable to the department, by an applicant stating intent to submit documentation for a permit under this chapter.

"Open area" means, for purposes of the DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard, any area beyond the panel zone within the site boundary of a project.

"Operator" means the person responsible for the overall operation and management of a solar energy project.

"Other solar technologies" means materials or devices or methodologies of producing electricity from sunlight other than PV or CPV.

"Owner" means the person that owns all or has all of a controlling interest in a solar energy project.

"Panel zone" means, for purposes of the DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard, the area underneath the solar arrays, including inter-row spacing within a disturbance zone.

"Parking lot" means an improved area, usually divided into individual spaces and covered with pavement or gravel, intended for the parking of motor vehicles.

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

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate,

commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

"Phase I archaeological survey" means systematic identification-level archaeological investigations as described in DHR's Guidelines for Conducting Historic Resources Survey in Virginia (2017) within the project area and submission of necessary documentation to DHR with recommendations on eligibility of identified resources for listing in the Virginia Landmarks Register and National Register of Historic Places.

"Phase I architectural survey" means comprehensive, reconnaissance-level documentation as described in DHR's Guidelines for Conducting Historic Resources Survey in Virginia (2017) of all standing buildings or structures 50 years of age or older within the project area and surrounding areas with a view to the project and submission of necessary documentation to DHR with recommendations on eligibility of identified resources for listing in the Virginia Landmarks Register and National Register of Historic Places.

"Photovoltaic" or "PV" means materials and devices that absorb sunlight and convert it directly into electricity by semiconductors.

"Photovoltaic cell" or "PV cell" means a solid state device that converts sunlight directly into electricity. PV cells may be connected together to form PV modules, which in turn may be combined and connected to form PV arrays (often called PV panels).

"Photovoltaic system" or "PV system" means PV cells, which may be connected into one or more PV modules or arrays, including any appurtenant wiring, electric connections, mounting hardware, power-conditioning equipment (inverter), and storage batteries.

"Preconstruction" means any time during related approval processes occurring prior to beginning land-disturbing activities necessary for the installation of energy-generating structures at the small solar energy project.

"Previously disturbed or repurposed areas" means the land area within the property boundary of industrial or commercial properties, including brownfields or previously mined areas. It does not include active or fallow agricultural land or silvicultural land use.

"Prime agricultural soils" means soils recognized as prime farmland by the U.S. Department of Agriculture. Prime agricultural soils are further defined in 7 CFR 657.5(a)(2) (January 1, 2024).

"Project" refers to all aspects of small solar energy facility development, including planning, permitting, construction, commissioning, and decommissioning.

"Rated capacity" means the maximum capacity of a solar energy project based on Photovoltaic USA Test Conditions (PVUSA Test Conditions) rating, measured in MW.

"Responsible person" means (i) for a corporation or limited liability company, a president, secretary, treasurer, or vice-president in charge of a principal business function or any other person that performs similar policy or decision-making functions for the corporation or limited liability company; (ii) for a partnership or sole proprietorship, a general partner or the proprietor, respectively; and (iii) for a local government entity or state, federal, or other public agency, either a principal executive officer or ranking elected official.

"Screening zone" means, for purposes of the DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard, a vegetated visual barrier.

"Site" means the area containing a solar energy project that is under common ownership or operating control. Electrical infrastructure and other appurtenant structures up to the interconnection point shall be considered to be within the site.

"Small renewable energy project" means (i) an electrical generation facility with a rated capacity not exceeding 150 MW that generates electricity only from sunlight or wind; (ii) an electrical generation facility with a rated capacity not exceeding 100 MW that generates electricity only from falling water, wave motion, tides, or geothermal power; (iii) an electrical generation facility with a rated capacity not exceeding 20 MW that generates electricity only from biomass, energy from waste, or municipal solid waste; (iv) an energy storage facility that uses electrochemical cells to convert chemical energy with a rated capacity not exceeding 150 MW; or (v) a hybrid project composed of an electrical generation facility that meets the parameters established in clause (i), (ii), or (iii) of this definition and an energy storage facility that meets the parameters established in clause (iv) of this definition.

"Small solar energy project" or "project" means a small renewable energy project that (i) generates electricity from sunlight, consisting of one or more PV systems and other appurtenant structures and facilities within the boundaries of the site and (ii) is designed for, or capable of, operation at a rated capacity equal to or less than 150 MW. Two or more solar energy projects otherwise spatially separated but under common ownership or operational control, which are connected to the electrical grid under a single interconnection agreement, shall be considered a single solar energy project. Nothing in this definition shall imply that a permit by rule is required for the construction of test structures to determine the appropriateness of a site for the development of a solar energy project.

"Threatened and endangered," "T&E," "state threatened or endangered species," or "state-listed species" means (i) any wildlife species designated as a Virginia endangered or

threatened species by DWR pursuant to §§ 29.1-563 through 29.1-570 of the Code of Virginia and 4VAC15-20-130 or (ii) any species designated as a Virginia endangered or threatened species by VDACS pursuant to Chapter 10 (§ 3.2-1000 et seq.) of Title 3.2 of the Code of Virginia and 2VAC5-320-10.

"VDACS" means the Virginia Department of Agriculture and Consumer Services.

"Virginia Natural Landscape Assessment Ecological Cores" means large patches of natural land with at least 100 contiguous acres of interior, which begins 100 meters inward from the nearest edge between natural and unnatural land covers identified by the Virginia Natural Landscape Assessment performed by the Virginia Natural Heritage Program within DCR.

"VLR" means the Virginia Landmarks Register.

"VLR-eligible" means those historic resources that meet the criteria necessary for inclusion on the VLR pursuant to 17VAC5-30-40 through 17VAC5-30-70 but are not listed in VLR.

"VLR-listed" means those historic resources that have been listed in the VLR in accordance with the criteria of 17VAC5-30-40 through 17VAC5-30-70.

"Wildlife" means wild animals; except, however, that T&E insect species shall be considered T&E wildlife.

VA.R. Doc. No. R27-8489; Filed August 5, 2026, 8:35 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-18).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6921; 40 CFR Parts 260 through 272.

Effective Date: September 23, 2026.

Agency Contact: Ashby Scott, Hazardous Waste Program Manager, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23218, telephone (804) 350-5623, or email ashby.scott@deq.virginia.gov.

Summary:

The amendment updates the reference to U.S. Environmental Protection Agency regulations in Title 40 of the Code of Federal Regulations to the July 1, 2025, edition.

9VAC20-60-18. Applicability of incorporated references based on the dates on which they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency (EPA) set forth in Title 40 of the Code of Federal Regulations is referenced and incorporated into this chapter, that regulation shall be as it exists and has been published in the July 1, ~~2024~~ 2025, annual edition; however, the incorporation by reference of Title 40 of the Code of Federal Regulations shall not include the requirements of EPA's Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule (83 FR 24664, May 30, 2018).

VA.R. Doc. No. R27-8429; Filed July 27, 2026, 12:57 p.m.

Final Regulation

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

Titles of Regulations: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-485, 9VAC25-31-490, 9VAC25-31-530, 9VAC25-31-540; adding 9VAC25-31-465).**

9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (amending 9VAC25-32-313, 9VAC25-32-356, 9VAC25-32-515, 9VAC25-32-570; adding 9VAC25-32-316).

Statutory Authority:

9VAC25-31: § 62.1-44.15 of the Code of Virginia; § 402 of the federal Clean Water Act; 40 CFR Parts 122, 123, 124, 403, and 503.

9VAC25-32: § 62.1-44.15 of the Code of Virginia.

Effective Date: September 23, 2026.

Agency Contact: Joseph Bryan, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2659, or email joseph.bryan@deq.virginia.gov.

Background: Chapters 853 and 854 of the 2026 Acts of Assembly establish requirements for perfluoroalkyl and polyfluoroalkyl substances (PFAS) testing, reporting, and concentration-based management for owners of sewage treatment works and other permit holders that land apply, market, or distribute sewage sludge in the Commonwealth. The

Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) and the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32) govern the management and treatment of sewage sludge, which is the solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage, to ensure that treated sewage sludge is acceptable for land application, marketing, or distribution. Sewage sludge that has received an established treatment and contains acceptable levels of certain pollutants is known as biosolids. Currently, neither 9VAC25-31 nor 9VAC25-32 addresses PFAS testing, reporting, or concentration-based management requirements for biosolids land application, marketing, and distribution.

Summary:

Pursuant to Chapters 853 and 854 of the 2026 Acts of Assembly, the amendments revise 9VAC25-31 and 9VAC25-32 to include requirements for biosolids across both permit frameworks. Beginning January 1, 2027, treatment works that produce biosolids will be required to test the biosolids for PFAS and report those results to the department and entities that land apply biosolids from the treatment works. This testing will also be required for out-of-state sources of biosolids that will be land applied in Virginia. Beginning July 1, 2027, distribution, marketing, and land application of biosolids with PFAS will be limited based on concentrations of perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA). Beginning July 1, 2029, distribution, marketing, and land application of biosolids with PFAS will be further limited based on the combined concentrations of PFOS and PFOA. In addition, beginning July 1, 2027, the amendments require companies that land apply biosolids that contain PFAS to provide owners of land where biosolids will be land applied with PFAS monitoring results at least two weeks prior to land application.

9VAC25-31-465. PFAS requirements.

A. In addition to the definitions given in Part I (9VAC25-31-10 et seq.) and Part VI (9VAC25-31-420 et seq.) of this chapter, the following definitions apply to this section:

"PFAS" means per- and polyfluoroalkyl substances, as that term is defined in § 62.1-44.34:29 of the Code of Virginia.

"PFOA" means perfluorooctanoic acid.

"PFOS" means perfluorooctane sulfonate.

B. Beginning January 1, 2027, any owner of a treatment works land applying, marketing, or distributing biosolids in the Commonwealth shall collect representative samples of the biosolids that are intended to be land applied, marketed, or distributed and have such samples analyzed by an accredited laboratory for PFAS using U.S. Environmental Protection Agency (EPA) Method 1633, an applicable EPA revision, or another method approved by EPA that may be allowed by the department.

1. The minimum frequency of such sampling shall be monthly for the initial sampling period from January 1, 2027, through December 31, 2027, and thereafter may be reduced to not less frequently than quarterly upon the approval of the department.

2. The owner of the treatment works shall provide the concentration results for PFOS and PFOA and all other target analytes from the analysis to the department and any person land applying biosolids from the treatment works within 10 days of receipt of such results.

3. If the treatment works that is the source of the biosolids is located outside of the Commonwealth, the permit holder intending to land apply, market, or distribute the biosolids in the Commonwealth from such treatment works shall provide analyses to the department that meet all requirements of this subsection.

C. After July 1, 2027, if the analysis required under subsection B of this section finds:

1. A PFOS or PFOA concentration in the biosolids of greater than or equal to 50 micrograms per kilogram annual average on a rolling 12-month basis, the biosolids shall not be land applied, marketed, or distributed. The owner of the treatment works shall arrange for alternative treatment, use, or disposal of the biosolids until such time as the annual average on a rolling 12-month basis demonstrates a concentration of less than 50 micrograms per kilogram;

2. A PFOS or PFOA concentration in the biosolids of greater than or equal to 25 but less than 50 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder shall reduce the application rate of the biosolids to three dry tons per acre, not to exceed the application rate required by the nutrient management plan, or submit to the department for approval an alternative risk management strategy at least two weeks prior to land application in lieu of the reduced land application rate. Such permit holder shall reduce the application rate required in this subdivision until such time as the annual average on a 12-month basis demonstrates a concentration of less than 25 micrograms per kilogram. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

a. Notwithstanding the provisions of this subdivision 2, if any single test result exceeds 75 micrograms per kilogram for PFOS or PFOA, the owner of the treatment works shall promptly collect another sample for testing; and

b. If the result of such sample exceeds 75 micrograms per kilogram for PFOS or PFOA, the owner of the treatment works shall arrange for alternative treatment, use, or disposal of the biosolids until such time as a subsequent

sample result demonstrates a concentration of less than 50 micrograms per kilogram; or

3. A PFOS and PFOA concentration in the biosolids of less than 25 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder may land apply, market, or distribute the biosolids in accordance with its permit with no additional requirements. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations of all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

D. After July 1, 2027, when biosolids from two or more treatment works are blended prior to land application, the requirements of subdivisions C 1, C 2, and C 3 of this section shall be applied to the blended biosolids without further testing, using a mass-balance calculation.

E. After July 1, 2029, if the analysis required under subsection B of this section finds:

1. A combined PFOS and PFOA concentration in the biosolids of greater than or equal to 50 micrograms per kilogram annual average on a rolling 12-month basis, the biosolids shall not be land applied, marketed, or distributed. The owner of the treatment works shall arrange for alternative treatment, use, or disposal of the biosolids until the annual average on a rolling 12-month basis demonstrates a concentration of less than 50 micrograms per kilogram;

2. A combined PFOS and PFOA concentration in the biosolids of greater than or equal to 25 but less than 50 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder shall reduce the application rate of the biosolids to three dry tons per acre, not to exceed the application rate required by the nutrient management plan, or submit to the department for approval an alternative risk management strategy at least two weeks prior to land application in lieu of the reduced land application rate. Such permit holder shall reduce the application rate required in this subdivision until such time as the annual average on a rolling 12-month basis demonstrates a concentration of less than 25 micrograms per kilogram. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

a. Notwithstanding the provisions of this subdivision 2, if any single test result exceeds a combined PFOS and PFOA concentration of 75 micrograms per kilogram, the owner of the treatment works shall promptly collect another sample for testing; and

b. If the result of such test exceeds a combined PFOS and PFOA concentration of 75 micrograms per kilogram, such owner shall arrange for the alternative treatment, use, or disposal of the biosolids until a subsequent sample result demonstrates a concentration of less than 50 micrograms per kilogram; or

3. A combined PFOS and PFOA concentration in the biosolids of less than 25 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder may land apply, market, or distribute the biosolids in accordance with its permit with no additional requirements. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

F. After July 1, 2029, when biosolids from two or more treatment works are blended prior to land application, the requirements of subdivisions E 1, E 2, and E 3 of this section shall be applied to the blended biosolids without further testing, using a mass-balance calculation.

9VAC25-31-485. Requirements for a person who land apply biosolids.

A. No person shall land apply biosolids pursuant to a permit issued in accordance with this ~~regulation~~ chapter unless an individual holding a valid certificate of competence as specified in Article 5 (9VAC25-32-690 et seq.) of Part IX (9VAC25-32-303 et seq.) of the Virginia Pollution Abatement (VPA) Permit Regulation~~, Article 5, Certification of Land Applicators, as set forth in 9VAC25-32-690 through 9VAC25-32-760,~~ is ~~onsite~~ on site at all times during such land application.

B. When an application for a permit that authorizes the land application of biosolids is submitted to the department:

1. Permit holders shall use a DEQ control number, if previously assigned, identifying each land application field. If a DEQ control number has not been assigned, provide the site identification code used by the permit applicant to report activities and the site's location.

2. A written agreement shall be established between the landowner and permit applicant or permit holder to be submitted with the permit application, whereby the landowner shall consent to the application of biosolids on his property. The landowner agreement shall include:

a. A statement certifying that the landowner is the sole owner or one of multiple owners of the property ~~or properties~~ identified on the landowner agreements;

b. A statement certifying that no concurrent agreements are in effect for the fields to be permitted for biosolids application;

c. An ~~acknowledgement~~ acknowledgment that the landowner shall notify the permittee when land is sold or ownership transferred;

d. An ~~acknowledgement~~ acknowledgment that the landowner shall notify the permittee if any conditions change such that any component of the landowner agreement becomes invalid;

e. Permission to allow department staff on the landowner's property to conduct inspections;

f. An ~~acknowledgement~~ acknowledgment by the landowner of any site restrictions identified in ~~the regulation~~ this chapter;

g. An ~~acknowledgement~~ acknowledgment that the landowner has received a biosolids fact sheet approved by the department; and

h. An ~~acknowledgement~~ acknowledgment that the landowner shall not remove notification signs placed by the permit holder.

3. New landowner agreements, using the most current form provided by the department, shall be submitted to the department for proposed land application sites identified in each application for issuance or reissuance of a permit or the modification to add land to an existing permit that authorizes the land application of biosolids.

4. For permits modified in order to incorporate changes to this chapter, the permit holder shall, within 60 days of the effective date of the permit modification, advise the landowner by certified letter of the requirement to provide a new landowner agreement. The letter shall include instructions to the landowner for signing and returning the new landowner agreement and shall advise the landowner that the permit holder's receipt of such new landowner agreement is required prior to application of biosolids to the landowner's property.

5. The responsibility for obtaining and maintaining the agreements lies with the permit holder.

C. The permit holder shall ensure that the landowner agreement is still valid at the time of land application.

D. Notification requirements.

1. At least 100 days prior to commencing the first land application of biosolids at a permitted site, the permittee shall deliver or cause to be delivered written notification to the chief executive officer or ~~his~~ designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the biosolids to be applied to the site. This requirement may be satisfied by the department's notice to the local government at the time of receiving the permit application if all necessary information is included in the notice or by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

2. At least 14 days prior to commencing land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.

3. Not more than 24 hours prior to commencing land application activities, including delivery of biosolids at a permitted site, the permittee shall notify in writing the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. This notification shall include identification of the biosolids source and shall include only sites where land application activities will commence within 24 hours or where the biosolids will be staged within 24 hours.

4. The permit holder shall conduct notification in accordance with 9VAC25-31-465.

E. Evidence of financial responsibility shall be provided in accordance with requirements specified in Article 6 (9VAC25-32-770 et seq.) of Part IX (9VAC25-32-303 et seq.) of the Virginia Pollution Abatement (VPA) Permit Regulation.

F. Posting signs.

1. At least five business days prior to delivery of biosolids for land application on any site permitted under this ~~regulation~~ chapter, the permit holder shall post signs at the site that comply with this section, are visible and legible from the public right-of-way in both directions of travel, and conform to the specifications in this subsection. The sign shall remain in place for at least five business days after land application has been completed at the site. The permit holder shall not remove the signs until at least 30 days after land application has been completed at the site.

a. A sign shall be posted at or near the intersection of the public right-of-way and the main site access road or driveway to the site used by the biosolids transport vehicles.

b. If the field is located adjacent to a public right-of-way, at least one sign shall be posted along each public road frontage beside the field to be land applied.

c. The department may grant a waiver to the requirements in this section~~,~~ or require alternative posting options due to extenuating circumstances or where requirements conflict with local government ordinances and other requirements regulating the use of signs.

2. Upon the posting of signs at a land application site prior to commencing land application, the permittee shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. Notification shall be delivered to the department within 24 hours of the posting of the signs. The notice shall include the following:

a. The name and telephone number of the permit holder, including the name of a representative knowledgeable of the permit;

b. Identification by tax map number and the DEQ control number for sites on which land application is to take place;

c. The name or title and telephone number of at least one individual designated by the permit holder to respond to questions and complaints related to the land application project if not the permit holder identified in subdivision a of this subdivision; and

d. The approximate dates on which land application is to begin and end at the site.

3. The sign shall be made of weather-resistant materials and shall be sturdily mounted so as to be capable of remaining in place and legible throughout the period that the sign is required at the site. Signs required by this section shall be temporary, nonilluminated, and four square feet or more in area, and only contain the following information:

a. A statement that biosolids are being land applied at the site;

b. The name of the permit holder;

c. The telephone number of an individual designated by the permit holder to respond to complaints and inquiries; and

d. Contact information for the department, including a telephone number for complaints and inquiries.

4. The permit holder shall make a good faith effort to replace or repair any sign that has been removed from a land application site or that has been damaged so as to render any of its required information illegible prior to five business days after completion of land application.

G. Biosolids management plan.

1. The permit holder shall maintain and implement a biosolids management plan, which shall consist of three components:

a. The materials, including site booklets, developed and submitted at the time of permit application or permit modification adding a site to the permit in accordance with 9VAC25-31-100 Q;

b. Nutrient management plan for each site, in accordance with 9VAC25-31-505; and

c. Operation and maintenance (O&M) manual, developed and submitted to the department within 90 days of the effective date of the permit.

2. The biosolids management plan and all of ~~its~~ the plan's components shall be incorporated as an enforceable part of the permit.

3. The O&M manual shall include at a minimum:

a. Equipment maintenance and calibration procedures and schedules;

b. Storage facility maintenance procedures and schedules;

c. Sampling schedules for:

(1) Required monitoring; and

(2) Operational control testing;

d. Sample collection, preservation and analysis procedures, including laboratories and methods used; and

e. Instructions for recording and reporting all monitoring activities.

4. Current VPDES permit holders who land apply biosolids may use their existing VPDES O&M plan addressing land application to satisfy the requirements of this section if the existing plan addresses all of the required minimum components identified in this section.

H. Handling of complaints.

1. Within 24 hours of receiving notification of a complaint, the permit holder shall commence investigation of the complaint and shall determine whether the complaint is substantive. The permit holder shall confirm receipt of all substantive complaints by phone, email, or facsimile to the department, the chief executive officer or designee for the local government of the jurisdiction in which the complaint originates, and the owner of the treatment facility from which the biosolids originated within 24 hours after receiving the complaint.

2. For the purposes of this section, a substantive complaint shall be deemed to be any complaint alleging a violation of ~~these regulations~~ this chapter, state law, or local ordinance; a release of biosolids to state waters or to a public right-of-way or to any location not authorized in the permit; or failure to comply with the nutrient management plan for the land application site.

9VAC25-31-490. Sampling and analysis.

A. Representative samples of biosolids that is applied to the land~~,~~ or placed on a surface disposal site shall be collected and analyzed.

B. Methods in the materials listed below or in 40 CFR Part 136 shall be used to analyze samples of biosolids and calculation procedures in the materials shall be used to calculate the percent volatile solids reduction for biosolids.

1. Enteric viruses.

ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludges," Annual Book of ASTM Standards: Section 11 - Water and Environmental Technology, ASTM, Philadelphia, PA., 1992.

2. Fecal coliform.

Part 9221 E. or Part 9222 D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

3. Helminth ova.

Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. PB 88-154273/AS, National Technical Information Service, Springfield, Virginia.

4. Inorganic pollutants.

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, IVA and IVB. PB88-239223, National Technical Information Service, Springfield, Virginia.

5. Salmonella sp. bacteria.

Part 9260 D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992; or

Kenner, B.A. and H.P. Clark, "Detection and enumeration of Salmonella and Pseudomonas aeruginosa," J. Water Pollution Control Federation, 46(9):2163-2171, 1974.

6. Specific oxygen uptake rate.

Part 2710 B., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

7. Total, fixed, and volatile solids.

Part 2540 G., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

8. Percent volatile solids reduction calculation.

"Environmental Regulations and Technology - Control of Pathogens and Vector Attraction in Sewage Sludge," EPA-625/R-92/013, U.S. Environmental Protection Agency, Cincinnati, Ohio, Revised July 2003.

9. Per- and polyfluoroalkyl substances.

"Method 1633, Revision A - Analysis of Per- and Polyfluoroalkyl Substances (PFAS) in Aqueous, Solid, Biosolids, and Tissue Samples by LC-MS/MS," EPA-820/R-24/007, U.S. Environmental Protection Agency, Washington, DC, Revised December 2024.

9VAC25-31-530. General requirements.

A. No person shall apply biosolids to the land except in accordance with the requirements in this article.

B. No person shall apply bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to agricultural land, forest, a public contact site, or a reclamation site if any of the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been reached.

C. No person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365-day period if the annual application rate in 9VAC25-31-540 C has been reached during that period.

D. The person who prepares bulk biosolids that is applied to agricultural land, forest, a public contact site, or a reclamation site shall provide the person who applies the bulk biosolids written notification of the concentration of total nitrogen (as N on a dry weight basis) in the bulk biosolids.

E. Application of biosolids to the land.

1. The person who applies biosolids to the land shall obtain information needed to comply with the requirements in this subpart.

2. Before bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 is applied to the land~~;~~:

a. The person who proposes to apply the bulk biosolids shall contact the department to determine whether bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993.

b. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has not been applied to the site since July 20, 1993, the cumulative amount for each pollutant listed in Table 2 of 9VAC25-31-540 may be applied to the site in accordance with 9VAC25-31-540 A 2 a.

c. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is known, the cumulative amount of each pollutant applied to the site shall be used to determine the additional amount of each pollutant that can be applied to the site in accordance with 9VAC25-31-540 A 2 a.

d. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is not known, an additional amount of each pollutant shall not be applied to the site in accordance with 9VAC25-31-540 A 2 a.

F. When a person who prepares bulk biosolids provides the bulk biosolids to a person who applies the bulk biosolids to the land, the person who prepares the bulk biosolids shall provide the person who applies the biosolids notice and necessary information to comply with the requirements in this article.

G. When a person who prepares biosolids provides the biosolids to another person who prepares the biosolids, the person who provides the biosolids shall provide the person who receives the biosolids notice and necessary information to comply with the requirements in this article.

H. The person who applies bulk biosolids to the land shall provide the owner or lease holder of the land on which the bulk biosolids is applied notice and necessary information to comply with the requirements in this article.

I. Any person who prepares bulk biosolids in another state that is applied to land in Virginia shall provide written notice to the department prior to the initial application of bulk biosolids to the land application site by the applier. The notice shall include:

1. The location, by either street address or latitude and longitude, of each land application site;

2. The approximate time period bulk biosolids will be applied to the site;

3. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who prepares the bulk biosolids; and

4. The name, address, telephone number, and National (or Virginia) Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk biosolids.

J. Any person who applies bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the land shall provide written notice, prior to the initial application of bulk biosolids to a land application site by the applier, to the department and the department shall retain and provide access to the notice. The notice shall include:

1. The location, by either street address or latitude and longitude, of the land application site; and

2. The name, address, telephone number, and Virginia Pollutant Discharge Elimination System permit number (if appropriate) of the person who will apply the bulk biosolids.

K. Any person who land applies, markets, or distributes biosolids must do so in accordance with the requirements in 9VAC25-31-465.

9VAC25-31-540. Pollutant limits.

A. Biosolids.

1. Bulk biosolids or biosolids sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the biosolids exceeds the ceiling concentration for the pollutant in Table 1 of this section.

2. If bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site, either:

a. The cumulative loading rate for each pollutant shall not exceed the cumulative pollutant loading rate for the pollutant in Table 2 of this section; or

b. The concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 3 of this section.

3. If bulk biosolids is applied to a lawn or a home garden, the concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 3 of this section.

4. If biosolids is sold or given away in a bag or other container for application to the land, either:

a. The concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 3 of this section; or

b. The product of the concentration of each pollutant in the biosolids and the annual whole sludge application rate for the biosolids shall not cause the annual pollutant loading rate for the pollutant in Table 4 of this section to be exceeded. The procedure used to determine the annual whole sludge application rate is presented in subsection D of this section.

5. Biosolids that are land applied, marketed, or distributed must satisfy the requirements in 9VAC25-31-465.

B. Pollutant concentrations and loading rates - biosolids.

TABLE 1
CEILING CONCENTRATIONS

Pollutant	Ceiling Concentration (milligrams per kilogram)*
Arsenic	75
Cadmium	85
Copper	4,300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7,500
*Dry weight basis	

TABLE 2
CUMULATIVE POLLUTANT LOADING RATES[1]

Pollutant	Cumulative Pollutant Loading Rate	
	(kilograms per hectare)	(pounds per acre)
Arsenic[2]	41	36
Cadmium	39	35
Copper	1,500	1,340
Lead	300	270
Mercury	17	16
Molybdenum[2]		
Nickel	420	375
Selenium	100	89
Zinc	2,800	2,500

Notes:

[1]Such total applications to be made on soils with the biosolids/soil mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil background pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.

[2]The maximum cumulative application rate is currently under study by ~~the USEPA~~ EPA. Research suggests that for Molybdenum a cumulative pollutant loading rate below 40 kg/hectare may be appropriate to reduce the risk of copper deficiency in grazing animals.

TABLE 3
POLLUTANT CONCENTRATIONS

Pollutant	Monthly Average Concentration (milligrams per kilogram)*
Arsenic	41
Cadmium	39
Copper	1,500
Lead	300
Mercury	17
Molybdenum[1]	
Nickel	420
Selenium	100
Zinc	2,800

*Dry weight basis

Note:

[1]The monthly average concentration is currently under study by ~~the USEPA~~ EPA. Research suggests that a monthly average Molybdenum concentration below 40 mg/kg may be appropriate to reduce the risk of copper deficiency in grazing animals.

TABLE 4
ANNUAL POLLUTANT LOADING RATES

Pollutant	Annual Pollutant Loading Rate[1] (per 365-day period)	
	(kilograms per hectare)	(pounds per acre)
Arsenic	2.0	1.8
Cadmium	1.9	1.7
Copper	75	67
Lead	15	13
Mercury	0.85	0.76
Molybdenum[2]		
Nickel	21	19
Selenium	5.0	4.6
Zinc	140	125

Notes:

[1]Such total applications to be made on soils with the biosolids/soils mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.

[2]The maximum cumulative application rate is currently under study by ~~the USEPA~~ EPA.

C. Domestic septage. The annual application rate for

domestic septage applied to agricultural land, forest, or a reclamation site shall not exceed the annual application rate calculated using equation (1).

EQUATION (1)
AAR = N/0.0026
AAR = Annual application rate in gallons per acre per 365-day period.
N = Amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land.

D. Procedures to determine the annual whole sludge application rate for biosolids. 9VAC25-31-540 A 4 b requires that the product of the concentration for each pollutant listed in Table 4 of this section in biosolids sold or given away in a bag or other container for application to the land and the AWSAR for the biosolids not cause the annual pollutant loading rate for the pollutant in Table 4 to be exceeded. This section contains the procedure used to determine the AWSAR for a biosolids that does not cause the annual pollutant loading rates in Table 4 of this section to be exceeded.

1. The relationship between the APLR for a pollutant and the AWSAR for a biosolids is shown in equation (2).

EQUATION (2)
APLR = C x AWSAR x 0.001
APLR = Annual pollutant loading rate in kilograms per hectare per 365-day period
C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis)
AWSAR = Annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis)
0.001 = A conversion factor

2. To determine the AWSAR, equation (2) is rearranged into equation (3):

EQUATION (3)
AWSAR = APLR/(C x 0.001)
AWSAR = Annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis)
APLR = Annual pollutant loading rate in kilograms per hectare per 365-day period
C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis)
0.001 = A conversion factor

3. The procedure used to determine the AWSAR for a biosolids is presented ~~below~~ in this subdivision 3.

a. Analyze a sample of the biosolids to determine the concentration for each of the pollutants listed in Table 4 of this section in the biosolids.

b. Using the pollutant concentrations from Step 1 and the APLRs from Table 4 of this section, calculate an AWSAR for each pollutant using equation (3) ~~above~~.

c. The AWSAR for the biosolids is the lowest AWSAR calculated in ~~Step 2~~ subdivision 3 b of this section.

9VAC25-32-313. General requirements.

A. No person shall apply biosolids to the land except in accordance with the requirements in this article.

B. No person shall apply bulk biosolids to the land if it is likely to adversely affect a threatened or endangered species listed in 9VAC25-260-320 or § 4 of the Endangered Species Act (16 USC § 1533) or if the land application is likely to adversely affect its designated critical habitat.

C. No person shall apply bulk biosolids subject to the cumulative pollutant loading rates in Table 3 of 9VAC25-32-356 ~~Table 3~~ to agricultural land, forest, a public contact site, or a reclamation site if any of the cumulative pollutant loading rates in Table 3 of 9VAC25-32-356 ~~Table 3~~ has been reached.

D. No person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365-day period if the annual application rate in 9VAC25-32-356 D has been reached during that period.

E. The person who prepares bulk biosolids that is applied to agricultural land, forest, a public contact site, or a reclamation site shall provide the person who applies the bulk biosolids written notification of the concentration of total nitrogen and phosphorus (as N and P on a dry weight basis) in the bulk biosolids.

F. Before bulk biosolids subject to the cumulative pollutant loading rates in Table 3 of 9VAC25-32-356 ~~Table 3~~ is applied to the land, the person who proposes to apply the bulk biosolids shall contact the department to determine whether bulk biosolids subject to the cumulative pollutant loading rates in Table 3 of 9VAC25-32-356 ~~Table 3~~ has been applied to the site since July 20, 1993.

1. If bulk biosolids subject to the cumulative pollutant loading rates in Table 3 of 9VAC25-32-356 ~~Table 3~~ has not been applied to the site since July 20, 1993, the cumulative amount of each pollutant listed in Table 3 of 9VAC25-32-356 ~~Table 3~~ may be applied to the site in accordance with 9VAC25-32-356 B 2 a.

2. If bulk biosolids subject to the cumulative pollutant loading rates in Table 3 of 9VAC25-32-356 ~~Table 3~~ has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is known, the cumulative amount of each pollutant applied to the site shall be used to determine

the additional amount of each pollutant that can be applied to the site in accordance with 9VAC25-32-356 B 2 a.

3. If bulk biosolids subject to the cumulative pollutant loading rates in Table 3 of 9VAC25-32-356 ~~Table 3~~ has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is not known, an additional amount of each pollutant shall not be applied to the site in accordance with 9VAC25-32-356 B 2 a.

G. When a person who prepares bulk biosolids provides the bulk biosolids to a person who applies the bulk biosolids to the land, the person who prepares the bulk biosolids shall provide the person who applies the biosolids notice and necessary information to comply with the requirements in this article.

H. When a person who prepares biosolids provides the biosolids to another person who prepares the biosolids, the person who provides the biosolids shall provide the person who receives the biosolids notice and necessary information to comply with the requirements in this article.

I. The person who applies bulk biosolids to the land shall provide the owner or lease holder of the land on which the bulk biosolids is applied notice and necessary information to comply with the requirements in this article.

J. Any person who prepares bulk biosolids in another state that is applied to land in Virginia shall provide written notice to the department prior to the initial application of bulk biosolids to the land application site by the applier. The notice shall include:

1. The location, by either street address or latitude and longitude, of each land application site;

2. The approximate time period bulk biosolids will be applied to the site;

3. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who prepares the bulk biosolids; and

4. The name, address, telephone number, and National (or Virginia) Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk biosolids.

K. Any person who applies bulk biosolids subject to the cumulative pollutant loading rates in Table 3 of 9VAC25-32-356 ~~Table 3~~ to the land shall provide written notice, prior to the initial application of bulk biosolids to the land application site by the applier, to the department and the department shall retain and provide access to the notice. The notice shall include:

1. The location, by either street address or latitude and longitude, of the land application site; and

2. The name, address, telephone number, and Virginia Pollution Abatement permit number (if appropriate) of the person who will apply the bulk biosolids.

L. Any person who land applies, markets, or distributes biosolids must do so in accordance with the requirements in 9VAC25-32-316.

9VAC25-32-316. PFAS requirements.

A. In addition to the definitions given in Part I (9VAC25-32-10 et seq.) of this chapter, the following definitions apply to this section:

"PFAS" means per- and polyfluoroalkyl substances, as that term is defined in § 62.1-44.34:29 of the Code of Virginia.

"PFOA" means perfluorooctanoic acid.

"PFOS" means perfluorooctane sulfonate.

B. Beginning January 1, 2027, any owner of a treatment works land applying, marketing, or distributing biosolids in the Commonwealth shall collect representative samples of the biosolids that are intended to be land applied, marketed, or distributed and have such samples analyzed by an accredited laboratory for PFAS using U.S. Environmental Protection Agency (EPA) Method 1633, an applicable EPA revision, or another method approved by EPA that may be allowed by the department.

1. The minimum frequency of such sampling shall be monthly for the initial sampling period from January 1, 2027, through December 31, 2027, and thereafter may be reduced to not less frequently than quarterly upon the approval of the department.

2. The owner of the treatment works shall provide the concentration results for PFOS and PFOA and all other target analytes from the analysis to the department and any person land applying biosolids from the treatment works within 10 days of receipt of such results.

3. If the treatment works that is the source of the biosolids is located outside of the Commonwealth, the permit holder intending to land apply, market, or distribute the biosolids in the Commonwealth from such treatment works shall provide analyses to the department that meet all requirements of this subsection.

C. After July 1, 2027, if the analysis required under subsection B of this section finds:

1. A PFOS or PFOA concentration in the biosolids of greater than or equal to 50 micrograms per kilogram annual average on a rolling 12-month basis, the biosolids shall not be land applied, marketed, or distributed. The owner of the treatment works shall arrange for alternative treatment, use, or disposal of the biosolids until such time as the annual average on a rolling 12-month basis demonstrates a concentration of less than 50 micrograms per kilogram;

2. A PFOS or PFOA concentration in the biosolids of greater than or equal to 25 but less than 50 micrograms per kilogram

annual average on a rolling 12-month basis, the permit holder shall reduce the application rate of the biosolids to 3 dry tons per acre, not to exceed the application rate required by the nutrient management plan, or submit to the department for approval an alternative risk management strategy at least two weeks prior to land application in lieu of the reduced land application rate. Such permit holder shall reduce the application rate required in this subdivision until such time as the annual average on a 12-month basis demonstrates a concentration of less than 25 micrograms per kilogram. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

a. Notwithstanding the provisions of this subdivision 2, if any single test result exceeds 75 micrograms per kilogram for PFOS or PFOA, the owner of the treatment works shall promptly collect another sample for testing; and

b. If the result of such sample exceeds 75 micrograms per kilogram for PFOS or PFOA, the owner of the treatment works shall arrange for alternative treatment, use, or disposal of the biosolids until such time as a subsequent sample result demonstrates a concentration of less than 50 micrograms per kilogram; or

3. A PFOS and PFOA concentration in the biosolids of less than 25 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder may land apply, market, or distribute the biosolids in accordance with its permit with no additional requirements. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations of all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

D. After July 1, 2027, when biosolids from two or more treatment works are blended prior to land application, the requirements of subdivisions C 1, C 2, and C 3 of this section shall be applied to the blended biosolids without further testing, using a mass-balance calculation.

E. After July 1, 2029, if the analysis required under subsection B of this section finds:

1. A combined PFOS and PFOA concentration in the biosolids of greater than or equal to 50 micrograms per kilogram annual average on a rolling 12-month basis, the biosolids shall not be land applied, marketed, or distributed. The owner of the treatment works shall arrange for alternative treatment, use, or disposal of the biosolids until the annual average on a rolling 12-month basis demonstrates a concentration of less than 50 micrograms per kilogram;

2. A combined PFOS and PFOA concentration in the biosolids of greater than or equal to 25 but less than 50 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder shall reduce the application rate of the biosolids to three dry tons per acre, not to exceed the application rate required by the nutrient management plan, or submit to the department for approval an alternative risk management strategy at least two weeks prior to land application in lieu of the reduced land application rate. Such permit holder shall reduce the application rate required in this subdivision until such time as the annual average on a rolling 12-month basis demonstrates a concentration of less than 25 micrograms per kilogram. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

a. Notwithstanding the provisions of this subdivision 2, if any single test result exceeds a combined PFOS and PFOA concentration of 75 micrograms per kilogram, the owner of the treatment works shall promptly collect another sample for testing; and

b. If the result of such test exceeds a combined PFOS and PFOA concentration of 75 micrograms per kilogram, such owner shall arrange for the alternative treatment, use, or disposal of the biosolids until a subsequent sample result demonstrates a concentration of less than 50 micrograms per kilogram; or

3. A combined PFOS and PFOA concentration in the biosolids of less than 25 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder may land apply, market, or distribute the biosolids in accordance with its permit with no additional requirements. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

F. After July 1, 2029, when biosolids from two or more treatment works are blended prior to land application, the requirements of subdivisions E 1, E 2, and E 3 of this section shall be applied to the blended biosolids without further testing, using a mass-balance calculation.

9VAC25-32-356. Pollutant monitoring and limits.

~~Article 2~~
~~Operational and Monitoring Requirements~~

A. Bulk biosolids or biosolids sold or given away in a bag or other container shall be monitored for the parameters identified in Table 1 of this section:

TABLE 1 PARAMETERS for BIOSOLIDS ANALYSIS[1]
Pollutant
Percent solids (%)
Volatile solids (%)
pH (standard units)
Total Kjeldahl nitrogen (%)
Ammonia nitrogen (%)
Nitrates (mg/kg)
Total phosphorus (%)
Total potassium (%)
Alkalinity as $CaCO_3$ (mg/kg)[2]
Arsenic (mg/kg)
Cadmium (mg/kg)
Copper (mg/kg)
Lead (mg/kg)
Mercury (mg/kg)
Molybdenum (mg/kg)
Nickel (mg/kg)
Selenium (mg/kg)
Zinc (mg/kg)
[1]Values reported on a dry weight basis unless indicated. [2]Lime treated biosolids (10% or more lime by weight) shall be analyzed for percent $CaCO_3$.

B. Biosolids pollutant limits.

1. Bulk biosolids or biosolids sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the biosolids exceeds the ceiling concentration for the pollutant in Table 2 of this section.

2. If bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site, either:

a. The cumulative loading rate for each pollutant shall not exceed the cumulative pollutant loading rate for the pollutant in Table 3 of this section; or

b. The concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 4 of this section.

3. If bulk biosolids is applied to a lawn or a home garden, the concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 4 of this section.

4. If biosolids is sold or given away in a bag or other container for application to the land, either:

a. The concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 4 of this section; or

b. The product of the concentration of each pollutant in the biosolids and the annual whole sludge application rate for the biosolids shall not cause the annual pollutant loading rate for the pollutant in Table 5 of this section to be exceeded. The procedure used to determine the annual whole sludge application rate is presented in subsection D of this section.

5. Biosolids that are land applied, marketed, or distributed must satisfy the requirements in 9VAC25-32-316.

C. Pollutant concentrations and loading rates - biosolids.

TABLE 2 CEILING CONCENTRATIONS	
Pollutant	Ceiling Concentration (milligrams per kilogram)*
Arsenic	75
Cadmium	85
Copper	4,300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7,500
*Dry weight basis	

TABLE 3
CUMULATIVE POLLUTANT LOADING RATES[1]

Pollutant	Cumulative Pollutant Loading Rate (kilograms per hectare)	Cumulative Pollutant Loading Rate (pounds per acre)
Arsenic[2]	41	36
Cadmium	39	35
Copper	1,500	1,340
Lead	300	270
Mercury	17	16
Molybdenum[2]		
Nickel	420	375
Selenium	100	89
Zinc	2,800	2,500

Notes:[1]Such total applications to be made on soils with the biosolids/soil mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil background pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.

[2]The maximum cumulative application is currently under study by ~~USEPA~~ EPA. Research suggests that for Molybdenum a cumulative pollutant loading rate below 40 kg/hectare may be appropriate to reduce the risk of copper deficiency in grazing animals.

TABLE 4
POLLUTANT CONCENTRATIONS

Pollutant	Monthly Average Concentration (milligrams per kilogram)*
Arsenic	41
Cadmium	39
Copper	1,500
Lead	300
Mercury	17
Molybdenum[1]	
Nickel	420
Selenium	100
Zinc	2,800

*Dry weight basis

Note: [1] The monthly average concentration is currently under study by ~~USEPA~~ EPA. Research suggests that a monthly average Molybdenum concentration below 40 mg/kg may be appropriate to reduce the risk of copper deficiency in grazing animals.

TABLE 5
ANNUAL POLLUTANT LOADING RATES [1]

Pollutant	Annual Pollutant Loading Rate (per 365-day period) (kilograms per hectare)	Annual Pollutant Loading Rate (per 365-day period) (pounds per acre)
Arsenic [2]	2.0	1.8
Cadmium	1.9	1.7
Copper	75	67
Lead	15	13
Mercury	0.85	0.76
Molybdenum[2]		
Nickel	21	19
Selenium	5.0	4.6
Zinc	140	125

Notes:[1]Such total applications to be made on soils with the biosolids/soil mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil background pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.

[2]The maximum cumulative application is currently under study by ~~USEPA~~ EPA.

D. Procedures to determine the annual whole sludge application rate (AWSAR) for biosolids. Subdivision B 4 b of this section requires that the product of the concentration for each pollutant listed in Table 4 of this section in biosolids sold or given away in a bag or other container for application to the land and the AWSAR for the biosolids not cause the annual pollutant loading rate for the pollutant in Table 5 to be exceeded. This subsection contains that procedure used to determine the AWSAR for a biosolids that does not cause the annual pollutant loading rates (APLR) in Table 5 of this section to be exceeded.

1. The relationship between the APLR for a pollutant and the AWSAR for a biosolids is shown in equation (1):

EQUATION (1)
APLR = C X AWSAR X 0.001
APLR = Annual pollutant loading rate in kilograms per hectare per 365-day period
C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis)
AWSAR = Annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis)
0.001 = A conversion factor

2. To determine the AWSAR, equation (1) is rearranged into equation (2):

EQUATION (2)
AWSAR = APLR/(C X 0.001)
AWSAR = Annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis)
APLR = Annual pollutant loading rate in kilograms per hectare per 365-day period
C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis)
0.001 = A conversion factor

3. The procedure used to determine the AWSAR for a biosolids is presented ~~below~~ in this subdivision 3:

a. Analyze a sample of the biosolids to determine the concentration for each of the pollutants listed in Table 4 of this section in the biosolids.

b. Using the pollutant concentrations from subdivision 3 a of this subsection and the APLRs from Table 5 of this section, calculate an AWSAR for each pollutant using ~~Equation~~ equation (2) ~~above~~.

c. The AWSAR for the biosolids is the lowest AWSAR calculated in subdivision 3 b of this subsection.

9VAC25-32-515. Notification of land application activity.

A. Written notification.

1. At least 100 days prior to commencing the first land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer or designee for the local government where the site is located. This requirement may be satisfied by the department's notice to the local government at the time of receiving the permit application if all necessary information is included in the notice or by providing a list of available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. If the site is located in more than one county, the information shall be provided to all jurisdictions where the site is located.

2. At least 14 days prior to commencing land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. The notice shall identify the location of the permitted site and the expected sources of the biosolids to be applied to the site.

3. Not more than 24 hours prior to commencing land application activities, including delivery of biosolids at a permitted site, the permittee shall notify in writing the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. This notification shall include identification of the biosolids source and shall include only sites where land application activities will commence within 24 hours or where biosolids will be staged within 24 hours.

4. The permit holder shall conduct notification in accordance with 9VAC25-32-316.

B. Posting signs.

1. At least five business days prior to delivery of biosolids for land application on any site permitted under this regulation, the permit holder shall post signs at the site that comply with this section, are visible and legible from the public right-of-way in both directions of travel, and conform to the specifications ~~herein~~ in this subsection. The sign shall remain in place for at least five business days after land application has been completed at the site. The permit holder shall not remove the signs until at least 30 days after land application has been completed at the site.

a. A sign shall be posted at or near the intersection of the public right-of-way and the main site access road or driveway to the site used by the biosolids transport vehicles.

b. If the field is located adjacent to a public right-of-way, at least one sign shall be posted along each public road frontage beside the field to be land applied.

c. The department may grant a waiver to the requirements in this section, or require alternative posting options due to extenuating circumstances or where requirements conflict with local government ordinances and other requirements regulating the use of signs.

2. Upon the posting of signs at a land application site prior to commencing land application, the permittee shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. Notification shall

be delivered to the department within 24 hours of the posting of signs. The notice shall include the following:

a. The name and telephone number of the permit holder, including the name of a representative knowledgeable of the permit;

b. Identification by tax map number and the DEQ control number for sites on which land application is to take place;

c. The name or title and telephone number of at least one individual designated by the permit holder to respond to questions and complaints related to the land application project if not the permit holder identified in 9VAC25-32-515 B 2 a;

d. The approximate dates on which land application is to begin and end at the site; and

e. The name, address, and telephone number of the wastewater treatment facility or facilities from which the biosolids will originate, including the name or title of a representative of the treatment facility who is knowledgeable about the land application operation.

3. The sign shall be made of weather-resistant materials and shall be sturdily mounted so as to be capable of remaining in place and legible throughout the period that the sign is required at the site. Signs required by this section shall be temporary, nonilluminated, and four square feet or more in area, and only contain the following information:

a. A statement that biosolids are being land-applied at the site;

b. The name of the permit holder;

c. The telephone number of an individual designated by the permit holder to respond to complaints and inquiries; and

d. Contact information for the department, including a telephone number for complaints and inquiries.

4. The permit holder shall make a good faith effort to replace or repair any sign that has been removed from a land application site or that has been damaged so as to render any of its required information illegible prior to five business days after completion of land application.

C. Handling of complaints.

1. Within 24 hours of receiving notification of a complaint, the permit holder shall commence investigation of said complaint and shall determine whether the complaint is substantive. The permit holder shall confirm receipt of all substantive complaints by phone, email, or facsimile to the department, the chief executive officer or ~~his~~ designee for the local government of the jurisdiction in which the complaint originates, and the owner of the treatment facility from which the biosolids originated within 24 hours after receiving the complaint.

2. For the purposes of this section, a substantive complaint shall be deemed to be any complaint alleging a violation of these regulations, state law, or local ordinance; a release of biosolids to state waters or to a public right-of-way or to any location not authorized in the permit; or failure to comply with the nutrient management plan for the land application site.

3. Localities receiving complaints concerning land application of biosolids shall notify the department and the permit holder within 24 hours of receiving the complaint.

9VAC25-32-570. Distribution and marketing.

A. Exceptional quality. Distribution or marketing provides for the sale or distribution of exceptional quality biosolids or mixtures of exceptional quality biosolids with other materials such that the mixture achieves the Class A pathogen control, vector attraction reduction, and pollutant control standards. Distribution or marketing of Class A biosolids that have been mixed with inert materials may be approved on a case-by-case basis. Use of such mixtures for agricultural purposes shall be evaluated through proper testing or research programs designed to assess the suitability of the material for such use. Exceptional quality biosolids marketed as fertilizers or soil conditioners must meet the following conditions:

1. The biosolids product must be registered with the Virginia Department of Agriculture and Consumer Services in accordance with the provisions of § 3.2-3607 of the Code of Virginia.

2. The biosolids product must be processed to meet Class A pathogen requirements as specified in 9VAC25-32-675 A.

3. The biosolids product must meet one of the vector attraction reduction requirements as specified in 9VAC25-32-685 B 1 through B 8.

4. The biosolids product must meet the ceiling concentrations specified in Table 2 of 9VAC25-32-356 ~~- Table 2~~.

5. The biosolids product must meet the pollutant concentrations specified in Table 4 of 9VAC25-32-356 ~~- Table 4~~.

6. The biosolids product must meet the requirements specified in 9VAC25-32-316.

7. Additional parameters may be required for screening purposes such as organic chemicals, aluminum (mg/kg), water soluble boron (mg/kg), calcium (mg/kg), chlorides (mg/l), manganese (mg/kg), sulfur (mg/kg), and those pollutants for which removal credits are granted.

B. Bulk distribution. Exceptional quality biosolids may be distributed and marketed in either bulk amounts (unpacked) or as a bagged product. The following requirements shall apply to distribution and marketing of biosolids products:

1. Any permit holder who distributes or markets exceptional quality biosolids shall comply with the reporting

requirements of §§ 3.2-3609 and 3.2-3610 of the Code of Virginia. The records shall be maintained for five years and made available to the department upon request.

2. Bulk quantities of exceptional quality biosolids shall be land applied in accordance with a nutrient management plan prepared by a certified nutrient management planner as stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia, except under the following conditions:

a. The percent solids of the biosolids is equal to or greater than 90% based on moisture content and total solids, or

b. A blended product derived from biosolids is utilized for a purpose other than land application at agricultural operations.

3. Within 30 days after land application at the site has commenced, the permit holder shall provide a copy of the plan to the farm operator of the site and the Department of Conservation and Recreation.

C. Approval of biosolids sources. Only exceptional quality biosolids produced from a sludge processing facility approved by the department can be distributed and marketed.

D. Information furnished to all users. Labeling requirements shall be addressed in a biosolids management plan. Either a label shall be affixed to the bag or other container in which exceptional quality biosolids is sold or given away for application to the land, or an information sheet shall be provided to the person who receives exceptional quality biosolids. The label or information sheet shall contain the following information:

1. The name and address of the person who prepared the exceptional quality biosolids;

2. A statement that application of the exceptional quality biosolids to the land is prohibited except in accordance with the instructions on the label or information sheet;

3. The annual whole sludge application rate for the biosolids that does not cause any of the annual pollutant loading rates in Table 5 of 9VAC25-32-356 to be exceeded; and

4. Information required in accordance with regulations promulgated under § 3.2-3601 of the Code of Virginia and with the labeling provisions of § 3.2-3611 of the Code of Virginia.

E. Recordkeeping.

1. The person who prepares exceptional quality biosolids shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 4 of 9VAC25-32-356 in the biosolids;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9VAC25-32-675 A and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are met; and

d. A description of how one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 is met.

2. The person who derives the material that meets the criteria of exceptional quality biosolids shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 4 of 9VAC25-32-356 in the material;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9VAC25-32-675 A and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are met; and

d. A description of how one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 is met.

3. If the requirements in 9VAC25-32-356 B 4 b are met when biosolids is sold or given away in a bag or other container for application to the land, the person who prepares the biosolids that is sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:

a. The annual whole sludge application rate for the biosolids that does not cause the annual pollutant loading rates in Table 5 of 9VAC25-32-356 to be exceeded;

b. The concentration of each pollutant listed in Table 5 of 9VAC25-32-356 in the biosolids;

c. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the

management practices in 9VAC25-32-570 E and F, the Class A pathogen requirement in 9VAC25-32-675 A, and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

d. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are met; and

e. A description of how one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 is met.

F. An annual report shall be submitted to the department that includes the following information:

1. Total amount in dry tons of exceptional quality biosolids distributed in a bag or other container per year;

2. Total amount in dry tons of exceptional quality biosolids distributed in bulk; and

3. Total amount in dry tons of exceptional quality biosolids distributed from each approved source.

VA.R. Doc. No. R27-8650; Filed July 27, 2026, 2:14 p.m.

STATE WATER CONTROL BOARD

Final Regulation

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

Title of Regulation: **9VAC25-151. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (amending 9VAC25-151-400).**

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

Effective Date: September 23, 2026.

Agency Contact: Laura Galli, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 573-5674, or email laura.galli@deq.virginia.gov.

Summary:

Pursuant to Chapter 1080 of the 2026 Acts of Assembly, the amendments allow permittees under the Industrial Stormwater General Permit to use nutrient credits generated by point sources for the purpose of nutrient reduction compliance for calendar years 2025 and 2026 to comply with Chesapeake Bay total maximum daily loads if (i) the credits are generated and applied for purposes of compliance for the same calendar year; (ii) the credits are acquired no later than September 1, 2026, for calendar year 2025 or June 1, 2027, for calendar year 2026; (iii) the credits are generated in the same locality or tributary, except that permittees in the Eastern Coastal Basin may also acquire credits from the Potomac and Rappahannock tributaries; (iv) the credits are either point source nitrogen or point source phosphorus credits generated by point sources covered by the general permit issued pursuant to § 62.1-44.19:14 of the Code of Virginia; and (v) the permittee reports evidence of having obtained the credits to the Department of Environmental Quality within 30 days of September 1, 2026, for calendar year 2025 or June 1, 2027, for calendar year 2026.

9VAC25-151-400. Chesapeake Bay total maximum daily load compliance.

A. Chesapeake Bay TMDL Compliance. EPA's Chesapeake Bay TMDL (December 29, 2010) includes wasteload allocations for VPDES permitted industrial stormwater facilities as part of the regulated stormwater aggregate load. EPA used data submitted by Virginia with the Phase I Chesapeake Bay TMDL Watershed Implementation Plan, including the number of industrial stormwater permits per county and the number of urban acres regulated by industrial stormwater permits, as part of their development of the aggregate load. Aggregate loads for industrial stormwater facilities were appropriate because actual facility loading data were not available to develop individual facility wasteload allocations.

Virginia estimated the loadings from industrial stormwater facilities using actual and estimated facility acreage information and total phosphorus (TP) and total nitrogen (TN) loading rates from the Northern Virginia Planning District Commission (NVPDC) Guidebook for Screening Urban Nonpoint Pollution Management Strategies (Annandale, VA November 1979), prepared for the Metropolitan Washington Council of Governments. The loading rates used were as follows:

TP - High (80%) imperviousness industrial; 1.5 lb/ac/yr

TN - High (80%) imperviousness industrial; 12.3 lb/ac/yr

Actual facility area information and TP and TN data collected for facilities subject to Part V of this permit will be used by the department to quantify the nutrient and sediment loads from those VPDES permitted industrial stormwater facilities.

1. Facilities that obtained coverage under the 2019 industrial stormwater general permit that demonstrated compliance with the Chesapeake Bay TMDL loading rates.

Owners shall maintain documentation of their demonstration of compliance with the Chesapeake Bay TMDL loading rates with the SWPPP and shall continue implementing any BMPs that may have been developed as part of that demonstration.

Documentation may include:

a. Calculations submitted to the department indicating that reductions were not necessary;

b. A completed TMDL Action Plan, including a description of the means and methods, such as management practices and retrofit programs that were utilized to meet the required reductions;

c. Other means accepted by the department indicating compliance with the Chesapeake Bay TMDL loading rates.

2. Facilities that obtained coverage under the 2019 industrial stormwater general permit that did not demonstrate compliance with the Chesapeake Bay TMDL loading rates shall submit a demonstration to the department.

a. Owners of facilities that submitted a Chesapeake Bay TMDL action plan during the 2019 industrial stormwater general permit term that did not achieve reductions by the end of the 2019 permit term shall update and resubmit their action plan to the department for approval no later than 60 days following coverage under this general permit. Permittees shall achieve 10% of the remaining reductions by December 31, 2024, and all remaining reductions by December 31, 2025. An annual report shall be submitted to the department by June 30 of each year describing the progress in meeting the interim and final reductions. A final report to demonstrate compliance shall be submitted to the department no later than January 10, 2026. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

b. Owners of facilities that completed four samples for each outfall for TN and TP during the 2019 industrial stormwater general permit term that did not submit calculations by the end of the 2019 permit term shall utilize the procedures in Part V D to calculate their facility stormwater loads. The permittee shall submit a copy of the calculations, and a Chesapeake Bay TMDL action plan if required under Part V E, no later than 60 days following coverage under this general permit to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department. Reductions, if applicable, shall be achieved by December 31, 2025, and an annual report shall be submitted to the department by June 30 of each year describing the progress in meeting the required reductions until such time that the demonstration is completed. The demonstration shall be submitted to the department no later than January 10, 2026. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

c. Owners of facilities registered prior to July 1, 2022, that did not complete four samples for each outfall for TN and TP by the end of the 2019 industrial stormwater general permit term shall monitor their discharges for TN and TP to characterize the contributions from their facility's specific industrial sector for these parameters. Total nitrogen is the sum of total Kjeldahl nitrogen (TKN) and nitrite + nitrate and shall be derived from the results of those tests. After the facility is granted coverage under the permit, samples shall be collected during each of the first four quarters of permit coverage. Samples shall be collected and analyzed in accordance with Part V B. Monitoring results shall be reported in accordance with Part V C and Part II C, and retained in accordance with Part II B. Calculations utilizing the procedures in Part V D, and a Chesapeake Bay TMDL action plan if required under Part V E, shall be submitted no later than 60 days following the completion of the fourth quarterly monitoring period to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department. Reductions, if applicable, shall be achieved by December 31, 2025, and an annual report shall be submitted to the department by June 30 of each year describing the progress in meeting the required reductions until such time that the demonstration is completed. The demonstration shall be submitted to the department no later than January 10, 2026. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

Facilities may use the applicable sampling data collected during the 2019 industrial stormwater general permit term to satisfy all or part of the four monitoring periods requirement in accordance with Part V A 2 c.

d. Owners of facilities registered after June 30, 2022, that did not complete four samples for each outfall for TN and TP by the end of the 2019 industrial stormwater general permit term shall monitor their discharges in accordance with Part V A 3.

Facilities may use the applicable sampling data collected during the 2019 industrial stormwater general permit term to satisfy all or part of the four monitoring periods requirements in accordance with Part V A 3.

3. Facilities that obtain initial coverage under the 2024 industrial stormwater general permit, but are not newly constructed facilities as identified in 9VAC25-151-60 C 13.

Owners of facilities in the Chesapeake Bay watershed that obtain initial coverage under the 2024 industrial stormwater general permit shall monitor their discharges for TN and TP to characterize the contributions from their facility's specific industrial sector for these parameters. Total nitrogen is the sum of total Kjeldahl nitrogen (TKN) and nitrite + nitrate and shall be derived from the results

of those tests. After the facility is granted coverage under the permit, samples shall be collected during each of the first four quarters of permit coverage. Samples shall be collected and analyzed in accordance with Part V B. Monitoring results shall be reported in accordance with Part V C and Part II C, and retained in accordance with Part II B. Calculations utilizing the procedures in Part V D and a Chesapeake Bay TMDL action plan if required under Part V E shall be submitted no later than 60 days following the completion of the fourth quarterly monitoring period to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department. Reductions, if applicable, shall be achieved by two years following the end of the fourth quarterly monitoring period, and an annual report shall be submitted to the department by June 30 of each year describing the progress in meeting the required reductions until such time that the demonstration is completed. The demonstration shall be submitted to the department no later than the 10th of the month directly following the two year period. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

B. Monitoring instructions.

1. Collection and analysis of samples. Sampling requirements shall be assessed on an outfall by outfall basis. Samples shall be collected and analyzed in accordance with the requirements of Part II A.

2. When and how to sample. A minimum of one grab sample shall be taken from the discharge associated with industrial activity resulting from a storm event that results in a discharge from the site providing the interval from the preceding storm event discharge is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document that less than a 72-hour interval is representative for local storm events during the sampling period. In the case of snowmelt, the monitoring shall be performed at a time when a measurable discharge occurs at the site. For discharges from a stormwater management structure, the monitoring shall be performed at a time when a measurable discharge occurs from the structure.

The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first three hours of the discharge, provided that the permittee explains why a grab sample during the first 30 minutes was impracticable. This information shall be submitted in the department's electronic discharge monitoring report (e-DMR) system and maintained with the SWPPP. If the sampled discharge commingles with process or nonprocess water, the permittee shall attempt to sample the stormwater discharge before it mixes with the nonstormwater.

3. Storm event data. For each monitoring event, except snowmelt monitoring, along with the monitoring results, the permittee shall identify the date of the storm event sampled; rainfall total (in inches) of the storm event that generated the sampled runoff; and the interval between the storm event sampled and the end of the previous storm event discharge. For snowmelt monitoring, the permittee shall identify the date of the sampling event.

4. Monitoring periods. Quarterly monitoring shall be conducted in each of the following three-month periods: January through March, April through June, July through September, and October through December.

5. Documentation explaining a facility's inability to obtain a sample (including dates and times the outfalls were viewed or sampling was attempted), of no rain event, or of deviation from the 72-hour storm interval shall be submitted with the e-DMR and maintained with the SWPPP. Acceptable documentation includes National Climatic Data Center (NCDC) weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

6. Representative outfalls may be used in accordance with Part I A 2 f.

C. Reporting monitoring results.

1. Reporting to the department. The permittee shall follow the reporting requirements and deadlines in Table 400-1 if required by Part V A 2 or A 3:

Table 400-1
Monitoring Reporting Requirements

Quarterly Chesapeake Bay TMDL Monitoring	Submit the results by January 10, April 10, July 10, and October 10

2. Permittees shall submit results for each outfall associated with industrial activity according to the requirements of Part II C.

3. Significant digits. The permittee shall report at least the same number of significant digits as a numeric effluent limitation or TMDL wasteload allocation for a given parameter; otherwise, at least two significant digits shall be reported for a given parameter. Regardless of the rounding convention used by the permittee (i.e., five always rounding up or to the nearest even number), the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

D. Calculation of facility loads.

Permittees required to collect nutrient and sediment data in accordance with Part V A 2 or A 3 shall analyze the data collected to determine if pollution reductions are required. The permittee shall average the data collected at the facility

for each of the pollutants of concern (POC) (e.g., TP and TN) and compare the results to the loading rates for TP and TN presented in Part V A.

The following formula may be used to determine the loading rate:

L = 0.226 x P x Pj x (0.05 + (0.9 x Ia)) x C

where:

L = the POC loading rate (lb/acre/year)

P = the annual rainfall (inches/year) - The permittee may use either actual annual average rainfall data for the facility location (in inches/year), the Virginia annual average rainfall of 44.3 inches/year, or another method approved by the department.

Pj = the fraction of annual events that produce runoff - The permittee shall use 0.9 unless the department approves another rate.

Ia = the impervious fraction of the facility impervious area of industrial activity to the facility industrial activity area.

C = the POC average concentration of all facility samples (mg/L) - Facilities with multiple outfalls shall calculate a weighted average concentration for each outfall using the drainage area of each outfall.

For total phosphorus, all daily concentration data below the quantitation level (QL) for the analytical method used shall be treated as half the QL. All daily concentration data equal to or above the QL for the analytical method used shall be treated as it is reported.

For total nitrogen, if none of the daily concentration data for the respective species (i.e., TKN, nitrate, or nitrite) are equal to or above the QL for the respective analytical methods used, the daily TN concentration value reported shall equal one half of the largest QL used for the respective species. If one of the data is equal to or above the QL, the daily TN concentration value shall be treated as that data point is reported. If more than one of the data is above the QL, the daily TN concentration value shall equal the sum of the data points as reported.

Calculations shall be submitted to the department within 60 days from the end of the last monitoring period that satisfies the monitoring requirements in Part V A 2 or A 3. Calculations shall be submitted to the DEQ regional office serving the area where the industrial facility is located, on a form provided by the department, and maintained with the facility's SWPPP.

Alternative calculations may be accepted on a case by case basis by the department to accommodate facilities with outfalls that rarely discharge.

E. Chesapeake Bay TMDL action plan requirements. For permittees required to submit calculations in accordance with Part V D, if the calculated facility loading rate for TP or TN is above the loading rates for TP or TN presented in Part V A, then the permittee shall develop and submit a Chesapeake Bay TMDL action plan to the department.

The Chesapeake Bay TMDL action plan shall be submitted on a form provided by the department to the regional office serving the area where the industrial facility is located within 60 days following the completion of the fourth quarterly monitoring period. A copy of the current Chesapeake Bay TMDL action plan and all facility loading rate calculations shall be maintained with the facility's SWPPP. The Chesapeake Bay TMDL action plan shall include:

1. A determination of the total pollutant load reductions for TP and TN (as appropriate) necessary to reduce the annual loads from industrial activities. This shall be determined by multiplying the industrial average times the difference between the TMDL loading rates listed in Part V A and the actual facility loading rates calculated in accordance with Part V D. The reduction applies to the total difference calculated for each pollutant of concern; and

2. The means and methods, such as management practices and retrofit programs that will be utilized to meet the required reductions determined in Part V E 1 and a schedule to achieve those reductions by the applicable deadline set in Part V A 2 or A 3. Pollutant reductions may be achieved using a combination of the following alternatives:

a. Reductions provided by one or more of the BMPs found through the Virginia Stormwater BMP Clearinghouse at http://www.deq.virginia.gov/our-programs/water/stormwater/stormwater-construction/bmp-clearinghouse, or BMPs approved by the Chesapeake Bay Program. Any BMPs implemented to provide the required pollutant reductions shall be incorporated in the SWPPP and be permanently maintained by the permittee;

b. Implementation of site-specific BMPs followed by a minimum of four stormwater samples collected in accordance with sampling requirements in Part V B that demonstrate pollutant loadings have been reduced below those calculated under Part V D. Any BMPs implemented to provide the required pollutant reductions shall be incorporated in the SWPPP and be permanently maintained by the permittee; ~~or~~

c. Acquisition of nonpoint source credits certified by the board as perpetual in accordance with § 62.1-44.19:20 of the Code of Virginia: or

d. Notwithstanding the applicable deadline set in Part V A 2 or A 3, to meet the required reductions determined in Part V E 1, for calendar years 2025 and 2026, the permittee may acquire and use nutrient credits generated by point sources in accordance with the requirements of Article 4.02 (§ 62.1-4419:12 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia for compliance purposes only if:

(1) Such point source credits are generated and applied for purposes of compliance for the same calendar year;

(2) Such point source credits are acquired no later than September 1, 2026, for calendar year 2025 or June 1, 2027, for calendar year 2026;

(3) Such point source credits are generated in the same locality or tributary, except that permittees located in the Eastern Coastal Basin may also acquire credits from the Potomac and Rappahannock tributaries;

(4) Such credits are either point source nitrogen or point source phosphorus credits generated by point sources covered by the general permit issued pursuant to § 62.1-44.19:14 of the Code of Virginia; and

(5) The permittee reports evidence of having obtained such credits to the department within 30 days of the deadlines specified in Part V E 2 d (2).

VA.R. Doc. No. R27-8647; Filed July 27, 2026, 1:57 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-820. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (amending 9VAC25-820-10, 9VAC25-820-15, 9VAC25-820-20, 9VAC25-820-40, 9VAC25-820-70, 9VAC25-820-80).**

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

Effective Date: January 1, 2027.

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

Background: This general permit regulation governs facilities holding a Virginia Pollutant Discharge Elimination System (VPDES) individual permit or owners of facilities that otherwise meet the definition of an existing facility that discharge or propose to discharge total nitrogen or total phosphorus or both to the Chesapeake Bay or tributaries to the Chesapeake Bay. Facilities covered by the general permit regulation are authorized to discharge to surface waters and trade credits for total nitrogen and total phosphorus to offset discharges that exceed facility wasteload allocations. Nitrogen and phosphorus are both nutrients that contribute to pollution in the Chesapeake Bay.

Summary:

The amendments include (i) updating the effective date of the Code of Federal Regulation citation to U.S. Environmental Protection Agency regulations referenced or adopted in the regulation; (ii) updating compliance and deadline dates throughout the regulation to accommodate the extension of the permit effective dates; (iii) clarifying consolidation versus aggregation of facilities and when and how wasteload allocations are terminated without transfer; (iv) removing language for completed compliance schedules; (v) adjusting monitoring requirements; (vi) clarifying monthly average reporting procedures and adding language regarding a new option to obtain point source credits through the Virginia Nutrient Credit Exchange Association; and (vii) updating the cost of credits per pound of nitrogen to $9.23 and per pound of phosphorus to $20.26 based on the 2022 Pay-For-Outcomes Nonpoint Source Pollution Reduction Grant Program, which was adjusted for inflation using the Consumer Price Index (CPI) July 2022 - July 2025 CPI-U Washington-Arlington-Alexandria, DC-VA-MD-WV.

Changes to the proposed regulation (i) remove a provision that allowed owners of facilities discharging into different tributaries to transfer their wasteload allocations across tributaries and (ii) clarify the differences between the annual acquisition of point source credits and the acquisition of wasteload allocations.

Chapter 820

~~General~~ Virginia Pollutant Discharge Elimination System (VPDES) ~~Watershed~~ General Permit Regulation for ~~Total Nitrogen and Total Phosphorus Discharges and~~ Nutrient Discharges and Trading in the Chesapeake Bay Watershed ~~in Virginia~~

9VAC25-820-10. Definitions.

Except as defined ~~below~~ in this section, the words and terms used in this chapter shall have the meanings defined in the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31).

"Annual mass load of total nitrogen" (expressed in pounds per year) means the sum of the total monthly loads for all of the

months in one calendar year. See Part I E 4 of the general permit in 9VAC25-820-70 for calculating total monthly load.

"Annual mass load of total phosphorus" (expressed in pounds per year) means the sum of the total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit in 9VAC25-820-70 for calculating total monthly load.

"Association" means the Virginia Nutrient Credit Exchange Association authorized by § 62.1-44.19:17 of the Code of Virginia.

"Attenuation" means the rate at which nutrients are reduced through natural processes during transport in water.

~~"Board" means the Virginia State Water Control Board or State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.~~

"Delivered total nitrogen load" means the discharged mass load of total nitrogen from a point source that is adjusted by the delivery factor for that point source.

"Delivered total phosphorus load" means the discharged mass load of total phosphorus from a point source that is adjusted by the delivery factor for that point source.

"Delivery factor" means an estimate of the number of pounds of total nitrogen or total phosphorus delivered to tidal waters for every pound discharged from a facility, as determined by the specific geographic location of the facility, to account for attenuation that occurs during riverine transport between the facility and tidal waters. Delivery factors shall be calculated using the Chesapeake Bay Program watershed model. For the purpose of this regulation, delivery factors with a value greater than 1.00 in the Chesapeake Bay Program watershed model shall be considered to be equal to 1.00.

"Department" or "DEQ" means the Department of Environmental Quality.

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

"Eastern Shore trading ratio" means the ratio of pounds of point source credits from another tributary that can be acquired and applied by the owner of a facility in the Eastern Shore Basin for every pound of point source total nitrogen or total phosphorus discharged from the Eastern Shore Basin facility. Trading ratios are expressed in the form "credits supplied: credits received."

"Equivalent load" means:

2,300 pounds per year of total nitrogen or 300 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.04 million gallons per day,

5,700 pounds per year of total nitrogen or 760 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.1 million gallons per day, and

28,500 pounds per year of total nitrogen or 3,800 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.5 million gallons per day.

"Existing facility" means a facility (i) subject to a current individual VPDES permit from which a discharge has commenced or for which its owner has received a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) for the treatment works used to derive its wasteload allocation on or before July 1, 2005, or (ii) for which the owner has a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. Existing facility shall also mean and include any facility, not subject to an individual VPDES permit, for which its owner holds a separate wasteload allocation in 9VAC25-720-120 C of the Water Quality Management Planning Regulation.

"Expansion" or "expands" means (i) initiating construction at an existing treatment works after July 1, 2005, to increase design flow capacity, except that the term does not apply in those cases where a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) was issued on or before July 1, 2005, or (ii) industrial production process changes or the use of new treatment products at industrial facilities that increase the annual mass load of total nitrogen or total phosphorus above the wasteload allocation.

"Facility" means a point source from which a discharge or proposed discharge of total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries exists. This term does not include confined animal feeding operations, discharges of storm water, return flows from irrigated agriculture, or vessels.

"General permit" means this general permit authorized by § 62.1-44.19:14 of the Code of Virginia.

"Industrial facility" means any facility (as defined above) other than sewage treatment works.

"Local water quality-based limitations" means limitations intended to protect local water quality including applicable total maximum daily load (TMDL) allocations, applicable Virginia Pollution Discharge Elimination System (VPDES) permit limits, applicable limitations set forth in water quality standards established under § 62.1-44.15 (3a) of the Code of Virginia, or other limitations as established by the State Water Control Board.

"New discharge" means any discharge from a facility that did not commence prior to July 1, 2005, except that the term does not apply in those cases where a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) was issued to the facility on or before July 1, 2005.

"Nonsignificant discharger" means (i) a sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with a design capacity of less than 0.1 million gallons per day, or less than an equivalent load discharged from industrial facilities, or (ii) a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line with a design capacity of less than 0.5 million gallons per day, or less than an equivalent load discharged from industrial facilities.

"Nutrient Offset Fund" means a special nonreverting fund as established under § 10.1-2128.2 of the Code of Virginia.

"Offset" means to acquire an annual wasteload allocation of total nitrogen or total phosphorus for a new or expanding facility to ensure that there is no net increase of nutrients into the affected tributary of the Chesapeake Bay.

"Permitted design capacity" or "permitted capacity" means the allowable load (pounds per year) assigned to an existing facility that is a nonsignificant discharger and that does not have a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. The permitted design capacity is calculated based on the design flow and installed nutrient removal technology (for sewage treatment works, or equivalent discharge from industrial facilities) at a facility that has either commenced discharge, or for which an owner has received a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) prior to July 1, 2005. This mass load is used for (i) determining whether the owner of the expanding facility must offset additional mass loading of nitrogen and phosphorus and (ii) determining whether the owner of the facility must acquire credits at the end of a calendar year. For the purpose of this chapter, owners of facilities that have installed secondary wastewater treatment (intended to achieve BOD and TSS monthly average concentrations equal to or less than 30 milligrams per liter) are assumed to achieve an annual average total nitrogen effluent concentration of 18.7 milligrams per liter and an annual average total phosphorus effluent concentration of 2.5 milligrams per liter. Permitted design capacities for facilities that, before July 1, 2005, were required to comply with more stringent nutrient limits shall be calculated using the more stringent values.

"Permitted facility" means a facility whose owner is authorized by this general permit to discharge total nitrogen or total phosphorus. For the sole purpose of generating point source nitrogen credits or point source phosphorus credits, "permitted facility" shall also mean the Blue Plains wastewater treatment facility operated by the District of Columbia Water and Sewer Authority.

"Permittee" means a person authorized by this general permit to discharge total nitrogen or total phosphorus.

"Point source nitrogen credit" means the difference between (i) the wasteload allocation for a permitted facility specified as an annual mass load of total nitrogen and (ii) the monitored annual mass load of total nitrogen discharged from that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total nitrogen load.

"Point source phosphorus credit" means the difference between (i) the wasteload allocation for a permitted facility specified as an annual mass load of total phosphorus and (ii) the monitored annual mass load of total phosphorus discharged from that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total phosphorus load.

"Quantification level" or "QL" means the minimum levels, concentrations, or quantities of a target variable (e.g., target analyte) that can be reported with a specified degree of confidence in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

"Registration list" means a list maintained by the department indicating all facilities that are registered for coverage under this general permit, by tributary, including their wasteload allocations, permitted design capacities, and delivery factors as appropriate.

"Significant discharger" means the owner of (i) a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line with a design capacity of 0.5 million gallons per day or greater, or an equivalent load discharged from industrial facilities; (ii) a sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with a design capacity of 0.1 million gallons per day or greater, or an equivalent load discharged from industrial facilities; (iii) a planned or newly expanding sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line that was expected to be in operation by December 31, 2010, with a permitted design of 0.5 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities; or (iv) a planned or newly expanding sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line that was expected to be in operation by December 31, 2010, with a design capacity of 0.1 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities.

"State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual average total nitrogen

effluent concentration of three milligrams per liter and an annual average total phosphorus effluent concentration of 0.3 milligrams per liter or (ii) equivalent load reductions in total nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the department.

"Tributaries" means those river basins listed in the Chesapeake Bay TMDL and includes the Potomac, Rappahannock, York, and James River Basins and the Eastern Shore Basin, which encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay.

"VPDES" means Virginia Pollutant Discharge Elimination System.

"Wasteload allocation" means the most limiting of (i) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus allocated to individual facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation or its successor, or permitted capacity in the case of nonsignificant dischargers; (ii) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus acquired pursuant to § 62.1-44.19:15 of the Code of Virginia for new or expanded facilities; or (iii) applicable total nitrogen or total phosphorus wasteload allocations under the Chesapeake Bay total maximum daily loads (TMDLs) to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

9VAC25-820-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, ~~2014; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update~~ 2025.

9VAC25-820-20. Purpose, applicability.

A. This regulation fulfills the statutory requirement for the ~~General~~ VPDES ~~Watershed~~ General Permit for ~~Total Nitrogen and Total Phosphorus discharges and nutrient trading~~ Nutrient Discharges and Trading in the Chesapeake Bay ~~watershed~~ Watershed issued by the ~~board~~ State Water Control Board pursuant to the Clean Water Act (33 USC § 1251 et seq.) and § 62.1-44.19:14 of the Code of Virginia.

B. This general permit regulation governs owners of facilities holding individual VPDES permits or otherwise meeting the definition of "existing facility" that discharge or propose to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries.

9VAC25-820-40. Compliance plans.

~~A. By February 1, 2023, every owner of a facility subject to reduced individual total nitrogen or total phosphorous wasteload allocations as identified in 9VAC25-820-80 shall either individually or through the Virginia Nutrient Credit Exchange Association submit compliance plans to the department for approval.~~

~~1. For facilities listed in 9VAC25-820-80 A, compliance with reduced wasteload allocations established by the Enhanced Nutrient Removal Certainty Program shall be on the effective date of the reduced allocations as established in 9VAC25-720-60 and 9VAC25-720-120. For facilities listed in 9VAC25-820-80 B, compliance with chlorophyll a based total phosphorus wasteload allocations shall be achieved as soon as possible, but no later than January 1, 2026. The compliance plans shall contain any capital projects and implementation schedules needed to achieve total nitrogen and phosphorus reductions sufficient to comply with the individual and combined wasteload allocations of all the permittees in the tributary. Permittees submitting individual plans are not required to account for other facilities' activities.~~

~~2. As part of the compliance plan development for facilities listed in 9VAC25-820-80 B, permittees shall either:~~

~~a. Demonstrate that the additional capital projects anticipated by subdivision 1 of this subsection are necessary to ensure continued compliance with these allocations by January 1, 2026, or~~

~~b. Request that their individual wasteload allocations become effective on January 1, 2023.~~

~~3. The compliance plans may rely on the exchange of point source credits in accordance with this general permit, but not the acquisition of credits through payments into the Nutrient Offset Fund (§ 10.1-2128.2 of the Code of Virginia), to achieve compliance with the individual and combined wasteload allocations in each tributary.~~

~~B.~~ Every owner of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit annual compliance plan updates to the department for approval as required by Part I D of the general permit.

9VAC25-820-70. General permit.

Any owner whose registration statement is accepted by the ~~board~~ department will receive the following general permit and shall comply with the requirements of the general permit.

General Permit No.: VAN000000
Effective Date: January 1, ~~2022~~ 2027
Expiration Date: December 31, ~~2026~~ 2031

GENERAL PERMIT FOR ~~TOTAL NITROGEN AND TOTAL PHOSPHORUS~~ NUTRIENT DISCHARGES AND ~~NUTRIENT~~ TRADING IN THE CHESAPEAKE BAY

WATERSHED ~~IN VIRGINIA~~
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of facilities holding a VPDES individual permit or owners of facilities that otherwise meet the definition of an existing facility, with total nitrogen or total phosphorus discharges, or both to the Chesapeake Bay or its tributaries, are authorized to discharge to surface waters and exchange credits for total nitrogen or total phosphorus, or both.

The authorized discharge shall be in accordance with the registration statement filed with DEQ, this cover page, Part I-Special Conditions Applicable to All Facilities, Part II-Special Conditions Applicable to New and Expanded Facilities, and Part III-Conditions Applicable to All VPDES Permits, as set forth herein.

PART I
SPECIAL CONDITIONS APPLICABLE TO ALL FACILITIES

A. Authorized activities.

1. Authorization to discharge for owners of facilities required to register.

a. Every owner of a facility required to submit a registration statement to the department by November 1, ~~2021~~ 2026, and thereafter upon the reissuance of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

b. Any owner of a facility required to submit a registration statement with the department ~~at the time he makes application with the department~~ for a new discharge or expansion that is subject to an offset or technology-based requirement in Part II of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

c. Upon the department's approval of the registration statement, a facility will be included in the registration list maintained by the department.

2. Authorization to discharge for owners of facilities not required to register. Any owner of a facility authorized by a VPDES permit and not required by this general permit to submit a registration statement shall be deemed to be authorized to discharge total nitrogen and total phosphorus under this general permit at the time it is issued. Owners of facilities that are deemed to be permitted under this subsection shall have no obligation under this general permit prior to submitting a registration statement and securing coverage under this general permit based upon such registration statement.

3. Continuation of permit coverage.

a. Any owner authorized to discharge under this general permit and who submits a complete registration statement for the reissued general permit by November 1, ~~2026~~ 2031, in accordance with Part III M or who is not required to register in accordance with Part I A 2 is authorized to continue to discharge under the terms of this general permit until such time as the ~~board~~ department either:

(1) Issues coverage to the owner under the reissued general permit, or

(2) Notifies the owner that the discharge is not eligible for coverage under this general permit.

b. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the ~~board~~ department may choose to do any or all of the following:

(1) Initiate enforcement action based upon the ~~2017~~ 2022 general permit,

(2) Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the administratively continued coverage under the terms of the ~~2017~~ 2022 general permit or be subject to enforcement action for operating without a permit, or

(3) Take other actions authorized by the State Water Control Law.

B. Wasteload allocations.

1. Wasteload allocations allocated to permitted facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, or applicable TMDLs, or wasteload allocations acquired by owners of new and expanding facilities to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion under Part II B of this general permit, and existing loads calculated from the permitted design capacity of expanding facilities not previously covered by this general permit, shall be incorporated into the registration list maintained by the department. The wasteload allocations contained in this list shall be enforceable as annual mass load limits in this general permit. Credits shall not be generated by facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005.

2. Except as described in subdivisions 2 c and 2 d of this subsection, an owner of two or more facilities covered by this general permit and discharging to the same tributary

may apply for and receive an aggregated mass load limit for delivered total nitrogen and an aggregated mass load limit for delivered total phosphorus reflecting the total of the water quality-based total nitrogen and total phosphorus wasteload allocations or permitted design capacities established for such facilities individually.

a. The permittee (and all of the individual facilities covered under a single registration) shall be deemed to be in compliance when the aggregate mass load discharged by the facilities is less than the aggregate mass load limit.

b. The permittee will be eligible to generate credits only if the aggregate mass load discharged by the facilities is less than the total of the wasteload allocations assigned to any of the affected facilities.

c. The aggregation of mass load limits shall not affect any requirement to comply with local water quality-based limitations.

d. Facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005, cannot be aggregated with other facilities under common ownership or operation.

e. Operation under an aggregated mass load limit in accordance with this section shall not be deemed credit acquisition as described in Part I J 2 of this general permit.

3. An owner that consolidates two or more facilities discharging to the same tributary into a single ~~regional~~ facility may apply for and receive ~~an aggregated~~ a consolidated mass load limit for total nitrogen and ~~an aggregated~~ a consolidated mass load limit for total phosphorus, subject to the following conditions:

a. ~~Aggregate~~ Consolidated mass load limits will be calculated accounting for delivery factors in effect at the time of the consolidation.

b. If all of the affected facilities have wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the ~~aggregate~~ consolidated mass load limit shall be calculated by adding the wasteload allocations of the affected facilities. ~~The regional facility shall be eligible to generate credits~~ Credits may be generated based on the consolidated wasteload allocation.

c. If any, but not all, of the affected facilities has a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the ~~aggregate~~ consolidated mass load limit shall be calculated by adding:

(1) Wasteload allocations of those facilities that have wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

(2) Permitted design capacities assigned to affected industrial facilities; and

(3) Loads from affected sewage treatment works that do not have a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, defined as the lesser of a previously calculated permitted design capacity, or the values calculated by the following ~~formulae~~ formulas:

Nitrogen Load (lbs/ year) = flow (MGD) x 8.0 mg/l x 8.345 x 365 days/year

Phosphorus Load (lbs/ year) = flow (MGD) x 1.0 mg/l x 8.345 x 365 days/year

Flows used in the preceding ~~formulae~~ formulas shall be the design flow of the treatment works from which the affected facility currently discharges.

~~The regional facility shall be eligible to generate credits~~ Credits may be generated based on the consolidated wasteload allocation.

d. If none of the affected facilities have a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the ~~aggregate~~ consolidated mass load limit shall be calculated by adding the respective permitted design capacities for the affected facilities.

e. Facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005, may be consolidated with other facilities under common ownership or operation, but their allocations cannot be transferred ~~to the regional facility~~.

f. Facilities whose operations were previously authorized by a VPA permit that was issued before July 1, 2005, can ~~become regional~~ receive effluent from other facilities, but they cannot receive additional allocations beyond those permitted in Part II B 1 d of this general permit.

4. [~~An owner that consolidates two or more facilities discharging into different tributaries may apply for a consolidated mass load limit for total nitrogen and a consolidated mass load limit for total phosphorus. The department will evaluate the request on a case-by-case basis, taking into account the conditions set forth in Part I B 3 a through Part I B 3 d of this section and any additional conditions necessary and appropriate for water quality protection.~~

~~5.~~] Termination of a wasteload allocation. If a facility's individual and general permit are terminated or expire with no consolidation of wasteload allocations, the following shall apply:

a. If a facility has wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, [~~and~~ or] 9VAC25-720-120 C of the Water

Quality Management Planning Regulation, the wasteload allocations shall be transferred to the Nutrient Offset Fund and the facility removed from the registration list.

b. If a facility has wasteload allocations based on permitted design capacity, the facility and the wasteload allocations shall be removed from the registration list.

~~4.~~ [~~6.~~ 5.] Unless otherwise noted, the nitrogen and phosphorus wasteload allocations assigned to permitted facilities are considered total loads, including nutrients present in the intake water from the river, as applicable. On a case-by-case basis, an industrial discharger may demonstrate to the satisfaction of the ~~board~~ department that a portion of the nutrient load originates in ~~its~~ the industrial discharger's intake water. This demonstration shall be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the ~~board~~ department may limit the permitted discharge to the net nutrient load portion of the assigned wasteload allocation.

~~5.~~ [~~7.~~ 6.] Bioavailability. Unless otherwise noted, the entire nitrogen and phosphorus wasteload allocations assigned to permitted facilities are considered to be bioavailable to organisms in the receiving stream. On a case-by-case basis, a discharger may demonstrate to the satisfaction of the ~~board~~ department that a portion of the nutrient load is not bioavailable; this demonstration shall not be based on the ability of the nutrient to resist degradation at the wastewater treatment plant, but instead, on the ability of the nutrient to resist degradation within a natural environment for the amount of time that it is expected to remain in the Chesapeake Bay watershed. This demonstration shall also be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the ~~board~~ department may limit the permitted discharge to the bioavailable portion of the assigned wasteload allocation.

C. Schedule of compliance.

1. For facilities listed in 9VAC25-820-80 [~~A~~], compliance with reduced wasteload allocations established by the Enhanced Nutrient Removal Certainty Program shall be on the effective date of the reduced allocations as established in 9VAC25-720-60 ~~and 9VAC25-720-120. For facilities listed in 9VAC25-820-80 B, compliance with chlorophyll a based total phosphorus wasteload allocations shall be achieved as soon as possible but no later than January 1, 2026~~.

2. Following submission of compliance plans and compliance plan updates required by 9VAC25-820-40, the ~~board~~ department shall reevaluate the schedule of compliance in subdivision 1 of this subsection, taking into account the information in the compliance plans and the factors in § 62.1-44.19:14 C 2 of the Code of Virginia. When warranted based on such information and factors, the ~~board~~ department shall adjust the schedule in subdivision 1 of this subsection as appropriate by modification or reissuance of this general permit.

~~3. The registration list shall contain individual dates for compliance with wasteload allocations for dischargers, as follows:~~

~~a. Owners of facilities listed in 9VAC25-820-80 B will have individual dates for compliance based on their respective compliance plans that may be earlier than the schedule listed in subdivision 1 of this subsection.~~

~~b. Owners of facilities listed in 9VAC25-820-80 B that waive their compliance schedules in accordance with 9VAC25-820-40 A 2 b shall have an individual compliance date of January 1, 2023.~~

~~c. Upon completion of the projects contained in their compliance plans, owners of facilities listed in 9VAC25-820-80 B may receive a revised individual compliance date of January 1 for the calendar year immediately following the year in which a Certificate to Operate was issued for the capital projects, but not later than January 1, 2026.~~

~~d. Owners of new and expanded facilities will have individual dates for compliance corresponding to the date that coverage under this general permit was extended to discharges from the facility.~~

D. Annual update of compliance plan. Every owner of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit updated compliance plans to the department no later than February 1 of each year. The compliance plans shall contain sufficient information to document a plan to achieve and maintain compliance with applicable total nitrogen and total phosphorus individual wasteload allocations on the registration list and aggregate wasteload allocations in Part I C 3. Compliance plans for owners of facilities that were required to submit a registration statement with the department under Part I G 1 a may rely on the acquisition of point source credits in accordance with Part I J of this general permit to achieve compliance with the individual and combined wasteload allocations in each tributary. Annual compliance plan updates for facilities subject to reduced wasteload allocations and listed in 9VAC25-820-80 shall not rely on the acquisition of credits through payments into the Nutrient Offset Fund. Compliance plans for expansions or new discharges for owners of facilities that are required to submit a registration statement with the department under Part I G 1 b and c may rely on the acquisition of allocation in accordance with Part II B of this general permit to achieve compliance with the individual and combined wasteload allocations in each tributary.

E. Monitoring requirements.

1. Discharges shall be monitored by the permittee during weekdays as specified in the table below unless the

department determines that weekday only sampling results in a non-representative load. Weekend monitoring or alternative monthly load calculations to address production schedules or seasonal flows shall be submitted to the department for review and approval on a case-by-case basis.

Facilities that exhibit instantaneous discharge flows that vary from the daily average discharge flow by less than 10% may submit a proposal to the department to use an alternative sample type; such proposals shall be reviewed and approved by the department on a case-by-case basis.

Parameter	Sample Type and Collection Frequency					
STP design flow	~~≥20.0~~ less than 0.040 MGD	~~1.0 - 19.999~~ 0.040-0.499 MGD	0.5-0.999 MGD	~~0.5 - 0.999~~ 1.0-4.99 MGD	~~0.040 - 0.499~~ 5.0-19.999 MGD	~~< 0.040~~ greater than or equal to 20.0 MGD
Effluent TN load limit for industrial facilities	less than 487 lb/yr	~~≥100,000~~ 487 - 49,999 lb/yr	50,000-99,999 lb/yr	~~50,000 - 99,999~~ 100,000-349,999 lb/yr	~~487 - 49,999~~ greater than 350,000 lb/yr	~~< 487 lb/yr~~
Effluent TP load limit for industrial facilities	less than 37 lb/yr	~~≥10,000~~ 37-4,999 lb/yr	5,000-9,999 lb/yr	~~5,000 - 9,999~~ 10,000-34,999 lb/yr	~~37 - 4,999~~ greater than 35,000 lb/yr	~~< 37 lb/yr~~
~~Flow~~		~~Totalizing, Indicating, and Recording~~				~~1/Day, see individual VPDES permit for sample type~~
Flow	1/Day, see individual VPDES permit for sample types	Totalizing, Indicating, and Recording				
Nitrogen Compounds (Total Nitrogen = TKN + NO_2- (as N) + NO_3- (as N))	~~24 HC 3 Days/Week~~ 1/Month Grab	~~24 HC 2 Days/Week*~~ 8 HC 2/Month, greater than 7 days apart	8 HC 1 Day/Week	~~8 HC 2 Days/Week*~~ 24 HC 1 Day/Week	~~8 HC 2/Month, > 7 days apart~~ 24 HC 2 Days/Week*	~~1/Month Grab~~ 24 HC 3 Days/Week
Total Phosphorus	~~24 HC 3 Days/Week~~ 1/Month Grab	~~24 HC 2 Days/Week*~~ 8 HC 2/Month, greater than 7 days apart	8 HC 1 Day/Week	~~8 HC 2 Days/Week*~~ 24 HC 1 Day/Week	~~8 HC 2/Month, > 7 days apart~~ 24 HC 2 Days/Week*	~~1/Month Grab~~ 24 HC 3 Days/Week

*Two flow composited samples taken in the same calendar week that are then composited by flow into a single weekly composite sample for analysis shall be considered ~~to be~~ in compliance with this requirement.

[HC = hour composite]

2. Monitoring for compliance with effluent limitations shall be performed in a manner identical to that used to determine compliance with effluent limitations established in the individual VPDES permit unless specified otherwise in subdivisions 3, 4, and 5 of Part I E. Monitoring or sampling shall be conducted according to analytical laboratory methods approved under 40 CFR Part 136, unless other test or sample collection procedures have been requested by the permittee and approved by the department in writing. All analysis for compliance with effluent limitations shall be conducted in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories. Monitoring may be performed by the permittee at frequencies more stringent than listed in subdivision 1 of Part I E; however, the permittee shall report

all results of such monitoring.

3. Loading values greater than or equal to 10 pounds reported in accordance with Part I E and F of this general permit shall be calculated and reported to the nearest pound without regard to mathematical rules of precision. Loading values of less than 10 pounds reported in accordance with Part I E and F of this general permit shall be calculated and reported to at least two significant digits with the exception that all complete calendar year annual loads shall be reported to the nearest pound.

4. Data shall be reported on a form provided by the department, by the same date each month as is required by the owner's individual VPDES permit. The total monthly load shall be calculated in accordance with the following formula:

$$ML = \left(\frac{\sum DL}{s} \right) \times d$$

where:

ML = total monthly load (lb/mo) = average daily load for the calendar month multiplied by the number of days of the calendar month on which a discharge occurred

DL = daily load = daily concentration (expressed as mg/l to the nearest 0.01 mg/l) multiplied by the flow volume of effluent discharged during the 24-hour period (expressed as MGD to at least the nearest 0.01 MGD and in no case less than two significant digits), multiplied by 8.345. Daily loads greater than or equal to 10 pounds may be rounded to the nearest whole number to convert to pounds per day (lbs/day). Daily loads less than or equal to 10 pounds may be rounded to no fewer than two significant figures.

s = number of days in the calendar month in which a sample was collected and analyzed

d = number of discharge days in the calendar month

For total phosphorus, all daily concentration data below the quantification level (QL) for the analytical method used shall be treated as half the QL (without rounding). All daily concentration data equal to or above the QL for the analytical method used shall be treated as it is reported. If all data are below the QL, then the average shall be reported as half the QL.

For total nitrogen (TN), if none of the daily concentration data for the respective species (i.e., TKN, nitrates/nitrites) are equal to or above the QL for the respective analytical methods used, the daily TN concentration value reported shall equal one half of the largest QL (without rounding) used for the respective species. If one of the data is equal to or above the QL, the daily TN concentration value shall be treated as that data point as reported. If more than one of the data is above the QL, the daily TN concentration value shall equal the sum of the data points as reported.

The quantification levels shall be less than or equal to the following concentrations:

Parameter	Quantification Level
TKN	0.50 mg/l
Nitrite	0.10 mg/l
Nitrate	0.20 mg/l
Nitrite + Nitrate	0.20 mg/l

Higher QLs may be approved on a case-by-case basis where a higher QL routinely results in reportable results of the species in question or is otherwise technically appropriate based on standard lab practices.

The total year-to-date mass load shall be calculated in accordance with the following formula:

$$AL_{YTD} = \sum_{(Jan-present)} ML$$

where:

AL-YTD = calendar year-to-date annual load (lb/yr)

ML = total monthly load (lb/mo)

The total annual mass load shall be calculated in accordance with the following formula:

$$AL = \sum_{(Jan-Dec)} ML$$

where:

AL = calendar year annual load (lb/yr)

ML = total monthly load (lb/mo)

5. The department may authorize a chemical usage evaluation as an alternative means of determining nutrient loading for outfalls where the only source of nutrients is that found in the surface water intake and chemical additives used by the facility. Such an evaluation shall be submitted to the department for review and approval on a case-by-case basis. Implementation of approved chemical usage evaluations shall satisfy the requirements specified under Part I E 1 and 2.

6. Monthly average concentration data reporting. For total phosphorus, TKN, and nitrite + nitrate monthly average concentration values. All concentration data below the QL used for the analysis shall be treated as one-half of the QL (without rounding). All concentration data equal to or above the QL used for the analysis shall be treated as it is reported to the nearest 0.01 mg/L. An arithmetic average shall be calculated using all reported data for the month. This

arithmetic average shall be reported on the Discharge Monitoring Report (DMR) as calculated to the nearest 0.01 mg/L.

For nitrite + nitrate if tested separately, add the daily total nitrite and nitrate concentrations to obtain the daily nitrite + nitrate values. If none of the daily concentrations data for the respective species tested separately (nitrites, nitrates) are equal to or above the QL for the respective analytical methods used, the daily nitrite + nitrate concentration value shall equal one-half of the largest QL (without rounding) used for the respective species. If one of the data is equal or above the QL, the daily nitrite + nitrate concentration value shall be treated as that data point as reported. If more than one of the data is above the QL, the daily nitrite + nitrate concentration value shall equal the sum of the data points as reported. An arithmetic average shall be calculated using all reported data for the month. This arithmetic average shall be reported on the DMR as calculated to the nearest 0.01 mg/L.

F. Annual reporting. On or before February 1, annually, each permittee shall file a discharge monitoring report with the department identifying the annual mass load of total nitrogen and the annual mass load of total phosphorus discharged by the permitted facility during the previous calendar year.

G. Requirement to register; exclusions.

1. The following owners are required to register for coverage under this general permit:

a. Every owner of an existing facility authorized by a VPDES permit to discharge 100,000 gallons or more per day from a sewage treatment work, or an equivalent load from an industrial facility, directly into tidal waters, or 500,000 gallons or more per day from a sewage treatment works, or an equivalent load from an industrial facility, directly into nontidal waters shall submit a registration statement to the department by November 1, ~~2016~~ [~~2026~~ 2031], and thereafter upon the reissuance of this general permit in accordance with Part III M. The conditions of this general permit will apply to such owner upon approval of a registration statement.

b. Any owner of a facility authorized by a ~~Virginia Pollutant Discharge Elimination System~~ VPDES permit to discharge 40,000 gallons or more per day from a sewage treatment works, or an equivalent load from an industrial facility, directly into tidal or nontidal waters shall submit a registration statement with the department at the time ~~he makes~~ the owner submits an application for an individual permit with the department for a new discharge or expansion that is subject to an offset requirement in Part II of this general permit or to a technology-based requirement in 9VAC25-40-70, and thereafter upon the reissuance of this general permit in accordance with Part III M. The conditions of this general permit will apply to such owner beginning January 1 of the calendar year immediately following approval of a registration statement and issuance or modification of the individual permit.

c. Any owner of a facility treating domestic sewage authorized by a VPDES permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that did not commence the discharge of pollutants prior to January 1, 2011, and is subject to offset requirements in accordance with Part II A 1 c of this general permit shall submit a registration statement with the department at the time the owner makes application for an individual permit with the department or prior to commencing a discharge, whichever occurs first, and thereafter upon the reissuance of this general permit in accordance with Part III M.

2. All other categories of discharges are excluded from registration under this general permit.

H. Registration statement.

1. The registration statement shall contain the following information:

a. Name, mailing address, ~~and~~ telephone number, and email address~~, and fax number~~ of the owner (and facility operator, if different from the owner) applying for permit coverage;

b. Name (or other identifier), address, city or county, contact name, phone number, and email address~~, and fax number~~ for the facility for which the registration statement is submitted;

c. VPDES permit numbers for all permits assigned to the facility, or pursuant to which the discharge is authorized;

d. If applying for an aggregated wasteload allocation in accordance with Part I B 2 of this permit, a list of all affected facilities and the VPDES permit numbers assigned to these facilities;

e. For new and expanded facilities, a plan to offset new or increased delivered total nitrogen and delivered total phosphorus loads, including the amount of wasteload allocation acquired. Wasteload allocations or credits sufficient to offset projected nutrient loads must be provided for period of at least five years; and

f. For existing facilities, the amount of a facility's wasteload allocation transferred to or from another facility to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

2. The registration statement shall be submitted to the DEQ Central Office, Office of VPDES Permits. Following notification from the department of the start date for the required electronic submission of Notices of Intent to Discharge forms (i.e., registration statements), as provided for in 9VAC25-31-1020, such form submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. At least

three months' notice shall be provided between the notification from the department and the date after which such forms must be submitted electronically.

3. An amended registration statement shall be submitted to DEQ immediately upon the acquisition or transfer of a facility's wasteload allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

I. Public notice for registration statements proposing modifications or incorporations of new wasteload allocations or delivery factors.

1. All public notices issued pursuant to a proposed modification or incorporation of a (i) new wasteload allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion or (ii) delivery factor shall be published once a week for two consecutive weeks in a local newspaper of general circulation serving the locality where the facility is located informing the public that the owner of the facility intends to apply for coverage under this general permit. At a minimum, the notice shall include:

a. A statement of the owner's intent to register for coverage under this general permit;

b. A brief description of the facility and its location;

c. The amount of wasteload allocation that will be acquired or transferred if applicable;

d. The delivery factor for a new discharge or expansion;

e. If applicable, any proposed nonpoint source to point source trading ratio less than 2:1 proposed under Part II B 1 b (1);

f. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication, and to establish a dialogue between the owner and persons who may be affected by the discharge from the facility;

g. An announcement of a 30-day comment period and the name, telephone number, and address of the owner's representative who can be contacted by the interested persons to answer questions;

h. The name, telephone number, and address of the DEQ representative who can be contacted by the interested persons to answer questions, or where comments shall be sent; and

i. The location where copies of the documentation to be submitted to the department in support of this general permit notification and any supporting documents can be viewed and copied.

2. The owner shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.

3. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period will begin on the date the notice is published in the local newspaper.

J. Compliance with wasteload allocations.

1. Methods of compliance. The owner of the permitted facility shall comply with its wasteload allocation contained in the registration list maintained by the department. The owner of the permitted facility shall be in compliance with its wasteload allocation if:

a. The annual mass load is less than or equal to the applicable wasteload allocation assigned to the facility in this general permit (or permitted design capacity for expanded facilities without allocations);

b. The owner of the permitted facility acquires sufficient point source nitrogen or phosphorus credits in accordance with subdivision 2 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual wasteload allocations for each permitted facility; or

c. In the event he is unable to meet the individual wasteload allocation pursuant to subdivision 1 a or 1 b of this subsection, the owner of the permitted facility acquires sufficient nitrogen or phosphorus credits through payments made into the Nutrient Offset Fund pursuant to subdivision 3 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual wasteload allocations for each permitted facility.

2. Credit acquisition from owners of permitted facilities. A permittee may acquire point source nitrogen credits or point source phosphorus credits from one or more owners of permitted facilities only if:

a. The credits are generated and applied to a compliance obligation in the same calendar year;

b. The credits are generated by one or more permitted facilities in the same tributary, except that owners of permitted facilities in the Eastern Shore Basin may also acquire credits from owners of permitted facilities in the Potomac and Rappahannock tributaries. Owners of Eastern Shore Basin facilities may acquire credits from the owners of Potomac tributary facilities at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from the owners of a Rappahannock tributary facility by the owner of an Eastern Shore Basin facility;

c. The exchange or acquisition of credits does not affect any requirement to comply with local water quality-based limitations as determined by the ~~board~~ department;

d. The credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied;

e. The credits are generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's wasteload allocations (until a facility is constructed and has commenced operation, such credits are held, and may be sold, by the Nutrient Offset Fund; and

f. No later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a credit exchange notification form supplied by the department that he has acquired sufficient credits to satisfy his compliance obligations. The permittee shall comply with the terms and conditions contained in the credit exchange notification form submitted to the department.

3. Credit acquisitions from the Nutrient Offset Fund. Until such time as the ~~board~~ department finds that no allocations are reasonably available in an individual tributary, permittees that cannot meet their total nitrogen or total phosphorus effluent limit may acquire nitrogen or phosphorus credits through payments made into the Nutrient Offset Fund established in § 10.1-2128.2 of the Code of Virginia only if, no later than June 1 immediately following the calendar year in which the credits are to be applied, the permittee certifies on a form supplied by the department that he has diligently sought, but has been unable to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point source nitrogen or phosphorus credits with other permitted facilities, and that he has acquired sufficient credits to satisfy his compliance obligations through one or more payments made in accordance with the terms of this general permit. Such certification may include providing a record of solicitation or demonstration that point source allocations are not available for sale in the tributary in which the permittee's facility is located. Payments to the Nutrient Offset Fund shall be in the amount of ~~$5.08~~ $9.23 for each pound of nitrogen and ~~$11.15~~ $20.26 for each pound of phosphorus and shall be subject to the following requirements:

a. The credits are generated and applied to a compliance obligation in the same calendar year.

b. The credits are generated in the same tributary, except that owners of permitted facilities in the Eastern Shore Basin may also acquire credits from the owners of facilities that discharge to the Potomac and Rappahannock tributaries. Owners of Eastern Shore Basin facilities may acquire credits from the owners of facilities that discharge to a Potomac tributary at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from owners of facilities that discharge to a Rappahannock tributary by the owners of an Eastern Shore Basin facility.

c. The acquisition of credits does not affect any requirement to comply with local water quality-based limitations, as determined by the ~~board~~ department.

4. This general permit neither requires nor prohibits a municipality or regional sewerage authority's development and implementation of trading programs among industrial users, which are consistent with the pretreatment regulatory requirements at 40 CFR Part 403 and the municipality's or authority's individual VPDES permit.

PART II

SPECIAL CONDITIONS APPLICABLE TO NEW AND EXPANDED FACILITIES

A. Offsetting mass loads discharged by new and expanded facilities.

1. An owner of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under this general permit.

a. An owner of a facility authorized by a VPDES permit first issued before July 1, 2005, that expands the facility to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005.

b. An owner of a facility authorized by a VPDES permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads.

c. An owner of a facility treating domestic sewage authorized by a VPDES permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that did not commence the discharge of pollutants prior to January 1, 2011, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset his delivered total nitrogen and delivered phosphorus loads prior to commencing the discharge, except when the facility is for short-term temporary use only as determined by the department or when treatment of domestic sewage is not the primary purpose of the facility.

2. Offset calculations shall address the proposed discharge that exceeds:

a. The applicable wasteload allocation assigned to discharges from the facility in this general permit, for expanding significant dischargers with a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60

C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

b. The permitted design capacity, for all other expanding dischargers; and

c. Zero, for facilities with a new discharge.

3. An owner of multiple facilities that discharge into the same tributary, and assigned an aggregate mass load limit in accordance with Part I B 2 of this general permit, that undertakes construction of new or expanded facilities shall be required to acquire wasteload allocations sufficient to offset any increase in delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond the aggregate mass load limit assigned these facilities.

B. Acquisition of wasteload allocations [or annual point source credits]. Wasteload allocations [or annual point source credits] required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this section.

1. Such allocations [or annual point source credits] may be acquired from one or a combination of the following:

a. Acquisition of all or a portion of the wasteload allocations or point source nitrogen or point source phosphorus credits from the owners of one or more permitted facilities, either directly from the owner or, in the case of point source credits, through the Virginia Nutrient Credit Exchange Association based on delivered pounds by the respective trading parties as listed by the department;

b. Acquisition of credits certified by the ~~board~~ department pursuant to § 62.1-44.19:20 of the Code of Virginia. Credits used to offset new or increased nutrient loads under this subdivision shall be:

(1) Subject to a trading ratio of two pounds reduced for every pound to be discharged if certified as a nonpoint source credit by the ~~board~~ department pursuant to § 62.1-44.19:20 of the Code of Virginia. On a case-by-case basis the ~~board~~ department may approve nonpoint source to source trading ratios of less than 2:1 (but not less than 1:1) when the applicant demonstrates factors that ameliorate the presumed 2:1 uncertainty ratio for credits generation by nonpoint sources such as:

(a) When direct and representative monitoring of the pollutant loadings from a nonpoint source is performed in a manner and at a frequency similar to that performed at VPDES point sources and there is consistency in the effectiveness of the operation of the nonpoint source best management practice (BMP) approaching that of a conventional point source.

(b) When nonpoint source credits are generated from land conservation that ensures permanent protection through a conservation easement or other instrument attached to the deed and when load reductions can be reliably determined;

(2) Calculated using best management practices efficiency rates and attenuation rates, as established by the latest science and relevant technical information, and approved by the ~~board~~ department;

(3) Based on appropriate delivery factors, as established by the latest science and relevant technical information, and approved by the ~~board~~ department;

(4) Demonstrated to have achieved reductions beyond those already required by or funded under federal or state law, or by Virginia's Chesapeake Bay TMDL Watershed Implementation Plan;

(5) Generated in accordance with conditions of the facility's individual VPDES permit; and

(6) In the case of credits generated by land use conversions and urban source reduction controls (BMPs), the credits shall represent nutrient reductions beyond those in place as of July 1, 2005;

c. Until such time as the ~~board~~ department finds that no allocations are reasonably available in an individual tributary, acquisition of allocations through payments made into the Nutrient Offset Fund established in § 10.1-2128.2 of the Code of Virginia; or

d. Acquisition of allocations through such other means as may be approved by the department on a case-by-case basis. This includes allocations granted by the ~~board~~ department to an owner of a facility that is authorized by a VPA permit to land apply domestic sewage if:

(1) The VPA permit was issued before July 1, 2005;

(2) The allocation does not exceed the facility's permitted design capacity as of July 1, 2005;

(3) The waste treated by the facility that is covered under the VPA permit will be treated and discharged pursuant to a VPDES permit for a new discharge; and

(4) The owner installs state-of-the-art nutrient removal technology at such a facility.

2. Acquisition of allocations or point source nitrogen or point source phosphorus credits is subject to the following conditions:

a. The allocations or credits shall be generated and applied to an offset obligation in the same calendar year in which the credit is generated;

b. The allocations or credits shall be generated in the same tributary;

c. Such acquisition does not affect any requirement to comply with local water quality-based limitations, as determined by the ~~board~~ department;

d. The allocations are authenticated (i.e., verified to have been generated) by the permittee as required by the facility's individual VPDES permit, utilizing procedures

approved by the ~~board~~ department, no later than February 1 immediately following the calendar year in which the allocations are applied; and

e. If obtained from the owner of a permitted point source, the allocations shall be generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's wasteload allocations.

f. Such allocations or credits shall be secured for a period of five years with each registration under the general permit.

3. Priority of options. The ~~board~~ department shall give priority to allocations or credits acquired in accordance with subdivisions 1 a, b, and d of this subsection. The ~~board~~ department shall approve allocations acquired in accordance with subdivision 1 c of this subsection only after the owner has demonstrated that he has made a good faith effort to acquire sufficient allocations in accordance with subdivisions 1 a and 1 b of this subsection, and that such allocations are not reasonably available taking into account timing, cost and other relevant factors. Such demonstration may include providing a record of solicitation, or other demonstration that point source allocations or nonpoint source allocations are not available for sale in the tributary in which the permittee's facility discharge is located.

4. Annual allocation acquisitions from the Nutrient Offset Fund. The cost for each pound of nitrogen and each pound of phosphorus shall be determined at the time payment is made to the Nutrient Offset Fund, based on the higher of (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost, as determined by the department on an annual basis, of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired.

PART III

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee or as requested by the ~~board~~ department.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved, or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the ~~board~~ department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The ~~board~~ department may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the discharge on the quality of state waters or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the ~~board~~ department, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee that discharges or causes or allows a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part III F, or that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharge not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include, but are not limited to, any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

1. An oral or online report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this paragraph:

a. Any unanticipated bypass; and

b. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The ~~board~~ department may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral or online report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

NOTE: The immediate (within 24 hours) reports required in Part III G, H, and I ~~may~~ shall be made to the department's regional office. Reports may be made by telephone or online at https://www.deq.virginia.gov/land-waste/pollution-response (online reporting is preferred). For reports outside normal working hours, ~~a message may be left and this shall fulfill the immediate reporting requirement~~ the online portal shall be used. For emergencies, call the Virginia ~~Department of~~ Emergency ~~Management maintains a 24 hour telephone service~~ Operations Center (24 hours) at 804-750-8845.

4. When the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement or submitted incorrect information in a permit registration statement or in any report to the department, the permittee shall promptly submit such facts or information.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act (33 USC § 1251 et seq.) that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the Clean Water Act within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or of disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or of disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits and other information requested by the ~~board~~ department shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual

or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action, permit coverage termination, or denial of a permit coverage renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the ~~board~~ department. The ~~board~~ department shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights or any infringement of federal, state, or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U) and "upset" (Part III V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the ~~board~~ department may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The ~~board~~ department may approve an anticipated bypass after considering ~~its~~ adverse effects of the anticipated bypass if the ~~board~~ department determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part III I; and

d. The permittee complied with remedial measures required under Part III S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative (including an authorized contractor acting as a representative of the administrator) upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours or whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permit coverage. Permit coverage is not transferable to any person except after notice to the department. Coverage under this permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the ~~board~~ department;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The ~~board~~ department does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement described in Part III Y 2.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

9VAC25-820-80. Facilities subject to reduced individual total nitrogen and total phosphorus wasteload allocations.

~~A.~~ Enhanced Nutrient Removal Certainty Program facilities

Facility	VPDES No.
~~HRSD - York River STP~~	~~VA0081311~~

HRSD - Boat Harbor STP	VA0081256
HRSD - James River STP	VA0081272
HRSD - Williamsburg STP	VA0081302
HRSD - Nansemond STP	VA0081299
HRSD - Army Base STP	VA0081230
HRSD - VIP WWTP	VA0081281

~~B. Chlorophyll-a based total phosphorus wasteload allocations.~~

~~Facility~~	~~VPDES No.~~
~~Richmond WWTP~~	~~VA0063177~~
~~Falling Creek WWTP~~	~~VA0024996~~
~~Proctor's Creek WWTP~~	~~VA0060194~~
~~Henrico County WWTP~~	~~VA0063690~~
~~Phillip Morris - Park 500~~	~~VA0026557~~
~~Hopewell WWTP~~	~~VA0066630~~
~~South Central Wastewater Authority WWTP~~	~~VA0025437~~

VA.R. Doc. No. R24-8010; Filed July 27, 2026, 12:09 p.m.

Forms

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

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

Agency Contact: Laura Galli, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 573-5674, or email laura.galli@deq.virginia.gov.

FORMS (9VAC25-820)

~~General Virginia Pollutant Discharge Elimination System (VPDES) Permit Registration Statement for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (rev. 9/2021).~~

Virginia Pollutant Discharge Elimination System (VPDES) General Permit Registration Statement for Nutrient Discharges and Trading in the Chesapeake Bay Watershed (rev. 6/2026)

VA.R. Doc. No. R27-8770; Filed August 3, 2026, 2:49 p.m.

TITLE 11. GAMING

CHARITABLE GAMING BOARD

Fast-Track Regulation

Title of Regulation: **11VAC15-13. Public Participation Guidelines (repealing 11VAC15-13-10 through 11VAC15-13-110).**

Statutory Authority: §§ 2.2-4007.02 and 18.2-340.18 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 23, 2026.

Effective Date: October 8, 2026.

Agency Contact: Joel Maddux, Director, Division of Consumer Protection, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3523, fax (804) 371-7479, or email joel.maddux@vdacs.virginia.gov.

Basis: Section 3.2-102 of the Code of Virginia grants the Commissioner of Agriculture and Consumer Services the authority to adopt regulations in accordance with the provisions of the Charitable Gaming Law (Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia). Chapters 554 and 609 of the 2022 Acts of Assembly resulted in the reclassification of the Charitable Gaming Board as an advisory board and the assumption by the commissioner of the board's regulatory authority over charitable gaming.

Purpose: The change in regulatory authority for charitable gaming from the board to the commissioner requires that 11VAC15-13 be repealed. The welfare of citizens is protected when rulemaking bodies comply with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial because Chapters 554 and 609 of the 2022 Acts of Assembly resulted in the reclassification of the board as an advisory board and the assumption by the commissioner of the board's regulatory authority over charitable gaming. As the board is no longer a rulemaking body, its public participation guidelines are no longer needed.

Substance: This regulatory action repeals Public Participation Guidelines (11VAC15-13).

Issues: The primary advantage to the public and the agency is the removal from the Virginia Administrative Code of a regulation that is no longer needed. In a separate regulatory action, the commissioner will promulgate Public Participation

Guidelines for the Department of Agriculture and Consumer Services, Charitable Gaming, providing the public with a simple and uniform method for participating in the agency's rulemaking process. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Commissioner of the Virginia Department of Agriculture and Consumer Services (VDACS) proposes to repeal the existing Charitable Gaming Board (board) Public Participation Guidelines (PPG) regulation to facilitate citizen participation in rulemaking concerning the VDACS regulations that pertain to charitable gaming.

Background. Chapters 554 and 609 of the 2022 Acts of Assembly (i) eliminated the provisions of the Code that authorized the Charitable Gaming Board (board) to promulgate regulations, (ii) reclassified the board as an advisory board within the meaning of § 2.2-2100 of the Code c, and (iii) authorized the commissioner to promulgate regulations to carry out the provisions of the Charitable Gaming Law (Article 1.1:1 of Chapter 8 of Title 18.2 of the Code of Virginia). Chapters 554 and 609 provide, in part, that the regulations of the Charitable Gaming Board shall be administered by VDACS and shall remain in full force and effect until the commissioner promulgates regulations. As such, it is necessary that the commissioner repeals the existing PPG regulation (11VAC15-13) through this regulatory action,[2] and that the commissioner, through a separate regulatory action, promulgates a new PPG regulation. The repeal of 11VAC15-13 and the promulgation of 11VAC20-10 will have the same effective date.

Estimated Benefits and Costs. Repealing the existing PPG regulation, along with the simultaneous promulgation of its replacement, would have no impact on requirements, but may nevertheless be beneficial by ensuring that the Virginia Administrative Code does not include a regulation for a Board that no longer has the authority to promulgate regulations.

Businesses and Other Entities Affected. The proposed repeal may affect readers of regulations. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation. 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. Repealing the existing PPG regulation, along with the simultaneous promulgation of its replacement, would neither increase net costs nor reduce net benefits. Thus, no adverse impact is indicated.

Small Businesses[3] Affected.[4] The proposed repeal does not adversely affect small businesses.

Localities[5] Affected.[6] The proposed repeal neither disproportionately affects particular localities nor affects costs for local governments.

Projected Impact on Employment. The proposed repeal does not affect employment.

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

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

[2] See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=6879.

[3] 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."

[4] See §§ 2.2-4007.04 A 2 and 2.2-4007.1 C of the Code of Virginia.

[5] "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.

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

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

Summary:

Chapters 554 and 609 of the 2022 Acts of Assembly eliminate the provisions of the Code of Virginia that authorize the Charitable Gaming Board to promulgate regulations and authorize the Commissioner of Agriculture and Consumer Services to promulgate regulations to carry out the provisions of the Charitable Gaming Law (Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia), provided that the regulations of the board shall be administered by the Department of Agriculture and Consumer Services and remain in full force and effect until the commissioner promulgates regulations. In a separate action published simultaneously with this action, the commissioner is promulgating new public participation guidelines at 11VAC20-10, which allows for the repeal the public participation guidelines adopted by the board at 11VAC15-13.

The repeal of 11VAC15-13 and the promulgation of 11VAC20-10 have the same effective date.

VA.R. Doc. No. R27-8016; Filed August 4, 2026, 2:15 p.m.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, CHARITABLE GAMING

Fast-Track Regulation

Title of Regulation: **11VAC20-10. Public Participation Guidelines (adding 11VAC20-10-10 through 11VAC20-10-110).**

Statutory Authority: §§ 2.2-4007.02 and 3.2-102 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 23, 2026.

Effective Date: October 8, 2026.

Agency Contact: Joel Maddux, Director, Division of Consumer Protection, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3523, or email joel.maddux@vdacs.virginia.gov.

Basis: Section 3.2-102 of the Code of Virginia grants the Commissioner Agriculture and Consumer Services the authority to adopt regulations in accordance with the provisions of the Charitable Gaming Law (Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia). Chapters 554 and 609 of the 2022 Acts of Assembly resulted in the reclassification of the Charitable Gaming Board as an advisory board and the assumption by the commissioner of the board's regulatory authority over charitable gaming.

Purpose: The change in regulatory authority for charitable gaming from the board to the commissioner requires that 11VAC15-13 be repealed. The Administrative Process Act requires that public participation guidelines be promulgated for every rulemaking body, therefore the commissioner is promulgating the required regulation to replace 11VAC15-13. The welfare of citizens is protected when rulemaking bodies comply with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial because Chapters 554 and 609 of the 2022 Acts of Assembly resulted in the reclassification of the board as an advisory board and the assumption by the commissioner of the board's regulatory authority over charitable gaming. Because the commissioner is required to repeal the existing board's public participation guidelines (PPGs), new PPGs must be promulgated.

Substance: Through this regulatory action, the commissioner adopts the model public participation guidelines developed by the Department of Planning and Budget and required by § 2.2-4007.02 of the Code of Virginia.

Issues: The primary advantage to the public and the agency is that the public will have a simple and uniform method for participating in the agency rulemaking process. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Commissioner of the Virginia Department of Agriculture and Consumer Services (VDACS) proposes to promulgate a Public Participation Guidelines (PPG) regulation to facilitate citizen participation in rulemaking concerning the VDACS regulations that pertain to charitable gaming.

Background. Chapters 554 and 609 of the 2022 Acts of Assembly (i) eliminated the provisions of the Code that authorized the Charitable Gaming Board (board) to promulgate regulations, (ii) reclassified the board as an advisory board within the meaning of § 2.2-2100 of the Code c, and (iii) authorized the commissioner to promulgate regulations to carry out the provisions of the Charitable Gaming Law (Article 1.1:1 of Chapter 8 of Title 18.2 of the Code of Virginia). Chapters 554 and 609 provide, in part, that the regulations of the Charitable Gaming Board shall be administered by VDACS and shall remain in full force and effect until the commissioner promulgates regulations. As such, it is necessary that the commissioner repeals the existing PPG regulation (11VAC15-13) through a separate regulatory action[2] and that the commissioner, through this regulatory action, promulgates a new PPG regulation. The repeal of 11VAC15-13 and the promulgation of 11VAC20-10 will have the same effective date.

Estimated Benefits and Costs The proposed regulation would benefit members of the public who have interest or concern about charitable gaming and VDACS by ensuring that a clear standardized process for obtaining public input from interested parties is used in the formation and development of agency regulations that pertain to charitable gaming, and by helping inform the public of that process.

Businesses and Other Entities Affected. The proposed regulation affects the 408 organizations that hold a charitable gaming permit, 109 organizations that hold a charitable gaming registration, members of the public who have interest or concern about charitable gaming, and VDACS. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation. 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. Promulgating the PPG regulation would neither increase net costs nor reduce net benefits. Thus, no adverse impact is indicated.

Small Businesses[3] Affected.[4] The proposed regulation does not adversely affect small businesses.

Localities[5] Affected.[6] The proposed regulation does not adversely affect small businesses.

Projected Impact on Employment. The proposed regulation does not affect employment.

Effects on the Use and Value of Private Property. The proposed regulation affects neither 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] See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=6878.

[3] 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."

[4] See §§ 2.2-4007.04 A 2 and 2.2-4007.1 C of the Code of Virginia.

[5] "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.

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

Agency Response to Economic Impact Analysis: The Department of Agriculture and Consumer Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

Chapters 554 and 609 of the 2022 Acts of Assembly eliminate the provisions of the Code of Virginia that authorize the Charitable Gaming Board to promulgate regulations and authorize the Commissioner of Agriculture and Consumer Services to promulgate regulations to carry out the provisions of the Charitable Gaming Law (Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia), provided that the regulations of the board shall be administered by the Department of Agriculture and Consumer Services and remain in full force and effect until the commissioner promulgates regulations. In a separate action published simultaneously with this action, the commissioner is repealing public participation guidelines at 11VAC15-13, which allows for the promulgation of new model public participation guidelines adopted by the commissioner at 11VAC20-10.

The promulgation of 11VAC20-10 and the repeal of 11VAC15-13 have the same effective date.

Chapter 10

Public Participation Guidelines

Part I

Purpose and Definitions

11VAC20-10-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment, or repeal of the regulations of the Department of Agriculture and Consumer Services that pertain to charitable gaming. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

11VAC20-10-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Department of Agriculture and Consumer Services, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending, or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov that has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended, and repealed regulations of state agencies, which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

Part II

Notification of Interested Persons

11VAC20-10-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

11VAC20-10-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 11 VAC 20-10-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a proposed, a reproposed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to § 2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III

Public Participation Procedures

11VAC20-10-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency, and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a reproposed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final

adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

11VAC20-10-60. Petition for rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider, and respond to a petition pursuant to § 2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

11VAC20-10-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

11VAC20-10-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. A NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

11VAC20-10-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with § 2.2-3707 E of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

11VAC20-10-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

11VAC20-10-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to § 2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in § 2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R27-7360; Filed August 4, 2026, 2:17 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Emergency Regulation

Title of Regulation: **12VAC5-371. Regulations for the Licensure of Nursing Facilities (adding 12VAC5-371-45).**

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

Effective Dates: July 27, 2026, through January 26, 2028.

Agency Contact: Geoff Garner, Senior Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-2157, or email geoff.garner@vdh.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 Chapters 254 and 265 of the 2025 Acts of Assembly, the amendments establish fees for the issuance, change, or renewal of a hospital or nursing home license. Funds generated from fees are deposited into the Hospital and Nursing Home Licensure and Inspection Program Fund created by the act to be used for the purposes of supporting the activities of the licensure and inspections requirements.

12VAC5-371-45. Fees.

A. The fees for the initial, renewal, and change of licensure of nursing facilities shall be paid into the state treasury and credited to the Hospital and Nursing Home Licensure and Inspection Program Fund established by § 32.1-130 of the Code of Virginia.

B. A nursing facility or an applicant for nursing facility licensure shall pay fees as follows:

1. Initial licensure: $150 base fee plus $29 per bed;

2. Renewal licensure: $150 base fee plus $29 per bed; and

3. Nursing facility change listed in 12VAC5-371-110 F: $250.

C. The commissioner may, in the commissioner's discretion, waive or reduce a nursing facility change fee described in subdivision B 3 of this section if a nursing facility provides substantial documentation justifying a waiver or reduction.

VA.R. Doc. No. R27-8377; Filed July 27, 2026, 4:58 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-590. Waterworks Regulations (amending 12VAC5-590-10, 12VAC5-590-545).**

Statutory Authority: §§ 32.1-12 and 32.1-170 of the Code of Virginia.

Effective Date: September 23, 2026.

Agency Contact: Dwayne Roadcap, Director, Office of Drinking Water, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 338-0371, or email dwayne.roadcap@vdh.virginia.gov.

Summary:

As mandated by revisions to the federal Consumer Confidence Report Rule, the amendments (i) require the inclusion of definitions for pesticide and herbicide in certain consumer confidence reports, (ii) modify existing federal health language, and (iii) change requirements for the information, content, manner, and frequency of the consumer confidence reports that community waterworks are currently required to make available to consumers.

12VAC5-590-10. Definitions and units of measurement.

A. Definitions. As used in this chapter, the following words, terms, and abbreviations shall have meanings respectively set forth unless the context clearly requires a different meaning:

"Action level" or "AL" means the concentration of lead or copper in water specified in 12VAC5-590-385, which determines, in some cases, the treatment requirements contained in 12VAC5-590-405 that an owner is required to complete.

"Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia. The APA is the basic law conferring authority on agencies either to make regulations or case decisions as well as to standardize court review thereof.

"Air gap separation" means the unobstructed vertical distance through the free atmosphere between the lowest point of the potable water outlet and the flood rim of the receiving vessel.

"ANSI" means the American National Standards Institute.

"Applied water" means water that is ready for filtration.

"ASME" means the American Society of Mechanical Engineers.

"ASSE" means the American Society of Sanitary Engineering.

"ASTM" means the American Society for Testing and Materials.

"Auxiliary water system" means any water supply or system on or available to the premises of the consumer other than the waterworks. These may be polluted or contaminated, objectionable, or of questionable quality and constitute an unapproved water supply or system over which the waterworks owner does not have control.

"AWWA" means the American Water Works Association.

"Backflow" means the undesirable reversal of flow of water or mixtures of water and other liquids, gases, or other substances into a waterworks.

"Backflow elimination method" means the air gap separation or physical disconnection that will eliminate the cross-connection.

"Backflow prevention assembly" means a mechanical unit, designed to control various cross-connections and stop the reversal of flow that includes an inlet and outlet shutoff valve and test cocks to facilitate testing of the assembly. Backflow prevention assemblies include the reduced pressure principle backflow prevention assembly, the double check valve assembly, and the pressure vacuum breaker assembly.

"Backflow prevention device" means a mechanical unit designed to control cross-connections and stop the reversal of flow that is not testable because it does not have inlet and outlet shutoff valves or test cocks. A backflow prevention device is not generally designed or constructed to withstand continuous pressure over 12 hours, or to control high hazards. A backflow prevention device generally includes the atmospheric type vacuum breakers and the dual check valve type devices.

"Backpressure backflow" means backflow caused by pressure in the downstream piping that is superior to the supply pressure at the point of consideration.

"Backsiphonage" means backflow caused by a reduction in pressure that causes a partial vacuum, creating a siphon effect.

"Bag filters" means pressure-driven separation devices that remove particulate matter larger than one micrometer using an engineered porous filtration media. Bag filters are typically constructed of a nonrigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.

"Bank filtration" means a water treatment process that uses a well to recover surface water that has naturally infiltrated into groundwater through a river bed or bank. Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well.

"Best available technology" or "BAT" means the best practicable technology, treatment techniques, or other means that the department finds, after examination for efficacy under field conditions and not solely under laboratory conditions, that are available (taking cost into consideration).

"Board" means the State Board of Health.

"Boil water advisory" and "boil water notice" mean a statement that informs consumers that drinking water is or may be contaminated and that the water should be boiled before being used for human consumption.

"BSSP" means a bacteriological sample siting plan.

"CAP" means a corrective action plan.

"Cartridge filters" means pressure-driven separation devices that remove particulate matter larger than one micrometer using an engineered porous filtration media. Cartridge filters are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

"Case decision" means an agency determination as defined in § 2.2-4001 of the Code of Virginia.

"CCCP" means a cross-connection control program.

"CCR" means consumer confidence report.

"CDC" means the Centers for Disease Control and Prevention.

"CFE" means the combined filter effluent.

"CFR" means the Code of Federal Regulations.

"Clean compliance history" means a record of no PMCL violations for microbiological contaminants, no monitoring violations under 12VAC5-590-370, and no coliform treatment technique trigger exceedances or treatment technique violations under 12VAC5-590-392.

"Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into floc.

"Combined distribution system" means the interconnected distribution system consisting of the distribution systems of wholesale waterworks and of the consecutive waterworks that receive finished water.

"Commissioner" means the State Health Commissioner, who is the executive officer of the board.

"Community waterworks" means a waterworks that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Compliance cycle" means the nine-year calendar year cycle during which a waterworks shall monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle began January 1, 1993, and ended December 31, 2001, with subsequent compliance cycles continuing thereafter.

"Compliance period" means a three-year calendar year period within a compliance cycle. Each compliance cycle consists of three three-year compliance periods. The first compliance period began January 1, 1993, and ended December 31, 1995, with subsequent compliance periods continuing thereafter.

"Comprehensive business plan" means a plan detailing the technical, managerial, and financial commitments that the owner will make in order to ~~assure~~ ensure that the waterworks will have the capability to provide water that complies with this chapter over the long term.

"Confirmation sample" means a sample to be collected by the owner within a specified time after the results of the initial sample are known to have exceeded a specified limit or standard in order to validate the initial result and to determine compliance.

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter~~,~~ or a portion ~~thereof,~~ of a membrane filter in which bacterial colonies are not discrete.

"Consecutive waterworks" means a waterworks that receives some or all of its finished water from one or more waterworks. Consecutive waterworks may provide additional treatment to finished water. Delivery may be through a direct connection or through the distribution system of one or more consecutive waterworks.

"Consolidated" means rock made from sedimentary, igneous, or metamorphic materials that have been metamorphosed or cemented together forming strata or bodies of rock.

"Consumer" means any person receiving water for human consumption from a waterworks.

"Consumer's water system" means any water system located on the consumer's premises, supplied by or in any manner connected to a waterworks.

"Containment" means the safeguard against backflow into a waterworks from a consumer's water system by installing an appropriate backflow prevention assembly, backflow prevention device, or backflow elimination method at the service connection or downstream of the service connection but before any unprotected takeoffs.

"Contaminant" means any ~~objectionable or hazardous~~ physical, chemical, biological, or radiological substance or matter in water.

"Contaminant release" means an unplanned or uncontrolled release by a waterworks of a chemical contaminant or petroleum or synthetic oil into the water that is treated by or distributed from the waterworks to customers. "Contaminant release" includes any such release at treatment facilities and raw or finished water pump stations.

"Conventional filtration treatment" means a series of processes, including coagulation, flocculation, sedimentation, and filtration, resulting in substantial particulate removal.

"Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

"Critical equipment failure or malfunction" means any equipment failure or malfunction that has significant potential for serious adverse effects on human health as a result of short-term exposure or to cause a widespread disruption of water service.

"Cross-connection" means any actual or potential link, connection, or physical arrangement, direct or indirect, between used water, an auxiliary water system, or other source of contamination or pollution to the waterworks through which backflow can occur.

"DBPPs" means disinfection byproduct precursors.

"DBPs" means disinfection byproducts.

"DCLS" means the Virginia Department of General Services, Division of Consolidated Laboratory Services.

"Department" means the Virginia Department of Health.

"DEQ" means the Virginia Department of Environmental Quality.

"Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which (i) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and (ii) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

"Direct filtration" means a series of processes, including coagulation and filtration but excluding sedimentation, resulting in substantial particulate removal.

"Disinfectant" means any chemical and physical agents, including chlorine, chlorine dioxide, chloramines, ozone, and UV light, added to water in any part of the treatment or distribution process for the purpose of killing or inactivating pathogenic organisms.

"Disinfection" means a process that inactivates or destroys pathogenic organisms in water by use of a disinfectant.

"Disinfection profile" means a summary of Giardia lamblia or virus inactivation through the water treatment plant.

"Distribution main" means a water pipeline whose primary purpose is to convey drinking water to service connections.

"Distribution system" means a network of pipelines and appurtenances by which a waterworks delivers drinking water to its consumers.

"DOC" means the dissolved organic carbon in a water sample.

"Double check valve assembly" or "double check detector backflow assembly" means a backflow prevention assembly composed of two single independently acting check valves, including tightly closing shutoff valves located at each end of the assembly and test cocks to facilitate testing of the assembly, used for low hazard situations.

"DPOR" means the Virginia Department of Professional and Occupational Regulation.

"Drawdown" means the difference, measured vertically, between the static water level in the well and the water level during pumping.

"Dual sample set" means a set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other sample analyzed for HAA5.

"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

"Entry point" means the place where water from the source after application of any treatment is delivered to the distribution system. Where two or more sources are combined before distribution, the entry point is the location that is representative of the blended water following all treatment.

"EPA" means the U.S. Environmental Protection Agency.

"Equipment failure" means an unplanned condition when the equipment cannot perform or is unable to perform as designed because of a problem with such equipment. "Equipment failure" does not mean a planned (i) removal from service, (ii) repair, or (iii) maintenance.

"Equipment malfunction" means an unplanned condition during which the equipment cannot perform or is unable to perform as designed due to a problem originating from outside the waterworks rather than a problem associated or originating with the equipment itself, including an issue with third-party provided gas or electric power feeds or a cyberattack.

"Exemption" means allowing a waterworks that satisfies the criteria in 12VAC5-590-150 to deviate from a specific PMCL or treatment technique requirement that is granted to the waterworks for a limited period of time.

"Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from start-up to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"Finished water" means water that is introduced into the distribution system of a waterworks and is intended for distribution and consumption without further treatment, except as treatment is necessary to maintain water quality in the distribution system (e.g., booster disinfection).

"Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

"Flowing stream" means a course of running water flowing in a definite channel.

"Free available chlorine" means that portion of the total chlorine residual remaining in water at the end of a specified contact period that will react chemically and biologically as hypochlorous acid or hypochlorite ion.

"GAC" means granular activated carbon.

"Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

"Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

"Groundwater" means all water obtained from sources not classified as surface water.

"Groundwater system" means any waterworks that uses groundwater as its source of supply; however, a waterworks that combines all its groundwater with surface water or with groundwater under the direct influence of surface water before treatment is not a groundwater system. Groundwater systems include consecutive waterworks that receive potable water from another groundwater source.

"Groundwater under the direct influence of surface water" or "GUDI" means any water beneath the surface of the ground with (i) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia or Cryptosporidium or (ii) significant and relatively rapid shifts in water characteristics such as turbidity,

temperature, conductivity, or pH that closely correlate to climatological or surface water conditions. GUDI source determinations shall be made by the department in accordance with 12VAC5-590-430.

"GWMA" means the groundwater management area designation by the State Water Control Board.

"Haloacetic acids (five)" or "HAA5" means the sum of the concentrations of the haloacetic acids, expressed in milligrams per liter (mg/L) as rounded to two significant figures. For the purpose of this chapter the HAA5 shall mean monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid.

"Halogen" means one of the chemical elements chlorine, bromine, fluorine, astatine, or iodine.

"Health hazard" means any condition, device, or practice in a waterworks or its operation that creates, or may create, a danger to the health and well-being of the water consumer.

"HPC" means the heterotrophic plate count of a bacterial population.

"Human consumption" means drinking, food preparation, dishwashing, bathing, showering, hand washing, teeth brushing, and maintaining oral hygiene.

"Hypochlorite" means the ionic component from the disassociation of hypochlorous acid that performs the function of disinfection. It is the available active ingredient in liquid hypochlorite disinfectants such as sodium and calcium hypochlorite.

"Initial compliance period" means the compliance period in which chemical and radiological monitoring began, and it is represented by the first full three-year compliance period beginning at least 18 months after rule promulgation. It applies to inorganic, organic, and radionuclide contaminants listed in Tables 340.1, 340.2, and 340.4, respectively.

"Isolation" means the safeguard against backflow into a waterworks from a consumer's water system by installing an appropriate backflow prevention assembly or device or by installing a backflow elimination method at the sources of potential contamination in the consumer's water system. This is also called point-of-use isolation.

"Karst geology" means an area predominantly underlain by limestone, dolomite, or gypsum and characterized by rapid underground drainage. These areas often feature sinkholes, caverns, and sinking or disappearing creeks.

"Lake or reservoir" means a natural or man-made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

"Lead free" means the following: (i) when used with respect to solders and flux, refers to solders and flux containing not more than 0.2% lead; and (ii) when used with respect to pipes, pipe fittings, plumbing fittings, and plumbing fixtures, refers to the weighted average of wetted surfaces of pipes, pipe fittings, plumbing fittings, and plumbing fixtures containing not more than 0.25% lead.

"Lead service line" means a pipeline made of lead that connects the distribution main to the building inlet and any lead pigtail, gooseneck, or other fitting that is connected to the lead pipeline.

"Leakage" means the loss of potable water from the distribution system, up to the points of service connections, through breaks or defects in piping and piping appurtenances.

"Legionella" means a genus of bacteria, some species of which cause a type of pneumonia called Legionnaires disease.

"Level 1 assessment" means an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and, when possible, the likely reason that the waterworks triggered the assessment.

"Level 2 assessment" means an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and, when possible, the likely reason that the waterworks triggered the assessment in a more comprehensive investigation than a Level 1 assessment.

"Locational running annual average" or "LRAA" means the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

"Log inactivation" means the inactivation of organisms expressed on a logarithmic scale. For example, a 99.9% inactivation is a 3-log inactivation; whereas a 99.99% inactivation is a 4-log inactivation.

"Log removal" means the removal of organisms expressed on a logarithmic scale. For example, a 99.9% is a 3-log removal; whereas a 99.99% removal is a 4-log removal.

"Maximum contaminant level" or "MCL" means the maximum permissible level of a contaminant in potable water that is delivered to any consumer of a waterworks. MCLs are set as close to the MCLGs as feasible using the BAT. MCLs may be either "primary" (PMCL), meaning based on health considerations, or "secondary" (SMCL), meaning based on aesthetic considerations.

"Maximum contaminant level goal" or "MCLG" means the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur and that allows an adequate margin of safety. Maximum contaminant level goals are nonenforceable health goals.

"Maximum residual disinfectant level" or "MRDL" means a level of a disinfectant added for water treatment that may not

be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.

"Maximum residual disinfectant level goal" or "MRDLG" means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and that allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.

"Maximum total trihalomethane potential" or "MTP" means the maximum concentration of total trihalomethanes (TTHMs) produced in a given water containing a residual disinfectant after seven days at a temperature of 25°C or above.

"Membrane filtration" means a pressure or vacuum-driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size exclusion mechanism, and that has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. Included in this definition are the common membrane classifications of microfiltration (MF), ultrafiltration (UF), nanofiltration (NF), and reverse osmosis (RO).

"Membrane module" means the smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet.

"Membrane technology" means a process that uses a permeable membrane to remove ions, molecules, or particles from the process stream, such as MF, UF, NF, RO, and electrodialysis reversal (EDR).

"Membrane unit" means a group of membrane modules that share common valving that allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

"Method detection limit" or "MDL" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

"Microfiltration" or "MF" means a pressure-driven membrane technology that separates particles, based on the pore-size rating of the membrane, from a feed stream by using a sieving mechanism. Typically, MF can remove particles down to 0.1 micrometer in size.

"Monthly operating report" or "MOR" means the report submitted by a waterworks to the office at least once each month that describes the waterworks' operational status and compliance with applicable laws, regulations, and policies, as directed by the department.

"Most probable number" or "MPN" means the density or number of organisms per unit volume most likely to be present in a water sample and obtained from method-specific statistical MPN tables.

"MPA" means the microscopic particulate analysis method approved by EPA for use in the determination of whether a groundwater is under the influence of surface water.

"Nanofiltration" or "NF" means a pressure-driven membrane technology designed to remove multivalent ions ("softening") and other constituents based on the pore size, which ranges from one to 10 nanometers. Nanofiltration membranes typically operate under a pressure range of 600 to 1100 psi.

"Noncommunity waterworks" means a waterworks that is not a community waterworks, but operates at least 60 days out of the year.

"Noncritical equipment failure or malfunction" means an equipment failure or malfunction that is not a critical equipment failure or malfunction, regardless of whether such anomaly is noticeable to customers of the waterworks.

"Nonpotable water" means water not classified as pure water.

"Nontransient noncommunity waterworks" or "NTNC" means a waterworks that is not a community waterworks and that regularly serves at least 25 of the same persons over six months out of the year. When used in the context of an NTNC, "regularly serves" means four or more hours per day, for four or more days per week, for 26 or more weeks per year.

"NSF" means NSF International, formerly known as the National Sanitation Foundation. NSF collaborates with ANSI and Canadian authorities on drinking water standards development (NSF/ANSI/CAN).

"Office" means the department's Office of Drinking Water.

"One hundred year flood elevation" or "100-year flood elevation" means flood elevation that has a 1.0% probability of being equaled or exceeded in any given year.

"Operating staff" means individuals employed or appointed by an owner to work at a waterworks. Included in this definition are operators, whether or not the operator's license is appropriate for the classification and category of the waterworks, and unlicensed individuals.

"Operator" means any individual with the requisite skills, employed or appointed by any owner, who is designated by the owner to be the person having full responsibility for the waterworks operations and any subordinate operating staff. The individual may be a supervisor, a shift operator, or a substitute in charge, and have duties including testing or evaluation to control waterworks operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks.

"Optimal corrosion control treatment" means the corrosion control treatment that minimizes the lead and copper concentrations at consumers' taps while ensuring that the treatment does not cause the waterworks to violate any other section of this chapter.

"Optimum fluoride ion concentration" means ~~that~~ the fluoride ion concentration recommended by the U.S. Public Health Service for protection from dental caries.

"Owner" means an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity, or the federal government that supplies or proposes to supply water to any person within the Commonwealth from or by means of any waterworks.

"PAC" means powdered activated carbon.

"PCBs" means polychlorinated biphenyls.

"PER" means a preliminary engineering report.

"Permit" means an authorization granted by the commissioner to construct or operate a waterworks.

"Permitted capacity" means the limiting hydraulic capability of the waterworks, taking into consideration the source water capacity, treatment facilities, finished water storage, delivery, and distribution system.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, or instrumentality ~~thereof~~ of those entities.

"pH" means the negative logarithm of the hydrogen ion concentration of an aqueous solution.

"Physical disconnection" means the removal or absence of pipes, fittings, or fixtures that connect a waterworks directly or indirectly to any other water system.

"Picocurie" or "pCi" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

"PMCL" means the primary maximum contaminant level of a contaminant based on health considerations.

"Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface runoff.

"Point-of-entry device" or "POE device" means a treatment device applied to the water entering a house or building for the purpose of reducing contaminants in the water distributed throughout the house or building.

"Point-of-use device" or "POU device" means a treatment device applied to a single tap for the purpose of reducing contaminants in the water at that one tap.

"Pollution" means the presence of any foreign substance (chemical, physical, radiological, or biological) in water that tends to degrade its quality so as to constitute an unnecessary risk to human health or impair the usefulness of the water.

"Potable water" means the same as "pure water."

"Practical quantitation level" or "PQL" means the lowest level that can be reliably measured within specified limits of precision and accuracy during routine laboratory conditions.

"Prechlorination" means the application of chlorine to water before filtration.

"Presedimentation" means a preliminary treatment process used to remove gravel, sand, and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a water treatment plant.

"Pressure vacuum breaker assembly" means a backflow prevention assembly (i) designed to prevent backsiphonage and used for high hazard or low hazard situations; (ii) composed of an independently operating spring-loaded check valve, an independently operating spring-loaded air-inlet valve, and tightly closing shutoff valves located at each end of the assembly; and (iii) fitted with properly located test cocks to facilitate testing of the assembly.

"Primary disinfection" means disinfection to achieve a desired level of inactivation of targeted pathogenic organisms in water by chemical or physical agents as an integral part of the treatment process.

"Process fluids" means any fluid or solution that may be chemically, biologically, or otherwise contaminated or polluted that would constitute a health, environmental, or system hazard if introduced into the waterworks. This includes (i) polluted or contaminated water; (ii) used waters; (iii) cooling waters; (iv) contaminated natural waters taken from wells, lakes or reservoirs, streams, or irrigation systems; (v) chemicals in solution or suspension; or (vi) oils, gases, acids, alkalis, and other liquid and gaseous fluid used in industrial or other processes.

"Process water" means water used for dissolving dry chemicals; diluting liquid chemicals; and operating chemical feeders, treatment facilities, or equipment.

"Project documents" means the engineer's report, design criteria, preliminary and final plans, specifications, and procurement documents for the construction of new waterworks or modifications to existing waterworks.

"Pure water" means water fit for human consumption that is (i) sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts and (ii) adequate in quantity and quality for the minimum health requirements of the persons served.

"QCRV" means the quality control release value used in challenge tests of microfiltration (MF) and ultrafiltration (UF) membrane filters.

"RAA" means running annual average.

"Reduced pressure principle backflow prevention assembly" or "reduced pressure zone backflow prevention assembly" or "RPZ assembly" means an assembly designed to prevent backsiphonage or backpressure backflow and used for high or low hazard situations, composed of two independently operating spring-loaded check valves together with an independent, hydraulically operating pressure differential relief valve located between the two check valves. During normal flow and at the cessation of normal flow, the pressure between these two checks ~~shall be~~ is less than the supply pressure. The assembly ~~shall include~~ includes tightly closing shutoff valves located at each end of the RPZ assembly and ~~shall be~~ is fitted with properly located test cocks to facilitate testing of the assembly.

"REM" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A millirem (mrem) is 1/1000 of an REM.

"Repeat compliance period" means any subsequent compliance period after the initial compliance period.

"Residual disinfectant concentration" means the concentration of disinfectant measured in mg/L in a representative sample of water.

"Reverse osmosis" or "RO" means a membrane technology designed to remove salts, low-molecular weight solutes, and all other constituents up to 0.0001 micron in size by applying a pressure in excess of osmotic pressure to force water through a semi-permeable membrane from a region of high solution concentration to a region of lower solution concentration.

"Sanitary defect" means a defect that could provide a pathway of entry for microbial contamination into the distribution system or that is indicative of a failure or imminent failure in a protective barrier that is already in place.

"Sanitary survey" means an evaluation conducted by the department of a waterworks' water supply, facilities, equipment, operation, maintenance, monitoring records, and overall management to ensure the provision of potable water.

"SDWA" means the Safe Drinking Water Act (42 USC § 300f et seq.) and its amendments.

"Seasonal waterworks" means a noncommunity waterworks that is not operated as a waterworks on a year-round basis, and starts up and shuts down at the beginning and end of each operating season.

"Secondary disinfection" means disinfection by chemical oxidants or equivalent agents applied at the entry point or in the distribution system to provide a residual disinfectant in water to maintain water quality and safeguard against chance contamination from permeation, leaching, intrusion, regrowth, or biofilms.

"Sedimentation" means a process for removal of solids before filtration by gravity or separation.

"Service connection" means the point of delivery of finished water from a waterworks to a consumer's water system, fire protection system, irrigation system, and to all other points where finished water is delivered through the distribution system to a consumer. Generally, the service connection occurs at the water meter, or at the distribution main if no water meter is installed, or in the case of an owner of both the waterworks and the building supplied, the point of entry into the building. Service connections may be permanent, temporary, or emergency.

"Service line" means the pipeline or service pipe between the service connection and the building connection.

"Sewer" means any pipe or conduit used to convey sanitary sewage, stormwater, or industrial waste streams. Combined sewers convey both stormwater and sanitary sewage.

"Significant deficiency" means any defect in a waterworks' design, operation, maintenance, or administration, as well as the failure or malfunction of any waterworks component that may cause or has the potential to cause~~,~~ an unacceptable risk to health or could affect the reliable delivery of potable water to consumers.

"Single-family structure" means, for the purpose of 12VAC5-590-375 B only, a building constructed as a single-family residence that is currently used as either a residence or a place of business.

"Site visit" means a tour of a waterworks by the department or other authorized persons for purposes including assessing and documenting ~~its~~ the waterworks' physical condition, operations, and compliance activities.

"Slow sand filtration" means a process involving passage of source water through a bed of sand at low velocity (generally less than 0.4 m/h), resulting in substantial particulate removal by physical and biological mechanisms.

"SMCL" means the secondary maximum contaminant level of a contaminant. SMCLs are based on aesthetic qualities related to the public acceptance of drinking water.

"SOP" means standard operating procedure.

"Source water" means water as it is pumped or otherwise withdrawn from a well, spring, stream, lake or reservoir, or any body of surface water (natural or impounded), and before any treatment.

"Supervisory control and data acquisition" or "SCADA" means a computer-controlled system used by a waterworks to monitor its operations. Typical design features may be specific

to individual waterworks and include alarm, response, control, and data acquisition.

"Surface water" means all water open to the atmosphere and subject to surface runoff.

"SUVA" means specific ultraviolet absorption at 254 nanometers (nm), an indicator of the humic content of the water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV_{254}) (in m^{-1}) by its concentration of DOC (in mg/L).

"Synthetic organic chemical" or "SOC" means a man-made organic compound, generally utilized for agriculture or industrial purposes. Table 340.2 lists SOCs regulated as contaminants.

"System hazard" means a condition posing an actual, or threat of, damage to the physical properties of the waterworks or a consumer's water system.

"TDS" means total dissolved solids.

"TMF" means the technical, managerial, and financial capabilities to operate and maintain a waterworks.

"Too numerous to count" or "TNTC" means that the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

"Total organic carbon" or "TOC" means total organic carbon in milligrams per liter (mg/l) measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

"Total trihalomethanes" or "TTHM" means the sum of the concentrations of the trihalomethanes (THMs) expressed in milligrams per liter (mg/L) and rounded to two significant figures. For the purpose of this chapter, TTHM ~~shall mean~~ means trichloromethane (chloroform), dibromochloromethane, bromodichloromethane, and tribromomethane (bromoform).

"Transient noncommunity waterworks" or "TNC" means a noncommunity waterworks that is not a nontransient noncommunity waterworks (NTNC). A TNC serves at least 25 persons daily for at least 60 days out of the year.

"Treatment" means any process that changes the chemical, physical, radiological, or bacteriological quality of water.

"Treatment technique" or "TT" means a technology or process demonstrated to the satisfaction of the department to lead to a reduction in the level of a specific contaminant sufficient to comply with this chapter.

"Triggered source water monitoring" means monitoring required of any groundwater system as a result of a total coliform-positive sample in the distribution system.

"Trihalomethane" or "THM" means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

"Ultrafiltration" or "UF" means a membrane technology designed to remove particles up to 0.01 micron in size.

"Unconsolidated" means loose sediment that has not been compacted, cemented, lithified, or metamorphosed into rock. Sediment may be derived from a sedimentary-type, igneous-type, metamorphic-type rock, which includes clay, silt, sand, gravel, and mixtures of these particle types.

"Uncovered finished water storage facility" means a tank, reservoir, or other facility used to store water that will undergo no further treatment to reduce microbial pathogens (except residual disinfection) and is directly open to the atmosphere.

"Unregulated contaminant" or "UC" means a contaminant for which a monitoring requirement has been established, but for which no MCL or treatment technique requirement has been established.

"USBC" means the Uniform Statewide Building Code (13VAC5-63).

"Used water" means any water supplied by a waterworks to a consumer's water system after ~~it~~ the water has passed through the service connection and is no longer under the control of the owner.

"UV" means ultraviolet.

"Variance" means allowing a waterworks that satisfies the criteria in 12VAC5-590-140 to provide drinking water that does not fully comply with this chapter. A PMCL variance is a variance to a primary maximum contaminant level, or a treatment technique requirement. An operational variance is a variance to an operational regulation or a SMCL.

"Virus" means a virus of fecal origin that is infectious to humans by waterborne transmission and must be preemptively inactivated through disinfection before human consumption.

"Volatile organic chemical" or "VOC" means an organic compound generally characterized by its low molecular weight and its tendency to vaporize rapidly at relatively low temperatures and pressures. Table 340.2 lists VOCs regulated as contaminants.

"VOSH" means the Virginia Occupational Safety and Health program.

"Waiver" means permission from the department to deviate from the monitoring and reporting requirements in this chapter for a specific contaminant.

"Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a waterworks that

is deficient in treatment, as determined by the commissioner or the State Epidemiologist.

"Water supply" means the source of water taken into a waterworks including wells, streams, springs, lakes or reservoirs, and other bodies of surface waters (natural or impounded), and the tributaries ~~thereto~~ of those sources, and all impounded groundwater. The term "water supply" ~~shall~~ does not include any waters above the point of intake of the waterworks.

"Water treatment plant" means that portion of a waterworks intended specifically for water treatment; ~~it~~ "water treatment plant" may include, among other operations, coagulation, sedimentation, filtration, and disinfection.

"Waterworks" means a system that serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year. "Waterworks" includes all structures, equipment, and appurtenances used in the storage, collection, purification, treatment, and distribution of potable water except the piping and fixtures inside the building where such water is delivered.

"Waterworks business operation plan" means the same as "comprehensive business plan."

"Wholesale waterworks" means a waterworks that treats source water as necessary to produce potable water and then delivers some or all of that potable water to another waterworks. Delivery may be through a direct connection or through the distribution system of one or more consecutive waterworks.

B. As used in this chapter, the following units of measurement shall use the abbreviations as shown in this subsection:

C – degrees Celsius

CU – color units

ft^2 – square feet of area

ft/min – feet per minute

ft/sec – feet per second

gpd – gallons per day

gpd/ft^2 – gallons per day per square foot

gpm – gallons per minute

gpm/ft – gallons per minute per foot

gpm/ft^2 – gallons per minute per square foot

in – inches

lb – pounds

lb/day – pounds per day

lb/ft^2 – pounds per square foot

MFL – million fibers per liter

MGD – million gallons per day

mg/L – milligrams per liter

min – minutes

mJ/cm^2 – millijoules per square centimeter

mrem – millirem

nm – nanometer (10^{-9} meter)

NTU – nephelometric turbidity units

pCi – picocuries

pCi/L – picocuries per liter

ppb – parts per billion, or micrograms per liter (µg/L)

ppm – parts per million, or milligrams per liter (mg/L)

ppq – parts per quadrillion, or pictograms per liter (pq/L)

ppt – parts per trillion, or nanograms per liter (ng/L)

psi – pounds per square inch

psig – pounds per square inch gauge

$scfm/ft^2$ – standard cubic feet per minute per square foot

µm – micrometers (10^{-6} meter or microns)

µg/L – micrograms per liter

µS/cm – microSiemens per centimeter

W/m^2 – Watts per square meter

12VAC5-590-545. Consumer confidence reports.

A. Purpose and applicability.

1. The owner of a community waterworks shall deliver to the owner's customers ~~an annual~~ a report that contains information ~~on the quality of the water delivered by the waterworks and characterizes the risks, if any, from exposure to contaminants detected in the drinking water~~ specified in this section and shall include a summary as specified in subsection I of this section.

2. For the purpose of this section, ~~customers~~ "customers" are defined as billing units or service connections to which water is delivered by a community waterworks. For the purposes of this section, "consumers" are defined as people served by the water system, including customers and people who do not receive a bill.

3. For the purpose of this section, ~~a contaminant is detected when the laboratory reports the contaminant level as a measured level and not as "non-detect," "not detected," "ND," or less than a certain level. These express that an analyte in a test sample cannot be reliably detected with the test equipment or laboratory instrumentation and the method used~~ "detected" means: at or above the levels prescribed by 40 CFR 141.23(a)(4) for inorganic contaminants, at or above

the levels prescribed by 40 CFR 141.24(f)(7) and 40 CFR 141.24(h)(18) for the contaminants listed in Table 340.2, at or above the levels prescribed by 40 CFR 141.131(b)(2)(iv) for the contaminants or contaminant groups listed in Table 340.6, and at or above the levels prescribed by Table 378.1 for radioactive contaminants.

B. Effective dates.

1. The owner of an existing community waterworks shall deliver the report by July 1 annually. The report shall contain data collected during the previous calendar year or the most recent calendar year before the previous calendar year.

2. The owner of a new community waterworks shall deliver the first report by July 1 of the year after its first full calendar year in operation and annually thereafter.

3. The owner of a community waterworks that sells water to a consecutive waterworks shall deliver the applicable information necessary to comply with the requirements contained in this section to the consecutive waterworks by April 1, 2027, and annually~~,~~ thereafter or on a date mutually agreed upon by the seller and the purchaser and specifically included in a contract between the parties. A community waterworks that sells water to another community waterworks that is required to provide reports biannually according to subsection H of this section must provide the applicable information required in subsection H of this section by October 1, 2027, to the buyer waterworks, and annually thereafter or on a date mutually agreed upon by the seller and the purchaser, included in a contract between the parties.

C. Content.

1. The owner of a community waterworks shall provide the owner's customers ~~an annual~~ a report that contains the information on the source of the water delivered and a summary as specified in subsection I of this section as follows:

a. The report shall identify the source of the water delivered by the community waterworks by providing information on:

(1) The type of the source water (e.g., surface water, ~~ground water~~ groundwater); and

(2) The commonly used name, if any, and location of the body of the source water.

b. Where a source water assessment has been completed, the report shall:

(1) Notify consumers of the availability of the assessment;

(2) Include the year the assessment was completed or most recently updated;

(3) Describe the means to obtain the assessment; and

~~(3)~~ (4) Include a brief summary of the waterworks' susceptibility to potential sources of contamination.

c. The owner is encouraged to highlight in the report significant sources of contamination in the source water area if the information is readily available.

2. For the purpose of compliance with this section, the report shall include the following definitions:

a. "Maximum contaminant level goal" or "MCLG" means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

b. "Maximum contaminant level" or "MCL" means the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

c. The report for a community waterworks operating under a variance or an exemption issued by the commissioner under 12VAC5-590-140 and 12VAC5-590-150 shall include the following definition: "Variances and exemptions" means state or EPA permission not to meet an MCL or a treatment technique under certain conditions.

d. The report that contains data on contaminants that EPA regulates using any of the following terms shall include the applicable definitions:

(1) "Treatment technique" means a required process intended to reduce the level of a contaminant in drinking water.

(2) "Action level" means the concentration of a contaminant that, if exceeded, triggers treatment or other requirements that an owner shall follow.

(3) "Maximum residual disinfectant level goal" or "MRDLG" means the level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(4) "Maximum residual disinfectant level" or "MRDL" means the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for the control of microbial contaminants.

(5) "Level 1 assessment" means a study of the waterworks to identify potential problems and determine, if possible, why total coliform bacteria have been found in waterworks.

(6) "Level 2 assessment" means a very detailed study of the waterworks to identify potential problems and determine, if possible, why an E. coli PMCL violation has occurred and why total coliform bacteria have been found in waterworks on multiple occasions.

(7) "Pesticide" means, generally, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

(8) "Herbicide" means any chemical used to control undesirable vegetation.

3. Information on detected contaminants.

a. This section specifies the requirements for information to be included in the report for contaminants subject to a PMCL, AL, MRDL, or treatment technique as specified in 12VAC5-590-340.

b. The data relating to these contaminants shall be presented in the reports in a manner that is clear and understandable for consumers. For example, the data may be displayed in one table or in several adjacent tables. Any additional monitoring results that an owner of a community waterworks chooses to include in the report shall be displayed separately.

c. The data shall be derived from data collected to comply with EPA and state monitoring and analytical requirements during the previous calendar year ~~preceding~~ or the most recent calendar year before the ~~report is due~~ previous calendar year, except that where an owner is allowed to monitor for contaminants specified in subdivision C 3 a of this section less often than once a year, the ~~table~~ contaminant data section shall include the date and results of the most recent sampling, and the report shall include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with this chapter. No data older than five years need be included.

d. For each detected ~~contaminants~~ regulated contaminant subject to a PMCL, AL, MRDL, or treatment technique as listed in Tables 340.1 through 340.7 and 406.1, the ~~tables~~ contaminant data section shall contain:

(1) The PMCL for that contaminant expressed as a number equal to or greater than 1.0 as provided in 12VAC5-590-546;

(2) The MCLG for that contaminant expressed in the same units as the PMCL as provided in 12VAC5-590-546;

(3) If there is no PMCL for a detected contaminant, then the ~~tables~~ contaminant data section shall indicate that there is a treatment technique, or specify the AL, applicable to that contaminant, and the report shall include the definitions for treatment technique, AL, or both, as appropriate, specified in subdivision C 3 d of this section;

(4) For contaminants subject to a PMCL, except turbidity and E. coli, the contaminant data section shall contain the highest contaminant level used to determine compliance and the range of detected levels is as follows:

(a) When compliance with the PMCL is determined annually or less frequently, the highest detected level at any sampling point and the range of detected levels expressed in the same units as the PMCL.

(b) When compliance with the PMCL is determined by calculating an RAA of all samples collected at a sampling point, the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the PMCL. For the PMCLs for TTHM and HAA5, the owner shall include the highest LRAA for TTHM and HAA5 and the range of individual sample results for all sampling points expressed in the same units as the PMCL. If more than one location exceeds the TTHM or HAA5 PMCL, then the owner shall include the LRAAs for all locations that exceed the PMCL.

(c) When compliance with the PMCL is determined on a system-wide basis by calculating an RAA of all samples at all sampling points, the average and range of detection expressed in the same units as the PMCL. The range of detection for TTHM and HAA5 shall include the individual sample results for the purpose of establishing the monitoring locations for EPA's "Stage 2 Disinfectants and Disinfection Byproducts Rule" initial distribution system evaluation.

(5) For turbidity, the highest single measurement and the lowest monthly percentage of combined filter samples meeting the turbidity limits specified in 12VAC5-590-395 A 2 b for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity;

(6) For lead and copper, the 90th percentile value of the most recent round of sampling, ~~and~~ the number of sampling sites exceeding the AL, and the range of tap sampling results;

(7) For E. coli analytical results under 12VAC5-590-370, the total number of positive samples; and

(8) The likely source ~~or sources~~ of the detected contaminants to the best of the owner's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments~~,~~ and should be used when available to the owner. If the owner lacks specific information on the likely source, then the report shall include one or more of the typical sources for that contaminant listed in 12VAC5-590-546 that are most applicable to the system.

e. If the owner of a community waterworks distributes water to the owner's customers from multiple hydraulically independent distribution systems that are fed by different source waters, then:

(1) The ~~table~~ contaminant data section shall contain a separate column for each service area and the report shall identify each separate distribution system; or

(2) The owner shall produce a separate report tailored to include data for each service area.

f. The ~~table~~ detected contaminant data section shall clearly identify any data indicating violations of PMCLs, MRDLs, or treatment techniques, and the report shall contain a clear and readily understandable explanation of the violation, including:

(1) The length of the violation;

(2) The potential adverse health effects using the relevant language of 12VAC5-590-546; and

(3) Actions taken by the owner to address the violation.

g. For detected UCs for which monitoring is required, the reports must present the average and range at which the contaminant was detected. The report shall include a brief explanation of the reasons for monitoring for UCs, such as:

(1) UC monitoring helps EPA to determine where certain contaminants occur and whether EPA should consider regulating those contaminants in the future; or

(2) The report may use an alternative educational statement in the CCR if approved by the department.

h. For systems that exceeded the lead AL in 12VAC5-590-385 A, the detected contaminant data section shall clearly identify the exceedance if any corrective action has been required by the department during the monitoring period covered by the report. The report shall include a clear and readily understandable explanation of the exceedance, the steps consumers can take to reduce their exposure to lead in drinking water, and a description of any corrective actions the system has or will take to address the exceedance.

4. Information on Cryptosporidium, radon, and other contaminants:

a. If the owner has performed any monitoring for Cryptosporidium, which indicates that Cryptosporidium may be present in the source water or the finished water, then the report shall include:

(1) A summary of the results of the monitoring; and

(2) An explanation of the significance of the results.

b. If the owner has performed any monitoring for radon, which indicates that radon may be present in the finished water, then the report shall include:

(1) The results of the monitoring; and

(2) An explanation of the significance of the results.

c. If the owner has performed additional monitoring that indicates the presence of other contaminants in the finished water, then the report should include any results that may indicate a health concern, as determined by the commissioner or department. Detections above a proposed MCL or health advisory level may indicate possible health concerns. For these contaminants, the report should include:

(1) The results of the monitoring; and

(2) An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

5. Compliance with other regulations. In addition to the requirements of subdivision C 3 f of this section, the report shall note any violation that occurred during the year covered by the report of a requirement listed in this subdivision 5 and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the owner has taken to correct the violation:

a. Monitoring and reporting of compliance data;

b. Filtration and disinfection prescribed by 12VAC5-590-395. For an owner who has failed to install adequate filtration or disinfection equipment or processes or has had a failure of such equipment or processes that constitutes a violation, the report shall include the following language as part of the explanation of potential adverse health effects: "Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches";

c. Lead and copper control requirements prescribed by 12VAC5-590-375. For that fails to take one or more of the prescribed actions, the report shall include the applicable language of 12VAC5-590-546 for lead, copper, or both;

d. Treatment techniques for acrylamide and epichlorohydrin prescribed by 12VAC5-590-395 B. For an owner who violates the requirements of that section, the report shall include the relevant language from 12VAC5-590-546;

e. Recordkeeping of compliance data;

f. Special monitoring requirements for sodium; and

g. Violation of the terms of a variance, an exemption, or an administrative or judicial order.

6. Variances and exemptions. If a waterworks is operating under the terms of a variance or an exemption issued by the commissioner under 12VAC5-590-140 and 12VAC5-590-150, then the report shall contain:

a. An explanation of the reasons for the variance or exemption;

b. The date on which the variance or exemption was issued;

c. A brief status report on the steps the owner is taking to install treatment, find alternative sources of source water, or otherwise comply with the terms and schedules of the variance or exemption; and

d. A notice of any opportunity for public input in the evaluation or renewal of the variance or exemption.

7. Additional information.

a. The report shall contain a brief explanation regarding contaminants, which may reasonably be expected to be found in drinking water, including bottled water. This explanation shall include the exact language of subdivisions 7 a (1), 7 a (2), and 7 a (3) of this subsection or the owner shall use comparable language following approval by the department. The report also shall include the exact language of subdivision 7 a (4) of this subsection.

(1) ~~The sources of drinking water (both~~ Both tap water and bottled water~~) include~~ come from rivers, lakes ~~or reservoirs~~, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals, and~~,~~ in some cases, radioactive material, and can pick up and transport substances resulting from the presence of animals or from human activity. These substances are also called contaminants.

(2) Contaminants are any physical, chemical, biological, or radiological substance or matter in water. Contaminants that may be present in source water include:

~~(i)~~ (a) microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife;

~~(ii)~~ (b) inorganic contaminants, such as salts and metals, which can ~~be~~ occur naturally ~~occurring~~ in the soil or groundwater or may result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming;

~~(iii)~~ (c) pesticides and herbicides, which may come from a variety of sources, such as agriculture, urban stormwater runoff, and residential uses;

~~(iv)~~ (d) organic chemical contaminants, including SOCs and VOCs, which are byproducts of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems; and

~~(v)~~ (e) radioactive contaminants, which can ~~be~~ occur naturally ~~occurring~~ or be the result of oil and gas production and mining activities.

(3) To ~~ensure that tap water is safe to drink~~ protect public health, EPA prescribes regulations that limit the amount of certain contaminants in ~~the~~ tap water provided by waterworks. The U.S. Food and Drug Administration (FDA) regulations establish limits for contaminants in bottled water, which must provide the same protection for public health.

(4) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling EPA's Safe Drinking Water Hotline (800-426-4791) or visiting EPA's website, epa.gov/safewater.

b. The report shall include the telephone number of the owner, operator, or designee of the community waterworks as a source of additional information concerning the report. If the waterworks uses a website or social media to share additional information, the department recommends including information in the report about how to access those media platforms.

c. In communities with a large proportion of ~~non-English-speaking residents~~ consumers with limited English proficiency, as determined by the department, the report shall contain information in the appropriate languages regarding the importance of the report ~~or contain a telephone number or address where the residents~~ and either information where such consumers may ~~contact the waterworks to~~ obtain a translated copy of the report or assistance in the appropriate language, or the report shall be in the appropriate language.

d. The report shall include the following information about opportunities for public participation in decisions that may affect the quality of the drinking water. The owner should consider including the following additional relevant information:

(1) The time and place of regularly scheduled board meetings of the governing body that has authority over the waterworks; and

(2) If regularly scheduled board meetings are not held, then the name and telephone number of a waterworks representative who has operational or managerial authority over the waterworks.

e. The owner may include additional information as deemed necessary for public education consistent with, and not detracting from, the purpose of the report.

f. For a community groundwater system:

(1) Where there is a significant deficiency that is uncorrected at the time of the report or ~~an E. coli-positive~~ a fecal indicator-positive source water sample that is not invalidated in accordance with 12VAC5-590-380 at the time of the report, the owner shall report the following:

(a) The nature of the significant deficiency or the source ~~water,~~ if the source is known, of the ~~E. coli~~ fecal contamination;

(b) The date the significant deficiency was identified by the department or the ~~date or~~ dates of the ~~E. coli-positive~~ fecal indicator-positive source water samples;

(c) Whether the ~~E. coli~~ fecal contamination has been addressed in accordance with 12VAC5-590-421 and the date of the action;

(d) ~~The~~ For each significant deficiency or fecal contamination in the groundwater source that has not been addressed under 12VAC5-590-421, the department-approved plan and schedule, including interim measures, progress to date, and which interim measures for correcting the significant deficiency or fecal contamination have been completed ~~for correcting the significant deficiency or E. coli contamination~~; and

(e) ~~The potential health effects language in 12VAC5-590-546 for an E. coli-positive~~ If the waterworks receives notice of a fecal indicator-positive source water sample that is not invalidated in accordance with 12VAC5-590-

380 using the health effects language 12VAC5-590-546 B.

(2) If directed by the department, where there are significant deficiencies that have been corrected at the time of the report, then the owner shall report the significant deficiencies, how the deficiencies were corrected, and the ~~date or~~ dates of correction.

D. Additional health information.

1. All reports shall prominently display the following language: "Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer who are undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA and Centers for Disease Control and Prevention guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791) or on EPA's website epa.gov/safewater."

2. The owner that detects arsenic at levels above 0.005 mg/L, but equal to or below the PMCL of 0.010 mg/L, shall include in the report the following informational statement about arsenic: "~~While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the cost of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which~~ Arsenic is ~~a mineral~~ known to cause cancer in humans ~~at high concentrations and is linked to other health effects such as skin damage and circulatory problems~~. Arsenic also may cause other health effects such as skin damage and circulatory problems. (Name of waterworks) meets the EPA arsenic drinking water standard, also known as a Maximum Contaminant Level (MCL). However, you should know that EPA's MCL for arsenic balances the scientific community's understanding of arsenic-related health effects and the cost of removing arsenic from drinking water. The highest concentration of arsenic found in (year) was (insert max arsenic level per 12VAC5-590-340) ppb."

Instead of the statement required in this subdivision, the owner may include the owner's educational statement after receiving approval from the department.

3. The owner that detects nitrate at levels above ~~5~~ five mg/L, but below the PMCL, shall include in the report the following informational statement about the impacts of nitrate on children: "~~Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If~~ Even though (name of waterworks) meets the EPA nitrate drinking water standard, also known as a Maximum Contaminant Level (MCL), if you are caring for an infant~~, then you should~~ and using tap water to prepare formula, you may want to use alternate sources of water or ask for advice from your health care provider. Nitrate levels above 10 ppm pose a particularly high health concern for infants younger than six months of age and can interfere with the capacity of the infant's blood to carry oxygen, resulting in a serious illness. Symptoms of serious illness include shortness of breath and blueness of the skin, known as "blue baby syndrome." Nitrate levels in drinking water can increase for short periods of time due to high levels of rainfall or agricultural activity, therefore we test for nitrate (insert applicable sampling frequency). The highest level for nitrate found during (year) was (insert max nitrate level per 12VAC5-590-340) ppm."

Instead of the statement required in this subdivision, the owner may include the owner's own educational statement after receiving approval from the department.

4. All reports shall prominently display the following ~~language~~ lead-specific information: "~~If present, elevated levels of lead~~ Lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. (Name of ~~Utility~~ waterworks) is responsible for providing ~~high quality~~ high-quality drinking water and removing lead pipes, but cannot control the variety of materials used in plumbing components in your home. ~~When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to two minutes before using water for drinking or cooking. If you are concerned about lead in your water, then you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline (800-426-4791)~~ You share the responsibility for protecting yourself and your family from the lead in your home plumbing. You can take responsibility by identifying and removing lead materials within your home plumbing and taking steps to reduce your family's risk. Before drinking tap water, flush your pipes for several minutes by running your tap, taking a shower, or doing laundry or a load of dishes. You can also use a filter certified by an American National Standards Institute accredited certifier to reduce lead in drinking water. If you are concerned about lead in your water and wish to have your water tested, contact (name of waterworks and contact information). Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available at http://www.epa.gov/safewater/lead."

Instead of the statement required in this subdivision, the owner may include the owner's educational statement after receiving approval from the department.

E. The owner of a community waterworks required to complete a Level 1 or a Level 2 assessment that is not due to an E. coli PMCL violation shall include in the report the text specified in subdivisions E 1, E 2, and E 3 of this section as appropriate, filling in the blanks accordingly, and shall include in the report the text specified in subdivision E 4 of this section, if appropriate.

1. "Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessments to identify problems and to correct any problems that are found."

2. "~~During the past year~~ Because we found coliforms during sampling, we were required to conduct (insert the number of Level 1 assessments) Level 1 assessments to identify possible sources of contamination. (insert the number of Level 1 assessments) Level 1 assessments were completed. In addition, we were required to take ~~t~~ (insert the number of corrective actions) corrective actions and we completed (insert the number of corrective actions) of these actions."

3. "~~During the past year~~ Because we found coliforms during sampling, we were required to conduct (insert the number of Level 2 assessments) Level 2 detailed assessments ~~were required to be completed for our waterworks~~ to identify possible sources of contamination. (insert the number of Level 2 assessments) Level 2 assessments were completed. In addition, we were required to take (insert the number of corrective actions) corrective actions and we completed (insert the number of corrective actions) of these actions."

4. An owner that failed to complete all of the required assessments or correct all identified sanitary defects is in violation of the treatment technique requirement and shall also include one or both of the following statements, as appropriate:

a. "During the past year, we failed to conduct all of the required assessments."

b. "During the past year, we failed to correct all identified sanitary defects that were found during the assessments."

F. The owner of a community waterworks required to conduct Level 2 assessments due to an E. coli PMCL violation shall include in the report the text specified in subdivisions F 1 and F 2 of this section, filling in the blanks accordingly, and shall include in the report the text specified in subdivision F 3 of this section, if appropriate. An owner may use an alternative statement with equivalent information for subdivisions 1, 2, and 3 of this subsection if approved by the department.

1. "~~E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems.~~ We found E. coli bacteria, indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessments to identify problems and to correct any problems that ~~are~~ were found during those assessments."

2. "We were required to complete a Level 2 assessment because we found E. coli in our waterworks. In addition, we were required to take (insert number of corrective actions) corrective actions and we completed (insert number of corrective actions) of these actions."

3. Any owner that has failed to complete the required assessment or correct all identified sanitary defects is in violation of the treatment technique requirement and shall also include one or both of the following statements, as appropriate:

a. "We failed to conduct the required assessment."

b. "We failed to correct all sanitary defects that were identified during the assessment that we conducted."

4. If E. coli is detected in a waterworks and the E. coli PMCL is violated, in addition to completing the table as specified in subdivision C 3 d of this section, the owner shall include one or more of the following statements to describe any noncompliance, as applicable:

a. "We had an E. coli-positive repeat sample following a total coliform-positive routine sample."

b. "We had a total coliform-positive repeat sample following an E. coli-positive routine sample."

c. "We failed to collect all the required repeat samples following an E. coli-positive routine sample."

d. "We failed to test for E. coli when any repeat sample tested positive for total coliform."

5. If E. coli is detected in a waterworks and the E. coli PMCL is not violated, in addition to completing the table as specified in subdivision C 3 d of this section, the owner may include a statement that explains that although E. coli was detected, the owner is not in violation of the E. coli PMCL.

G. Waterworks required to comply with lead and copper control. Effective July 1, 2027:

1. The report shall notify consumers that complete lead tap sampling data are available for review and shall include information on how to access the data.

2. The report shall include a statement that a service line inventory (including inventories consisting only of a statement that there are no lead, galvanized requiring replacement, or lead status unknown service lines) has been prepared and include instructions to access the publicly available service line inventory. If the service line inventory is available online, the report must include the direct link to the inventory.

3. The report shall contain a plainly worded explanation of the corrosion control efforts the system is taking in accordance with 12VAC5-590-375 and 12VAC5-590-405. Corrosion control efforts consist of treatment (e.g., pH adjustment, alkalinity adjustment, or corrosion inhibitor addition) and other efforts contributing to the control of the corrosivity of water, including monitoring to assess the corrosivity of water. The owner may use one of the following templates or use an explanation that includes equivalent information.

a. For a waterworks with department of EPA-designated Optimal Corrosion Control Treatment:

(1) "Corrosion of pipes, plumbing fittings, and fixtures may cause lead and copper to enter drinking water. To assess corrosion of lead and copper, (name of waterworks) conducts tap sampling for lead and copper at selected sites (insert frequency at which system conducts tap sampling). (Name of waterworks) treats water using (identify treatment method) to control corrosion, which was designated as the optimal corrosion control treatment by (the state or EPA, as applicable). To ensure the treatment is operating effectively, (name of waterworks) monitors water quality parameters set by the (state or EPA, as applicable) (insert frequency at which waterworks conducts water quality parameter monitoring)."

(2) If applicable add: "(Name of waterworks) is currently conducting a study of corrosion control to determine if any changes to treatment methods are needed to minimize the corrosivity of the water."

b. For a waterworks without state or EPA designated Optimal Corrosion Control Treatment:

(1) "Corrosion of pipes, plumbing fittings and fixtures may cause metals, including lead and copper, to enter drinking water. To assess corrosion of lead and copper, (name of system) conducts tap sampling for lead and copper at selected sites (insert frequency at which waterworks conducts tap sampling)."

(2) If applicable, add: "(Name of waterworks) treats water using (identify treatment method) to control corrosion."

(3) If applicable add: "(Name of waterworks) is currently conducting a study of corrosion control to determine if any changes to treatment methods are needed to minimize the corrosivity of the water."

H. Report delivery, reporting, and recordkeeping.

1. ~~The~~ Except as provided in subdivision 7 of this subsection, the owner of a community waterworks shall ~~mail or otherwise~~ directly deliver one copy of the report to each customer~~, except as follows:~~.

a. ~~The~~ An owner ~~serving fewer than 10,000 persons~~ shall ~~have the option to either mail (or otherwise directly deliver) a copy of the report to each customer or publish the report in a local newspaper or newspapers of general circulation serving the area in which the waterworks is located by July 1 of each year; and~~ use, at a minimum, one of the following forms of delivery:

(1) Mail or hand deliver a paper copy of the report;

(2) Mail a notification that the report is available on a website via a direct link;

(3) Email a direct link or electronic version of the report; or

(4) Use another direct delivery method approved in writing by the department.

b. ~~If the~~ An owner ~~chooses to publish the report, then the owner~~ using electronic delivery methods in subdivisions 1 a (2), 1 a (3), and 1 a (4) of this subsection shall ~~inform customers, either in the newspaper in which the report is to be published or by other means approved by the department, that a copy of the report will not be mailed to them and that~~ provide a copy of the report ~~will be made available to the public~~ to any customer upon request. The notification method must prominently display directions for requesting a copy of the report.

c. An owner that chooses to electronically deliver a report by posting the report to a website and providing a notification either by mail or email:

(1) Shall make the report publicly available on the website at the time the notification is made;

(2) Shall prominently display the link and include an explanation of the nature of the link; and

(3) May use a web page to convey the information required in this section.

d. An owner that uses a publicly available website to provide a report must maintain public access to the report for no fewer than three years.

2. The owner of a community waterworks shall make a good faith effort to ~~deliver the report to the~~ reach consumers who ~~are served by the waterworks but are not bill paying customers~~ do not receive water bills, such as renters or workers, using means recommended by the department. This good faith effort shall include ~~at least one, and preferably two or more,~~ a mix of the following methods ~~appropriate to the particular~~ to reach the broadest range of persons served by the waterworks:

a. Posting the reports on the Internet;

b. Mailing ~~to postal patrons in metropolitan areas~~ the report or postcard with a link to the report to all service addresses or postal customers;

c. Advertising the availability of the report in the news media;

d. Publishing in a local newspaper or newsletter;

e. Posting a copy of the report or notice of availability with links or equivalents, such as quick response (QR) codes, in public places such as ~~libraries, community centers, and~~ cafeterias or lunchrooms of public buildings;

f. Delivering multiple copies for distribution by single-biller customers such as apartment buildings or large private employers;

g. Delivering to community organizations; ~~or~~

h. Using an opt-in notification system to send emails or texts with links to the reports to interested consumers;

j. Holding a public meeting to educate consumers on the reports; and

i. Other methods as approved by the department.

Where the owner is aware that the waterworks serves a substantial number of non-bill paying customers, the owner is encouraged to directly deliver the reports or notices of availability of the reports to service addresses. Where the owner is aware of a substantial number of bill-paying consumers without access to electronic forms of the report, the owner should use at least one non-electronic form of delivery.

3. No later than ~~July 1 of each year~~ 10 days after the date the owner is required to distribute the report to waterworks customers, the owner of a community waterworks shall ~~deliver~~ provide a copy of the report to the department~~, followed within three months by~~ and a certification that the report has been distributed to customers and that the information in the report is correct and consistent with the compliance monitoring data previously submitted to the department.

4. No later than ~~July 1 of each year~~ the date the owner is required to distribute the report to its customers, the owner of a community waterworks shall deliver the report to any other agency or clearinghouse ~~specified~~ identified by the department.

5. The owner of a community waterworks shall make ~~the report~~ its reports available to the public upon request. The owner should make a reasonable effort to provide the reports in an accessible format to anyone who requests an accommodation.

6. The owner of a community waterworks serving ~~100,000~~ 50,000 or more persons shall post the waterworks' current year's report to a publicly accessible site on the Internet.

7. The Governor or the Governor's designee can waive the requirement of subdivision 1 of this subsection for community waterworks serving fewer than 10,000 persons.

a. The owner of such a waterworks shall:

(1) Publish the reports in one or more local newspapers or on one or more local online news sites serving the area in which the system is located;

(2) Inform the customers that the reports will not be mailed, either in the newspapers in which the reports are published or by other means approved by the department; and

(3) Make the reports available to the public upon request.

b. The owner of a waterworks serving 500 or fewer persons may forgo the requirements of subdivisions 7 a (1) and 7 a (2) of this subsection if the owner provides notice that the report is available upon request at least once per year to the customers by mail, door-to-door delivery, or by posting in one or more locations where persons served by the waterworks can reasonably be expected to see it.

8. The owner of a community waterworks shall retain copies of the report for no ~~less~~ fewer than three years.

9. The owner of a waterworks serving 100,000 or more persons shall develop a plan for providing assistance to consumers with limited English proficiency. The owner shall evaluate the languages spoken by persons with limited English proficiency served by the waterworks and the owner's anticipated approach to address translation needs. The owner shall provide the first plan to the department with the first report in 2027. Plans shall be evaluated annually and updated as necessary and reported with the certification required in subdivision 3 of this subsection.

10. Delivery timing and biannual delivery:

a. Each owner of a community waterworks shall distribute reports by July 1 each year. Each report distributed by July 1 shall use data collected during, or prior to, the previous calendar year using methods described in subdivision 1 of this subsection.

b. Beginning January 1, 2027, each owner of a community waterworks serving 10,000 or more persons shall distribute the report biannually, or twice per calendar year, by December 31 using methods described in subsection 1 of this section.

c. Beginning January 1, 2027, an owner required to comply with subdivision 10 b of this subsection with a violation or action level exceedance that occurred between January 1 and June 30 of the current year or that has received monitoring results from required monitoring under the Unregulated Contaminant Monitoring Rule in 40 CFR 141.40 shall include a six-month update with the second report with the following:

(1) A short description of the nature of the six-month update and the biannual delivery.

(2) If a waterworks receives an MCL, MRDL, or treatment technique violation, the six-month update shall include the applicable contaminant section information in subdivision C 4 of this section and a readily understandable explanation of the violation, including: the length of the violation, the potential adverse health effects, actions taken by the system to address the violation, and timeframe the waterworks expects to complete those actions. To describe the potential health effects, the owner must use the relevant language of 12VAC5-590-546 B.

(3) If a waterworks receives any other violation, the six-month update shall include the information in subdivision C 6 of this section.

(4) If a waterworks exceeded the lead action level following monitoring conducted between January 1 and June 30 of the current year, the owner shall include information identified in subdivisions C 4 d (4) and C 8 of this section.

(5) For a waterworks monitoring under the Unregulated Contaminant Monitoring Rule in 40 CFR 141.40 that becomes aware of results for samples collected during the reporting year that were not included in the reports distributed by July 1, the owner shall include information as required by subdivision C 4 e of this section.

I. Summary of report contents.

1. Each report shall include a summary displayed prominently at the beginning of the report, including a brief description of the nature of the report.

2. The owner shall include, at a minimum, the following information in the summary:

a. Summary of violations and compliance information included in the report required by subdivision C 6 of this section, 12VAC5-590-379 for groundwater systems, and 12VAC5-590-380.

b. Contact information for owner, operator, or designee of the community waterworks as a source of additional information concerning the report pursuant to subdivision C 7 b of this section.

3. If applicable, the owner of a waterworks shall include the following in the summary:

a. For a waterworks using delivery methods in subdivision H 1 a of this section, directions for consumers to request a paper copy of the report, as described in subdivision 2 b of this subsection.

b. For a waterworks subject to subdivision H 9 of this section because it serves a large proportion of consumers with limited English proficiency, information where consumers may obtain a translated copy of the report or get assistance in the appropriate language.

c. For a waterworks using the report to also meet the public notification requirements of 12VAC5-590-540, specify that the waterworks is also serving to provide public notification of one or more violations or situations and provide a brief statement about the nature of the notice and a brief description of how to locate the notice in the report.

4. The summary should be written in plain language and may use infographics.

5. For a waterworks required to include a six-month update with the second report under subdivision H 10 of this section, the summary should include a brief description of the nature of the report and update, noting the availability of new information for the current year (between January and June).

6. The report summary shall include the following standard language to encourage the distribution of the report to all persons served: "Please share this information with anyone who drinks this water (or their guardians), especially those who may not have received this report directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this report in a public place or distributing copies by hand, mail, email, or another method."

VA.R. Doc. No. R27-8588; Filed July 28, 2026, 11:03 a.m.

Action Withdrawn

Title of Regulation: **12VAC5-660, Regulations Governing Biological Sex Specific or Separated Spaces and Activities.**

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

The State Board of Health has WITHDRAWN the regulatory action for **12VAC5-660, Regulations Governing Biological Sex Specific or Separated Spaces and Activities**, which was published as a Notice of Intended Regulatory Action in 42:7 VA.R. 807 November 17, 2025. The purpose of the proposed action was to promulgate a new regulation governing gender-specific spaces and activities. Upon review of statutory authority, the State Board of Health is not proceeding with this regulatory action. Therefore, the action is withdrawn on July 30, 2026.

Agency Contact: Joe Hilbert, Director of Governmental and Regulatory Affairs, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7006, fax (804) 864-7022, or email joe.hilbert@vdh.virginia.gov.

VA.R. Doc. No. R26-8488; Filed July 30, 2026, 2:01 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

CEMETERY BOARD

Forms

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

Title of Regulation: **18VAC47-20. Cemetery Board Rules and Regulations.**

Agency Contact: Christina Dumas, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Perimeter Center, Suite 400, Richmond, VA 23233, telephone (804) 367-2177, or email christina.dumas1@dpor.virginia.gov.

FORMS (18VAC47-20)

Cemetery Company and Personnel Forms

Cemetery Company License Application, A462-4901LIC-v6 (eff. 12/2025)

Cemetery Company Renewal or Reinstatement Application, A462-4901RENREI-v13 (eff. 12/2025)

Sales Personnel Registration Form, A462-4903REG-v6 (eff. 12/2025)

Compliance Agent Designee Application, A462-49CAD-v4 (eff. 12/2025)

Compliance Agent, Officer, or Director Change Form, A462-49ADO_CHG-v4 (eff. 12/2025)

Cemetery Addition Form, 4901ADD-v3 (rev. 1/2014)

Cemetery Salesperson Personnel Transfer Application, A462-4903SPTR-v1 (eff. 12/2025)

Perpetual Care Forms

Perpetual Care Fidelity Bond Form, 49PCFBND-v1 (rev. 9/2013)

Perpetual Care Trust Fund Financial Report, 49PCTFR-v1 (rev. 9/2013)

Perpetual Care Trust Fund Financial Report Instructions, 49PCTINS-v1 (rev. 9/2013)

Perpetual Care Trust Fund Financial Report - Schedule A (Statement of Receipts and Expenses), 49PCTFRA-v1 (rev. 9/2013)

Perpetual Care Trust Fund Financial Report - Schedule B (Statement of Required Deposits), 49PCTFRB-v1 (rev. 9/2013)

Perpetual Care Trust Fund Financial Report - Schedule C (Statement of Expenses Incurred for the General Care, Maintenance, Embellishment, and Administration of Cemeteries), 49PCTFRC-v1 (rev. 9/2013)

Perpetual Care Trust Fund Financial Report - Schedule D (Statement of Investment Securities), 49PCTFRD-v1 (rev. 9/2013)

Perpetual Care Trust Fund Financial Report - Schedule E (Cemeteries Covered by Trust Fund), 49PCTFRE-v1 (rev. 9/2013)

Total Return Distribution Method Procedures Supplement (eff. 7/2026)

Perpetual Care Trust Fund - Notice of Conversion, A462-49NOC-v2 (eff. 7/2026)

Total Return Distribution Form, A462-49TRD-v1 (eff. 7/2026)

Perpetual Care Trust Fund - Schedule A - Total Return Distribution, A463-49TRDFRA-v1 (eff. 7/2026)

Perpetual Care Trust Fund - Schedule B - Total Return Distribution, A463-49TRDFRB-v1 (eff. 7/2026)

Perpetual Care Trust Fund - Schedule C - Total Return Distribution, A463-49TRDFRC-v1 (eff. 7/2026)

Perpetual Care Trust Fund - Schedule D - Total Return Distribution, A463-49TRDFRD-v1 (eff. 7/2026)

Perpetual Care Trust Fund - Schedule E - Total Return Distribution, A463-49TRDFRE-v1 (eff. 7/2026)

Preneed Forms

Preneed Burial Contract (undated)

Preneed Fidelity Bond Form, 49PFBND-v1 (rev. 9/2013)

Preneed Trust Fund Financial Report, 49PTFR-v1 (rev. 9/2013)

Preneed Trust Fund Financial Report Instructions, 49PTINS-v1 (rev. 9/2013)

Preneed Trust Fund Financial Report - Schedule A (Statement of Receipts and Expenses), 49PTFRA-v1 (rev. 9/2013)

Preneed Trust Fund Financial Report - Schedule B (Statement of Financial Deposits), 49PTFRB-v1 (rev. 9/2013)

Preneed Trust Fund Financial Report - Schedule C (Statement of Investment Securities), 49PTFRC-v1 (rev. 9/2013)

Trustee Forms

Perpetual Care Trust Fund Trustee Verification, 49TRVER-v1 (rev. 9/2013)

Trustee Approval Application, A462-49TRAPP-v4 (eff.12/2025)

New Trustee Transfer of Funds Notification Form, 4901NEWTR-v1 (rev. 9/2013)

VA.R. Doc. No. R27-8766; Filed July 22, 2026, 1:43 p.m.

BOARD OF MEDICINE

Final Regulation

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

Title of Regulation: **18VAC85-21. Regulations Governing Prescribing of Opioids and Buprenorphine (amending 18VAC85-21-130).**

Statutory Authority: §§ 54.1-2400 and 54.1-2928.2 of the Code of Virginia.

Effective Date: September 23, 2026.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, fax (804) 915-0382, or email erin.barrett@dhp.virginia.gov.

Summary:

Pursuant to Chapters 207 and 208 of the 2026 Acts of Assembly, the amendments (i) allow practitioners prescribing buprenorphine for opioid use disorder to offer appropriate counseling to a patient in addition to referring the patient to counseling, (ii) require that such counseling or referral to counseling be documented in the patient's medical record, and (iii) stipulate that a patient's refusal of such counseling or referral to counseling does not preclude the patient from receiving office-based buprenorphine treatment for opioid use disorder.

18VAC85-21-130. General provisions pertaining to prescribing of buprenorphine for opioid use disorder.

A. Practitioners shall abide by all federal and state laws and regulations governing the prescribing of buprenorphine for the treatment of opioid use disorder.

B. Physician assistants shall prescribe buprenorphine for opioid use disorder pursuant to a practice agreement with a patient care team doctor of medicine or doctor of osteopathic medicine.

C. Practitioners engaged in medication-assisted treatment shall ~~either provide~~ offer counseling ~~in their practice or refer the patient to a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, who has the education and experience to provide substance misuse counseling~~ or provide a referral for counseling to each patient as clinically indicated. The practitioner shall document the provision of counseling or a referral for counseling in the medical record. A patient's refusal to receive counseling does not preclude the patient from receiving office-based buprenorphine treatment for opioid use disorder.

VA.R. Doc. No. R27-8656; Filed July 29, 2026, 12:09 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Medicine is claiming an exemption from the Administrative Process Act in accordance with Chapters 553 and 561 of the 2025 Acts of Assembly, which exempt the actions of the board relating to the initial adoption of regulations necessary to implement the provisions of the acts; however, the board is required to provide an opportunity for public comment on regulations prior to their adoption.

Title of Regulation: **18VAC85-40. Regulations Governing the Practice of Respiratory Therapists (amending 18VAC85-40-40, 18VAC85-40-45, 18VAC85-40-50; adding 18VAC85-40-51).**

Statutory Authority: §§ 54.1-2400 and 54.1-2912.1 of the Code of Virginia.

Effective Date: September 23, 2026.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, fax (804) 915-0382, or email erin.barrett@dhp.virginia.gov.

Summary:

Pursuant to Chapters 553 and 561 of the 2025 Acts of Assembly, the Board of Medicine is adding a licensure by endorsement pathway for respiratory therapists.

18VAC85-40-40. ~~Licensure~~ Initial licensure requirements.

An applicant for initial licensure shall submit the following on forms provided by the board:

1. A completed application and a fee as prescribed in 18VAC85-40-35.

2. Verification of professional education in respiratory care as required in 18VAC85-40-45.

3. Verification of practice as required on the application form.

4. Evidence of passage of the national examination as required in 18VAC85-40-50.

5. ~~If licensed or certified in any other jurisdiction, documentation of active practice as a respiratory therapist or documentation of 20 hours of continuing education within the 24 month period immediately preceding application and verification~~ Verification that there has been no disciplinary action taken or pending in ~~that~~ any other jurisdiction.

18VAC85-40-45. Educational requirements for initial licensure.

An applicant for initial licensure shall:

1. Be a graduate of an accredited educational program for respiratory therapists; or

2. Hold current credentialing as a Certified Respiratory Therapist ~~(CRT)~~ or a Registered Respiratory Therapist ~~(RRT)~~ from the NBRC or any other credentialing body determined by the board to be equivalent.

18VAC85-40-50. Examination requirements for initial licensure.

An applicant for ~~a~~ an initial license to practice as a licensed respiratory therapist shall submit to the board evidence that the applicant has passed the NBRC entry level examination for respiratory care, or its equivalent as approved by the board.

18VAC85-40-51. Licensure by endorsement.

An applicant for licensure by endorsement shall submit the following:

1. Evidence of a current, active license in a United States jurisdiction or Canada that is in good standing;

2. A completed application and fee;

3. Verification of a professional credential as a Certified Respiratory Therapist or Registered Respiratory Therapist from the NBRC; and

4. A current report from the National Practitioner Data Bank.

VA.R. Doc. No. R27-8712; Filed July 30, 2026, 9:53 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Medicine is claiming an exemption from the Administrative Process Act in accordance with Chapters 553 and 561 of the 2025 Acts of Assembly, which exempt the actions of the board relating to the initial adoption of regulations necessary to implement the provisions of the acts; however, the board is required to provide an opportunity for public comment on regulations prior to their adoption.

Title of Regulation: **18VAC85-160. Regulations Governing the Licensure of Surgical Assistants and Certification of Surgical Technologists (amending 18VAC85-160-50, 18VAC85-160-51, 18VAC85-160-60, 18VAC85-160-65; adding 18VAC85-160-52).**

Statutory Authority: §§ 54.1-2400 and 54.1-2956.12 of the Code Virginia.

Effective Date: September 23, 2026.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, fax (804) 915-0382, or email erin.barrett@dhp.virginia.gov.

Summary:

Pursuant to Chapters 553 and 561 of the 2025 Acts of Assembly, the Board of Medicine is adding a licensure by endorsement pathway for surgical assistants and surgical technologists.

18VAC85-160-50. Requirements for initial licensure as a surgical assistant.

A. An applicant for initial licensure shall submit a completed application and a fee as prescribed in 18VAC85-160-40 on forms provided by the board.

B. An applicant for initial licensure as a surgical assistant shall provide evidence of:

1. A current credential as a surgical assistant or surgical first assistant issued by the National Board of Surgical Technology and Surgical Assisting or the National Commission for Certification of Surgical Assistants or their successors;

2. Successful completion of a surgical assistant training program during the applicant's service as a member of any branch of the armed forces of the United States; or

3. Practice as a surgical assistant in the Commonwealth at any time in the six months immediately prior to July 1, 2020.

18VAC85-160-51. Requirements for initial certification as a surgical technologist.

A. An applicant for initial certification as a surgical technologist shall submit a completed application and a fee as prescribed in 18VAC85-160-40 on forms provided by the board.

B. An applicant for initial certification as a surgical technologist shall provide satisfactory evidence of:

1. Successful completion of an accredited surgical technologist training program and a current credential as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor; or

2. Successful completion of a training program for surgical technology during the applicant's service as a member of any branch of the armed forces of the United States.

~~C. The board will certify a surgical technologist who registers with the board by December 31, 2023, if that surgical technologist provides satisfactory evidence of:~~

~~1. Practice as a surgical technologist prior to October 1, 2022; or~~

~~2. Attendance of a surgical technologist training program prior to October 1, 2022.~~

18VAC85-160-52. Licensure and certification by endorsement.

A. An applicant for licensure by endorsement as a surgical assistant shall submit the following:

1. Evidence of a current, active license in a United States jurisdiction or Canada that is in good standing;

2. A completed application and fee;

3. Verification of a professional credential as a surgical assistant or first surgical assistant issued by the National Board of Surgical Technology and Surgical Assisting or National Commission for Certification of Surgical Assistants or their successor; and

4. A current report from the National Practitioner Data Bank.

B. An applicant for certification as a surgical technologist by endorsement shall submit the following:

1. Evidence of a current, active license in a United States jurisdiction or Canada that is in good standing;

2. A completed application and fee;

3. Verification of a professional credential as a certified surgical technologist from an organization recognized by the board; and

4. A current report from the National Practitioner Data Bank.

18VAC85-160-60. Renewal of licensure for a surgical assistant.

~~A.~~ A surgical assistant who was ~~licensed based on a credential as a surgical assistant or surgical first assistant issued by the National Board of Surgical Technology and Surgical Assisting or the National Commission for the Certification of Surgical Assistants or their successors~~ required to demonstrate evidence of an active national credential recognized by the board as a condition of licensure shall attest that the credential is current at the time of renewal. ~~B.~~ A surgical assistant who was licensed ~~based on successful completion of a surgical assistant training program during the person's service as a member of any branch of the armed forces of the United States or based on practice as a surgical assistant in the Commonwealth at any time in the six months immediately prior to July 1, 2020,~~ pursuant to 18VAC85-160-50 B 2 and B 3 shall attest to completion of 38 hours of continuing education recognized by the National Surgical Assistant Association at the time of ~~biennial~~ renewal.

18VAC85-160-65. Renewal of certification for a surgical technologist.

~~A.~~ A surgical technologist who was ~~certified based on certification as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor~~ required to demonstrate evidence of an active national credential recognized by the board as a condition of certification shall attest that the credential is current at the time of renewal. ~~B.~~ A surgical technologist who was certified ~~based on successful completion of a training program for surgical technology during the person's service as a member of any branch of the armed forces of the United States, or based on practice as a surgical technologist at any time in the six months prior to July 1, 2021~~ (i) pursuant to 18VAC85-160-51 B 2, (ii) pursuant to § 54.1-2956.12 of the Code of Virginia, or (iii) based on practice prior to October 1, 2022, shall attest to completion of 30 hours of continuing education recognized by the Association of Surgical Technologists at the time of ~~biennial~~ renewal.

VA.R. Doc. No. R27-8711; Filed July 30, 2026, 9:52 a.m.

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to subsection D of § 54.1-3443 of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322).**

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: September 23, 2026.

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

Summary:

The amendments add six compounds into Schedule I of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) as recommended by the Department of Forensic Science pursuant to § 54.1-3443 of the Code of Virginia. The placement of these compounds will remain in effect for 18 months or until the compounds are placed in Schedule I by legislative action of the General Assembly.

18VAC110-20-322. Placement of chemicals in Schedule I.

A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Compound expected to have depressant properties. 7-Bromo-5-(2-chlorophenyl)-1,3-dihydro-2H-1,4-benzo diazepin-2-one (other name: phenazepam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Cannabimimetic agent. Methyl N-[(5-methyl-1H-indazol-3-yl)carbonyl]-3-methyl-valinate (other name: MDMB-5Me-INACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until November 21, 2026, unless enacted into law in the Drug Control Act.

B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. The following compounds classified as synthetic opioids:

a. 2-[(4-methoxyphenyl)methyl]-5-nitro-1-(2-pyrrolidin-1-ylethyl)benzimidazole (other names: metonitazepyne, N-pyrrolidino metonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. 2-[2-[(4-ethoxyphenyl)methyl]-5-nitrobenzimidazol-1-yl]-N-ethylethanamine (other name: N-desethyl etonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. N-(2-methylphenyl)-N-[1-(2-phenethyl)piperidin-4-yl]propanamide (other name: ortho-methylfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. The following compounds expected to have hallucinogenic properties:

a. [3-[2-(diethylamino)ethyl]-1H-indol-4-yl] acetate (other names: 4-acetoxy-N,N-diethyltryptamine; 4-acetoxy DET; 4-AcO-DET; ethacetin), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 3-[2-(diethylamino)ethyl]-1H-indol-4-ol (other names: 4-hydroxy-N,N-diethyltryptamine; 4-hydroxy DET; ethocin), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 3-methylmethcathinone (other names: 3-MMC; metaphedrone; 2-(methylamino)-1-(3-methylphenyl) propan-1-one), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. The following compounds classified as cannabimimetic agents:

a. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1H-indazole-3-carboxamide (other name: ADB-INACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N-cyclohexyl-2-(1-pentylindol-3-yl)acetamide (other names: cyclohexyl-PIATA, CH-PIACA, CH-PIATA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until November 21, 2026, unless enacted into law in the Drug Control Act.

C. Pursuant to subsection E of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following compounds into Schedule I of the Drug Control Act to conform to federal scheduling changes:

1. Meta-fluorofentanyl (other name: N-(3-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide);

2. Meta-fluoroisobutyryl fentanyl (other name: N-(3-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide);

3. Para-methoxyfuranyl fentanyl (other name: N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide);

4. 3-furanyl fentanyl (other name: N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-3-carboxamide);

5. 2′,5′-dimethoxyfentanyl (other name: N-(1-(2,5-dimethoxyphenethyl)piperidin-4-yl)-N-phenylpropionamide);

6. Isovaleryl fentanyl (other name: 3-methyl-N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide);

7. Ortho-fluorofuranyl fentanyl (other name: N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide);

8. Para-methylcyclopropyl fentanyl (other name: N-(4-methylphenyl)-N-(1-phenethylpiperidin-4-yl)cyclopropane carboxamide);

9. Methyl 2-[[1-(4-fluorobutyl)indole-3-carbonyl]amino]-3,3-dimethyl-butanoate (other names: 4F-MDMB-BUTICA; 4F-MDMB-BICA);

10. 5-Pentyl-2-(2-phenylpropan-2-yl)pyrido[4,3-b]indol-1-one (other names: CUMYL-PEGACLONE; SGT-151);

11. Ethyl 2-[[1-(5-fluoropentyl)indole-3-carbonyl]amino]-3,3-dimethyl-butanoate (other names: 5F-EDMB-PICA; 5F-EDMB-2201); and

12. 2-(4-ethoxybenzyl)-5-nitro-1-(2-(piperidin-1-yl)ethyl)-1H-benzimidazole (other names: N-piperidinyl etonitazene; etonitazepipne).

D. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. The following compound expected to have hallucinogenic properties: N,N-dipropyl-1H-indole-3-ethanamine (other names: Dipropyltryptamine; N,N-DPT), its salts, isomers (optical, position, and geometric), and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; and

2. The following cannabimimetic agent: N-(1-amino-3-methyl-1-oxobutan-2-yl)-3-(dimethylsulfamoyl)-4-methyl benzamide (other name: AB-MDMSBA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until April 8, 2027, unless enacted into law in the Drug Control Act.

E. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. The following compound classified as a synthetic opioid: N-(2-methylphenyl)-1-(2-phenylethyl)piperidin-4-amine (other name: Despropionyl o-methylfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. The following compounds expected to have hallucinogenic properties:

a. [3-[2-(dimethylamino)ethyl]-1H-indol-4-yl] propan oate (other names: 4-propionoyloxy-N,N-dimethyltryptamine, 4-propanoyloxy DMT, 4-ProO DMT), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 1-(1,3-benzodioxol-5-yl)-2-(2-methylpropylamino) propan-1-one (other names: 3,4-methylenedioxy-N-isobutylcathinone; N-isobutyl methylone; 3,4-methylenedioxy-α-isobutylaminopropiophenone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 2-bromo-Deschloroketamine (other name: 2-(2-bromophenyl)-2-(methylamino)-cyclohexanone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. The following compound expected to have depressant properties: 1-methyl-8-nitro-6-phenyl-4H-[1,2,4]triazolo [4,3-a][1,4]benzodiazepine (other name: Nitrazolam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. The following compounds classified as cannabimimetic agents:

a. Naphthalen-1-yl 3-(dimethylsulfamoyl)-4-methyl benzoate (other names: NMDMSB; 1-naphthyl 3-(dimethylsulfamoyl)-4-methylbenzoate), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N-[1-(5-fluoropentyl)-2-hydroxyindol-3-yl]iminobenzamide (other names: 5-fluoro BZO-POXIZID, 5-fluoropentyl MDA 19), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until September 11, 2027, unless enacted into law in the Drug Control Act.

F. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following compounds expected to have depressant properties in Schedule I of the Drug Control Act:

1. 5-(2-chlorophenyl)-1,3-dihydro-1-methyl-7-nitro-2H-1,4-benzodiazepin-2-one (other name: Methylclonazepam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; and

2. 8-bromo-1-ethyl-6-phenyl-4H-[1,2,4]triazolo[4,3-a][1,4] benzodiazepine (other name: Ethylbromazolam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until January 29, 2028, unless enacted into law in the Drug Control Act.

G. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. The following compounds classified as synthetic opioids:

a. 3-[2-[(dimethylamino)methyl]-1-hydroxycyclohexyl] phenol (other names: O-desmethyltramadol, ODMT), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. 3-[1-[1-(4-chlorophenyl)ethyl]piperidin-4-yl]-1H-benzimidazol-2-one (other names: chlorphine; 1-[1-[1-(4-chlorophenyl)ethyl]-4-piperidinyl]-1,3-dihydro-2H-benzimidazol-2-one), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. 3-[3-[1-[1-(4-chlorophenyl)ethyl]piperidin-4-yl]-2-oxo benzimidazol-1-yl]propanenitrile (other names: cychlorphine; N-propionitrile chlorphine), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation; and

2. The following compounds expected to have hallucinogenic properties:

a. [3-[2-[ethyl(methyl)amino]ethyl]-1H-indol-4-yl] acetate (other names: 4-acetoxy-N-methyl-N-ethyl tryptamine, 4-acetoxy-MET, 4-AcO-MET), its salts, isomers (optical, position, and geometric), and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 1-(4-bromophenyl)-2-pyrrolidin-1-ylpentan-1-one (other names: 4-bromo-alpha-pyrrolidinovalerophenone, 4-bromo-alpha-PVP), its salts, isomers (optical, position, and geometric), and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 1-[1-(3-methylphenyl)cyclohexyl]piperidine (other names: 3-methyl phencyclidine, 3-methyl PCP), its salts, isomers (optical, position, and geometric), and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until March 23, 2028, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R27-8637; Filed July 27, 2026, 1:01 p.m.

Final Regulation

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

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322).**

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: September 23, 2026.

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

Summary:

The amendments remove from regulatory text compounds placed in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) by Chapter 171 of the 2026 Acts of Assembly.

18VAC110-20-322. Placement of chemicals in Schedule I.

~~A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:~~

~~1. Compound expected to have depressant properties. 7-Bromo-5-(2-chlorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one (other name: phenazepam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~2. Cannabimimetic agent. Methyl N-[(5-methyl-1H-indazol-3-yl)carbonyl]-3-methyl valinate (other name: MDMB-5Me-INACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~The placement of drugs listed in this subsection shall remain in effect until November 21, 2026, unless enacted into law in the Drug Control Act.~~

~~B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:~~

~~1. The following compounds classified as synthetic opioids:~~

~~a. 2-[(4-methoxyphenyl)methyl]-5-nitro-1-(2-pyrrolidin-1-ylethyl)benzimidazole (other names: metonitazepyne, N-pyrrolidino metonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless~~

specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. 2-[2-[(4-ethoxyphenyl)methyl]-5-nitrobenzimidazol-1-yl]-N-ethylethanamine (other name: N-desethyl etonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. N-(2-methylphenyl)-N-[1-(2-phenethyl)piperidin-4-yl]propanamide (other name: ortho-methylfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. The following compounds expected to have hallucinogenic properties:

a. [3-[2-(diethylamino)ethyl]-1H-indol-4-yl] acetate (other names: 4-acetoxy-N,N-diethyltryptamine; 4-acetoxy-DET; 4-AcO-DET; ethacetin), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 3-[2-(diethylamino)ethyl]-1H-indol-4-ol (other names: 4-hydroxy-N,N-diethyltryptamine; 4-hydroxy-DET; ethocin), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 3-methylmethcathinone (other names: 3-MMC; metaphedrone; 2-(methylamino)-1-(3-methylphenyl)propan-1-one), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. The following compounds classified as cannabimimetic agents:

a. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1H-indazole-3-carboxamide (other name: ADB-INACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N-cyclohexyl-2-(1-pentylindol-3-yl)acetamide (other names: cyclohexyl-PIATA, CH-PIACA, CH-PIATA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until November 21, 2026, unless enacted into law in the Drug Control Act.

C. Pursuant to subsection E of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following compounds into Schedule I of the Drug Control Act to conform to federal scheduling changes:

1. Meta-fluorofentanyl (other name: N-(3-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide);

2. Meta-fluoroisobutyryl fentanyl (other name: N-(3-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide);

3. Para-methoxyfuranyl fentanyl (other name: N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide);

4. 3-furanyl fentanyl (other name: N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-3-carboxamide);

5. 2′,5′-dimethoxyfentanyl (other name: N-(1-(2,5-dimethoxyphenethyl)piperidin-4-yl)-N-phenylpropionamide);

6. Isovaleryl fentanyl (other name: 3-methyl-N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide);

7. Ortho-fluorofuranyl fentanyl (other name: N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide);

8. Para-methylcyclopropyl fentanyl (other name: N-(4-methylphenyl)-N-(1-phenethylpiperidin-4-yl)cyclopropanecarboxamide);

9. Methyl-2-[[1-(4-fluorobutyl)indole-3-carbonyl]amino]-3,3-dimethyl-butanoate (other names: 4F-MDMB-BUTICA; 4F-MDMB-BICA);

10. 5-Pentyl-2-(2-phenylpropan-2-yl)pyrido[4,3-b]indol-1-one (other names: CUMYL-PEGACLONE; SGT-151);

11. Ethyl-2-[[1-(5-fluoropentyl)indole-3-carbonyl]amino]-3,3-dimethyl-butanoate (other names: 5F-EDMB-PICA; 5F-EDMB-2201); and

12. 2-(4-ethoxybenzyl)-5-nitro-1-(2-(piperidin-1-yl)ethyl)-1H-benzimidazole (other names: N-piperidinyl etonitazene; etonitazepipne).

D. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. The following compound expected to have hallucinogenic properties: N,N-dipropyl-1H-indole-3-ethanamine (other names: Dipropyltryptamine; N,N-DPT), its salts, isomers (optical, position, and geometric), and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; and

2. The following cannabimimetic agent: N-(1-amino-3-methyl-1-oxobutan-2-yl)-3-(dimethylsulfamoyl)-4-methylbenzamide (other name: AB-MDMSBA), its salts, isomers, and salts of isomers whenever the existence of such

~~salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~The placement of drugs listed in this subsection shall remain in effect until April 8, 2027, unless enacted into law in the Drug Control Act.~~

~~E.~~ A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. The following compound classified as a synthetic opioid: N-(2-methylphenyl)-1-(2-phenylethyl)piperidin-4-amine (other name: Despropionyl o-methylfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. The following compounds expected to have hallucinogenic properties:

a. [3-[2-(dimethylamino)ethyl]-1H-indol-4-yl] propan oate (other names: 4-propionoyloxy-N,N-dimethyl tryptamine, 4-propanoyloxy DMT, 4-ProO DMT), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 1-(1,3-benzodioxol-5-yl)-2-(2-methylpropylamino) propan-1-one (other names: 3,4-methylenedioxy-N-isobutylcathinone; N-isobutyl methylone; 3,4-methylenedioxy-α-isobutylaminopropiophenone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 2-bromo-Deschloroketamine (other name: 2-(2-bromophenyl)-2-(methylamino)-cyclohexanone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. The following compound expected to have depressant properties: 1-methyl-8-nitro-6-phenyl-4H-[1,2,4]triazolo [4,3-a][1,4]benzodiazepine (other name: Nitrazolam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. The following compounds classified as cannabimimetic agents:

a. Naphthalen-1-yl 3-(dimethylsulfamoyl)-4-methyl benzoate (other names: NMDMSB; 1-naphthyl 3-(dimethylsulfamoyl)-4-methylbenzoate), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N-[1-(5-fluoropentyl)-2-hydroxyindol-3-yl]iminobenza mide (other names: 5-fluoro BZO-POXIZID, 5-fluoropentyl MDA 19), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until September 11, 2027, unless enacted into law in the Drug Control Act.

~~F.~~ B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following compounds expected to have depressant properties in Schedule I of the Drug Control Act:

1. 5-(2-chlorophenyl)-1,3-dihydro-1-methyl-7-nitro-2H-1,4-benzodiazepin-2-one (other name: Methylclonazepam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; and

2. 8-bromo-1-ethyl-6-phenyl-4H-[1,2,4]triazolo[4,3-a][1,4] benzodiazepine (other name: Ethylbromazolam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until January 29, 2028, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R27-8640; Filed July 27, 2026, 1:02 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to subsection E of § 54.1-3443 of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-323).**

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: September 23, 2026.

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

Summary:

The amendments add chemicals to Schedule I of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) pursuant to § 54.1-3443 of Code of Virginia to conform Virginia scheduled drugs with federal scheduling actions. The amendments represent changes made by the federal government from September 2025 to May 2026.

18VAC110-20-323. Scheduling for conformity with federal law or rule.

Pursuant to subsection E of § 54.1-3443 of the Code of Virginia and in order to conform the Drug Control Act to recent scheduling changes enacted in federal law or rule, the board:

1. Replaces 4-anilino-N-phenethyl-4-piperidine (CASRN 21409-26-7) in Schedule II with 4-anilino-N-phenethylpiperidine (ANPP);

2. Deletes Samidorphan from Schedule II; ~~and~~

3. Adds the following chemicals into Schedule I:

a. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of a fentanyl-related substance or that contains the salts, isomers, and salts of isomers of a fentanyl-related substance whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. For purposes of subdivision 3 a of this section, except as provided in subdivision 3 c of this section, the term "fentanyl-related substance" means any substance that is structurally related to fentanyl by one or more of the following modifications:

(1) By replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(2) By substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino, or nitro groups;

(3) By substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino, or nitro groups;

(4) By replacement of the aniline ring with any aromatic monocycle, whether or not further substituted in or on the aromatic monocycle; or

(5) By replacement of the N-propionyl group with another acyl group.

c. A substance that satisfies the definition of the term "fentanyl-related substance" in subdivision 3 b of this section shall not be treated as a fentanyl-related substance subject to Schedule I if the substance is expressly listed in a schedule other than Schedule I.

d. The absence of a substance from Schedule I in the Drug Control Act (§ 54.1-3400 et seq of the Code of Virginia) or board regulation does not negate the control status of the substance under Schedule I if the substance satisfies the definition of the term "fentanyl-related substance" in subdivision 3 b of this section and does not meet the exception requirement of subdivision 3 c of this section;

4. Adds the following chemicals to Schedule I, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

a. Ortho-chlorofentanyl (N-(2-chlorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide).

b. Meta-fluorofuranyl fentanyl (N-(3-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide).

c. Ortho-methylcyclopropyl fentanyl (N-(2-methyl phenyl)-N-(1-phenethylpiperidin-4-yl)cyclopropanecarboxamide).

d. Beta-methylacetyl fentanyl (N-phenyl-N-(1-(2-phenyl propyl)piperidin-4-yl)acetamide).

e. Tetrahydrothiofuranyl fentanyl (N-(1-phenethyl piperidin-4-yl)-N-phenyltetrahydrothiophene-2-carboxamide);

5. Adds the following benzimidazole-opioid substances to Schedule I, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible:

a. 2-(2-((2,3-dihydrobenzofuran-5-yl)methyl)-5-nitro-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine (commonly known as, ethyleneoxynitazene).

b. 2-(2-(benzodioxol-5-ylmethyl)-5-nitro-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine (commonly known as, methylenedioxynitazene or 3′,4′-methyl enedioxynitazene).

c. 2-(2-(4-ethoxybenzyl)-5-methyl-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine (commonly known as, 5-methyl etodesnitazene).

d. N-ethyl-2-(5-nitro-2-(4-propoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine (commonly known as, N-desethyl protonitazene).

e. 2-(2-(4-ethoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)-N,N-dimethylethan-1-amine (commonly known as, N,N-dimethylamino etonitazene);

6. Adds the following cannabimimetic agents to Schedule I:

a.(4-ethylnaphthalen-1-yl)(1-(5-fluoropentyl)-1H-indol-3-yl)methanone (EAM-2201).

b. (4-methoxynaphthalen-1-yl)(2-methyl-1-pentyl-1H-indol-3-yl)methanone (JWH-098).

c. 3-((4-methylnaphthalen-1-yl)methyl)-1-pentyl-1H-indole (JWH-184).

d. (4-methylnaphthalen-1-yl)(1-(2-morpholinoethyl)-1H-indol-3-yl)methanone (JWH-193).

e. (2-methyl-1-pentyl-1H-indol-3-yl)(naphthalen-1-yl) methanone (JWH-007).

f. naphthalen-1-yl(1-(pent-4-en-1-yl)-1H-indol-3-yl)methanone (JWH-022).

g. (1-hexyl-5-phenyl-1H-pyrrol-3-yl)(naphthalen-1-yl) methanone (JWH-147).

h. 2-(3-methoxyphenyl)-1-(1-pentyl-1H-indol-3-yl)ethan-1-one (JWH-302).

i. (5-(2-fluorophenyl)-1-pentyl-1H-pyrrol-3-yl)(naph thalen-1-yl)methanone (JWH-307).

j. (4-fluoronaphthalen-1-yl)(1-pentyl-1H-indol-3-yl) methanone (JWH-412).

k. (5-methyl-3-(morpholinomethyl)-2,3-dihydro-[1,4] oxazino[2,3,4- hi]indol-6-yl)(naphthalen-1-yl)methanone (WIN 55,212-2).

l. 2-(5-hydroxy-2-(3-hydroxypropyl)cyclohexyl)-5-(2-methyloctan-2-yl)phenol (CP-55,940); and

7. Adds the following hallucinogenic substance to Schedule I: 6,6,9-trimethyl-3-pentyl-6a,7,8,9,10,10a-hexahydro-6 H -benzo[c]chromen-1-ol (also known as hexahydrocannabinol and HHC).

VA.R. Doc. No. R27-8687; Filed July 27, 2026, 1:03 p.m.

Final Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20).**

18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (amending 18VAC110-21-20).

18VAC110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances (amending 18VAC110-30-15).

18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, Third-Party Logistics Providers, and Warehousers (amending 18VAC110-50-20).

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

Effective Date: September 23, 2026.

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

Summary:

Pursuant to § 54.1-113 of the Code of Virginia, the amendments raise fees charged by the Board of Pharmacy to ensure the board obtains sufficient operating funds for fiscal years 2025 and 2026.

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

18VAC110-20-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial application fees.

1. Pharmacy permit	~~$500~~ $700
2. Permitted physician licensed to dispense drugs	~~$500~~ $700
3. Medical equipment supplier permit	~~$235~~ $350
4. Outsourcing facility permit	~~$350~~ $900
5. Nonresident pharmacy registration	~~$350~~ $700
6. Nonresident outsourcing facility registration	~~$350~~ $900
7. Controlled substances registrations	~~$120~~ $180
8. Innovative program approval.	~~$325~~ $415
If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.	
9. Approval of a repackaging training program	~~$65~~ $85
10. Sterile compounding initial fee	$200

Applicants for a pharmacy permit or nonresident pharmacy registration that intend to perform sterile compounding shall submit a sterile compounding fee in addition to the pharmacy permit or nonresident pharmacy initial application fee.

C. Annual renewal fees.

1. Pharmacy permit – due no later than April 30	~~$350~~ $490
2. Physician permit to practice pharmacy – due no later than February 28	~~$350~~ $490
3. Medical equipment supplier permit – due no later than February 28	~~$235~~ $350
4. Outsourcing facility permit – due no later than April 30	~~$350~~ $1,100

5. Nonresident pharmacy registration – due no later than the date of initial registration	~~$350~~ $490
6. Nonresident outsourcing facility registration – due no later than the date of initial registration	~~$350~~ $1,100
7. Controlled substances registrations – due no later than February 28	~~$120~~ $180
8. Innovative program continued approval based on board order not to exceed ~~$260~~ $375 per approval period.	
9. Repackaging training program	~~$40~~ $50 every two years
10. Sterile compounding renewal fee	$400

Permitted pharmacies and registered nonresident pharmacies performing sterile compounding shall submit a sterile compounding renewal fee in addition to the pharmacy permit or nonresident pharmacy renewal fee.

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired permit or registration within one year of the expiration date. In addition, engaging in activities requiring a permit or registration after the expiration date of such permit or registration shall be grounds for disciplinary action by the board.

1. Pharmacy permit	$120
2. Physician permit to practice pharmacy	$120
3. Medical equipment supplier permit	$80
4. Outsourcing facility permit	$120
5. Nonresident pharmacy registration	$120
6. Nonresident outsourcing facility registration	$120
7. Controlled substances registrations	$40
8. Repackaging training program	$15

E. Reinstatement fees.

1. Any person or entity attempting to renew a permit or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

2. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Pharmacy permit	~~$315~~ $440
b. Physician permit to practice pharmacy	~~$315~~ $440
c. Medical equipment supplier permit	~~$275~~ $385
d. Outsourcing facility permit	~~$315~~ $500
e. Nonresident pharmacy registration	~~$150~~ $440
f. Nonresident outsourcing facility registration	~~$315~~ $500
g. Controlled substances registration	~~$235~~ $350
h. Repackaging training program	~~$65~~ $85

F. Application for change or inspection fees for facilities or other entities.

1. Change of pharmacist-in-charge	~~$65~~ $125
2. Change of ownership for any facility	~~$65~~ $125
3. Inspection for remodeling or change of location for any facility	~~$300~~ $435
4. Reinspection of any facility	~~$300~~ $435
~~5. Board-required inspection for a robotic pharmacy system~~	~~$300~~
~~6.~~ 5. Board-required inspection of an innovative program location	~~$300~~ $435
~~7.~~ 6. Change of pharmacist responsible for an approved innovative program	~~$35~~ $150

G. Miscellaneous fees.

1. Handling fee for returned check or a dishonored credit card or debit card	$50
2. Duplicate permit or registration	~~$15~~ $20
3. Verification of permit or registration	$35

18VAC110-21-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	~~$235~~ $300
2. Pharmacy intern registration	~~$20~~ $30

3. Pharmacy technician trainee registration	~~$20~~ $30
4. Pharmacy technician registration	~~$35~~ $40
~~5. Approval of a pharmacy technician training program~~	~~$200~~
~~6.~~ 5. Approval of a continuing education program	~~$130~~ $190

D. Annual renewal fees.

1. Pharmacist active license – due no later than December 31	~~$120~~ $175
2. Pharmacist inactive license – due no later than December 31	~~$60~~ $95
3. Pharmacy technician registration – due no later than December 31	~~$35~~ $45
~~4. Pharmacy technician training program~~	~~$100 every two years~~

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license or registration within one year of the expiration date ~~or within two years in the case of a pharmacy technician training program~~. In addition, engaging in activities requiring a license or registration after the expiration date of such license or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license	$40
2. Pharmacist inactive license	$20
3. Pharmacy technician registration	$15
~~4. Pharmacy technician training program~~	~~$20~~

F. Reinstatement fees. Any person or entity attempting to renew a license or registration more than one year after the expiration date~~, or more than two years after the expiration date in the case of a pharmacy technician training program,~~ shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

1. Pharmacist license	~~$275~~ $300
2. Pharmacist license after revocation or suspension	~~$650~~ $750
3. Pharmacy technician registration	~~$45~~ $50
4. Pharmacy technician or pharmacy technician trainee registration after revocation or suspension	~~$165~~ $200
~~5. A pharmacy technician training program that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus a reinstatement fee of $75. A pharmacy technician training program that ceases operation and wishes to resume shall not be eligible for reinstatement but shall apply for a new registration.~~	
5. Pharmacy technician trainee	$25

G. Miscellaneous fees.

1. Duplicate wall certificate	$50
2. Handling fee for returned check or a dishonored credit card or debit card	$50
3. Duplicate license or registration	~~$15~~ $20
4. Verification of licensure or registration	$35

18VAC110-30-15. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial application fees.

1. License for practitioner of the healing arts to sell controlled substances: ~~$235~~ $300.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: ~~$315~~ $700.

C. Annual renewal fees.

1. License for practitioner of the healing arts to sell controlled substances: ~~$120~~ $175.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: ~~$315~~ $490.

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date.

1. License for practitioner of the healing arts to sell controlled substances: $40.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: ~~$50~~ $120.

E. Reinstatement fees. Any person or entity attempting to renew a license or permit more than one year after the expiration date shall submit an application for reinstatement with any required fees.

1. License for practitioner of the healing arts to sell controlled substances: ~~$195~~ $300.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: ~~$315~~ $415.

3. Application fee for reinstatement of a license or permit that has been revoked or suspended indefinitely: ~~$650~~ $750.

F. Facilities in which only one practitioner of the healing arts is licensed by the board to sell controlled substances shall be exempt from fees associated with obtaining and renewing a facility permit. Facilities that change from only one practitioner to more than one shall notify the board within 30 days of such change.

G. The fee for reinspection of any facility shall be ~~300~~ $435.

H. The handling fee for returned check or a dishonored credit card or debit card shall be $50.

18VAC110-50-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial application fees.

1. Nonrestricted manufacturer permit	~~$350~~ $1,000
2. Restricted manufacturer permit	~~$235~~ $850
3. Wholesale distributor license	~~$350~~ $750
4. Warehouser permit	~~$350~~ $510
5. Nonresident wholesale distributor registration	~~$350~~ $750
6. Controlled substances registration	~~$120~~ $180
7. Third-party logistics provider permit	~~$350~~ $750
8. Nonresident manufacturer registration	~~$350~~ $1,000
9. Nonresident warehouser registration	~~$350~~ $510
10. Nonresident third-party logistics provider registration	~~$350~~ $750

C. Annual renewal fees shall be due on February 28 of each year.

1. Nonrestricted manufacturer permit	~~$350~~ $1,000
2. Restricted manufacturer permit	~~$235~~ $850
3. Wholesale distributor license	~~$350~~ $750
4. Warehouser permit	~~$350~~ $510
5. Nonresident wholesale distributor registration	~~$350~~ $750
6. Controlled substances registration	~~$120~~ $180
7. Third-party logistics provider permit	~~$350~~ $750
8. Nonresident manufacturer registration	~~$350~~ $1,000
9. Nonresident warehouser registration	~~$350~~ $510
10. Nonresident third-party logistics provider registration	~~$350~~ $750

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Nonrestricted manufacturer permit	$120
2. Restricted manufacturer permit	$80
3. Wholesale distributor license	$120
4. Warehouser permit	$120
5. Nonresident wholesale distributor registration	$120
6. Controlled substances registration	$40
7. Third-party logistics provider permit	$120
8. Nonresident manufacturer registration	$120
9. Nonresident warehouser registration	$120
10. Nonresident third-party logistics provider registration	$120

E. Reinstatement fees.

1. Any entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

2. Engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration.

3. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Nonrestricted manufacturer permit	~~$315~~ $440
b. Restricted manufacturer permit	~~$275~~ $385
c. Wholesale distributor license	~~$315~~ $440
d. Warehouser permit	~~$315~~ $440

e. Nonresident wholesale distributor registration	~~$315~~ $440
f. Controlled substances registration	~~$235~~ $350
g. Third-party logistics provider permit	~~$315~~ $440
h. Nonresident manufacturer registration	~~$315~~ $440
i. Nonresident warehouser registration	~~$315~~ $440
j. Nonresident third-party logistics provider registration	~~$315~~ $440

F. Application for change or inspection fees.

1. Reinspection fee	~~$300~~ $435
2. Inspection fee for change of location, structural changes, or security system changes	~~$300~~ $435
3. Change of ownership fee	~~$65~~ $125
4. Change of responsible party	~~$65~~ $125

G. The handling fee for a returned check or a dishonored credit card or debit card shall be $50.

H. The fee for verification of license, permit, or registration shall be $35.

VA.R. Doc. No. R24-7695; Filed August 4, 2026, 7:49 a.m.

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TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

Title of Regulation: **19VAC30-20. Motor Carrier Safety Regulations (amending 19VAC30-20-80).**

Statutory Authority: § 52-8.4 of the Code of Virginia; 49 CFR Part 390.

Effective Date: October 1, 2026.

Agency Contact: Thomas Lambert, Director, Office of Legal Affairs, Department of State Police, Virginia State Police Headquarters, 7700 Midlothian Turnpike, Suite 1200, North Chesterfield, VA 232358, telephone (804) 674-6722, fax (804) 968-0322, or email tom.lambert@vsp.virginia.gov.

Summary:

The amendment updates the effective date of the Federal Motor Carrier Safety Regulations promulgated by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration that are incorporated for compliance and enforcement purposes.

19VAC30-20-80. Compliance.

Every person and commercial motor vehicle subject to this chapter operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, with amendments promulgated and in effect as of October 1, ~~2025~~ 2026, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 366, 370 through 376, 379, 380 Subparts E and F, 382, 385, 386 Subpart G, 387, 390 through 397, and 399, which are incorporated in this chapter by reference, with certain exceptions.

VA.R. Doc. No. R27-8615; Filed July 24, 2026, 10:54 a.m.

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TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **21VAC5-80. Investment Advisors (amending 21VAC5-80-200).**

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

Effective Date: September 1, 2026.

Agency Contact: Ashley Vick, Manager of Audit, Division of Securities and Retail Franchising, State Corporation Commission, Tyler Building, Ninth Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 786-8431, fax (804) 371-9911, or email ashley.vick@scc.virginia.gov.

Summary:

The amendments (i) remove the existing prohibition against client testimonials, which will be permitted under § 13.1-515 B of the Code of Virginia, as amended by Chapter 622 of the 2026 Virginia Acts of Assembly, and (ii) adopt the federal Securities and Exchange Commission Rule at 17 CFR 275.206(4)-1 under the Investment Advisers Act of 1940 (15 USC § 80b-1 et seq.).

AT RICHMOND, JULY 28, 2026

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2026-00018

Ex Parte: In the matter of

Adopting Revisions to the Rules

Governing the Virginia Securities Act

ORDER ADOPTING REGULATIONS

On May 12, 2026, the State Corporation Commission (Commission) entered an Order Establishing Proceeding regarding a proposal by the Division of Securities and Retail Franchising (Division) to revise Chapter 80 of Title 21 of the Virginia Administrative Code (Chapter 80), which provides the Commission's Rules Governing Investment Advisors, 21 VAC 5-80-10 et seq. (Rules).[1]

The Division recommended revisions to Chapter 80 to: (a) remove the prohibition against client testimonials in Rule 21VAC5-80-200, which are now permitted following recent legislative changes to § 13.1-515 B of the Virginia Securities Act (Act),[2] § 13.1-501 et seq. of the Code of Virginia; and (b) adopt the SEC Marketing Rule, § 206(4)-1 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-1 et seq.), by reference in Rule 21VAC5-80-200. Collectively, these revisions are referred to in the Commission's Order Establishing Proceeding as the Proposed Revisions.

The Order Establishing Proceeding and Proposed Revisions were posted on the Commission's website, sent to interested persons, and published in the Virginia Register of Regulations on June 15, 2026. The Order Establishing Proceeding invited any interested persons to participate and required that any comments or requests for a hearing on the Proposed Revisions be submitted in writing on or before July 13, 2026.

No comments were filed nor were any requests for hearing made in this matter.

The Division has not recommended that the Commission further amend the Proposed Revisions following the entry of the Order Establishing Proceeding.

NOW THE COMMISSION, having considered this matter, finds that the Proposed Revisions should be adopted effective September 1, 2026.

Accordingly, IT IS ORDERED THAT:

(1) The Proposed Revisions, attached hereto and made a part hereof, are ADOPTED effective September 1, 2026.

(2) This Order Adopting Regulations (Order) and the attached adopted revisions shall be made available on the Commission's website: scc.virginia.gov/case-information.

(3) The Commission's Office of General Counsel shall provide a copy of this Order and the adopted revisions to Chapter 80 to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed.

A COPY of this Order and the attached regulation shall be sent by the Clerk of the Commission to: John Farmer, Jr., Senior Assistant Attorney General, at JFarmer@oag.state.va.us, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and the Commission's Office of General Counsel and the Director of the Division of Securities and Retail Franchising.

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[1]Available at https://law.lis.virginia.gov/admincode/title21/agency5/chapter80.

[2]Section 13.1-515 B of the Act, as amended by Chapter 622 of the 2026 Virginia Acts of Assembly, took effect on July 1, 2026.

21VAC5-80-200. Dishonest or unethical practices.

A. An investment advisor or federal covered advisor is a fiduciary and has a duty to act primarily for the benefit of ~~his~~ the advisor's clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor or federal covered advisor and ~~his~~ the advisor's clients and the circumstances of each case, an investment advisor or federal covered advisor who is registered or required to be registered shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, risk tolerance and needs, and any other information known or acquired by the investment advisor or federal covered advisor after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.

4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor or federal covered advisor, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor or federal covered advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor or federal covered advisor.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor or federal covered advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which ~~they~~ the statements are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor without disclosing that fact. This prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or federal covered advisor or any of ~~his~~ the advisor's employees ~~which~~ that could reasonably be expected to impair the rendering of unbiased and objective advice, including:

a. Compensation arrangements connected with advisory services to clients ~~which~~ that are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or ~~his~~ the advisor's employees.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice ~~which~~ that will be rendered.

13. Directly or indirectly using any advertisement that does not comply with SEC Rule 206(4)-1 under the Investment Advisers Act of 1940 or does any one of the following:

~~a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;~~

~~b.~~ a. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

~~c.~~ b. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or ~~which~~ that represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated to its use;

~~d.~~ c. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

~~e.~~ d. Represents that the commission has approved any advertisement; or

~~f.~~ e. Contains any untrue statement of a material fact~~,~~ or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" ~~includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:(i) Any analysis, report, or publication concerning securities;(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or(iv) Any other investment advisory service with regard to securities~~ has the same meaning as in Rule 206(4)-1(e)(1) under the Investment Advisers Act of 1940.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor has custody

or possession of such securities or funds, when the investment advisor's action is subject to and does not comply with the safekeeping requirements of 21VAC5-80-146.

16. Entering into, extending, or renewing any investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor or federal covered advisor, and that no assignment of such contract shall be made by the investment advisor or federal covered advisor without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales or marketing;

(b) Does not have reasonable standards or procedures for ~~assuring~~ ensuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of the law.

B. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of ~~his~~ the representative's clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and ~~his~~ the representative's clients and the circumstances of each case, an investment advisor representative who is registered or required to be

registered shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.

4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which ~~they~~ the statements are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor or federal covered advisor uses published research reports or statistical analyses to render advice or where an investment advisor or federal covered advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative ~~which~~ that could reasonably be expected to impair the rendering of unbiased and objective advice, including:

a. Compensation arrangements connected with advisory services to clients ~~which~~ that are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice ~~which~~ that will be rendered.

13. Directly or indirectly using any advertisement that does not comply with SEC Rule 206(4)-1 under the Investment Advisers Act of 1940 or does any one of the following:

~~a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;~~

~~b.~~ a. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

~~c.~~ b. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or ~~which~~ that represents, directly or indirectly, that any graph, chart, formula, or other device being offered will

assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated with its use;

~~d.~~ c. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

~~e.~~ d. Represents that the commission has approved any advertisement; or

~~f.~~ e. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" ~~includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following: (i) Any analysis, report, or publication concerning securities; (ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell; (iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or (iv) Any other investment advisory service with regard to securities~~ has the same meaning as in Rule 206(4)-1(e)(1) under the Investment Advisers Act of 1940.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative other than a person associated with a federal covered advisor has custody or possession of such securities or funds, when the investment advisor representative's action is subject to and does not comply with the safekeeping requirements of 21VAC5-80-146.

16. Entering into, extending, or renewing any investment advisory or federal covered advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor representative, and that no assignment of such contract shall be made by the investment advisor representative without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection~~,~~ or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales or marketing;

(b) Does not have reasonable standards or procedures for ~~assuring~~ ensuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting

Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3(a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law.

C. The conduct set forth in subsections A and B of this section is not all inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice except to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

D. The provisions of this section shall apply to federal covered advisors to the extent that fraud or deceit is involved, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

E. An investment advisor or investment advisor representative may delay or refuse to place an order or to disburse funds that may involve or result in the financial exploitation of an individual pursuant to § 63.2-1606 L of the Code of Virginia.

F. For purposes of this section, any mandatory arbitration provision in an advisory contract shall be prohibited.

G. The investment advisor or investment advisor representative shall notify the Division of Securities and Retail Franchising, State Corporation Commission and the client of an unauthorized access to records that may expose a client's identity or investments to a third party within three business days of the discovery of the unauthorized access.

VA.R. Doc. No. R26-8660; Filed July 29, 2026, 9:19 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

Title of Regulation: **22VAC40-73. Standards for Licensed Assisted Living Facilities (amending 22VAC40-73-45, 22VAC40-73-50, 22VAC40-73-390).**

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

Effective Date: September 23, 2026.

Agency Contact: Daniella Halbleib, Licensing Consultant, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 718-1184, fax (804) 726-7132, or email daniella.halbleib@dss.virginia.gov.

Summary:

Pursuant to Chapter 580 of the 2023 Acts of Assembly, the amendments require every assisted living facility (ALF) to maintain a minimum amount of liability insurance, as determined by the State Board of Social Services on the basis of the number of residents for which the ALF is licensed, and provide notice of such insurance, upon request, to any resident or prospective resident.

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

22VAC40-73-45. ~~Minimum amount for liability~~ Liability insurance ~~disclosure~~.

A. ~~The minimum amount of liability insurance coverage to be maintained by an assisted living facility for purposes of disclosure in the statement required by 22VAC40-73-50 and the resident agreement required by 22VAC40-73-390 is as follows:~~ Assisted living facilities shall maintain liability insurance coverage per occurrence according to the following licensed capacity tiers:

1. ~~$500,000 per occurrence to compensate residents or other individuals for injuries and losses from the negligent acts of the facility; and~~ Tier I: A minimum of $250,000 for facilities licensed for 25 residents or fewer;

2. ~~$500,000 aggregate to compensate residents or other individuals for injuries and losses from the negligent acts of the facility.~~ Tier II: A minimum of $400,000 for facilities licensed for more than 25 but no more than 75 residents;

3. Tier III: A minimum of $500,000 for facilities licensed for more than 75 but no more than 150 residents; or

4. Tier IV: A minimum of $1,000,000 for facilities licensed for 151 or more residents.

B. ~~No facility shall state that liability insurance is in place unless the insurance provides the minimum amount of coverage established in subsection A of this section.~~ Each facility shall prepare and provide, upon request of the prospective resident or resident and resident's legal representative, if any, a statement that the facility maintains liability insurance in force to compensate residents or other individuals for injuries and losses from the negligent acts of the facility. The statement shall be made on the liability insurance statement form provided by the department.

22VAC40-73-50. Disclosure.

A. The assisted living facility shall prepare and provide a statement to the prospective resident and ~~his~~ the prospective resident's legal representative, if any, that discloses information about the facility. The statement shall be on a form developed by the department and shall:

1. Disclose information fully and accurately in plain language;

2. Be provided in advance of admission and prior to signing an admission agreement or contract;

3. Be provided upon request; and

4. Disclose the following information, which shall be kept current:

a. Name of the facility;

b. Name of the licensee;

c. Ownership structure of the facility (e.g., individual, partnership, corporation, limited liability company, unincorporated association, or public agency);

d. Description of all accommodations, services, and care that the facility offers;

e. Fees charged for accommodations, services, and care, including clear information about what is included in the base fee and all fees for additional accommodations, services, and care;

f. Criteria for admission to the facility and restrictions on admission;

g. Criteria for transfer to a different living area within the same facility, including transfer to another level or type of care within the same facility or complex;

h. Criteria for discharge;

i. Categories, frequency, and number of activities provided for residents;

j. General number, position types, and qualifications of staff on each shift;

~~k. Whether or not the facility maintains liability insurance that provides at least the minimum amount of coverage established by the board for disclosure purposes set forth in 22VAC40-73-45 to compensate residents or other individuals for injuries and losses from negligent acts of the facility. The facility shall state in the disclosure statement the minimum amount of coverage established by the board in 22VAC40-73-45;~~

~~l.~~ k. Whether ~~or not~~ the facility has an onsite emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. If the facility does have an onsite emergency electrical power source, the statement must include (i) the items for which the source will supply power and (ii) whether ~~or not~~ staff of the facility have been trained to maintain and operate the power source. For the purposes of this subdivision k, an onsite emergency electrical power supply shall include both permanent emergency electrical power sources and portable emergency electrical power sources, provided that such temporary electrical power supply source remains on the premises of the facility at all times. Written acknowledgment of the disclosure shall be evidenced by the signature or initials of the resident or ~~his~~ the resident's legal representative immediately following the onsite emergency electrical power source disclosure statement;

~~m.~~ l. Notation that additional information about the facility that is included in the resident agreement is available upon request; and

~~n.~~ m. The department's website address, with a note that additional information about the facility may be obtained from the website.

B. Written acknowledgment of the receipt of the disclosure by the resident or ~~his~~ the resident's legal representative shall be retained in the resident's record.

C. The disclosure statement shall also be available to the general public, upon request.

22VAC40-73-390. Resident agreement with facility.

A. At or prior to the time of admission, there shall be a written ~~agreement/acknowledgment~~ agreement or acknowledgment of notification dated and signed by the resident or applicant for admission or the appropriate legal representative~~,~~ and by the licensee or administrator. This document shall include the following:

1. Financial arrangement for accommodations, services, and care that specifies:

a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;

b. Description of all accommodations, services, and care that the facility offers and any related charges;

c. For an auxiliary grant recipient, a list of services included under the auxiliary grant rate;

d. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment, except that recipients of auxiliary grants may not be charged an advance payment or deposit payment;

e. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;

f. If the ownership of any personal property, real estate, money, or financial investments is to be transferred to the facility at the time of admission or at some future date, it shall be stipulated in the agreement; and

g. The refund policy to apply when transfer of ownership, closing of facility, or resident transfer or discharge occurs.

2. Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions.

3. Those actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility.

4. Specific acknowledgments that:

a. Requirements or rules regarding resident conduct, other restrictions, or special conditions have been reviewed by the resident or ~~his~~ the resident's legal representative;

b. The resident or ~~his~~ the resident's legal representative has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility;

c. The resident has been informed of the policy required by 22VAC40-73-840 regarding pets living in the facility;

d. The resident has been informed of the policy required by 22VAC40-73-860 K regarding weapons;

e. The resident or ~~his~~ the resident's legal representative or responsible individual, as stipulated in 22VAC40-73-550 H, has reviewed § 63.2-1808 of the Code of Virginia, Rights and Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained ~~to him~~;

f. The resident or ~~his~~ the resident's legal representative or responsible individual, as stipulated in 22VAC40-73-550 H, has reviewed ~~and had explained to him~~ the facility's policies and procedures for implementing § 63.2-1808 of the Code of Virginia;

g. The resident has been informed ~~and had explained to him that he~~ that the resident may refuse release of information regarding ~~his~~ the resident's personal affairs and records to any individual outside the facility, except as otherwise provided in law and except in case of ~~his~~ the resident's transfer to another caregiving facility, notwithstanding any requirements of this chapter;

h. The resident has been informed that interested residents may establish and maintain a resident council, that the facility is responsible for providing assistance with the formation and maintenance of the council, whether or not such a council currently exists in the facility, and the general purpose of a resident council (See 22VAC40-73-830);

i. The resident has been informed of the bed hold policy in case of temporary transfer or movement from the facility~~,~~ if the facility has such a policy (See 22VAC40-73-420 B);

j. The resident has been informed of the policy or guidelines regarding visiting in the facility~~,~~ if the facility has such a policy or guidelines (See 22VAC40-73-540 C);

k. The resident has been informed of the rules and restrictions regarding smoking on the premises of the facility, including ~~that which is~~ those required by 22VAC40-73-820;

l. The resident has been informed of the policy regarding the administration and storage of medications and dietary supplements;

m. The resident, upon request, has been notified in writing ~~whether or not~~ that the facility maintains liability insurance that provides ~~at least~~ the minimum amount of coverage ~~established by the board for disclosure purposes~~ set forth in 22VAC40-73-45 to compensate residents or other individuals for injuries and losses from negligent acts of the facility~~. The facility shall state in the notification the minimum amount of coverage established by the board in 22VAC40-73-45. The written notification must be on a form developed by the department~~; and

n. The resident has received written assurance that the facility has the appropriate license to meet ~~his~~ the resident's care needs at the time of admission, as required by 22VAC40-73-310 D.

B. Copies of the signed ~~agreement/acknowledgment~~ agreement or acknowledgment and any updates as noted in subsection C of this section shall be provided to the resident and, as appropriate, ~~his~~ the resident's legal representative and shall be retained in the resident's record.

C. The original ~~agreement/acknowledgment~~ agreement or acknowledgment shall be updated whenever there are changes to any of the policies or information referenced or identified in the ~~agreement/acknowledgment~~ agreement or acknowledgment and dated and signed by the licensee or administrator and the resident or ~~his~~ the resident's legal representative.

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

FORMS (22VAC40-73)

~~Report of Tuberculosis Screening (eff. 10/2011)~~

~~Virginia Department of Health Report of Tuberculosis Screening Form (undated)~~

~~Virginia Department of Health TB Control Program Risk Assessment Form, TB 512 (eff. 9/2016)~~

Assisted Living Facility Liability Insurance Statement, 032-05-0600-02-eng (eff. 4/2025)

VA.R. Doc. No. R25-7763; Filed July 27, 2026, 1:13 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF TRANSPORTATION

Fast-Track Regulation

Title of Regulation: **24VAC30-640. Parking on Primary and Secondary Highways (amending 24VAC30-640-10).**

Statutory Authority: § 46.2-1223 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 23, 2026.

Effective Date: October 8, 2026.

Agency Contact: Steven Jack, Regulatory Manager, Department of Transportation, 1221 East Broad Street, Richmond, VA 23219, telephone (804) 786-3885, or email steven.jack@vdot.virginia.gov.

Basis: Section 46.2-1223 of the Code of Virginia authorizes the Commissioner of Highways to regulate parking on any part of the primary and secondary systems of state highways.

Purpose: This action is essential to protect public health, safety, and welfare as it ensures that accurate information is provided to the public through the regulatory text.

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 removes a sentence that directs the public to a repealed regulatory section.

Substance: The amendment removes the reference to 24VAC30-151-760 from the definition of clear zone.

Issues: The advantage of this action to the public and agency is that it removes outdated language. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Commonwealth Transportation Board (board) proposes to repeal an obsolete reference.

Background. The current regulation defines "clear zone" as "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)." The referenced regulatory section was repealed in a 2025 action.[2] Thus, the board proposes to remove the last sentence in the definition of clear zone.

Estimated Benefits and Costs. The proposed elimination of direction to an obsolete reference would have no impact on requirements but could be beneficial in that it would reduce the likelihood that readers of the regulation would spend time looking for a referenced regulatory section that no longer exists.

Businesses and Other Entities Affected. The proposed amendment affects readers of the regulation. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[3] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[4] The proposed amendment neither increases net cost nor reduces net benefit for any entity. Thus, no adverse impact is indicated.

Small Businesses[5] Affected.[6] The proposed amendment does not adversely affect small businesses.

Localities[7] Affected.[8] The proposed amendment neither disproportionately affects any particular locality nor affects costs for local governments.

Projected Impact on Employment. The proposed amendment does not affect employment.

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

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

[2] See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=6274.

[3] See § 2.2-4007.04 D of the Code of Virginia.

[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] See §§ 2.2-4007.04 A 2 and 2.2-4007.1 C of the Code of Virginia.

[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 Transportation agrees with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The amendment removes the reference to 24VAC30-151-760, which was repealed in 2025 from the definition of "clear zone."

24VAC30-640-10. Definitions.

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

"Bicycle lane" means that portion of a roadway designated by signs or pavement markings for the preferential use of bicycles, electric power-assisted bicycles, motorized skateboards or scooters, and mopeds.

"Business district" means the territory contiguous to a highway where 75% or more of the property contiguous to a highway, on either side of the highway, for a distance of 300 feet or more along the highway, is occupied by land and buildings actually in use for business purposes.

"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).~~

"Commissioner" means the Commissioner of Highways, the individual who serves as the chief executive officer of the Virginia Department of Transportation or his designee.

"Department" or "VDOT" means the Virginia Department of Transportation.

"Highway" means the entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys, and, for law-enforcement purposes, (i) the entire width between the boundary lines of all private roads or private streets that have been specifically designated "highways" by an ordinance adopted by the governing body of the county, city, or town in which such private roads or streets are located and (ii) the entire width between the boundary lines of every way or place used for purposes of vehicular travel on any property owned, leased, or controlled by the United States government and located in the Commonwealth.

"Parking" means halting a vehicle, whether occupied or not, other than "stopping" or "standing," for an appreciable period of time.

"Primary highway" means any highway in or component of the primary state highway system as defined in § 33.2-100 of the Code of Virginia.

"Residence district" means the territory contiguous to a highway, not comprising a business district, where 75% or more of the property abutting such highway, on either side of the highway, for a distance of 300 feet or more along the highway consists of (i) land improved for dwelling purposes or is occupied by dwellings, (ii) land or buildings in use for business purposes, or (iii) territory zoned residential or territory in residential subdivisions created under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

"Secondary highway" means any highway in or component of the secondary state highway system as defined in § 33.2-100 of the Code of Virginia.

"Shared-use path" means a bikeway that is physically separated from motorized vehicular traffic by an open space or barrier and is located either within the highway right-of-way or within a separate right-of-way. Shared-use paths may also be used by pedestrians, skaters, users of wheel chairs or wheel chair conveyances, joggers, and other nonmotorized users and personal delivery devices.

"Shoulder" means that part of a highway between the portion regularly traveled by vehicular traffic and the lateral curbline or ditch.

"Standing" means the halting of a vehicle, while still occupying the vehicle, for the purpose of and while actually engaged in receiving or discharging passengers.

"Stopping" means the momentary halting of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic-control device.

"Travel lane" means that portion of a roadway designed or designated to accommodate the forward movement of a single line of vehicles.

"Vehicle" means every device in, on, or by which any person or property is or may be transported or drawn on a highway, except personal delivery devices and devices moved by human power or used exclusively on stationary rails or tracks.

VA.R. Doc. No. R27-8620; Filed August 4, 2026, 6:40 a.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

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

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Titles of Documents: Vocational Rehabilitation Policy and Procedure Manual Chapter 5.

Vocational Rehabilitation Policy and Procedure Manual- Excerpts from Chapters 1.2, 1.3, 8.02, 8.13, 8.21.

Public Comment Deadline: September 23, 2026.

Effective Date: September 24, 2026.

Agency Contact: Charlotte Arbogast, Senior Policy Analyst and Regulatory Coordinator, Department for Aging and Rehabilitative Services, 5620 Cox Road, Glen Allen, 23060, telephone (804) 662-7093, or email charlotte.arbogast@dars.virginia.gov.

STATE BOARD OF HEALTH

Title of Document: Policy for Virginia's Public Health Shellfish Program.

Public Comment Deadline: September 23, 2026.

Effective Date: September 24, 2026.

Agency Contact: Danielle Schools, Director, Division of Shellfish Safety and Waterborne Hazards, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7480, or email danielle.schools@vdh.virginia.gov.

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Title of Document: Virginia School Health Guidelines.

Public Comment Deadline: September 23, 2026.

Effective Date: September 24, 2026.

Agency Contact: Joanna Pitts, School Health Nurse Consultant, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 356-8214, or email joanna.pitts@vdh.virginia.gov.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Title of Document: Virginia Commonwealth Emergency Assistance Guidelines.

Public Comment Deadline: September 23, 2026.

Effective Date: September 24, 2026.

Agency Contact: Lee Andes, Financial Aid Manager, State Council of Higher Education for Virginia, James Monroe Building, Ninth Floor, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2614, or email leeandes@schev.edu.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Documents: Addiction and Recovery (ARTS) Chapter 12 Appendix D.

ARTS Peer Recovery Support Services Supplement.

Developmental Disabilities Waiver - Customized Rate Provider Guide.

Mental Health Services Manual, Chapter II.

Mental Health Services Manual, Chapter IV.

Nursing Facility Manual, Chapter IV.

Re-entry Targeted Case Management Supplement.

Public Comment Deadline: September 23, 2026.

Effective Date: September 24, 2026.

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.

STATE BOARD OF SOCIAL SERVICES

Title of Document: Virginia Electronic Benefit Transfer Guidance Manual 2026.

Public Comment Deadline: September 23, 2026.

Effective Date: September 24, 2026.

Agency Contact: Jennifer Cooper, Associate Director of Benefit Programs, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (757) 812-2212, or email jennifer.cooper@dss.virginia.gov.

COMMONWEALTH TRANSPORTATION BOARD

Title of Document: Transportation Partnership Opportunity Fund Guidelines and Criteria.

Public Comment Deadline: September 23, 2026.

Effective Date: September 24, 2026.

Agency Contact: Joshua Heslinga, Director, Governance and Legislative Affairs, Department of Transportation, 1221 East Broad Street, Richmond, VA 23219, telephone (804) 551-2902, or email joshua.heslinga@vdot.virginia.gov

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DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Woodbridge MHP, LLC

The Virginia Department of Environmental Quality is proposing enforcement action for Woodbridge MHP, LLC for violations of State Water Control Law, regulations, and applicable permit at the Woodbridge mobile home park sewage treatment plant facility located in Woodbridge, Virginia. The proposed order is available from the DEQ contact or at https://www.deq.virginia.gov/news-info/shortcuts/public-notices/enforcement-actions. The DEQ contact will accept written comments from August 24, 2026, to September 23, 2026.

Contact Information: Holly Shupe, Enforcement Specialist, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email holly.shupe@deq.virginia.gov.

Notice of Public Hearing and Public Comment Period for Air Quality Plan

Notice of action: The Virginia Department of Environmental Quality (DEQ) is seeking comments and announcing a public hearing on a proposed plan to maintain compliance with the 2015 ozone national ambient air quality standard (NAAQS) in the Northern Virginia 2015 ozone NAAQS nonattainment area. The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth to fulfill its responsibilities under the Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the federal Clean Air Act.

Purpose of notice: DEQ is seeking comments on the overall plan and on the issue of whether the plan enables the Northern Virginia 2015 ozone NAAQS nonattainment area, which is part of the Washington DC-MD-VA 2015 ozone NAAQS nonattainment area, to maintain compliance with the 2015 ozone NAAQS until at least 2038.

Public comment period: August 24, 2026, to September 24, 2026.

Public hearing: A public hearing will be conducted at the DEQ Northern Regional Office, 13901 Crown Court, Conference Room 1, Woodbridge, VA 22193 at 1:00 pm on Friday, September 18, 2026. Description of proposal: The proposal consists of:

1. An air quality maintenance plan in support of a concurrent request to redesignate the Northern Virginia 2015 ozone NAAQS nonattainment area (Counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park) to attainment: The purpose of the plan is to ensure that emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) do not exceed the 2022 attainment year levels through 2038, enabling the area to continue meeting the 2015 ozone NAAQS. The plan contains control measures that are currently in place and will be continued to maintain emissions at or below the 2022 levels. These measures include federal control programs for on-road and non-road engines; formulation limitations on various consumer, commercial, and industrial products; and controls on industrial sources. The plan includes information concerning emissions estimates, growth assumptions, emission factors, and reduction assumptions.

2. Motor vehicle emission budgets for the years 2022, 2032, and 2038: The purpose of the motor vehicle emissions budgets is to ensure that transportation emissions conform to the requirements of the proposed plan for maintaining compliance with the 2015 ozone NAAQS (transportation conformity).

3. Contingency measures: The plan contains a program of contingency measures to be implemented if the air quality monitoring stations in the area record a violation of the 2015 ozone NAAQS or if emissions in the area increase above the 2022 levels.

The proposed ozone redesignation request and maintenance plan were prepared by the Metropolitan Washington Air Quality Committee (MWAQC), which consists of elected officials from the affected localities and representatives of state transportation and air quality planning agencies.

The maintenance plan will be submitted as an SIP revision in conjunction with a request to EPA from the Commonwealth to redesignate the Northern Virginia 2015 ozone NAAQS nonattainment area as attainment or maintenance. DEQ is accepting comments on both the redesignation request and maintenance plan, but the redesignation request will not be submitted as part of the SIP revision.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposed maintenance plan and supporting technical documents will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

How to comment: DEQ accepts written comments by email and postal mail. To be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ no later than the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. Comments on the redesignation request and maintenance plan must be submitted to the DEQ contact listed

at the end of this notice. All materials received are part of the public record.

To review the proposal: The proposal and supporting documents are available on the DEQ Air Public Notices website at https://www.deq.virginia.gov/news-info/shortcuts/public-notices/air. The documents may also be obtained by contacting the DEQ representative listed. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1. Central Office, 1111 East Main Street, Suite 1400, Richmond, VA, 23219, telephone (804) 698-4000; and

2. Northern Regional Office, 13901 Crown Court, Woodbridge, VA, 22193, telephone (703) 583-3800.

Contact Information: Doris A. McLeod, Air Quality Planner, Department of Environmental Quality, 1111 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1990, or email doris.mcleod@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Public Notice of and Public Comment Opportunity for Intent to Amend State Plan - Nursing Facility Value-Based Payment Updates

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates for Long-Term Care (12VAC30-90).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act (42 USC § 1396a(a)(13)). A copy of this notice is available for public review from the DMAS contact listed at the end of this notice.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to the contact listed. Comments may also be submitted, in writing, on the Virginia Regulatory Town Hall public comment forum at https://townhall.virginia.gov/L/generalnotice.cfm.

Methods and Standards for Establishing Payment Rates for Long-Term Care (12VAC30-90)

In accordance with Item 219 LLL 2 of the 2026 Appropriation Act, the state plan is being revised to indicate that nursing facility value-based program funding is restricted to facilities demonstrating sufficiently high quality of care as determined by DMAS. Facilities failing to meet quality of care standards, including facilities under complaint surveys due to major quality or safety issues, can be found ineligible for value-based payment enhanced funds for a period determined by DMAS. Special focus facilities (SFF) are barred from receiving value-based purchasing rewards until such facilities successfully graduate from SFF status. Updates are also being made to address outdated website links and to streamline text related to the program year and performance measures.

No expected increases or decreases in annual fee-for-service aggregate expenditures are expected as a result of these changes.

Contact Information: Meredith Lee, Policy Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3863, fax (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

Public Notice of Intent to Amend State Plan - Elimination of Community Stabilization

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act (42 USC § 1396a(a)(13)). A copy of this notice is available for public review from the contact listed at the end of this notice.

This notice is available for public review on the Virginia Regulatory Town Hall at https://townhall.virginia.gov/L/generalnotice.cfm.

Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80)

In accordance with Item 291 LLLLL of the 2026 Appropriation Act, the state plan is being revised to eliminate the behavioral health service called "Community Stabilization."

The expected decrease in annual fee-for-service aggregate expenditures is $547,136 in state general funds and $1,652,025 in federal funds in federal fiscal year 2027 and $891,897 in state general funds and $2,693,000 in federal funds in federal fiscal year 2028.

Contact Information: Meredith Lee, Policy Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3863, fax (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

COMMONWEALTH TRANSPORTATION BOARD

Public Comment Opportunity for Draft Application and Intent to Participate in Surface Transportation Project Delivery Program

Summary: The Commonwealth of Virginia, acting by and through the Virginia Department of Transportation (VDOT), provides access to a draft application and gives notice of intent to participate in the Surface Transportation Project Delivery Program pursuant to 23 USC § 327, National Environmental Policy Act (NEPA), which assigns environmental responsibilities of the U.S. Department of Transportation to the Commonwealth of Virginia, including NEPA and authority for categorical exclusions, environmental assessments, and environmental impact statements, and § 33.2-228.1 of the Code of Virginia. This program allows the Federal Highway Administration to assign its authority and responsibility under NEPA and other federal environmental review requirements.

The draft application for public and agency comment document is available at https://www.vdot.virginia.gov/doing-business/technical-guidance-and-support/environmental/#programassignment

Comments: Comments must be received on or before August 24, 2026.

Comments may be submitted on the Virginia Regulatory Town Hall or sent to the contact listed in this notice. Inquiries by be sent to the same contact. All comments received will be posted without change in VDOT's Final Application.

Contact Information: Chris Swanson, Director, Environmental Division, Department of Transportation, 9120 Lockwood Boulevard, Mechanicsville, VA 23116, telephone (804) 786-6839, or email vdotenvinquiry@vdot.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.

BOARD FOR CONTRACTORS

Title of Regulation: **18VAC50-22 Board for Contractors Regulations.**

Publication: 41:25 VA.R. 2686-2700; July 28, 2025

Correction to Final Regulation:

Page 2691, column 1, 18VAC50-22-30, definition of "Environmental specialties contracting" line 3, after "devices." strike "No other specialty provides for this function."

VA.R. Doc. No. R23-7412; Filed July 31, 2026, 8:21 a.m.

STATE CORPORATION COMMISSION

Title of Regulation: **10VAC5-120. Money Order Sellers and Money Transmitters.**

Publication: 42:19 VA.R 1943-1950; May 4, 2026.

Correction to Proposed Regulation:

Page 1945, 10VAC5-120-15 A, line 5, after "website" insert "."

Page 1945, 10VAC5-120-15 D, line 2, after "specified" insert "in § 6.2-1923 of the Code of Virginia"

Page 1946, column 2, 10VAC5-120-30 D, line 5, after "Commonwealth" insert "of Virginia"

Page 1947, column 1, 10VAC5-120-35 C, line 5, after "the" change "licensee" to "licensees"

line 6, after "renewing" change "the license" to "their licenses"

Page 1948, 10VAC5-120-50, paragraph 5, line 10, after "Commonwealth" add "of Virginia"

Page 1949, column 1, 10VAC5-120-70 H, line 2, after "Commonwealth" add "of Virginia"

VA.R. Doc. No. R26-8628; Filed July 27, 2026, 10:46 a.m.