VIRGINIA REGISTER OF REGULATIONS

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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

An agency wishing to adopt, amend, or repeal regulations must first publish 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 proposal 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 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 (JCAR) 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 changes made to the proposed regulation 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*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, 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 exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when 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. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

Members of the Virginia Code Commission: **John S. Edwards,** Chair; **James A. "Jay" Leftwich,** Vice Chair; **Ryan T. McDougle; Rita Davis; Leslie L. Lilley; E.M. Miller, Jr.; Thomas M. Moncure, Jr.; Christopher R. Nolen; Charles S. Sharp; Samuel T. Towell; Mark J. Vucci.**

Staff of the *Virginia Register:* **Karen Perrine,** Registrar of Regulations; **Anne Bloomsburg,** Assistant Registrar; **Nikki Clemons,** Regulations Analyst; **Rhonda Dyer,** Publications Assistant; **Terri Edwards,** Senior Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

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

May 2019 through April 2020

Volume: Issue	Material Submitted By Noon*	Will Be Published On
35:19	April 24, 2019	May 13, 2019
35:20	May 8, 2019	May 27, 2019
35:21	May 22, 2019	June 10, 2019
35:22	June 5, 2019	June 24, 2019
35:23	June 19, 2019	July 8, 2019
35:24	July 3, 2019	July 22, 2019
35:25	July 17, 2019	August 5, 2019
35:26	July 31, 2019	August 19, 2019
36:1	August 14, 2019	September 2, 2019
36:2	August 28, 2019	September 16, 2019
36:3	September 11, 2019	September 30, 2019
36:4	September 25, 2019	October 14, 2019
36:5	October 9, 2019	October 28, 2019
36:6	October 23, 2019	November 11, 2019
36:7	November 6, 2019	November 25, 2019
36:8	November 18, 2019 **(Monday)**	December 9, 2019
36:9	December 4, 2019	December 23, 2019
36:10	December 18, 2019	January 6, 2020
36:11	January 1, 2020	January 20, 2020
36:12	January 15, 2020	February 3, 2020
36:13	January 29, 2020	February 17, 2020
36:14	February 12. 2020	March 2, 2020
36:15	February 26, 2020	March 16, 2020
36:16	March 11, 2020	March 30, 2020
36:17	March 25, 2020	April 13, 2020

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Initial Agency Notice

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

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

Name of Petitioner: Dr. Luke Vetti.

Nature of Petitioner's Request: To include the American Board of Podiatric Medicine in regulations for endorsement and informed consent for podiatrists.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Registrar of Regulations and will be published on April 15, 2019, and posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov. Comment on the petition will be requested until May 14, 2019, and may be posted on the Town Hall or sent to the board. Following receipt of all comments on the petition, the board will decide whether to make any change to its regulations. The matter will be considered by the full board at its meeting on June 13, 2019.

Public Comment Deadline: May 14, 2019.

Agency Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R19-30; Filed March 20, 2019, 9:49 a.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending **13VAC5-31, Virginia Amusement Device Regulations**. The purpose of the proposed action is to update the regulation to incorporate by reference the 2018 editions of the nationally recognized American Society of Testing and Materials (ASTM) standards. This action is exempt from Article 2 of the Administrative Process Act in accordance with subdivision A 12 of § 2.2-4006 of the Code of Virginia.

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the Board of Housing and Community Development is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: § 36-98.3 of the Code of Virginia.

Public Comment Deadline: May 15, 2019.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

VA.R. Doc. No. R19-5883; Filed March 21, 2019, 9:51 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending **13VAC5-51, Virginia Statewide Fire Prevention Code**. The purpose of the proposed action is to update the regulation to incorporate by reference the 2018 editions of the nationally recognized model building codes and standards produced by the International Code Council (ICC). This action is exempt from Article 2 of the Administrative Process Act in accordance with subdivision A 12 of § 2.2-4006 of the Code of Virginia.

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the Board of Housing and Community Development is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: § 27-97 of the Code of Virginia.

Public Comment Deadline: May 15, 2019.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

VA.R. Doc. No. R19-5886; Filed March 21, 2019, 10:13 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending **13VAC5-63, Virginia Uniform Statewide Building Code**. The purpose of the proposed action is to update the regulation to incorporate by reference the 2018 editions of the nationally recognized model building codes and standards produced by the International Code Council (ICC). This action is exempt from Article 2 of the Administrative Process Act in accordance with subdivision A 12 of § 2.2-4006 of the Code of Virginia.

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the Board of Housing and Community Development is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: § 36-98 of the Code of Virginia.

Public Comment Deadline: May 15, 2019.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

VA.R. Doc. No. R19-5887; Filed March 21, 2019, 10:18 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending **13VAC5-91, Virginia Industrialized Building Safety Regulations**. The purpose of the proposed action is to update the regulation to incorporate by reference the 2018 editions of the nationally recognized model building codes and standards produced by the International Code Council (ICC). This action is exempt from Article 2 of the Administrative Process Act in accordance with subdivision A 12 of § 2.2-4006 of the Code of Virginia.

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the Board of Housing and Community Development is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: § 36-73 of the Code of Virginia.

Public Comment Deadline: May 15, 2019.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

VA.R. Doc. No. R19-5885; Filed March 21, 2019, 10:06 a.m.

TITLE 1. ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

Final Regulation

Title of Regulation: **1VAC30-150. Regulations for Public Use of Robert E. Lee Monument, Richmond, VA (adding 1VAC30-150-10 through 1VAC30-150-50).**

Statutory Authority: § 2.2-1102 of the Code of Virginia.

Effective Date: May 16, 2019.

Agency Contact: Rhonda Bishton, Director's Executive Administrative Assistant, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email rhonda.bishton@dgs.virginia.gov.

Summary:

This action establishes the regulations for public use of the Robert E. Lee Monument located at 1700 Monument Avenue in the City of Richmond.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 150
REGULATIONS FOR PUBLIC USE OF ROBERT E. LEE MONUMENT, RICHMOND, VA

1VAC30-150-10. Purpose, applicability, and definitions.

The Robert E. Lee Monument, located at 1700 Monument Avenue, is the largest monument on the City of Richmond's Monument Avenue. The 60-foot high statue, composed of a granite base and 14-foot tall bronze equestrian statue of Robert E. Lee, stands in the middle of Lee Circle, a traffic circle at the intersection of Monument Avenue and Allen Avenue. The purpose of this chapter is to establish and codify regulations governing the use of this state-owned property. This chapter applies to the Lee Monument.

The following word or term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Lee Monument" means the statue of Robert E. Lee and the surrounding 25,000 square feet of state-owned property located at 1700 Monument Avenue in the City of Richmond. The Lee Monument does not include the abutting sidewalk or streets, which are the property of the City of Richmond.

1VAC30-150-20. General rules.

The following rules apply to any person, including permit applicants and permit holders [,] at the Lee Monument.

1. The Lee Monument shall be closed to the public from sunset each night until sunrise the following morning.

2. Any gathering that is expected to draw 10 or more participants requires a special event permit.

3. The maximum occupancy of the Lee Monument is 500 persons.

4. There shall be no motor vehicles on the Lee Monument at any time.

5. No banners, flags, posters, or other objects shall be placed on or affixed to the statue itself.

6. No persons shall climb on the statue itself. This provision also applies to the steps of the statue.

7. Unlawful activity is prohibited.

1VAC30-150-30. Rules regarding permitted events.

A. All permitted events must be coordinated with the City of Richmond to ensure that such event will not interfere with major vehicular traffic within the traffic circle. The areas surrounding the Lee Monument are residential zones. In conjunction with § 18.2-419 of the Code of Virginia and the City of Richmond's noise ordinance level restrictions, events at the grounds may only occur during the following hours, unless the times referenced in this subsection conflict with subdivision 1 of 1VAC30-150-20.

1. Monday through Friday: 9 a.m. to 4 p.m. and 7 p.m. to 9 p.m.

2. Saturday: 9 a.m. to 9 p.m.

3. Sunday: 2 p.m. to 9 p.m.

B. Permitted events may last a maximum of two hours, with an additional 30 minutes to set up and 30 minutes to break down the event. If the City of Richmond will require road closure, permitted events will be authorized to last one hour, with an additional 30 minutes to set up and 30 minutes to break down the event. Permitted events shall not exceed these time parameters.

C. The following items and activities are prohibited on the Lee Monument, and any violation will result in an immediate

revocation of the permit and removal from the Lee Monument:

1. Weapons: any pistol, rifle, shotgun, or other firearm of any kind, whether loaded or unloaded, air rifle, air pistol, paintball gun, paintball rifle, explosive, blasting cap, knife, hatchet, ax, slingshot, blackjack, metal knuckles, mace, iron buckle, ax handle, chains, crowbar, hammer, or any club, bludgeon, or any other instrumentality used, or intended to be used, as a dangerous weapon.

2. Bricks, stones, rocks, or pieces of asphalt or concrete.

3. Glass bottles, glass jars, or glass containers of any kind.

4. Tents, tables, scaffolding, or staging.

5. Penetration of the ground by any object.

6. Stick-holding placards.

7. Solicitations, sales, collections, or fundraising activities.

8. Food [~~, alcohol,~~] or beverages of any type.

9. Auxiliary and portable lights.

10. Open air burning. Hand-held candles with drip guards are acceptable.

11. The use of unmanned aircraft systems (drones).

12. Hazardous, flammable, or combustible liquids or materials.

13. Animals, except service animals that are individually trained to do work or perform tasks for people with disabilities.

14. Fossil-fuel powered generators.

[~~15. Any mask, hood, or other device whereby a substantial portion of the face is hidden or covered unless otherwise permitted by law.~~]

D. Nothing in this chapter shall prohibit a disabled person from carrying, possessing, or using a wheelchair, cane, walker, or similar device necessary for providing mobility so that the person may participate in a permitted event.

E. Nothing in this chapter shall prohibit certified law-enforcement officers or other public safety officials acting in their official capacity from carrying or possessing materials, weapons, or devices used in the performance of law-enforcement duties.

F. Certain portions of subsections A, B, and C of this section may not apply to established events that have been approved for more than three consecutive years by the Department of General Services and the City of Richmond permitting processes prior to the enactment of this regulation.

1VAC30-150-40. Special event permit process.

A. Requests for a special event permit must be submitted in writing, on the forms required by the Department of General Services, and must be submitted to the Director of the Department of General Services at least 45 days prior to the requested event date.

B. All applications shall contain at a minimum, the following information:

1. Type and purpose of event, meeting, or function.

2. Name, address, telephone numbers, and email address of the applicant.

3. Name of the organization, date of origin, status (corporation, unincorporated association, partnership, nonprofit corporation, etc.), address, and telephone numbers. If applicable, the federal tax ID number, registered agent's address, telephone numbers, and email address.

4. Organization's primary point of contact, to include name, title, permanent address, telephone numbers, and email addresses.

5. Organization's primary and alternative point of contact who will be on-site at the Lee Monument for the event, to include name, address, telephone numbers, and email addresses. The organization's on-site primary point of contact shall be responsible for the conduct of participants at the event.

6. If the event is designed to be held by, on behalf of, or for any person other than the applicant, the applicant shall file with the director written documentation from the person or organization seeking to host the event, authorizing the applicant to apply for the permit on behalf of the person or organization.

7. The estimated number of participants for the event. The maximum occupancy for the Lee Monument is 500 persons.

8. Requested date and start and end times.

9. Whether the event is being advertised, to include advertising on social media platforms.

10. Proof that all needed permit applications have been submitted to the City of Richmond, to include a road closure permit if necessary. The applicant understands that if the City of Richmond will require road closure, authorized events will be permitted to last one hour, with an additional 30 minutes to set up and 30 minutes to break down the event. All events will begin at the agreed upon time and must fall within the allowable time periods addressed in this section.

11. List of requested items or equipment to be used during the event.

12. Waste management plan and a point of contact for the plan, including name and telephone number.

C. Notwithstanding the 45-day requirement for a special event permit, the applicant may apply for a permit for an event that is proposed to be conducted in less than six days, provided:

1.The applicant submits a completed special event permit application in accordance with this chapter.

2. A showing by the applicant, in writing, clearly describing why the circumstances giving rise to the proposed event did not reasonably allow the applicant to apply for a permit within the 45-day time period.

3. The event has not been planned for more than six days in advance of the proposed event.

4. Proof that all needed permit applications have been submitted to the City of Richmond, to include a road closure permit if necessary. The applicant understands that if the City of Richmond will require road closure based on the size of the event, authorized events will be permitted to last one hour, with an additional 30 minutes to set up and 30 minutes to break down the event. All events will begin at the agreed upon time and must fall within the allowable time periods addressed in this section.

D. Permit applications may be submitted up to one year in advance of the proposed event.

E. The Director of the Department of General Services shall take action on all permit applications within 10 business days of receiving a complete special event permit application, and as soon as practicable but not more than three business days for applications submitted for events to be held within six business days. If no permits are required by the City of Richmond, the department shall approve or deny the application within 10 days. If one or more permits are required by the City of Richmond, the department shall acknowledge receipt of the application within 10 business days, but the Director of the Department of General Services shall not grant final approval until proof that all permits required by the city, to include a road closure permit, have been issued.

F. The Director of the Department of General Services shall deny a request for a permit if:

1. Another application has been previously submitted with a request for the same date and time;

2. Upon advisement from law enforcement, the director determines that approving the permit and allowing the event to occur would pose a significant threat to public safety;

3. Any of the conditions are not agreed to by the applicant;

4. The director concludes that the event could not possibly conform to the conditions prescribed in this chapter;

5. Any of the information contained in the application is found to be false or inaccurate; or

6. The City of Richmond denies a needed permit.

G. If a permit request is denied, the director shall send, in writing, an explanation of why the event permit was denied and if applicable, provide the applicant with alternative times or dates.

H. If a permit is denied due to a preexisting application for the same time and date, the director shall notify the applicant if the originally requested date and time become available.

I. Authorization for the use of the Lee Monument will be set forth in a letter addressed to the applicant.

J. The director or the director's designee may contact the applicant and the event organizer at any time to discuss or clarify the contents of the application or any additional conditions or restrictions to be applied.

1VAC30-150-50. Permit holder responsibilities.

A. The event organizer is responsible for providing a safe and secure event and may be required to provide general security, crowd control, and assistance to participants based on the size of the event. If general security is required by the Commonwealth, it shall be provided by law-enforcement personnel licensed by the Commonwealth of Virginia.

B. By submitting an application for a special event permit under this chapter, the applicant understands the following statements and conditions and agrees to comply with all rules, conditions, and restrictions:

1. The applicant agrees to all prohibitions and restrictions identified in this chapter;

2. The applicant and organization agree to indemnify the Commonwealth of Virginia against any loss or damage to the monument that may occur in connection with the applicant or event organizer's use of the property;

3. The applicant agrees to leave the premises clean and orderly [~~.~~]

4. The applicant and participants agree to obey all state and local laws and ordinances;

5. The applicant agrees to notify law enforcement, to include the Division of Capitol Police, if any unlawful activities occur during the permitted event. In addition to 9-1-1, the applicant should call the Capitol Police emergency number at (804) 786-4357. For nonemergencies, applicants should call (804) 786-2568;

6. Unlawful activities will be handled by law enforcement, to include the Division of Capitol Police; and

7. The applicant shall be required to notify the Director of the Department of General Services of any changes to the information contained in the permit application as soon as practicable.

C. Violations of this chapter [or of any other provision of state law] shall result in immediate revocation of the permit by the Director of the Department of General Services or the director's designee, and in the event such revocation occurs, all participants shall be required to immediately vacate the monument. Failure of any person to immediately vacate the monument after proper notice shall be considered trespassing in violation of § 18.2-119 of the Code of Virginia.

NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (1VAC30-150)

Request to Hold an Event at the Lee Monument (undated, filed 12/19/2018)

VA.R. Doc. No. R18-5342; Filed March 27, 2019, 9:09 a.m.

DEPARTMENT OF VETERANS SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Veterans Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 25 of the Code of Virginia, which exempts the department when promulgating regulations pursuant to § 58.1-3219.7 of the Code of Virginia regarding an exemption from taxes on real property.

Title of Regulation: **1VAC80-10. 100% Disabled Veteran Real Property Tax Exemption (amending 1VAC80-10-50).**

Statutory Authority: § 58.1-3219.7 of the Code of Virginia.

Effective Date: July 1, 2019.

Agency Contact: Carrie Ann Alford, Director of Policy and Planning, Department of Veterans Services, 101 North 14th Street, 17th Floor, Richmond, VA 23219, telephone (804) 225-4716, email carrieann.alford@dvs.virginia.gov.

Summary:

The amendment removes the requirement that, in order to qualify for surviving spouse exemption from real property tax, the surviving spouse of an eligible veteran continues to occupy the real property as the spouse's principal place of residence.

1VAC80-10-50. Surviving spouse exemption.

A. The surviving spouse of a veteran eligible for the exemption shall also qualify for the exemption, so long as:

1. The death of the qualified veteran occurs on or after January 1, 2011;

2. The surviving spouse was married to the qualified veteran at the time of the veteran's death;

3. The surviving spouse does not remarry;

~~4. The surviving spouse continues to occupy the real property as the surviving spouse's principal place of residence;~~ and

~~5.~~ 4. The veteran was eligible for the exemption at the time of the veteran's death. This exemption is available even if the qualifying veteran never requested the exemption.

B. The exemption for a surviving spouse includes real property (i) held by the veteran's spouse as tenant for life, (ii) held in a revocable inter vivos trust over which the surviving spouse holds the power of revocation, or (iii) held in an irrevocable trust under which the surviving spouse possesses a life estate or enjoys a continuing right of use or support. The exemption does not apply to any other forms of trust or any interest held under a leasehold or term of years.

VA.R. Doc. No. R19-5882; Filed March 21, 2019, 9:58 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-60, 4VAC20-252-70).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 1, 2019.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments set the mandatory reporting deadline at 21 days after the trophy-size striped bass recreational season closure and add a provision that failure to report, whether there was harvest or no activity, any one year will result in the loss of eligibility for that permit the following year.

4VAC20-252-60. Bay and Coastal spring trophy-size striped bass recreational fisheries.

A. The open season for the Bay spring trophy-size striped bass recreational fishery shall be May 1 through June 15, inclusive.

B. The area open for the Bay spring trophy-size striped bass recreational fishery shall be the Chesapeake Bay and its tributaries, except the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers.

C. The open season for the Coastal spring trophy-size striped bass recreational fishery shall be May 1 through May 15, inclusive.

D. The area open for the Coastal spring trophy-size striped bass recreational fishery is the coastal area as described in 4VAC20-252-20.

E. The minimum size limit for the fisheries described in this section shall be 36 inches total length.

F. The possession limit for the fisheries described in this section shall be one fish per person.

G. It shall be unlawful for any person participating in any Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery to possess or land any trophy-size striped bass from a recreational vessel unless the captain or operator of that recreational vessel has obtained a Spring Recreational Striped Bass Trophy Permit. The captain or operator shall be responsible for reporting for all anglers on the recreational vessel and shall provide his Marine Resources Commission identification (MRC ID) number, the date of harvest, the number of individuals on board, the mode of fishing, the water body where the trophy-size striped bass was caught, and the number of trophy-size striped bass kept or released.

H. It shall be unlawful for any person participating in any Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery to possess or land any trophy-size striped bass harvested recreationally from shore, a pier, or any other ~~manmade~~ man-made structure without first having obtained a Spring Recreational Striped Bass Trophy Permit from the Marine Resources Commission. Any such permittee shall provide his MRC ID number, the date of harvest, the mode of fishing, the water body where the trophy-size striped bass was caught, and the number of trophy-size striped bass kept or released.

I. It shall be unlawful for any spring recreational striped bass trophy permittee or any charter boat striped bass permittee to fail to report trips where striped bass are caught, whether harvested, released, or possessed, as described in ~~subsection E of~~ this section, on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where striped bass are targeted but not successfully caught by the ~~15th~~ 21st day after any close of the Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery.

~~J. Any permittee who did not participate in any Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery shall notify the commission of his lack of participation by the 15th day after the close of any Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery.~~

1. Any permittee who did not participate in any Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery shall notify the commission of his lack of participation by the 21st day after the close of any Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery on forms provided by the commission or through the Virginia Saltwater Fisherman's Journal.

2. Following the 21st day after the close of any Bay spring trophy-size striped bass or Coastal spring trophy-size striped bass recreational season, any permittee who failed to report, whether there was harvest or no activity during that season, shall be ineligible to receive a Spring Recreational Striped Bass Trophy Permit for the following trophy-size striped bass season but shall be eligible to reapply for that permit in subsequent years.

4VAC20-252-70. Potomac River tributaries spring trophy-size striped bass recreational fishery.

A. The open season for the Potomac River tributaries spring striped bass recreational fishery shall correspond to the open season as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring fishery.

B. The area open for this fishery shall be those tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the Route 301 bridge.

C. The minimum size limit for this fishery shall correspond to the minimum size limit as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring trophy-size fishery.

D. The possession limit for this fishery shall be one fish per person.

E. It shall be unlawful for any person participating in any Potomac River tributaries spring trophy-size striped bass recreational fishery to possess or land any trophy-size striped bass from a recreational vessel unless the captain or operator of that recreational vessel has obtained a Spring Recreational Striped Bass Trophy Permit. The captain or operator shall be responsible for reporting for all anglers on the recreational vessel and shall provide his Marine Resources Commission identification (MRC ID) number, the date of harvest, the number of individuals on board, the mode of fishing, the water body where the trophy-size striped bass was caught, and the number of trophy-size striped bass kept or released.

F. It shall be unlawful for any person participating in any Potomac River tributaries spring trophy-size striped bass recreational fisheries to possess or land any trophy-size striped bass harvested recreationally from shore, a pier, or any other ~~manmade~~ man-made structure without first having obtained a Spring Recreational Striped Bass Trophy Permit from the Marine Resources Commission. Any such permittee shall provide his MRC ID number, the date of harvest, the mode of fishing, the water body where the trophy-size striped bass was caught, and the number of trophy-size striped bass kept or released.

G. It shall be unlawful for any spring recreational striped bass trophy permittee or any charter boat striped bass permittee to fail to report trips where striped bass are caught, whether harvested, released, or possessed, as described in this section, on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where striped bass are targeted but not successfully caught by the ~~15th~~ 21st day after the close of any Potomac River tributaries spring trophy-size striped bass recreational fishery.

~~H. Any permittee who did not participate in any Potomac River tributaries spring trophy-size striped bass recreational fishery shall notify the commission of his lack of participation by the 15th day after the close of any Potomac River tributaries spring trophy-size striped bass recreational fishery.~~

1. Any permittee who did not participate in any Potomac River tributaries spring trophy-size striped bass recreational fishery shall notify the commission of his lack of participation by the 21st day after the close of any Potomac River tributaries spring trophy-size striped bass recreational fishery on forms provided by the commission or through the Virginia Saltwater Fisherman's Journal.

2. Following the 21st day after the close of any Potomac River tributaries recreational spring trophy-size striped bass season, any permittee who failed to report, whether there was harvest or no activity during that season, shall be ineligible to receive a Spring Recreational Striped Bass Trophy Permit for the following trophy-size striped bass season but shall be eligible to reapply for that permit in subsequent years.

VA.R. Doc. No. R19-5891; Filed March 28, 2019, 4:07 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-15).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 1, 2019.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments set the mandatory reporting deadline at 21 days after the recreational cobia season closure and add a provision that failure to report, whether there was harvest or no activity, any one year will result in the loss of eligibility for that permit the following year.

4VAC20-510-15. Recreational cobia permit and mandatory reporting.

A. It shall be unlawful for any person to possess or land any cobia harvested from a recreational vessel unless the captain or operator of that recreational vessel has obtained a Recreational Cobia Permit from the Marine Resources Commission (commission). The captain or operator shall be responsible for reporting for all anglers on the recreational vessel and shall provide his Marine Resources Commission identification (MRC ID) number, the date of harvest, the number of individuals on board, the mode of fishing, and the number of cobia kept or released.

B. It shall be unlawful for any person to possess or land any cobia harvested recreationally from shore, a pier, or any other ~~manmade~~ man-made structure without first having obtained a Recreational Cobia Permit from the Marine Resources Commission. Any such permittee shall provide his MRC ID number, the date of harvest, the mode of fishing, and the number of cobia kept or released on that report to the commission.

C. It shall be unlawful for any permittee to fail to report trips where cobia are caught, whether harvested, released, or possessed in accordance with this section on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where cobia were targeted but not successfully caught, by the

~~15th~~ 21st day after the close of any recreational cobia fishery season.

1. Any permittee who did not participate in the recreational cobia season shall notify the commission of his lack of participation by the ~~15th~~ 21st day after the close of the recreational cobia season on forms provided by the commission or through the Virginia Saltwater Fisherman's Journal.

2. ~~Any permittee who either fails to report the harvest of cobia or did not participate in any recreational cobia season and fails to report no activity shall be ineligible to receive a Recreational Cobia Permit in the following year.~~ Following the 21st day after the close of any recreational cobia season, any permittee who failed to report, whether there was harvest or no activity during that season, shall be ineligible to receive a Recreational Cobia Permit for the following cobia season but shall be eligible to reapply for that permit in subsequent years.

VA.R. Doc. No. R19-5892; Filed March 28, 2019, 4:14 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-740. Pertaining to the Snagging of Fish (amending 4VAC20-740-10; adding 4VAC20-740-15, 4VAC20-740-25).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 1, 2019.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment prohibits the towing of any cobia or striped bass.

CHAPTER 740
PERTAINING TO THE SNAGGING OR TOWING OF FISH

4VAC20-740-10. Purpose.

The purpose of this chapter is to reduce snagging and towing injuries and mortalities to finfish in Virginia waters~~,~~ and to preserve the public safety by prohibiting the practice of snagging fish.

4VAC20-740-15. Definition.

The following word or term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise.

"Towing of fish" means tethering a fish by any method behind the vessel while the engine is running and in gear.

4VAC20-740-25. Towing of fish prohibited.

It shall be unlawful for any person to tow any cobia or striped bass.

VA.R. Doc. No. R19-5890; Filed March 28, 2019, 3:59 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-890. Pertaining to Channeled Whelk (amending 4VAC20-890-20 through 4VAC20-890-45).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 1, 2019.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments (i) remove the use of a culling ring in the measurement of channeled whelk and maintain only a length measure; (ii) redefine the container used by law enforcement to better enforce the sublegal size tolerance allowed in the harvest and landing of channeled whelk; and (iii) allow harvest and landings of any whelk species by channeled whelk pots.

4VAC20-890-20. Definitions.

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

"Bait bag" means a bag, box, or other container~~,~~ with mesh, slats~~,~~ or other types of openings no greater than three-eighths of an inch in one dimension, either width or length, that is designed for the purposes of containing the bait within a ~~conch~~ channeled whelk pot.

"Basket" means a circular plastic mesh container of 2,566 cubic inches with a top inside diameter of 17 inches, bottom inside diameter of 13.5 inches, and an inside height of 14 inches.

"Bushel" means a Virginia bushel with a volumetric measure equivalent to 1.4 U.S. standard bushels or ~~3003.9~~ 3,003.9 cubic inches.

"Channeled whelk" means any whelk of the species Busycotypus canaliculatus.

"Land" or "landing" means to enter port with channeled whelk on board any boat or vessel, to begin offloading channeled whelk, or to offload channeled whelk.

"Length" means the total length of a channeled whelk, measured from the tip of the apex to the outer tip of the shell opening.

"MRC ID" means the unique Marine Resources Commission identification number assigned to each individual.

4VAC20-890-25. Entry limitation; transfers; prohibitions.

A. The sale of commercial ~~conch~~ channeled whelk pot licenses shall be limited to registered commercial fishermen, solely for the harvest of channeled whelk from Virginia waters described in this section, who meet either of the following requirements:

1. The fisherman shall have held a provisional Virginia conch pot permit in 1999 and reported in accordance with the requirements of 4VAC20-610-60 and the 1999 conch pot permit; or

2. The fisherman shall provide the commission with proof of having harvested channeled whelk from federal waters during the January 1, 1997, through October 1, 1999, period.

B. Any person licensed for commercial ~~conch~~ channeled whelk pot under the provisions of this section may transfer such license to any registered commercial fisherman when said transfer is documented on the form provided by the commission and approved by the Commissioner of Marine Resources. Upon approval, the person entering the Virginia commercial ~~conch~~ channeled whelk pot fishery shall purchase a commercial ~~conch~~ channeled whelk pot license in his own name. No commercial ~~conch~~ channeled whelk pot license shall be transferred more than once per calendar year.

C. It shall be unlawful for any person licensed under the provisions of subsection A of this section as a commercial ~~conch~~ channeled whelk pot fisherman to do any of the following, unless otherwise specified:

1. Place, set or fish any ~~conch~~ channeled whelk pot within any channel.

2. Fail to be on board the vessel when that vessel is operating in a commercial ~~conch~~ channeled whelk pot harvesting capacity within Virginia tidal waters;

3. Fail to display the commercial ~~conch~~ channeled whelk pot license ~~plate~~ decal prominently on the starboard side of the vessel;

4. Fail to inscribe each ~~conch~~ channeled whelk pot buoy with the last four numbers of the ~~commercial fisherman registration license~~ MRC ID preceded by the letter "W," which correspond to the lawful ~~conch~~ channeled whelk pot licensee;

5. Place, set or fish more than 200 ~~conch~~ channeled whelk pots within Virginia tidal waters;

6. Retain by-catch of any ~~other~~ species not in the whelk family caught by ~~conch~~ channeled whelk pots;

7. Fail to report harvest-related data from harvests in Virginia waters on a monthly basis on forms supplied by the commission; and

8. Set, place, or fish a ~~conch~~ channeled whelk pot of any type in an area extending 250 yards from either span of the Chesapeake Bay Bridge-Tunnel. For purposes of this section, the distance shall be measured from the outer edges of each span and shall extend from the low water mark on Fisherman's Island to the one-mile marker on the south end of the bridge-tunnel.

D. It shall be unlawful for any person to take or catch channeled whelk with ~~conch~~ channeled whelk pots from the tidal waters of Virginia without first having purchased a ~~conch~~ channeled whelk pot license from the commission or its agent. No person may purchase a ~~conch~~ channeled whelk pot license unless ~~he~~ the person is a registered commercial fisherman as described in § 28.2-241 of the Code of Virginia.

4VAC20-890-30. Minimum size limits.

A. It shall be unlawful for any person to possess more than 10 channeled whelk~~, per bushel or bag, which~~ that measure less than 5-1/2 inches in length ~~or can be passed through a culling ring of 2 3/4 inches in diameter~~ in any inspected basket, except as described in subsection D of this section.

B. ~~It shall be unlawful for any person to possess more than 30 channeled whelk, per barrel, which measure less than 5-1/2 inches in length or can be passed through a culling ring of 2 3/4 inches in diameter, except as described in subsection D of this section.~~ Any police officer may fill one basket with channeled whelk for inspection from a single container or from within a vehicle, trailer, or the inside open part of the boat. The officer may inspect multiple baskets but must finish inspecting a basket before inspecting another. In the event the officer cannot fill a basket from a single container, the officer may fill the basket from any other single container in order to determine any violation of the possession limit of sublegal size channeled whelk.

C. Those undersized whelk in excess of the allowance level, as described in ~~subsections~~ subsection A ~~and B~~ of this section, shall be returned immediately to the water alive.

D. Nothing in this section shall prohibit the possession of ~~sub-legal~~ sublegal size channeled whelk imported from other

states or jurisdictions, provided the following conditions are met:

1. Such imports shall have been landed in another state or jurisdiction and shall not have been imported into Virginia by waterborne transport.

2. Such imported channeled whelk are accompanied by a bill of sale ~~which~~ that shall include the name of the seller, address and phone number of the seller, the license number of the seller if such license is required in the jurisdiction of harvest, the date of sale, and the quantity of channeled whelk purchased under the bill of sale.

4VAC20-890-35. Possession and landing limits.

A. The possession and landing limits for channeled whelk shall be 60 bushels per licensed ~~conch pot~~ channeled whelk pot fishermen on board a vessel but shall not exceed 120 bushels per vessel. Only one ~~conch pot~~ channeled whelk pot license per person shall be used to calculate the vessel limit.

B. It shall be unlawful for any person to possess aboard any vessel or to land more than the possession and landing limit for channeled whelk specified in subsection A of this section. In the enforcement of this provision, the vessel operator or captain shall be responsible for the possession and landing limit.

4VAC20-890-40. Gear restrictions.

A. It shall be unlawful for any person to possess channeled whelk harvested from Virginia waters by any means other than by hand, licensed conch dredge, licensed crab dredge, or licensed ~~conch~~ channeled whelk pot, except as described in 4VAC20-890-50.

B. Except as provided in subsection C of this section, it shall be unlawful for any person to place, set, or fish, or attempt to place, set, or fish any ~~conch~~ channeled whelk pot that does not contain a bait bag.

C. Any person not utilizing horseshoe crabs as bait for channeled whelk shall be exempt from the provisions of subsection B of this section, provided that the possession of any quantity of horseshoe crabs on board the vessel of such person shall constitute prima facie evidence of a violation of this chapter. Further, the presence of any quantity of horseshoe crab in any ~~conch~~ channeled whelk pot not equipped with a bait bag shall constitute prima facie evidence of a violation of this chapter.

D. It shall be unlawful for any person to place, set, or fish or attempt to place, set, or fish any ~~conch~~ channeled whelk pot that exclusively contains more than either one-half of a female horseshoe crab or one male horseshoe crab, in whole or in parts.

E. It shall be unlawful for any person to land, attempt to land, or possess channeled whelk that were harvested by pots that do not meet the provisions of this chapter.

4VAC20-890-45. Monitoring requirements.

A. It shall be unlawful, for any person, firm, or corporation to buy any channeled whelk from any ~~lawful~~ legally licensed harvester ~~on or after July 1, 2007,~~ without first having obtained a Channeled Whelk Buyer's Permit from the Marine Resources Commission. Such permit shall be completed in full by the licensed seafood buyer. A copy of the Channeled Whelk Buyer's Permit shall be in possession of the permittee while buying or possessing channeled whelk.

B. Any licensed seafood buyer permitted to purchase channeled whelk shall provide written reports to the commission of daily purchases and harvest information of channeled whelk landed in Virginia organized by month on forms provided by the commission. Such information shall include the date of the purchase; the buyer's channeled whelk permit number and harvester's ~~Commercial Fisherman Registration License~~ MRC ID number; the gear type; water area fished; city or county of landing; and number of bushels, bags or barrels of channeled whelk. These reports shall be completed in full and submitted to the commission no later than the 15th day of January for the prior year's purchases.

VA.R. Doc. No. R19-5894; Filed March 28, 2019, 4:45 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-1120. Pertaining to Tilefish and Grouper (repealing 4VAC20-1120-31).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 1, 2019.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment repeals the mandatory reporting requirements for recreational landing of tilefish and grouper.

4VAC20-1120-31. ~~Recreational permit and mandatory reporting.~~ (Repealed.)

~~A. It shall be unlawful to possess aboard or to land any tilefish or grouper harvested from a recreational vessel unless the captain or operator of that recreational vessel has obtained a Recreational Tilefish and Grouper Permit from the Marine Resources Commission (MRC). The captain or operator shall be responsible for reporting for all anglers on the recreational vessel and shall provide his MRC identification (ID) number,~~

~~the date of harvest, the number of individuals on board, the mode of fishing, and the number of tilefish and grouper, by species, kept or released.~~

~~B. It shall be unlawful for any person to possess or land any tilefish or grouper harvested recreationally from shore, a pier, or any other manmade structure without first having obtained a Recreational Tilefish and Grouper Permit from the Marine Resources Commission. Any such permittee shall provide his MRC ID number, the date of harvest, the mode of fishing, and the number of tilefish and grouper, by species, kept or released on that report to the commission.~~

~~C. It shall be unlawful for any registered tilefish and grouper permittee, as described in this section, to fail to report trips where tilefish or grouper were caught, whether harvested, released, or possessed, in accordance with this section on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where tilefish or grouper were targeted but not successfully caught on forms provided by the commission by the 15th day after the close of any tilefish and grouper recreational fishery seasons.~~

~~1. Any permittee who did not participate in the tilefish and grouper recreational fishery season shall notify the commission of his lack of participation by the 15th day after the close of the tilefish and grouper recreational fishery seasons.~~

~~2. Any permittee who either fails to report the harvest of any tilefish or grouper or did not participate in any recreational tilefish and grouper recreational season and fails to report no activity shall be ineligible to receive the permit in the following year.~~

VA.R. Doc. No. R19-5893; Filed March 28, 2019, 4:19 p.m.

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TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Reproposed Regulation

Title of Regulation: **9VAC25-900. Certification of Nonpoint Source Nutrient Credits (adding 9VAC25-900-10 through 9VAC25-900-350).**

Statutory Authority: § 62.1-44.19:20 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: May 30, 2019.

Agency Contact: Debra Harris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4346, or email debra.harris@deq.virginia.gov.

Basis: The state authority to promulgate the proposed regulation is pursuant to the Chesapeake Bay Watershed Nutrient Credit Program, Article 4.02 (§ 62.1-44.19:12 et seq.) of the State Water Control Law. Specifically, the regulatory authority for the board is § 62.1-44.19:20 of the State Water Control Law. Additionally, § 62.1-44.15 of the State Water Control Law authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth.

Purpose: Pursuant to § 62.1-44.19:20 of the State Water Control Law, the board is required to adopt regulations for the certification of nonpoint source nutrient credits. Nonpoint credits established by the board in accordance with the legislation and this regulatory action may include credits generated from agricultural and urban stormwater best management practices, management of animal feeding operations, land use conversion, and other established or innovative methods of nutrient control or removal. As part of the revised proposed regulation, additional provisions for the generation of nonpoint source nutrient credits from stream or wetlands restoration have also been incorporated.

In order to be placed on a registry of credits for exchange, the nonpoint source nutrient credits must be certified. These certified credits that are placed on the registry will be part of an enforceable market-based trading program that will involve the exchange of pollution allocations between sources. Currently, most programs involve exchanges between different point sources; however, this proposed regulation is anticipated to make available nonpoint source nutrient credits to further trading avenues such as point source to nonpoint source trades or nonpoint to nonpoint trades. These trades will be part of the overall goal of meeting the reductions assigned by the Chesapeake Bay Watershed Implementation Plan and the Chesapeake Bay TMDL.

This regulation is another step toward a successful trading program for nutrient credits. The regulation provides clarity and assurances regarding the process for certification of nonpoint source nutrient credits for both the nutrient credit generating project and prospective credit purchasers.

Substance: In accordance with § 62.1-44.19:20 of the State Water Control Law, the board approved a proposed regulation for public comment. Based on the public comment received, a regulatory advisory panel (RAP) was reconvened to provide input on topics that required additional consideration. The proposed regulation has been revised based on (i) the reconvened RAP discussions; (ii) public comment received on the proposed regulations; (iii) statutory changes; and (iv) the department's programmatic experience. These changes contained in the revised proposed regulation, some of which are substantive, are consistent with the requirements outlined in § 62.1-44.19:20 of the State Water Control Law and include the following:

1. Stream and wetland restoration practices. Provisions for the certification of nutrient credits generated from the restoration of wetlands or streams by mitigation banks or new restoration projects have been added to the regulations in various sections as appropriate. These changes were made as part of the reconvened RAP process.

2. Innovative practices. Additional requirements for innovative practices that may be used to generate nutrient credits have been incorporated such as (i) defining innovative practices as practices that are not approved by the Chesapeake Bay Program Partnership or the Virginia Stormwater Best Management Practices (BMP) Clearinghouse, (ii) limiting innovative practices to generating only term credits, and (iii) including a second public notification for projects using innovative practices. These changes were made as part of the reconvened RAP process.

3. Credits. The revised proposed regulation defines term credits to include a maximum term of five years with an option to renew every five years. The requirements for renewal applications have been included, and a financial assurance exception is provided for term credits generated by structural BMPs when such credits are annual verified prior to release. The definition of and the requirements for application for certification of perpetual credit have been clarified, including requirements for deed restrictions and site ownership. These changes were made as part of the reconvened RAP process.

4. Land conversion applications. The 2016 General Assembly adopted a statutory change mandating the process for reviewing applications and releasing credits generated by nutrient credit-generating projects using land conversion. The revised proposed comports with the legislative changes provided in Chapter 653 of the 2016 Acts of Assembly.

5. Clarifications per public comment. Revisions have been made to the regulation based on public comments received during the proposed regulation's public comment period, including clarification of various terms, the applicability and limitation provisions, public notification, and the credit retirement and exchange provisions. Additionally, requirements for municipal separate storm sewer systems (MS4s) generating nutrient credits for certification have been included, and the baseline provision for MS4s has been added.

6. Revisions based on department changes. Revisions to the proposed regulation have been made based on the department's additional experience processing requests for nutrient credit certifications pursuant to subsection C of § 62.1-44.19:20 of the State Water Control Law, which requires that prior to the effective date of the regulation, nutrient credits be certified on a case-by-case basis using the best available scientific and technical information.

Issues: The primary advantage of this regulatory action is that the revised proposed regulation provides clarity and certainty for the nutrient trading market by establishing appropriate procedures for the certification of nonpoint source credits. This is an advantage to the nutrient credit-generating community, the public, and the Commonwealth as certainty in this market will help meet commitments outlined in the Chesapeake Bay Watershed Implementation Plan and other total maximum daily loads. The framework and content of this regulatory action largely tracks the specifics outlined in § 62.1-44.19:20 of State Water Control Law.

As with the proposed regulation, the department reconvened the RAP to assist with specific topics that required additional RAP input and consideration. The revised proposed regulation includes substantive changes that were a result of this reconvened RAP process. The department was careful to minimize disadvantages and to develop a program that provides clarity and certainty for those persons who choose to certify nonpoint source nutrient credits. This revised proposed regulatory action should pose no disadvantages to the public or to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 748 and 808 of the 2012 Acts of Assembly (Nutrient Trading Act),[1] the State Water Control Board (Board) proposes to establish in regulation the process for the certification of nonpoint source[2] nitrogen and phosphorus nutrient credits. Nonpoint source pollution is pollution such as sediment, nitrogen, phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff. The proposed regulation includes application procedures, baseline requirements, credit calculation procedures, release and registration of credits, compliance and reporting requirements for nutrient credit-generating entities, enforcement requirements, application fees, and financial assurance requirements. Nonpoint source nutrient credits must be certified by the Department of Environmental Quality (Department) prior to release, placement on a registry, and exchange.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. If landowners take specified actions that are judged to reduce the amount of phosphorus and/or nitrogen leaving their property below the amount allowed by regulation, then under the nutrient trading program the landowner can be awarded nutrient credits. These specified actions may be from agricultural and urban stormwater best management practices, management of animal feeding operations, land use conversion, and other established or innovative methods of nutrient control or

removal. The credits can be sold to a different landowner situated within the same river basin. This allows the purchasing landowner to legally apply the credited amount of phosphorus or nitrogen to offset the impacts of stormwater associated with new development or a new point source discharge, or to meet a nutrient reduction requirement of a municipal separate storm sewer system permit. According to the Department, in awarding nutrient credits, the agency is conservative in estimating the amount of reduction in nutrients that occur as a result of the landowner's specified actions. In other words, on average the reduction in nutrients entering the waterbody due to the specified action likely exceeds the amount credited. Thus, there is likely a net reduction in phosphorus or nitrogen entering the river basin taking into account both the selling and purchasing landowners' actions.

Nutrient trading creates revenue opportunities and reduces costs associated with protecting the environment. The opportunity for nutrient trading arises because large differences in the cost to reduce a pound of nitrogen or phosphorus exist among various sectors and practices. In a trading market, sources that can reduce nutrients at low cost have an economic incentive to make reductions below target levels and then sell the credits to those facing higher costs. Trading therefore creates new revenue opportunities for farmers, entrepreneurs, and others who can generate nutrient credits. At the same time, trading allows land developers and other entities that face higher nutrient reduction costs to save money by purchasing credits to meet a portion of their nutrient reduction obligations. As a result, trading helps achieve overall nutrient reductions in the Chesapeake Bay watershed and elsewhere in the Commonwealth in a more cost-effective manner.

The framework and content of this regulatory action largely tracks the specifics outlined in the Nutrient Trading Act. Additionally, this program has already been in operation through guidance documents. Placing the program specifics in regulation is beneficial in that it helps improve clarity and helps ensure consistent procedures for the approval of nonpoint source nutrient banks. The nutrient trading program itself is beneficial in that it improves efficiency and reduces the cost of economic development while maintaining environmental standards. Additionally, since in awarding credits for the nutrient banks the Department is conservative in estimating the amount of reduction in nutrients that enter the river basin as a result of the landowners specified actions, the nutrient trading program in practice likely improves environmental quality.

Though the program has already been in operation through guidance documents, the proposed regulation does introduce some changes. Operating under the guidance documents, nutrient credits have not been awarded for the reestablishment of a wetland, stream, or other aquatic resource in an area where it previously existed (restoration). Nutrient credits would be available for restoration under the proposed regulations. This would likely increase how often such restoration takes place, positively affecting the environment.

Regarding granting credits for tree plantings on land conversion projects, the Department's practice thus far has been to release 100% of credits upon planting with the sponsor providing financial assurance in the event of a crop failure. This procedure has placed the burden on the Department to re-inspect plantings a year or two after release and to require replanting or to potentially cash in the financial assurance mechanism and contract out replanting of the site if the sponsor does not cooperate. The Department has found some sites with significant planting failures, which occurred after credits were released and sold. In order to minimize the problems caused in such situations, the proposed regulation puts the onus on the applicant rather than the Department by not releasing 100% of the credits until the planting has proven to be successful. The proposed regulation allows for an initial release of 25% of the credits upon taking the property out of agricultural production and recording of a deed restriction. The remaining 75% of credits would not be released until the success of the planting has been established (i.e., after one complete growing season for evergreens and two complete growing seasons for hardwoods). The proposed phased release eliminates the need for financial assurance on land conversion projects.

Businesses and Entities Affected. The nonpoint source nutrient trading program and the proposed regulation affect owners of land that may earn nutrient credits from agricultural and urban stormwater best management practices, management of animal feeding operations, land use conversion, stream or wetlands restoration, shellfish aquaculture, and other established or innovative methods of nutrient control or removal. Investors seeking to purchase land or to partner with landowners to create credits for sale are also affected. Land developers are indirectly affected in that they will be likely buyers of these credits.

Localities Particularly Affected. The nonpoint source nutrient certification program under the proposed regulation applies to localities throughout the Commonwealth. These credits can be certified and used statewide to offset new development. There is likely to be particular demand for the use of the credits within the Chesapeake Bay watershed.

Projected Impact on Employment. By reducing the cost of economic development while maintaining environmental standards, the nutrient trading program and the proposed regulation may positively affect employment.

Effects on the Use and Value of Private Property. The nutrient trading program and the proposed regulation may increase the value of land that can be used for nonpoint source nutrient banks.

Small Businesses: Costs and Other Effects. The nutrient trading program and the proposed regulation may reduce development costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendment will not adversely affect small businesses.

Real Estate Development Costs. The nutrient trading program and the proposed regulation may reduce real estate development costs.

[1]See http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0748

[2]Nonpoint source pollution is pollution such as sediment, nitrogen, phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

Agency's Response to Economic Impact Analysis: The State Water Control Board has no comment.

Summary:

Pursuant to Chapter 748 of the 2012 Acts of Assembly, the revised proposed regulation establishes the process for the certification of nonpoint source nitrogen and phosphorus nutrient credits. The revised proposed regulation includes application procedures, baseline requirements, credit calculation procedures, release and registration of credits, compliance and reporting requirements for nutrient credit-generating entities, enforcement requirements, application fees, and financial assurance requirements. Nonpoint source nutrient credits must be certified by the Department of Environmental Quality prior to release, placement on the registry, and exchange.

The revised proposed regulation includes substantive changes to the proposed regulation, including revisions (i) for and the incorporation of provisions regarding stream and wetland restoration practices that may be used to generate nutrient credits; (ii) regarding innovative practices that may be used to generate nutrient credits; (iii) to term credits to include a maximum term of five years with an option to renew every five years; (iv) pursuant to Chapter 653 of the 2016 Acts of Assembly, to the process for reviewing land applications and releasing credits generated by nutrient credit-generating projects using land conversion; (v) for clarification of various terms, the applicability and limitation provisions, public notification, and the credit retirement and exchange provisions; and (vi) to processing requests for nutrient credit certifications.

CHAPTER 900
CERTIFICATION OF NONPOINT SOURCE NUTRIENT CREDITS

Part I
Definitions

9VAC25-900-10. Definitions.

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

"300 animal units" means the term as defined in 9VAC25-192-10.

"Act" means the Chesapeake Bay Watershed Nutrient Credit Exchange Program, Article 4.02 (§ 62.1-44.19:12 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

[~~"Agricultural lands" means cropland, hayland, or pastures.~~]

"Animal feeding operation" means the term as defined by 9VAC25-31-10.

"Applicant" means the person who submits an application to the department for nutrient credit certification pursuant to this chapter.

["Bankfull event" means the storm event that corresponds with the stream stage at its incipient point of flooding. The bankfull discharge associated with the bankfull event is the flow that transports the majority of a stream's sediment load over time and thereby forms and maintains the channel dimension, pattern, and profile.]

"Baseline" means the practices, actions, or levels of reductions that must be in place before credits can be generated. The best management practices to be implemented for achieving baseline are provided in 9VAC25-900-100.

"Best management practice," "practice," or "BMP" means a structural practice, nonstructural practice, or other management practice used to prevent or reduce nutrient loads reaching surface waters or the adverse effects thereof.

"Board" means the State Water Control Board.

[~~"CDA" means contributing drainage area.~~]

"Certification of nutrient credits" or "nutrient credit certification" means the approval of nutrient credits issued by the department as specified in 9VAC25-900-80. [Nutrient credit certification does not include the certification of point source credits generated by point sources regulated under the Watershed General Virginia Pollutant Discharge Elimination System Permit issued pursuant to § 62.1-44.19:14 of the State Water Control Law.]

"Chesapeake Bay Watershed" means the land areas draining to the following Virginia river basins: the Potomac River Basin, the James River Basin, the Rappahannock River Basin,

the Chesapeake Bay and small coastal basins, or the York River Basin.

"Concentrated animal feeding operation" means the term as defined by 9VAC25-31-10.

"Cropland" means land that is used for the production of grain, oilseeds, silage or industrial crops not defined as hay or pasture.

"DCR" means the Department of Conservation and Recreation.

"Delivery factor" means the estimated percentage of a total nitrogen or total phosphorus load delivered to tidal waters as determined by the specific geographic location of the nutrient source. For point source discharges the delivery factor accounts for attenuation that occurs during riverine transport between the point of discharge and tidal waters. For nonpoint source loads the delivery factor accounts for attenuation that occurs during riverine transport as well as attenuation between the nutrient source and the edge of the nearest stream. Delivery factors values shall be as specified by the department. [In the Chesapeake Bay Watershed, the Chesapeake Bay Program Partnership's approved delivery factors shall be used.]

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality or his designee.

"Exchange" means the transaction in which a person [~~buys~~ acquires] released nutrient credits produced by a nutrient [~~credit generating entity~~ credit-generating project].

"Field office technical guide" or "FOTG" means technical guides about conservation of soil, water, air, and related plant and animal resources and are the primary scientific reference for the U.S. Department of Agriculture's Natural Resource Conservation Service. These guides are used in each field office and are localized so that they apply specifically to the geographic area for which they are prepared.

"Hayland" means land that is used to grow a grass, legume, or other plants such as clover or alfalfa, which is cut and dried for feed.

"Highly erodible soils" means land that is defined as highly erodible by the Sodbuster, Conservation Reserve, and Conservation Compliance parts of the Food Security Act of 1985 (P.L. 99-198) and the Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101-624). Lists of highly erodible and potential highly erodible map units are maintained in NRCS field office technical guide.

"HUC" means the hydrologic unit code.

"Impaired waters" means those waters identified as impaired in the 305(b)/303(d) Water Quality Assessment Integrated Report [~~(see 9VAC25-900-70)~~ prepared pursuant to § 62.1-44.19:5 of the State Water Control Law.]

"Implementation plan" means a plan that has been developed to meet the requirements of 9VAC25-900-120 and is submitted as part of the application.

"Invasive plant species" means non-native plant species that are contained on DCR's [~~List of Invasive Alien Plant Species of Virginia (see 9VAC25-900-70).~~ Virginia Invasive Plant Species List.

"Innovative practice" means practices or BMPs not approved by the Chesapeake Bay Program Partnership or the Virginia Stormwater BMP Clearinghouse. Nutrient credits generated by innovative practices may only be certified as term credits.

"Landowner" means any person or group of persons acting individually or as a group that owns the parcel on which a nutrient credit-generating project is sited including: (i) the Commonwealth or any of its political subdivisions, including localities, commissions, and authorities; (ii) any public or private institution, corporation, association, firm, or company organized or existing under the laws of this or any other state or country; or (iii) any officer or agency of the United States.]

"Land use controls" means legal measures or instruments that restrict the activity, use, and access to property.

"Land use conversion" means a change from a more intensive to less intensive land use resulting in nutrient reductions.

"Management area" means all contiguous parcels deeded to the same landowner that includes the [site of the] nutrient credit-generating [~~site~~ project] within its boundaries. The term contiguous means the same or adjacent parcels that may be divided by public or private right-of-way. The management area [~~does not include publicly owned roads or rights of way.~~ for an MS4 generating nutrient credits is the MS4 service area.

"Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent practicable and then compensating for remaining unavoidable impacts of a proposed action.

"Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is developed and approved in accordance with all applicable federal and state laws or regulations for the establishment, use and operation of mitigation banks and is operating under a signed mitigation banking instrument.]

"Mitigation banking instrument" means the legal document for the establishment, operation, and use of a stream or wetland mitigation bank.

"MS4" means a municipal separate storm sewer system as defined in 9VAC25-870-10.

["MS4 service area" means the term as described in 9VAC25-890.]

"Non-land use conversion" means practices, except for land use conversion, that are used by a nutrient credit-generating [~~entity~~ project] to produce nutrient reductions.

"Nonpoint source pollution" [or "nonpoint source"] means pollution such as sediment, nitrogen, phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"NRCS" mean the U.S. Department of Agriculture's Natural Resource Conservation Service.

"Nutrient credit" or "credit" means a [nonpoint source] nutrient reduction that is certified pursuant to this chapter and expressed in pounds of phosphorus and nitrogen either (i) delivered to tidal waters when the credit is generated within the Chesapeake Bay Watershed or (ii) as otherwise specified when generated in the Southern Rivers watersheds. Nutrient credit does not include point source nitrogen credits or point source phosphorus credits as defined in § 62.1-44.19:13 of the Code of Virginia.

[~~"Nutrient credit-generating entity" means an entity that implements practices for the generation of nonpoint source nutrient credits.~~

"Nutrient credit-generating project" or "project" means a project developed to reduce the load of nitrogen and phosphorous nonpoint source pollution in order to generate nutrient credits for certification pursuant to this chapter.]

"Nutrient reductions" means the reduction in the load of nitrogen and phosphorous nonpoint source pollution.

"Owner" means the Commonwealth or any of its political subdivisions, including [~~but not limited to~~] sanitation district commissions and authorities and any public or private institution, corporation, association, firm, or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any nutrient credit-generating [~~entity~~ project].

"Pasture" means land that supports the grazing of domesticated animals for forages.

"Performance standards" means the minimum objectives or specifications required of a particular management practice by the department in order to assure predicted nutrient reductions will be achieved.

"Perpetual nutrient credits" or "perpetual credits" mean credits that are [generated by practices that result in permanent nutrient reductions from baseline and] certified as permanent in accordance with this chapter.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including a federal, state, or local entity as applicable, any interstate body or any other legal entity.

"Potential nutrient credits" means the possible credits generated by a nutrient credit-generating [~~entity~~ project] as calculated pursuant to 9VAC25-900-110. These potential nutrient credits shall be expressed in terms of the estimated number of phosphorus and nitrogen credits generated.

"Redevelopment" means a project that includes new development on previously developed land.

"Registry" means the online Virginia Nutrient Credit Registry established and maintained by the department in accordance with § 62.1-44.1.19:20 D of the Code of Virginia.

"Released nutrient credit" means credits that the department has determined to be eligible for [~~exchange~~ placement] on the Virginia Nutrient Credit Registry.

["Restoration" means the reestablishment of a wetland, stream, or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology, soils, and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered, or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.]

"Retrofit" means a project that provides improved nutrient reductions to previously developed land through the implementation of new BMPs or upgrades to existing BMPs.

"Site" means the physical location [within the management area] where the nutrient credit-generating [~~entity~~ project] and its associated practices, both baseline and credit-generating, are located.

"Site protection instrument" means a [deed restriction, conservation easement, or other] legal mechanism approved by the department that provides assurance that the credits will be maintained [~~for the term of the credit.~~ in accordance with this chapter and the certification requirements.]

"Southern Rivers watersheds" means the land areas draining to the following river basins: the Albemarle Sound, [Coastal; the Atlantic Ocean, Coastal;] the Big Sandy River Basin; the Chowan River Basin; the Clinch-Powell River Basin; the New Holston River Basin (Upper Tennessee); the New River Basin; the Roanoke River Basin; [or] the Yadkin River Basin [~~, or those water bodies draining directly to the Atlantic Ocean~~].

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

"Steward" or "long-term steward" means any person who is responsible for implementation of the long-term management plan of a perpetual nutrient credit-generating project.]

"Structural BMPs" means any [~~manmade~~ man-made] stormwater control measure or feature that requires routine maintenance in order to function or provide the hydrologic, hydraulic, or water quality benefit as designed. Structural practices include [~~, but are not limited to~~] bioretention, infiltration facilities, wet ponds, extended detention, wet and dry swales, permeable pavement, rainwater harvesting, vegetated roofs, underground or surface chambers or filters, and other manufactured treatment devices (MTDs).

"T" means the soil loss tolerance rate as defined by the NRCS.

"Term nutrient credit" or "term credit" means nutrient reduction activities that generate credits for a determined and finite period of at least one year [but no greater than five years].

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs. [~~TMDL is not necessarily a daily load but may be expressed in other units of time.~~ TMDLs in Virginia are expressed as both a daily load and an annual load.] For nutrient trading, [~~yearly~~ annual] loads are most often utilized.

"Tributary" means those river basins for which separate tributary strategies were prepared pursuant to § 2.2-218 of the Code of Virginia and includes the Potomac, Rappahannock, York, and James River basins, and the Eastern Coastal 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. For areas outside of the Chesapeake Bay Watershed, "tributary" includes the following watersheds: Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston (Upper Tennessee); New River; Roanoke; and Yadkin.

"Urban lands" means lands characterized by developed areas with buildings, asphalt, concrete, suburban gardens, and a systematic street pattern. Classes of urban development include residential, commercial, industrial, institutional, transportation, communications, utilities, and mixed urban. Undeveloped land surrounded by developed areas, such as cemeteries, golf courses, and urban parks is recognized as urban lands.

"VACS BMP Manual" means the Virginia Agricultural Cost Share BMP Manual (see 9VAC25-900-70).

"Virginia Chesapeake Bay TMDL Watershed Implementation Plan," "Watershed Implementation Plan," or "WIP" means the Phase I watershed implementation plan strategy submitted by Virginia and approved by the [U.S.] Environmental Protection Agency (EPA) in December 2010 to meet the nutrient and sediment allocations prescribed in the Chesapeake Bay Watershed TMDL or any subsequent revision approved of EPA (see 9VAC25-900-70).

"Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

"Virginia Stormwater Management Program" or "VSMP" means a program to manage the quality and quantity of runoff resulting from land-disturbing activities and includes such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement, where authorized in the Stormwater Management Act and pursuant to 9VAC25-870, 9VAC25-880, or 9VAC25-890.

["Virginia Water Protection permit" or "VWP permit" means an individual or general permit issued by the board under § 62.1-44.15:20 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as Virginia's Section 401 certification.]

"VPA" means Virginia Pollution Abatement.

"VPDES" means Virginia Pollutant Discharge Elimination System.

["VSMP authority" means a Virginia stormwater management program authority as defined in 9VAC25-870-10.]

"VWP" means Virginia Water Protection.

"Water body with perennial flow" means a body of water that flows in a natural or man-made channel year-round during a year of normal precipitation as a result of groundwater discharge or surface runoff. Such water bodies exhibit the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Water Quality Guide" means Virginia's Forestry Best Management Practices for Water Quality [~~(see 9VAC25-900-70)~~].

["Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and

duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.]

Part II
General Information

9VAC25-900-20. Authority and delegation of authority.

A. This chapter is issued under authority of § 62.1-44.19:20 of the Act.

B. The director may perform any act of the board provided under this [~~regulation~~ chapter] except as limited by § 62.1-44.14 of the Code of Virginia.

9VAC25-900-30. Purpose and applicability.

A. The purpose of this chapter is to establish standards and procedures pertaining to the certification of nutrient credits [that will be placed on the registry for exchange].

B. This chapter applies to all persons who submit an application for and to all persons that receive a certification of nutrient credits from the department in accordance with the Act and this chapter.

C. Nutrient credits from stormwater nonpoint nutrient credit-generating [~~entities~~ projects] in receipt of a Nonpoint Nutrient Offset Authorization for Transfer letter from the department prior to [~~[the effective date of this chapter]~~ (insert the effective date of this chapter)] shall be considered certified nutrient credits and shall not be subject to further nutrient credit certification requirements or to the credit retirement requirements of this chapter. However, such [~~entities~~ projects] shall be subject to all other provisions of this chapter, including registration under 9VAC25-900-90 and the requirements of Part IV (9VAC25-900-140 et seq.) [of this chapter] including inspection, reporting, and enforcement.

[D. This chapter does not apply to the certification of point source nutrient credits that may be generated from effective nutrient controls or removal practices associated with the types of facilities or practices historically regulated by the board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse.

E. This chapter does not apply to stream or wetland restoration projects constructed prior to July 1, 2005, as no usable nutrient reductions are deemed to be generated from these projects and, therefore, no nutrient credits can be certified.]

9VAC25-900-40. Relationship to other laws and regulations.

A. Specific requirements regarding the use of nutrient credits are found in the following regulations and statutes:

1. Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870).

a. VSMP Individual Permits for Discharges from Construction Activities. As specified in § 62.1-44.19:21 B of the Act, those applicants required to comply with water quality requirements for land-disturbing activities operating under a construction individual permit issued pursuant to 9VAC25-870 may acquire and use perpetual nutrient credits placed on the registry for exchange.

b. VSMP Individual Permits for Municipal [Separate] Storm Sewer Systems. As specified in § 62.1-44.19:21 A of the Act, an MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance with any wasteload allocations established as effluent limitations in an MS4 individual permit issued pursuant to 9VAC25-870. Such method of compliance may be approved by the department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits and is in accordance with the provisions of § 62.1-44.19:21 A.

2. General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880). As specified in § 62.1-44.19:21 B of the Act, those applicants required to comply with water quality requirements for land-disturbing activities operating under a general VSMP permit for discharges of stormwater from construction activities issued pursuant to 9VAC50-880 may acquire and use perpetual nutrient credits placed on the registry for exchange.

3. General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (9VAC25-890). As specified in § 62.1-44.19:21 A of the Act, an MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance with any wasteload allocations established as effluent limitations in an MS4 general permit issued pursuant to 9VAC25-890. Such method of compliance may be approved by the department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits and is in accordance with the provisions of § 62.1-44.19:21 A.

4. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). As specified in § 62.1-44.19:21 C of the Act, owners of confined or concentrated animal feeding operations issued individual permits pursuant to 9VAC25-31 may acquire, use, and transfer credits for compliance with any wasteload allocations contained in the provisions of a VPDES permit. Such method of compliance may be approved by the department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

5. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity (9VAC25-151). As specified in § 62.1-44.19:21 D of the Act, owners of facilities registered for coverage under 9VAC25-151 for the general VPDES permit may acquire, use, and transfer credits for compliance with any wasteload allocations established as effluent limitations in a VPDES permit. Such method of compliance may be approved by the department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

6. 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 (9VAC25-820). Nutrient credits certified pursuant to this chapter may be acquired to offset mass loads of total nitrogen or total phosphorus discharged by new or expanded facilities regulated by 9VAC25-820.

B. This chapter shall not be construed to limit or otherwise affect the authority of the board to establish and enforce more stringent water quality-based effluent limitations for total nitrogen or total phosphorus in permits where those limitations are necessary to protect local water quality. The exchange or acquisition of credits pursuant to this chapter shall not affect any requirement to comply with such local water quality-based limitations.

9VAC25-900-50. Appeal process.

Any person applying to establish a nutrient credit-generating [~~entity~~ project] or an owner of a nutrient credit-generating [~~entity~~ project] aggrieved by any action of the department taken in accordance with this chapter, or by inaction of the department, shall have the right to review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

9VAC25-900-60. Limitations, liability, and prohibitions.

A. [~~The department~~ Except to the extent it may be an owner as defined by this chapter, none of the following] shall [~~not~~] have responsibility or liability for the performance of practices at a nutrient credit-generating [~~entity~~ project] evaluated using the procedures established in this chapter [: (i) the department, (ii) a VSMP authority, or (iii) any political subdivision of the Commonwealth].

B. Those persons with whom the department contracts, including those serving as technical evaluators on an advisory committee, are advisors to the department, and the department remains solely responsible for decisions made regarding implementation of this chapter.

C. For the purposes of this chapter, the certification of nutrient credits that are generated from practices funded in part or in whole by federal or state water quality grant funds is prohibited other than controls and practices under § 62.1-44.19:20 B 1 a of the Act; however, establishing baseline as specified in 9VAC25-900-100 may be achieved through the use of such grants.

D. The option to acquire nutrient credits for compliance purposes shall not eliminate any requirement to comply with local water quality requirements [, including such requirements lawfully imposed by a locality or local MS4].

E. The issuance of a nutrient credit certification under this chapter does not convey any property rights of any sort or any exclusive privilege.

F. The issuance of a nutrient credit certification under this chapter does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

G. Nutrient credit certifications are not transferable except [~~after notice to the department~~] in accordance with 9VAC25-900-180. The department may require modification or revocation and reissuance of nutrient credit certifications to change the name of the owner of the nutrient credit-generating [~~entity~~ project] and incorporate such other requirements as may be necessary under the State Water Control Law or the Clean Water Act.

H. No person shall offer for exchange nutrient credits except in compliance with the provisions of this chapter.

I. No nutrient credit shall be generated by practices previously implemented to comply with: (i) the requirements for a VPDES (9VAC25-31), VPA (9VAC25-32), VWP (9VAC25-210), or VSMP (9VAC25-870) permit; (ii) erosion and sedimentation control requirements pursuant to 9VAC25-840; or (iii) the requirements of the Chesapeake Bay Preservation Act pursuant to § 62.1-44.15:67-79 of the Code of Virginia.

[J. Nutrient credit generation and use shall be contemporaneous with the applicable permit's compliance period.]

9VAC25-900-70. Documents and Internet accessible resources.

[~~This chapter refers to documents and Internet accessible resources to be used by applicants in gathering information to be submitted to the department. Therefore, in~~ In] order to assist the applicants, the citations for the documents and the uniform resource locator (URL) for the Internet resources referenced in this chapter [~~are as follows:~~ are:]

1. [~~Virginia Chesapeake Bay TMDL Watershed Implementation Plan, November 29, 2010, Department of Environmental Quality. Available at the following Internet address:~~

~~http://www.deq.virginia.gov/Portals/0/DEQ/Water/TMDL/Baywip/vatmdlwipphase1.pdf. 2.~~] Virginia Agricultural [BMP] Cost Share [~~BMP~~] Manual, Program Year [~~2014, July 2013,~~ 2018,] Department of Conservation and Recreation, Division of Soil and Water Conservation, Richmond, Virginia. Available at the following Internet address:

[~~http://dswcapps.dcr.virginia.gov/htdocs/agbmpman/csmanual.pdf.~~ http://dswcapps.dcr.virginia.gov/htdocs/agbmpman/agbmptoc.htm.]

[~~3. List of Invasive Alien Plant Species of Virginia,~~ 2. Virginia Invasive Plant Species List,] Department of Conservation and Recreation, Division of Natural Heritage, Richmond, Virginia. Available at the following Internet address: http://www.dcr.virginia.gov/natural_heritage/invsppdflist.shtml.

[~~4.~~ 3.] Field Office Technical Guide, Natural Resources Conservation Service, United States Department of Agriculture, Washington, D.C. Available at the following Internet address: http://efotg.sc.egov.usda.gov/efotg_locator.aspx.

[~~5. 305(b)/303(d) Water Quality Assessment Integrated Report, 2012 , Department of Environmental Quality. Available at the following Internet address:~~

~~http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityAssessments/2012305(b)303(d)IntegratedReport.aspx.~~

~~6. Virginia's Forestry Best Management Practices for Water Quality,Fifth Edition 2011, Department of Forestry. Available at the following Internet address:~~

~~http://www.dof.virginia.gov/print/water/BMP/Manual/2011_Manual_BMP.pdf.~~]

Part III
Administrative and Technical Criteria

9VAC25-900-80. Procedure for application for certification of nutrient credits.

A. [~~Application submittal.~~] An applicant requesting certification of nutrient credits shall submit an application to the department [in accordance with this part. Applicants requesting a renewal of a certification of term nutrient credits shall submit an application to the department at least 60 days prior to the expiration of the nutrient credit term. If the renewal application is not received by the department at least 60 days prior to the expiration of the nutrient credit term, the application will be deemed a new application.] The application [or renewal application] shall be in the form required by the department including signature in accordance with 9VAC25-900-130 and shall include the following elements:

1. A brief narrative description of the nutrient credit-generating [~~entity~~ project].

2. Contact information for the applicant including name, address, and telephone number.

3. Contact information for the nutrient credit-generating [~~entity~~ project], including the [~~entity's~~ project's] mailing address, street address, telephone number, and the contact person's name and email address.

4. Status of the applicant as owner, co-owner, operator, or lessee of the nutrient credit-generating [~~entity~~ project] or the site on which the [~~entity~~ project] is located. The applicant shall provide documentation of the applicant's right to exercise control of the nutrient credit-generating [~~entity or~~ project and] the site on which it is located for the purposes of generating and maintaining the proposed nutrient credit-generating [~~entity.~~ project via a title, deed, grant, lease, or easement agreement. Evidence of such documentation must be recorded in the property chain of title and must identify contact information for the applicant or long-term steward for perpetual credits.] If the applicant cannot demonstrate control, those parties who singularly or in conjunction with the applicant exercise control over the nutrient credit-generating [~~entity~~ project] or the site on which it is located shall be required to jointly apply for nutrient credit certification with the applicant.

5. The name, mailing address, telephone number, and responsibilities of all known contractors responsible for any operational or maintenance aspects of the nutrient credit-generating [~~entity~~ project].

6. The number [and type] of potential nutrient credits to be generated and supporting information including (i) a description of the baseline practices in place within the management area and the nutrient credit-generating [~~entity's~~ project's] practices that may result in generation of nutrient credits beyond baseline requirements; (ii) the potential nutrient credit calculation including the efficiencies and factors used; and (iii) the associated documentation supporting the potential nutrient credits calculation. Baseline shall be determined in accordance with the requirements of 9VAC25-900-100. The number of potential nutrient credits shall be as calculated in accordance with 9VAC25-900-110.

7. A topographic map [, survey,] or another type of map deemed acceptable by the department that delineates the property boundary of the management area and clearly shows the location of [~~the~~ all practices, including] nutrient credit-generating [~~entity~~ projects] and [any] baseline practices.

8. A description of current site conditions with [~~photos~~ photographs].

9. The 8-digit, 10-digit, and 12-digit HUC in which the nutrient credit-generating [~~entity~~ project] is located.

10. For land use conversion projects, provide documentation of the condition of the land and land use controls in place as of the date specified in 9VAC25-900-100 E noting any changes in the condition of the land or land use controls since that date.

11. An implementation plan that meets the requirements of 9VAC25-900-120.

12. For structural BMPs [~~, the~~ or restoration projects required to submit and maintain financial assurance in accordance with 9VAC25-900-230, the draft financial assurance documents and] financial assurance cost estimate calculated pursuant to Part VI (9VAC25-900-230 et seq.) [of this chapter]. [As required by the schedule of release provisions of subsection B of 9VAC25-900-90, prior to the release of nutrient credits all required financial assurance mechanisms shall be established per Part VI (9VAC25-900-230 et seq.) of this chapter and approved by the department.]

13. The appropriate fee required pursuant to Part V (9VAC25-900-190 et seq.) [of this chapter].

14. [~~The~~ For perpetual credits, a draft of the] proposed site protection instrument [~~or instruments~~] for [~~perpetual credits~~ the site on which the nutrient credit-generating project is located. If the landowner is not an individual, documentation will be required establishing that the person executing the protection instrument has the authority to do so].

15. A description of other permits and approvals that may be necessary to operate the nutrient credit-generating [~~entity~~ project].

16. A description of any state or federal water quality grants received for water quality actions in the management area.

17. For perpetual credits, [~~notarized proof that all management area property used to generate credits is held with clear title by the owner and free of any unsubordinated liens~~ the applicant shall demonstrate that the site on which the nutrient credit-generating project is located is held with title free from all defects, liens, and encumbrances that would interfere with or be in conflict with the establishment and operation of the nutrient credit-generating project. The demonstration may include documentation of the subordination of property interests (e.g., mineral rights, mortgages, easement) if the department determines that the property interest would interfere with or be in conflict with the establishment and operation of the nutrient credit-generating project.

18. For term credits, the desired term of the credit shall be submitted; however, the term shall not exceed five-years].

[~~18.~~ 19.] A tax map showing the management area and adjacent parcels.

[20. For nutrient credit-generating projects using innovative practices, the department may request submittal of additional information in order to review the innovative practice. This additional information may include application provisions that are deemed relevant to the innovative practice.]

[~~19.~~ 21.] Any other information deemed necessary by the department.

B. [Applications for certification of nutrient credits based on nutrient reductions from practices other than land conversion shall be processed in accordance with this subsection.

1.] Administrative [~~completeness~~] review. Upon receiving an application pursuant to subsection A of this section, the department shall [~~conduct an administrative completeness review prior to the technical review and respond~~ perform a cursory review of the application] within 30 calendar days of [~~application~~] receipt. If the application [~~is not administratively complete~~ does not contain all the necessary elements in accordance with subsection A of this section], the department shall notify the applicant of the [~~administrative deficiencies. If the application is administratively complete,~~ missing elements. Otherwise,] the department shall notify the applicant that [the] application will be [~~technically reviewed~~ evaluated] for nutrient credit certification.

[~~C.~~ 2.] Public notification. [~~The~~ After receipt of an application, the] department shall post a public notification of the proposed nutrient credit-generating [~~entity~~ project] on its website. [The public notification shall include the name of the applicant, the location of the nutrient credit-generating project, and a description of the practices utilized.]

[~~D.~~ 3.] Technical [~~review~~ evaluation]. Once the application [~~is deemed administratively complete~~ contains all the required elements], the department shall perform a technical [~~review~~ evaluation] of the application. As part of the [~~technical review~~ evaluation], additional information may be required and the nutrient credit-generating [~~entity~~ project] and management area may be visited. Additionally, [~~if~~] the department [~~chooses,~~ may convene] a certification advisory committee [~~may be convened~~ to provide input regarding the review of an application such as those which incorporate the use of innovative practices by the nutrient credit-generating project]. Within [~~90~~ 120] days of the [~~receipt of an administratively complete application~~ department's notification that the application will be evaluated], the department shall notify the applicant of the status of the [~~technical review~~ evaluation] of the application [and, for

innovative practices, provide a projected processing timeline for the application].

[~~E. Technical completeness~~ 4. Completeness]. The nutrient credits shall not be certified until the application is [~~administratively and technically~~] complete [; however, a determination that an application is complete shall not require the department to issue the nutrient credit certification].

[a.] An application for nutrient credit certification is [~~technically~~] complete when the department receives an application in accordance with subsection A of this section, and the application [,] and any supplemental information fulfills the application requirements to the department's satisfaction.

[~~F.~~ b. For applications for certification of nutrient credits generated from innovative practices, a second public notification shall be provided after the application is complete and prior to the issuance of the nutrient credit certification. The department shall post on its website a public notification of its intent to issue a nutrient credit certification, and the notification shall include the name of the applicant, the location of the nutrient credit-generating project, a description of the innovative practice, and the proposed quantity of term nutrient credits to be certified.

5.] Nutrient credit certification. [~~The department shall notify the applicant of approval of the nutrient credit certification and provide any applicable conditions required for credit certification including retirement and release of credits in accordance with 9VAC25-900-90, or the department shall notify the applicant that the nutrient credit generating entity does not qualify for any certified credits pursuant to the requirements of this part.~~ Once the application is deemed complete, the department shall either (i) deny the application and notify the applicant that the nutrient credit-generating project does not qualify for any certified credits pursuant to the requirements of this chapter or (ii) approve the application by issuance of a nutrient credit certification and provide any applicable conditions including the schedule of release and retirement of nutrient credits in accordance with 9VAC25-900-90.]

[C. Applications for nutrient credit certification based on nutrient reductions solely from land conversion practices shall be processed in accordance with this subsection.

1. Application review. Within 30 days of receipt of an application, the department shall, if warranted, conduct a site visit. Within 45 days of receipt of an application, the department shall either determine that the application is complete or request additional specific information from the applicant. A determination that an application for a land conversion project is complete shall not require the department to issue a nutrient credit certification.

2. Public notification. After receipt of the application, the department shall post a public notification of the proposed nutrient credit-generating project on its website. The public notification shall include the name of the applicant, the location of the nutrient credit-generating project, and a description of the land conversion practice.

3. Nutrient credit certification. Within 15 days of the department's determination that the application is complete pursuant to subdivision 1 of this subsection, the department shall either (i) deny the application and notify the applicant that the nutrient credit-generating project does not qualify for any certified credits pursuant to the requirements of this chapter or (ii) approve the application by issuance of a nutrient credit certification and provide any applicable conditions including the schedule of release and retirement of nutrient credits in accordance with 9VAC25-900-90.]

9VAC25-900-90. Nutrient credit release and registration.

A. Retirement of credits.

1. Pursuant to the requirements of § 62.1-44.19:20 of the Act, 5.0% of the total credits certified will be retired by the department at the time of nutrient credit certification and will not be placed on the registry for exchange.

2. When phosphorus credits are acquired [~~for compliance with 9VAC25-870,~~ in accordance with 9VAC25-870-69,] the associated nitrogen credits generated by the nutrient credit-generating [~~entity~~ project] will be retired and removed from the registry by the department.

3. When nitrogen credits are [~~exchanged~~ acquired] for purposes other than compliance with [~~9VAC25-870~~ 9VAC25-870-69], the associated phosphorus credits generated by the [~~nutrient credit entity~~ nutrient credit-generating project] shall not be available for compliance under [~~9VAC25-870~~ 9VAC25-870-69].

[4. Except as limited by this subsection, associated nitrogen and phosphorus credits generated by a nutrient credit-generating project may be exchanged independently.]

B. Schedule of release of nutrient credits. The department shall establish a schedule for release of credits as follows:

1. For nutrient credit-generating [~~entities~~ projects] using land use conversion, 25% of the credits will be released by the department after the department has verified completion of the conditions of the nutrient credit certification. The remaining 75% of credits will be released by the department after it is satisfied that the implementation plan's performance criteria required pursuant to 9VAC25-900-120 has been achieved. [When a request for credit release is made concurrently with the application for nutrient credit certification from land conversion practices, the concurrent 25% initial release shall be processed on the same timeline as the application

as provided in 9VAC25-900-80 C. When the request for credit release is from a previously approved land conversion project, the department shall schedule a site visit, if warranted, within 30 days of the request and shall deny, approve, or approve with conditions the release of the remaining 75% of the nutrient credits within 15 days of the site visit or determination that a site visit is not warranted.]

2. [For nutrient credit-generating projects using wetland or stream restoration, after construction 25% of the credits may be released by the department after the department has verified completion of the conditions of the nutrient credit certification. Every monitoring year thereafter, 25% of the credits may be released if all performance standards are met, the area or channel is stable, and, for streams, evidence is presented that a bankfull event occurred within the monitoring year. For streams, if a bankfull event did not occur, but performance standards are met and the channel is stable, 10% of the credits may be released. No additional credits will be released after the fourth monitoring year until a bankfull event has occurred. After the fourth monitoring year, if a bankfull event occurs, the channel is stable, and all performance standards are met, 25% of the credits may be released that monitoring year, not to exceed the remaining credits available. The schedule for release of credits shall also require, prior to the release of credits, the approval of any required financial assurance mechanism established pursuant to Part VI (9VAC25-900-230 et seq.) of this chapter.

3.] For nutrient credit-generating [~~entities~~ projects] using practices other than land use conversion [or wetland or stream restoration], the schedule for release of credits will be determined by the department [on a case-by-case basis] and provided to the applicant with the nutrient credit certification. For [~~entities~~ projects] using structural BMPs, the schedule shall also require, prior to release of credits, the approval of [~~the~~ any required] financial assurance mechanism established pursuant to Part VI (9VAC25-900-230 et seq.) [of this chapter].

C. Registration of nutrient credits. Credits will be placed on the registry and classified as term or perpetual credits by the department. The registry will also indicate the number of credits that have been released for exchange. Only credits released by the department are available for exchange. Exchange of a credit released by the department is:

1. Subject to the provisions of § 62.1-44.15:35, 62.1-44.19:15, or 62.1-44.19:21 of the Code of Virginia; and

2. Where necessary to ensure compliance with local water quality requirements, conditioned as follows:

a. Within the Chesapeake Bay Watershed, the exchange of credits within an area subject to an approved local TMDL for total phosphorus or total nitrogen with allocations more stringent than the Chesapeake Bay Watershed TMDL shall be limited to those credits generated upstream of where the discharge reaches impaired waters [~~and within the approved local TMDL watershed~~].

b. Within the Southern Rivers watersheds, the exchange of credits within an area subject to an approved local TMDL for total phosphorus or total nitrogen shall be limited to those credits generated upstream of where the discharge reaches impaired waters [~~and within the approved local TMDL watershed~~].

c. Within an area with waters impaired for dissolved oxygen, benthic community [,] or nutrients but with no approved local TMDL, the exchange of credits shall be limited to those credits generated in accordance with the following hierarchy:

(1) Upstream of where the discharge reaches impaired waters, if credits are available;

(2) Within the same 12-digit HUC, if credits are available;

(3) Within the same 10-digit HUC, if credits are available;

(4) Within the same 8-digit HUC, if credits are available;

(5) Within an adjacent 8-digit HUC within the same tributary, if credits are available; or

(6) Within the same tributary.

The hierarchy of this subdivision shall not apply should it be demonstrated to the department's satisfaction that [(i)] the water quality impairment is not likely caused by nutrients [; (ii) the use of credits would not reasonably be considered to cause or contribute to the impairment; or (iii) the department determines through issuance of a VPDES permit that local water quality cannot be protected unless exchange of credits are restricted to upstream of where the discharge reaches impaired waters].

9VAC25-900-100. Establishing baseline.

A. Practices for establishing baseline must be in place prior to the generation of any credits by a nutrient credit-generating [~~entity~~ project] except in the case of land use conversion as described in subsection E of this section. The practices for establishing baselines, as provided in this section, shall be implemented and properly maintained for each type of operation within the management area. Baselines are applicable statewide for nutrient credit-generating [~~entities~~ projects] including those located in either the Chesapeake Bay Watershed or the Southern Rivers watersheds. [Baselines practices are, at a minimum, in accordance with the requirements of the WIP or an approved TMDL, whichever is more stringent.]

B. [~~Agricultural cropland~~ Cropland], hayland, and pastures. [~~The baseline for agricultural management areas are those practices implemented to achieve a level of reduction assigned in the WIP or an approved TMDL.~~] Baselines for cropland, hayland, or pastures within the management area shall be established in accordance with [~~either~~] subdivision 1, 2, or 3 of this subsection.

1. The owner holds a valid Certificate of Resource Management Plan Implementation for the management area that has been issued pursuant to the Resource Management Plans regulation (4VAC50-70).

2. If the owner does not hold a valid Certificate of Resource Management Plan Implementation for the management area, [~~he~~ the owner] shall implement the following practices for establishing baseline:

a. Soil conservation. Soil conservation practices for the management area shall be implemented and maintained to achieve a maximum soil loss rate not to exceed "T" and to address gross erosion when it is present as gullies or other severely eroding conditions.

b. Nutrient management. Implementation and maintenance of the nutrient management practices required by the nutrient management plan written by a certified nutrient management planner pursuant to the Nutrient Management Training and Certification Regulations (4VAC50-85).

c. Riparian buffer. A woodland or grass riparian buffer shall be installed and maintained around all water bodies with perennial flow within the management area and shall be installed and maintained along all water bodies with perennial flow bordering the management area. The riparian buffer shall be a minimum width of 35 feet as measured from the top of the channel bank to the edge of the cropland, hayland, or pasture and in accordance with DCR Specifications for NO. FR-3 or DCR Specifications for NO. WQ-1 contained in the VACS BMP Manual.

d. Cover crop. For croplands, cover crops shall be planted to meet the standard planting date and other specifications in accordance with DCR Specifications for NO. SL-8B contained in the VACS BMP Manual. This requirement applies to all croplands where summer annual crops are grown and the summer annual crop receives greater than a total of 50 pounds per acre of nitrogen application from any nutrient source; however, if the cropland is planted to winter cereal crops for harvest in the spring, then cover crops do not need to be planted on these croplands during that production year.

e. Livestock water body exclusion. For pastures or when livestock are present within the management area, livestock exclusion fencing shall be placed around perennial streams, rivers, lakes, ponds, or other water bodies having perennial flow. This exclusionary fencing shall be constructed in accordance with DCR Specification NO. WP-2 contained in the VACS BMP Manual in order to restrict livestock access to the water body. Livestock shall be provided with an alternative watering source. The livestock exclusion fencing shall be placed at least 35 feet from the top of the channel bank and this exclusion zone shall contain the riparian buffer required by subdivision 2 c of this subsection. Access points for livestock watering or crossing over a water body shall be a hardened surface constructed to DCR Specifications for NO. WP-2 contained in the VACS BMP Manual and shall be fenced to limit livestock access to the water body at the crossing point. Ponds that have been specifically built for the purpose of livestock watering and that do not have perennial flow through an overflow pipe or spillway are not required to meet the provisions of this subdivision [2 e].

3. The department may approve a load-based baseline determination equivalent to full implementation of the practices identified in subdivision 2 of this subsection.

C. Agricultural animal feeding operations. Baselines for agricultural animal feeding operations within the management area shall be established in accordance with either subdivision 1 or 2 of this subsection:

1. The animal feeding operation [~~within the management area has~~ is in compliance with] a valid VPDES or VPA permit in compliance with the board's regulations.

2. For animal feeding operations excluded from or not required to hold a VPDES or VPA permit under the board's regulations, the practices for establishing baseline shall be implemented and properly maintained as required in this subdivision 2.

a. Implementation and maintenance of the nutrient management practices required by the nutrient management plan written by a certified nutrient management planner pursuant to the Nutrient Management Training and Certification Regulations (4VAC50-85).

b. For animal feeding operations, except confined poultry operations, a storage facility designed and operated to prevent point source discharges of pollutants to state waters except in the case of a storm event greater than a 25-year/24-hour storm and to provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste shall be implemented and maintained.

c. For confined poultry operations, storage of poultry waste according to the nutrient management plan and in a manner that prevents contact with surface water and

groundwater. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility or at a location that provides adequate storage. Adequate storage management practices shall meet the following minimum requirements:

(1) The poultry waste shall be covered to protect it from precipitation and wind.

(2) Stormwater shall not run onto or under the area where the poultry waste is stored.

(3) The ground surface of the poultry waste storage area shall have a minimum of two feet separation distance to the seasonal high water table. If poultry waste is stored in an area where the seasonal high groundwater table lies within two feet of the ground surface, the storage area shall be underlain by a low-permeability, hard-surfaced barrier such as concrete or asphalt.

(4) For poultry waste that is not stored inside or under a roofed structure, the storage area must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

D. Urban practices. [~~Baselines for urban development are applicable to the entire management area.~~] Achievement of baseline for new development, redevelopment, or retrofits to existing development shall be required prior to generation of credits. These baselines are:

1. For new development and redevelopment, baseline shall be achieved through compliance with the post-construction water quality design criteria requirements of the Virginia Stormwater Management Program (VSMP) Regulation under 9VAC25-870-63. Additionally, for development in a locality with a local stormwater management design criteria more stringent than 9VAC25-870-63, baselines shall be achieved through compliance with the local stormwater management ordinance.

2. For retrofits within the Chesapeake Bay Watershed, baseline shall be at a level necessary to achieve the nutrient reduction assigned in the urban sector of the WIP or the approved local TMDL, whichever is more stringent.

3. For retrofits within the Southern Rivers watersheds and within a watershed with an approved TMDL with total phosphorus or total nitrogen allocations, baselines shall be at a level necessary to achieve reductions of the approved TMDL. For all other retrofits within the Southern Rivers watersheds, baseline shall be achieved through compliance with the post-construction water quality design criteria requirements for development on prior developed lands pursuant to 9VAC25-870-63 A 2.

[4. For a nutrient credit-generating project owned by an MS4 permittee, baseline shall only be achieved when the level of nutrient reduction required by the WIP or approved TMDL, whichever is more stringent, is achieved for the entire MS4 service area. MS4 permittees generating credits for exchange outside the MS4 service area shall have an accounting system demonstrating that the exchanged credits are not used to satisfy the MS4 permit requirements.]

E. Land use conversions. Baselines for land use conversion shall be established using the preconversion land use. The preconversion land use shall be based on the land use as of (i) July 1, 2005, for a nutrient credit-generating [~~entity~~ project] located within the Chesapeake Bay Watershed; (ii) the date of the approved TMDL for a nutrient credit-generating [~~entity~~ project] located within a TMDL watershed but not within the Chesapeake Bay Watershed; or (iii) July, 1, 2009, for a nutrient credit-generating [~~entity~~ project] not within an approved TMDL watershed or the Chesapeake Bay Watershed.

F. [Stream or wetland restoration. Baseline for stream restoration shall be established using the pre-restoration condition of the stream. Baseline for wetland restoration shall be established on a case-by-case basis, depending on the current land use of the proposed wetland restoration area.

G.] Other nutrient credit-generating [~~entities~~ projects]. The department shall establish baselines for other nutrient credit-generating [~~entities~~ projects] not otherwise regulated by subsections B through [~~E~~ F] of this section. The practices necessary for establishing baseline at these other nutrient credit-generating [~~entities~~ projects] shall be in accordance with the requirements of the WIP or the approved TMDL and shall utilize the best available scientific and technical information regarding the practices.

9VAC25-900-110. Credit calculation procedures.

A. Pursuant to this section, the applicant shall calculate the potential nutrient credits generated by the practices implemented at the nutrient credit-generating [~~entity~~ project]. The applicable delivery factors, dependent upon the tributary in which the nutrient credit-generating [~~entity~~ project] is located, shall be applied when calculating the potential credits generated.

B. For agricultural practices, except land use conversion, the potential nutrient credits shall be calculated using removal efficiencies for practices approved by the department. In the Chesapeake Bay Watershed, these practices shall be approved by the department based on the efficiencies assigned by the Chesapeake Bay Program. In the Southern Rivers watersheds, these practices shall be approved by the department based on submitted calculations and demonstrations. The standards and specifications for implementation of the practices will be established by the department and shall be in accordance with the VACS BMP Manual or the FOTG, as applicable.

C. For urban practices, the potential nutrient credits shall be calculated using the applicable removal efficiencies pursuant to 9VAC25-870-65 or using the best available scientific and

technical information available at the time of nutrient credit certification as approved by the department. Limitations on potential nutrient credits from certain BMPs are:

1. In the Chesapeake Bay Watershed, nutrient load reductions from practices in place prior to July 1, 2005, may not be used to generate credits. [Removal efficiencies shall be based upon those efficiencies approved by the Chesapeake Bay Program partnership where applicable. These efficiencies shall be reviewed at the time of certification renewal and adjusted as necessary based upon changes made by the Chesapeake Bay Program Partnership.]

2. In the Southern Rivers watersheds, nutrient load reductions from practices in place prior to July 1, 2009, may not be used to generate credits.

D. For land use conversions, conversion of land to a more intensive land use activity will not generate nutrient credits. The number of potential nutrient credits shall be determined by calculating the nutrient credits per acre and multiplying that number by the total acreage that will undergo land use conversion. The nutrient credits per acre is equal to the amount calculated by subtracting the load per acre of nutrient nonpoint source pollution for the proposed land use after conversion from the load per acre for the preconversion land use. The values used for the loadings per acre in this calculation shall be based on the applicable loading levels provided in the WIP or the approved TMDL [, where applicable]. The preconversion land use shall be based on the land use as of the date specified in 9VAC25-900-100 E. The load per acre for the preconversion land use shall reflect the implementation of any applicable baseline practices necessary to comply with 9VAC25-900-100 B, C, and D. No credits shall be generated from the conversion of land within 35 feet of a water body with perennial water flow as measured from the top of the channel bank.

E. [For wetland or stream restoration, an existing conditions assessment survey will be completed prior to restoration activities to use as a pre-restoration condition (baseline pursuant to of 9VAC25-900-100 F) and will be used for comparison to post-restoration conditions. The potential number of credits shall be determined by applying protocols or guidance on a case-by-case basis using the best available scientific and technical information, as approved by the department.

F.] For a practice not previously approved by the department, the department will perform a case-by-case review in order to calculate the number of potential nutrient credits generated. The owner shall submit the removal efficiency calculation information for the practice and the calculation of the potential number of credits generated using that efficiency. The department may also request that the submittal include requirements for demonstration projects, the collection of sufficient data to evaluate the results, and any other information the department deems necessary to determine the validity of the credits. [In the Chesapeake Bay Watershed, for a practice not approved by the Chesapeake Bay Program Partnership, the department will perform a case-by-case review in order to calculate the number of potential nutrient credits generated on a term basis.]

9VAC25-900-120. Implementation plan.

A. The implementation plan submitted pursuant to 9VAC25-900-80 shall provide information detailing how the nutrient credit-generating [~~entity~~ project] will generate credits for the term of the credits. The implementation plan will include the applicable information as required in subsections B through [~~I~~ J] of this section.

B. For all nutrient credit-generating [~~entities~~ projects], the implementation plan shall include:

1. An operation and maintenance plan that provides a description and schedule of operation and maintenance requirements and detailed written specifications and process diagrams for the practices used at the nutrient credit-generating [~~entity~~ project]. The plan must be adhered to for the term of the credits and shall include a description of site management activities to be performed after meeting all performance standards to ensure long-term sustainability of the site.

2. The performance standards that shall be used to evaluate whether the nutrient credit-generating [~~entity~~ project] is generating credits as calculated in 9VAC25-900-110.

3. Applicable requirements for the project required pursuant to Part IV (9VAC25-900-140 et seq.) [of this chapter].

C. For nutrient credit-generating [~~entities~~ projects] utilizing managed afforestation land use conversion, the implementation plan shall also include:

1. A project plan submitted in the form required by the department and prepared by a person trained in (i) forestry management, (ii) nutrient management, or (iii) other applicable land management training that includes an understanding of whole land management planning. The project plan shall include [~~, but is not limited to~~] (i) methods for invasive plant species control and eradication if woody invasive plant species impacts 5.0% or more of the nutrient credit-generating [~~entity's~~ project's] acreage; (ii) a requirement that any harvesting of timber shall adhere to best management practices as set forth by [~~DOF's~~ Department of Forestry's] Water Quality Guide and any other applicable local, state, or federal laws or requirements; (iii) the land management goals; (iv) a statement that no fertilizer is to be used on the nutrient credit-generating [~~entity's~~ project's] land conversion acreage for the term of the credit generated; (v) a planting plan to include size, species, and spacing of trees; and (vi)

any planting phases planned for the project if the area will not be planted all at one time, but will be planted in different phases. Additionally, if timbering is planned within the land conversion area, a copy of the timbering plan shall be submitted to the department at least 90 days prior to the occurrence of any land disturbance or timbering.

2. Provisions for planting forests to achieve an initial survival density of a minimum of 400 [deciduous tree or evergreen tree] woody stems per acre including any noninvasive volunteers. Survival of planted deciduous trees shall not be established until the start of the second complete growing season following planting. Survival of planted evergreen trees may be established after completion of the first complete growing season following planting.

3. A description of agricultural baseline requirements implemented in accordance with 9VAC50-900-100 B and C that apply to any remaining portions of the management area that are not undergoing land use conversion.

4. Performance standards and reporting procedures demonstrating ongoing compliance with the baseline requirements of 9VAC25-900-100 B and C.

D. For nutrient credit-generating [~~entities~~ projects] utilizing natural succession land use conversion, the implementation plan shall also include provisions for:

1. Forests to achieve an initial density of a minimum of 400 noninvasive woody stems per acre.

2. Invasive plant species control and eradication if woody invasive plant species impacts 5.0% or more of the nutrient credit-generating [~~entity's~~ project's] acreage.

3. A description of agricultural baseline requirements implemented in accordance with 9VAC25-900-100 B and C that apply to any remaining portions of the management area not undergoing land use conversion.

4. Performance standards for demonstrating ongoing compliance with the agricultural baseline requirements of 9VAC25-900-100 B and C.

E. For nutrient credit-generating [~~entities~~ projects] utilizing other land use conversion not subject to [~~either~~] subsection C, D, or G of this section, the implementation plan shall also include:

1. Description of the land use conversion project and its implementation and maintenance criteria.

2. Description of the applicable baseline practices implemented in accordance with 9VAC25-900-100 for the management area including the nutrient credit-generating [~~entity~~ project].

3. Performance standards and reporting procedures demonstrating ongoing compliance with the baseline practices requirements of 9VAC25-900-100.

F. For nutrient credit-generating [~~entities~~ projects] utilizing non-land use conversion agricultural practices, the implementation plan shall also include:

1. A description of the entire management area. This description shall include (i) the acreage and use including descriptions for the proposed practices of the nutrient credit-generating [~~entity~~ project] and baseline area [~~or areas~~]; (ii) water features including all streams, ponds, lakes, and wetlands; (iii) environmentally sensitive sites as defined in 4VAC50-85-10; (iv) areas with highly erodible soils; and (v) the current agricultural operations, crops, or animal facilities.

2. Copies of the current nutrient management plans developed by a certified nutrient management planner and approved by the department and any soil conservation plans completed by a certified conservation planner.

3. Information on the location and status of all existing and proposed BMPs including implementation schedules, lifespan, and maintenance procedures for each BMP that constitutes the baseline requirements.

G. For nutrient credit-generating [~~entities~~ projects] utilizing [~~existing~~ approved] wetland and stream mitigation projects pursuant to § 62.1-44.15:23 of the Code of Virginia, the implementation plan shall also include:

1. A copy of the approved mitigation banking instrument.

2. A plan [view map] clearly delineating and labeling areas to be considered for credit conversion.

3. A spreadsheet or table listing each labeled area. For each labeled area, the table shall include:

a. The type of eligible land use conversion [or restoration practice];

b. The acreage [or linear feet] of the area;

c. The available mitigation credits;

d. The potential nutrient credits; and

e. The ratio of mitigation credits to nutrient credits.

4. Documentation that complies with the department-approved procedure to ensure credits are not used for both wetland or stream credit and nutrient credit purposes. [~~This documentation shall include the approval by the mitigation banking Interagency Review Team.~~

5. Documentation shall include written approval from the Interagency Review Team, which oversees stream and wetland mitigation projects pursuant to 33 CFR 332.8 and § 62.1-44.15:23 of the Code of Virginia, to establish a

nutrient credit generating site within an approved mitigation bank.

H. For nutrient credit-generating projects utilizing proposed new wetland or stream restoration projects not subject to 33 CFR 332.8 and § 62.1-44.15:23 of the Code of Virginia, the implementation plan shall also include, where appropriate to the type of restoration and project:

1. Certification that the owner will obtain all appropriate permits or other authorizations needed to construct and maintain the restoration activities, prior to initiating work in state waters.

2. An initial wetland restoration plan, which shall include the following:

a. The goals and objectives in terms of proposed nutrient reductions and restoration activities;

b. A detailed location map (e.g., a U.S. Geologic Survey topographic quadrangle map) including latitude and longitude to the nearest second and the hydrologic unit code (HUC) at the center of the site;

c. A description of the surrounding land use;

d. A hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year;

e. The groundwater elevation data or, if not available, the proposed location of groundwater monitoring wells to collect this data;

f. Wetland delineation confirmation and data sheets and maps for existing surface water areas on the proposed site;

g. A preliminary grading plan;

h. A preliminary wetland planting scheme, including suggested plant species and zonation of each vegetation type proposed;

i. Descriptions of existing soils, including general information on topsoil and subsoil conditions, permeability, and the need for soil amendments;

j. A preliminary design of any water control systems or structures for wetland restoration or establishment;

k. Depiction of any land conversion or other buffer areas associated with the nutrient credit-generating entity;

l. A description of any structures or features necessary for the success of the site; and

m. A preliminary schedule for site construction.

3. An initial stream restoration plan, which shall include the following:

a. The goals and objectives in terms of proposed nutrient reductions and restoration activities;

b. A detailed location map (e.g., a U.S. Geologic Survey topographic quadrangle map), including the latitude and longitude (to the nearest second) and the hydrologic unit code (HUC) at the center of the site;

c. A description of the surrounding land use;

d. The preliminary proposed stream segment restoration locations, including plan view, profile, and cross-section sketches;

e. The existing stream deficiencies that need to be addressed;

f. The proposed restoration measures to be employed, including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme for streambank plantings;

g. Reference stream data, if available;

h. Depiction of any land conversion or other buffer areas associated with the nutrient credit-generating project; and,

i. A preliminary schedule for site construction.

4. Prior to construction of the restoration site, the following final plans shall be submitted where appropriate to the type of restoration:

a. The final wetland restoration plan, which shall include all of the items listed in subdivision H 2 of this section and the following:

(1) A summary of the type and acreage of existing stream and wetland impacts anticipated during the construction of the restoration site and the proposed compensation for these impacts;

(2) A site access plan;

(3) An erosion and sediment control plan meeting the requirements of 9VAC25-840;

(4) The final construction schedule; and

(5) A monitoring plan as detailed in subdivision H 4 c of this section.

b. A final stream restoration plan, which shall include the items listed in subdivision H 3 of this section of this section and the following:

(1) A summary of the type and acreage or linear feet of impacts to state waters anticipated during the construction of the restoration site and the proposed compensation for these impacts;

(2) Detailed plan view, profile, and cross-section sketches with the location of proposed restoration measures;

(3) A site access plan;

(4) An erosion and sediment control plan meeting the requirements of 9VAC25-840;

(5) Final construction schedule; and

(6) A monitoring plan as detailed in subdivision H 4 c of this section.

c. A monitoring plan, which shall include: (i) monitoring goals; (ii) proposed performance standards; (iii) parameters to be monitored; (iv) methods of monitoring; (v) length of monitoring period; (vi) monitoring and reporting schedule; (vii) reporting requirements; and, (viii) projects responsible for monitoring and reporting.

(1) Performance standards for wetland or stream restoration shall include specific, measureable parameters for determination of performance in comparison to as-built conditions. For wetland restoration, performance standards may include applicable parameters to demonstrate characteristics of wetland formation and stability for the type of wetland restored, including hydrology, soils, vegetation, and stability of any water control structures or berms. For stream restoration, performance standards may include applicable parameters to demonstrate characteristics of channel stability, including dimension, pattern, profile, materials, and stability of the channel and any structures.

(2) Monitoring methods and parameters shall be selected based on type of wetland or stream restoration, the implementation plan, and performance standards of the nutrient credit-generating project, and will be outlined in the monitoring plan. For wetland restoration, the monitoring plan shall include the location and number of photo stations, monitoring wells, vegetation sampling points, other monitoring equipment, and reference wetlands, if available. For stream restoration, the plan shall include the location and number of stations utilized for photo-monitoring, cross-sections, profiles, pattern measurements, streambank stability measurements, streambank vegetation surveys, bank pins, scour chains, stream gages, rain gages, other monitoring equipment, and reference streams, if available.

(3) The monitoring and reporting schedule shall include an as-built survey conducted directly following construction and at least six monitoring and reporting events over a 10-year monitoring period following construction. All monitoring activities shall occur during the growing season, with the exception that after year three, physical monitoring of stream condition (cross-section, profiles, pattern) may be conducted outside the growing season. For any year in which planting was conducted, monitoring of woody vegetation shall take place no earlier than October and at least six months following planting. If all performance standards have not been met in the 10th year, then a monitoring report shall be required for each consecutive year until two sequential annual reports indicate that all performance standards have been successfully satisfied. The extent of monitoring may be reduced, upon approval by the department, on a case-by-case basis, in response to exceptional attainment of performance standards. Submittal of a final monitoring report, typically prepared the 10th growing season following construction completion, shall be required as a baseline for long-term management.

5. A long-term management plan, which shall include:

a. Restoration projects shall include minimization of active engineering features (e.g., pumps) that require long-term management and appropriate site selection to ensure that natural hydrology and landscape context will support long-term sustainability;

b. Long-term management and maintenance shall include basic management as necessary to ensure long-term sustainability of the nutrient credit-generating project such as long-term repair or replacement, maintenance of water control or other structures, or easement enforcement;

c. The owner shall designate a responsible long-term steward in the plan. The owner of the nutrient credit-generating project is the default long-term steward and is responsible for implementing the long term management plan and management of the financial assurance. However, the owner may transfer the long-term management responsibilities and management of the long-term financial assurance to a long-term steward or land stewardship project, such as a public agency, nongovernmental organization, or private land manager, upon review and approval by the department.

d. Long-term management needs, annual cost estimates for these needs, and identifying the funding mechanism that will be used to meet these needs shall be included.]

[~~H.~~ I.] For nutrient credit-generating [~~entities~~ projects] utilizing urban practices, the implementation plan shall also include:

1. A description of the contributing drainage area (CDA) for the proposed nutrient credit-generating [~~entity's~~ project's] BMP. This description shall include (i) the acreage and land covers (e.g., impervious, forest or open space, managed turf); (ii) water features including all streams, ponds, lakes, and wetlands; (iii) identification of all impaired waters and approved TMDLs; and (iv) [~~identification/mapping~~ identification or mapping] of the

soil types within the CDA, by USDA hydrological soil group.

2. A list of all of the current urban nutrient management plans developed by a certified nutrient management planner and being implemented within the CDA.

3. Information on the location and description of existing BMPs within the CDA. For BMPs that constitute the baseline requirements include implementation schedules, lifespan, and maintenance procedures.

4. For development and redevelopment projects, the implementation plan shall include the erosion and sediment control plan and the stormwater management plan developed in accordance 9VAC25-870.

5. For retrofits, the implementation plan shall include relevant credit calculations and documentation as deemed appropriate by the department.

[~~I.~~ J.] For other types of activities or projects not presented in subsections C through [~~H~~ I] of this section, the implementation plan shall include information as deemed appropriate by the department in order to evaluate the credits for nutrient credit certification.

9VAC25-900-130. Signature requirements.

A. All applications for certification of nutrient credits shall be signed as follows:

1. For a corporation, the application shall be signed by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means 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 the manager of the nutrient credit-generating [~~entity~~ project] provided the manager is authorized to make management decisions that govern the operation of the [~~entity~~ project];

2. For a partnership or sole proprietorship, the application shall be signed by a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency, the application shall be signed by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes the chief executive officer of the agency or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. All reports required by this chapter and other information requested by the department shall be signed by a person described in subsection A of this section or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in subsection A of this section;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the [~~entity~~ project]; and

3. The written authorization is submitted to the department.

C. If an authorization under subsection B of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the [~~entity~~ project], a new authorization satisfying the requirements of subsection B of this section shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

D. Any person signing a document under subdivision A or B of this section shall [~~certify that all submittals are true, accurate, and complete to the best of his knowledge and belief.~~ 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."]

Part IV
Compliance and Enforcement

9VAC25-900-140. Inspections and information to be furnished.

A. The owner of the nutrient credit-generating [~~entity~~ project] shall allow the director or an authorized representative, including an authorized contractor acting as a representative of the department, upon presentation of credentials, to:

1. Enter the management area including the premises where the nutrient credit-generating [~~entity~~ project] is located and where records are kept in accordance with this chapter or the nutrient credit certification. Records to be retained include the approved implementation plan, operations and maintenance plan, and, if required, confirmation of financial assurance documents.

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this chapter, the approved plans listed in subdivision A 1 of this section, or as otherwise required by the nutrient credit certification. The owner will make available any records requested by the department that detail nutrient credit-generating [~~entity~~ project] operations, status, records of

transactions [,] or other actions that demonstrate the status of credits and operations of the nutrient credit-generating [~~entity~~ project] including records required to be kept under any implementation plan, operations and maintenance plan, or financial assurance documents;

3. Inspect at reasonable times any [~~entities~~ projects], equipment, practices, or operations regulated or required under the provisions of this chapter, the approved plans listed in subdivision A 1 of this section, or as otherwise required by the nutrient credit certification; and

4. Sample or monitor at reasonable times, for the purposes of assuring compliance with the provisions of this chapter, the nutrient credit certification, or as otherwise authorized by state law or regulation.

B. For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing in this section shall make an inspection unreasonable during an emergency when applicable.

C. The owner of the nutrient credit-generating [~~entity~~ project] shall furnish to the department, within a reasonable time, any information that the department may request to determine (i) whether cause exists for suspension of nutrient credit exchange, modifying, revoking and recertifying, or terminating nutrient credit certification or (ii) compliance with the provisions of this chapter or the implementation plan, operations and maintenance plan, or financial assurance approved under this chapter. The department may require the owner of the nutrient credit-generating [~~entity~~ project] to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the operation of the nutrient credit-generating [~~entity~~ project] on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the law. The owner of the nutrient credit-generating [~~entity~~ project] shall also furnish to the department, upon request, copies of records required to be kept under the provisions of this chapter or the nutrient credit certification including the approved implementation plan, operations and maintenance plan, or proof of financial assurance records.

9VAC25-900-150. Recordkeeping and reporting.

A. The owner of the nutrient credit-generating [~~entity~~ project] shall maintain all records relevant to the management, operations, and maintenance of the nutrient credit-generating [~~entity~~ project], including copies of all reports required by this chapter, the nutrient credit certification or the implementation plan, operations and maintenance plan, or financial assurance approved under this chapter. Records of all data used to complete the application for certification of nutrient credits shall be kept. All records shall be maintained for at least five years following the final exchange of any credits. 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 owner of the nutrient credit-generating [~~entity~~ project], or as requested by the board.

B. All applications, reports, or information submitted to the department shall be signed and certified as required by 9VAC25-900-130.

C. Reporting requirements.

1. The owner of the nutrient credit-generating [~~entity~~ project] shall give advance notice to the department as soon as possible of any planned physical alterations or additions to the [~~entity~~ project] when the alteration or addition could change the amount of nutrient reductions generated.

2. The owner of the nutrient credit-generating [~~entity~~ project] shall give advance notice to the department of any planned changes in the [~~entity~~ project] that may result in noncompliance with the Act, this chapter, or the nutrient credit certification.

3. Reports of compliance or noncompliance with [~~,~~] or any progress reports on achieving conditions specified in the nutrient credit certification shall be submitted no later than 14 days following each schedule date.

4. Where the owner of the nutrient credit-generating [~~entity~~ project] becomes aware that incorrect information has been submitted in an application for nutrient credit certification or in any report to the department, the owner shall promptly submit the corrected information.

5. Each owner shall submit an annual report on the status of the nutrient credit-generating [~~entity~~ project] operations including credit-generating practices, confirmation of the continued implementation and maintenance of practices required to establish baseline in accordance with 9VAC25-900-100, [statement of financial assurances,] and an up-to-date credit ledger detailing credits available for exchange, credits exchanged, and associated purchaser information. This report shall contain recent photographs of any structural BMPs implemented to achieve baseline or for nutrient credit generation [~~and it shall cover the period from July 1 through June 30 of each year~~]. The report shall [cover the period from July 1 through June 30 of each year and] be submitted annually by August 15 [unless an alternative reporting period and submittal date are provided for in the nutrient credit certification].

6. [In addition to the annual report detailed in subdivision 5 of this subsection, nutrient credit-generating projects utilizing wetland or stream restoration shall conduct post-construction monitoring and submit monitoring reports, according to the monitoring plan approved as part of the implementation plan pursuant to 9VAC25-900-120.

7.] Exchange of credits shall be recorded on the registry. The exchange of credits by the owner of the nutrient credit-generating [~~entity~~ project] shall be reported to the department within 14 calendar days of the date of the exchange. This report shall include:

a. The identification for the credits exchanged;

b. The name of and contact information for the buyer;

c. The name of the seller;

d. The amount of credits exchanged; and

e. If applicable, the name of the facility and the associated permit number that shall use the purchased credits.

9VAC25-900-160. Enforcement and penalties.

The board may enforce the provisions of this chapter utilizing all applicable procedures under the State Water Control Law.

9VAC25-900-170. Suspension of credit exchange.

A. If the department tentatively decides to suspend the ability of an owner of a nutrient credit-generating [~~entity~~ project] to exchange credits, the department shall issue a notice of its tentative decision to the owner. If the department determines that suspension is appropriate, it will also remove the ability for the owner to show credits for exchange on the registry. The ability to exchange credits shall remain suspended until such time as the owner brings the nutrient credit-generating [~~entity~~ project] into compliance with this chapter and the nutrient credit certification to the department's satisfaction.

B. The following are causes for the department to suspend the exchange of credits:

1. Noncompliance by the owner of the nutrient credit-generating [~~entity~~ project] with any condition of the nutrient credit certification or any plans approved under or required by the nutrient credit certification or this chapter;

2. Failure of the owner of the nutrient credit-generating [~~entity~~ project] to disclose fully all relevant material facts or, the misrepresentation of any relevant material facts in applying for certification of nutrient credits or in any other report or document required under the law, this chapter, the nutrient credit certification, or any plans approved or required under the nutrient credit certification;

3. A change in any condition that results in a temporary or permanent elimination of the best management practices approved as part of the nutrient credit certification; or

4. There exists a material change in the basis on which the nutrient credit certification was issued that requires either a temporary or permanent elimination of activities controlled by the nutrient credit certification necessary to protect human health or the environment; however, credit quantities established using the best available scientific and technical information at the time of certification may not be reduced.

9VAC25-900-180. Nutrient credit certification transfer, modification, revocation and [~~reccertification~~ reissuance], or termination.

A. Nutrient credit certifications may be modified, revoked and reissued, or terminated either at the request of the party holding the certification or upon the department's initiative for cause. The filing of a request by the holder of the nutrient credit certification for a modification, revocation and reissuance, or termination of a certification, or a notification of planned changes or anticipated noncompliance with regulatory requirements does not stay any condition of a nutrient credit certification.

B. If the department decides that a request for modification, revocation and reissuance, or termination is not justified, it shall send the requester a brief response giving a reason for the decision.

C. If the department tentatively decides to modify or revoke and reissue a nutrient credit certification, it may request the submission of a new application.

D. If the department tentatively decides to terminate a nutrient credit certification and the owner of the nutrient credit-generating [~~entity~~ project] objects, the department shall issue a notice of intent to terminate and shall contemporaneously notify any known buyers of the [~~entity's~~ project's] nutrient credits of its intent to terminate.

E. A certification of nutrient credits may be modified, revoked and reissued, or terminated for cause.

1. Causes for modification. The following are causes for modification, revocation, and reissuance of a certification of nutrient credits:

a. There are material and substantial alterations or additions to the nutrient credit-generating [~~entity~~ project] that occurred after certification of nutrient credits and that justify the application of conditions that are different or absent in the existing nutrient credit certification.

b. The department has received new technical information that would have justified the application of different conditions at the time of issuance; however, credit quantities established using the best available scientific and technical information at the time of certification may not be reduced.

c. The department determines good cause exists for modification of milestones within the nutrient credit certification.

d. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining nutrient credit certification conditions.

e. The department has received notification of a proposed transfer of ownership of the nutrient credit-generating [~~entity~~ project].

2. Causes for termination. The following are causes for terminating a nutrient credit certification during its term or for denying an application for certification of nutrient credits after notice and opportunity for [~~a hearing~~ an informal fact finding proceeding in accordance with § 2.2-4019 of the Administrative Process Act]:

a. The owner of the nutrient credit-generating [~~entity~~ project] has violated any regulation or order of the board or department, any provision of the law, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations that, in the opinion of the department, demonstrates the owner's disregard for or inability to comply with applicable laws, regulations, or requirements;

b. Noncompliance by the owner of the nutrient credit-generating [~~entity~~ project] with any condition of the nutrient credit certification or any plans approved under or required by the nutrient credit certification or this chapter;

c. Failure of the owner of the nutrient credit-generating [~~entity~~ project] to disclose fully all relevant material facts or the misrepresentation of any relevant material facts in applying for a certification of nutrient credits or in any other report or document required under the law, this chapter, the nutrient credit certification, or any plans approved or required under the nutrient credit certification;

d. A determination that the credit-generating activity endangers human health or the environment and can only be regulated to acceptable levels by modification or termination of the nutrient credit certification;

e. A change in any condition that results in a permanent elimination of any of the best management practices approved as part of the nutrient credit certification; or

f. There exists a material change in the basis on which the nutrient credit certification was issued that requires either a temporary or a permanent elimination of activities controlled by the nutrient credit certification necessary to protect human health or the environment; however, credit quantities established using the best available scientific and technical information at the time of certification may not be reduced.

g. Failure of the owner of the nutrient credit-generating [~~entity~~ project] to operate and maintain the required baseline practices throughout the management area.

F. Except as provided in subsection G of this section, a nutrient credit certification may be transferred to a new owner or operator only if the certification has been modified or revoked and reissued to identify the new owner or operator and incorporate such other requirements as may be necessary under the Act and this chapter.

G. As an alternative to transfers under subsection F of this section, any certification of nutrient credits may be automatically transferred if:

1. The current holder of the certification of nutrient credits notifies the department at least 30 days in advance of the proposed transfer date in subdivision 2 of this subsection;

2. The notice includes a written agreement between the existing and new owners containing a specific date for transfer of responsibility, coverage, and liability for the nutrient credit-generating [~~entity~~ project] between them; and

3. If the department does not notify the existing holder of the certification of nutrient credits and the proposed holder of its intent to modify or revoke and reissue the nutrient credit certification within the 30 days of receipt of the holder's notification of transfer, the transfer is effective on the date specified in the agreement mentioned in subdivision 2 of this subsection.

[~~H. The department shall follow the applicable procedures in this chapter when terminating any nutrient credit certification, except when the baseline or nutrient reduction practices used at a nutrient credit-generating entity are permanently terminated or eliminated the department may then terminate the nutrient credit certification by notice to the owner of the nutrient credit-generating entity. Termination by notice shall be effective 30 days after notice is sent, unless the owner objects within that time. If the owner objects during that period, the department shall follow the applicable procedures for termination under this section.~~]

Part V
Fees

9VAC25-900-190. Purpose and applicability of fees.

A. The purpose of this part is to establish a schedule of fees collected by the department in the support of its programs under this chapter and as permitted under the Act.

B. This part applies to all persons who submit an application for a certification of nutrient credits in accordance with 9VAC25-900-80. The fees shall be assessed in accordance with this part.

9VAC25-900-200. Determination of application fee amount.

A. Each nutrient credit-generating [~~entity~~ project] application and each nutrient credit-generating [~~entity~~ project] modification application is a separate action and shall be assessed a separate fee. The amount of such fees is determined on the basis of this section.

B. Perpetual nutrient credit certifications.

1. An applicant for certification of perpetual nutrient credits is assessed a base fee as shown in Table 1 of 9VAC25-900-220 A.

2. An applicant is assessed a supplementary fee based on the number of potential nutrient credits of phosphorus generated in addition to the base fee specified in subdivision 1 of this subsection. The supplementary fees are shown in Table 1 of 9VAC25-900-220 A.

3. Modifications of approved perpetual nutrient credit certifications will be assessed the base fee only unless the modifications generate additional perpetual credits then a supplementary fee based on the number of additional potential nutrient credits of phosphorus will be assessed in addition to the base fee as specified in subdivision 2 of this subsection.

4. The total fee (base fee plus supplementary fee) shall not exceed $10,000. If the calculated fee is greater than $10,000 then the applicant shall only pay $10,000.

C. Term nutrient credit certifications.

1. An applicant for certification of term nutrient credits is assessed a base fee plus a supplementary fee based on the number of potential term credits and the requested term of those credits as shown in Table 2 of 9VAC25-900-220 A.

2. A modification of an approved term nutrient credit certification is assessed a base fee plus a supplementary fee based on the number of term credits and the requested term of those credits as shown in Table 2 of 9VAC25-900-220 A.

3. A renewal will be assessed a base fee plus a supplementary fee based on the number of renewing term credits as shown in Table 3 of 9VAC25-900-220 A if there are (i) no changes to the site or practices that were submitted with the previously approved nutrient credit certification application; (ii) the renewal application submitted [~~is an exact duplicate of the application for~~ does not contain any new practices and is substantial the same as] the previously approved nutrient credit certification; and (iii) the application is submitted at least 60 days prior to the end date of the term credits for which renewal is sought. If the renewal application [includes changes to the site, changes to practices, or new practices or] is submitted less than 60 days prior to the end date of the term credits, the application shall be deemed a new application and shall be assessed a fee as provided in subdivision 1 of this subsection.

4. The total fee (base fee plus supplementary fee) shall not exceed $10,000. If the calculated fee is greater than $10,000 then the applicant shall only pay $10,000.

9VAC25-900-210. Payment of application fees.

A. Due date. All application fees are due on the day of application and must accompany the application.

B. Method of payment. Fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 1104, Richmond, VA 23218. When the department is able to accept electronic payments, payments may be submitted electronically.

C. Incomplete payments. All incomplete payments will be deemed nonpayments.

D. Late payment. Pursuant to 9VAC25-900-80, no applications will be deemed to be complete until the department receives [~~proper payment~~ the fee paid in full].

9VAC25-900-220. Application fee schedule.

A. Fees.

Table 1. Perpetual Nutrient Credits Certification Application Fees

Base Fee	$3,000
Supplementary Fees – Total Number of Perpetual Phosphorus Credits (X)	
X ≤ 30	$1,000
30 < X ≤ 60	$3,000
60 < X ≤ 90	$5,000
X > 90	$7,000

Table 2. Term Nutrient Credits Certification Application Fees

Base Fee	$3,000
Supplementary Fees	$/(Credit*Term Years)
1st 100 term nutrient credits (1 to 100)	$4.00
2nd 100 term nutrient credits (101 to 200)	$3.00
3rd 100 term nutrient credits (201 to 300)	$2.00
4th 100 term nutrient credits (> 300)	$1.00

Table 3. Renewal Term Nutrient Credits Certification Application Fees

Base Fee	$1,000
Supplementary Fees	$/(Credit*Term Years)
1st 100 term nutrient credits (1 to 100)	$4.00
2nd 100 term nutrient credits (101 to 200)	$3.00
3rd 100 term nutrient credits (201 to 300)	$2.00
4th 100 term nutrient credits (> 300)	$1.00

B. Illustrative examples.

1. Example 1. The applicant is submitting an application for nutrient credit certification of a nutrient credit-generating [~~entity~~ project] that will generate perpetual credits. The number of potential perpetual credits calculated is 150. The required fee is calculated as follows:

Base fee	$3,000
Supplementary fee for 150 perpetual P credits	+$7,000
Total fee	=$10,000

2. Example 2. The applicant is submitting an application for nutrient credit certification of a nutrient credit-generating [~~entity~~ project] that generated credits with a five-year term. The number of potential nutrient credits calculated is 275. The required fee is calculated as follows:

Base fee	$3,000
Supplementary fee for 1 to 100 credits	+(100*5*$4)=$2,000
Supplementary fee for 101 to 200 credits	+(100*5*$3)=$1,500
Supplementary fee for 201 to 275 credits	+ (75*5*$2)= $750
Total fee	= $7,250

3. Example 3. The applicant is submitting a renewal application for annual credits generated at a nutrient credit-generating [~~entity~~ project] for a five-year term. The number of annual credits being renewed for another term is 165. The required fee is calculated as follows:

Base fee	$1,000
Supplementary fee for 1 to 100 credits	+(100*5*$4)=$2,000
Supplementary fee for 101 to 200 credits	+(65*5*$3)=$975
Total fee	= $3,975

[4. Example 4. The applicant is submitting an application for nutrient credit certification of a nutrient credit-generating project that generates credits with a five-year term. The number of potential nutrient credits calculated is 1000. The required fee is calculated as follows:

Base fee	$3,000
Supplementary fee for 1 to 100 credits	+(100*5*$4)=$2,000
Supplementary fee for 101 to 200 credits	+(100*5*$3)=$1,500
Supplementary fee for 201 to 300 credits	+(100*5*$2)=$1,000
Supplementary fee for 301 to 1000 credits	+(700*5*$1)=$3,500
Total	= $11,000
Total fee	= $10,000 (fee cannot exceed $10,000)]

Part VI
Financial Assurance

9VAC25-900-230. Financial assurance applicability.

A. An owner of a nutrient credit-generating [~~entity~~ project] that utilizes structural BMPs for the generation of perpetual credits shall submit and maintain financial assurance in accordance with this part. The financial assurance mechanism shall be submitted to and approved by the department prior to the release of credits.

B. An owner of a nutrient credit-generating [~~entity~~ project] that utilizes structural BMPs for the generation of term credits with terms that exceed one year shall submit and maintain financial assurance in accordance with this part. [~~The~~ However, an owner of a nutrient credit-generating project that utilizes structural BMPs for the generation of term credits with terms that exceed one year shall not be required to submit and maintain financial assurance in accordance with this part, provided that the department annually approves the generation of the term nutrient credits prior to release of the credits. In accordance with 9VAC25-900-90 B, the] financial assurance mechanism shall be submitted to and approved by the department prior to the release of credits. For the purposes of this part, term credit shall refer to credit with a term greater than one year [but not perpetual].

C. An owner of a nutrient credit-generating [~~entity that utilizes structural BMPs for the generation of credits with a term of one year shall not be required to provide financial assurance. D.~~ project using proposed new wetland or stream

restoration practices not subject to 33 CFR 332.8 and § 62.1-44.15:23 of the Code of Virginia for the generation of perpetual credits shall be required to submit and maintain financial assurance in accordance with this chapter. In accordance with 9VAC25-900-90 B, the financial assurance mechanism shall be submitted to and approved by the department prior to the release of credits. The following financial assurances shall be provided for these new wetland or stream restoration projects:

1. A monitoring plan financial assurance mechanism shall be established to ensure implementation of the monitoring plan pursuant to 9VAC25-900-120 for any nutrient credits generated from wetland or stream restoration. When the owner conducts the required monitoring and submits a complete monitoring report as specified in the monitoring plan and report requirements, then the owner may request a reduction of the required financial assurance amount equivalent to the cost of one year of monitoring, subject to department approval. If any funds remain in the financial assurance mechanism after the monitoring period, the mechanism shall be maintained until the final monitoring report is submitted and approved, at which point the mechanism shall be released by the department; and

2. A long-term management fund financial assurance mechanism shall be established in support of required long-term management plan tasks pursuant to 9VAC25-900-120 for any nutrient credits generated from wetland or stream restoration. Long-term management funds shall be placed in a separate interest bearing trust account in an appropriate financial institution and may be funded from a sufficient percentage of all credit sale proceeds, a single lump sum payment, or an approved schedule of payments, subject to department approval. No long-term management funds shall be used to finance any expense or activity other than those specified in the long-term management plan unless approved by the department. Responsibility for and access to the long-term management fund is given to the owner or long-term steward and may be transferred to any new long-term steward that is designated by the owner and approved by the department.

~~E.~~ D.] When the nutrient credits are generated or used by a locality, authority, utility, sanitation district, or owner operating an MS4 or a point source permitted under 9VAC25-870, the [~~existing~~ existence of] tax or rate authority may be used [~~to provide evidence~~ by such entity at its option in satisfaction] of the financial assurance required pursuant to this part. [~~The locality, authority, utility, sanitation district, or owner shall certify as a condition of their application that such tax or rate authority will be used to ensure an adequate supply of credits to meet the entity's obligation, whether by continued operation and maintenance of the structural BMPs at the nutrient credit generating entity or by other means.~~]

9VAC25-900-240. Suspension of nutrient credit exchange.

Failure to provide or maintain adequate evidence of financial assurance in accordance with this part shall be cause for the department to suspend the exchange of credits in accordance with 9VAC25-900-170 or terminate the nutrient credit certification in accordance with 9VAC25-900-180.

9VAC25-900-250. Cost estimates for perpetual and term credit nutrient credit-generating [~~entities~~ projects].

A. The owner of a nutrient credit-generating [~~entity~~ project] shall prepare for approval by the department a detailed written cost estimate providing the cost of [~~either~~] repairing or restoring [, as appropriate,] and operating and maintaining any structural BMPs [~~generating perpetual nutrient credits or term nutrient credits with a term of greater than one year~~ required to submit and maintain financial assurance pursuant to 9VAC25-900-230]. This written cost estimate shall be submitted as part of the application in accordance with 9VAC25-900-80 and shall include:

1. For structural BMPs generating perpetual nutrient credits, the cost estimate shall equal the [~~estimated~~ full] cost for [~~either~~] repairing or restoring [, as appropriate,] the structural BMPs plus the cost for [~~five~~ fifty years] of operation and maintenance of the structural BMPs in accordance with the implementation plan.

2. For structural BMPs generating term nutrient credits, the cost estimate shall equal the full cost for [~~either~~] repairing or restoring [, as appropriate,] the structural BMPs plus the cost for the operation and maintenance of the structural BMPs in accordance with the implementation plan for the term of the credits or for five years, whichever is less.

3. The cost estimate shall be based on and include the costs of hiring a third party to either repair or restore and operate and maintain the structural BMPs generating nutrient credits. The third party may not be either a parent corporation or subsidiary of the owner.

B. [The owner of the nutrient credit-generating project utilizing proposed new wetland or stream restoration practices not subject to 33 CFR 332.8 and § 62.1-44.15:23 of the Code of Virginia will develop a separate written cost estimate for each of the applicable financial assurance requirements provided in 9VAC25-900-230 D. All cost estimates shall be submitted as part of the application in accordance with 9VAC25-900-80.

1. Monitoring plan financial assurance cost estimates shall be sufficient to hire another qualified entity to monitor and report on performance standards for the nutrient credit-generating project in the event of noncompliance with this chapter.

2. Long-term management fund financial assurance cost estimates shall be based on the size and complexity of the implementation plan, long-term management plan tasks,

and any other factors that the department deems appropriate and will state the total dollar amount required to fund this financial assurance.

C.] For a nutrient credit-generating [~~entity~~ project] generating perpetual credit [~~from structural BMPs~~], the cost estimate shall be [~~reviewed~~ updated by the owner and submitted to the department for its review] for sufficiency [~~by the department~~] at least once every five years.

9VAC25-900-260. Financial assurance requirements for term credits.

A. For a nutrient credit-generating [~~entity~~ project] generating term credits [~~with a term of greater than one year~~ and required to submit and maintain financial assurance pursuant to 9VAC25-900-230], the owner shall demonstrate financial assurance using any one or a combination of the mechanisms specified in 9VAC25-900-290 through 9VAC25-900-330.

B. The financial assurance mechanism [~~or mechanisms~~] shall provide funding for the full amount of the cost estimate at all times.

C. The financial assurance mechanism [~~or mechanisms~~] used to provide evidence of the financial assurance shall ensure that the funds necessary will be available whenever they are needed.

D. The owner shall provide continuous financial assurance coverage for the term credit nutrient credit-generating [~~entity~~ project] in accordance with this part until released by the department.

E. After submittal of a complete financial assurance mechanism, the department shall notify the owner of the tentative decision to approve or reject the financial assurance mechanism.

[F. A financial assurance mechanism must be in a form that ensures that the department will receive proper notification in advance of any termination or revocation. The owner may, at their discretion and with prior approval of the department, replace the financial assurance or financial institution that issued the financial assurance. The owner shall provide the department with prior notice of its desire to replace the issuing institution and a draft of the new mechanism for review. The provisions of the new mechanism shall conform to the provisions of the former mechanism and this part.]

9VAC25-900-270. Financial assurance requirements for perpetual credits.

A. Subject to the requirements and limitations outlined in this section, the owner shall demonstrate financial assurance for the [~~perpetual credit~~] nutrient credit-generating [~~entity~~ project generating perpetual nutrient credits] using any one or combination of the mechanisms specified in 9VAC25-900-290 through 9VAC25-900-330. [However, for restoration projects, the owner may only use a trust fund as provided in 9VAC25-900-290 to demonstrate financial assurance for the long-term management fund as described in 9VAC25-900-230 C 2.]

B. The financial assurance mechanism [~~or mechanisms~~ used] shall provide funding for the full amount of the cost estimate [or of the sum of all cost estimates] at all times.

C. The owner may only establish or continue to use insurance, as outlined in 9VAC25-900-330, to demonstrate financial assurance for that portion of the total cost estimate that does not include credits that have been exchanged. On an annual basis, the owner shall either establish or increase the noninsurance mechanism [~~or mechanisms~~] outlined in 9VAC25-900-290 through 9VAC25-900-320 in an amount to be determined in accordance with the [following] formula [~~below~~]:

CE/TCIAS * CEDAAP

where:

CE = Cost Estimate

TCIAS = Total Number of Credits Initially Available for Exchange

CEDAAP = Number of Credits Exchanged During the Applicable Annual Period

D. The owner shall establish or increase the mechanism [~~or mechanisms~~] as required by subsection C [of this section] no later than 30 days after the current anniversary date of the nutrient credit certification. The applicable annual period for credits exchanged is the one culminating on the anniversary date of the nutrient credit certification.

E. The financial assurance mechanisms used to provide evidence of the financial assurance shall ensure that the funds necessary will be available whenever they are needed.

F. After submittal of a complete financial assurance mechanism, the department shall notify the owner of the tentative decision to approve or reject the financial assurance mechanism.

[G. A financial assurance mechanism must be in a form that ensures that the department will receive proper notification in advance of any termination or revocation. The owner may, at its discretion and with prior approval of the department, replace the financial assurance or financial institution that issued the financial assurance. The owner shall provide the department with prior notice of its desire to replace the issuing institution and a draft of the new mechanism for review. The provisions of the new mechanism shall conform to the provisions of the former mechanism and this part.]

9VAC25-900-280. Allowable financial mechanisms.

[A.] Subject to the limitations and requirements outlined in 9VAC25-900-260 and 9VAC25-900-270, an owner of nutrient credit-generating [~~entity~~ project] using structural BMPs to generate term or perpetual nutrient credits [and required to submit financial assurance pursuant to 9VAC25-900-230] may use any one or combination of mechanisms listed in 9VAC25-900-290 through 9VAC25-900-330 to meet the financial assurance requirements of this [~~part~~ chapter].

[B. Subject to the limitation and requirements outlined in 9VAC25-900-270, an owner of a nutrient credit-generating project utilizing wetland or stream restoration practices to generate perpetual credits and required to submit financial assurance pursuant to 9VAC25-900-230, may use any one or combination of mechanisms listed in 9VAC25-900-290 through 9VAC25-900-330 to meet the financial assurance requirements for the monitoring plan; however, only a trust fund may be used to meet the financial assurance requirements for the long-term management fund.]

9VAC25-900-290. Trust.

A. An owner may satisfy the requirements of this part by establishing a trust fund that conforms to the requirements of this section and by submitting an originally signed triplicate of the trust agreement to the director. The owner shall also place a copy of the trust agreement into the nutrient credit-generating [~~entity's~~ project's] operating record. The trustee for the trust fund shall be a bank or financial institution that has the authority to act as a trustee and whose trust operations are regulated and examined by a state or federal agency.

B. Payments into the trust fund shall be made by the owner whenever necessary under the requirements of 9VAC25-900-260 or 9VAC25-900-270.

C. During any annual period when a payment into the fund is necessary under the [applicable] requirements outlined in 9VAC25-900-260 and 9VAC25-900-270, the owner must submit the following information to the director no later than the anniversary date of the initial approval by the department of the release of credits for exchange:

1. The calculation for determining the appropriate payment amount into the trust; and

2. A statement from the trustee indicating the amount of the currently required deposit into the trust fund and the subsequent balance of the fund.

D. The owner shall compare the cost estimate with the trustee's most recent annual valuation of the trust fund:

1. Annually, at least 60 days prior to the anniversary date of the initial approval by the department of the release of credits for exchange. If the value of the fund is less than the amount of the cost estimate, the owner shall, by the anniversary date of the initial approval by the department of the release of credits for exchange, deposit a sufficient amount into the fund so that its value after payment at least equals the amount of the cost estimate, or obtain other financial assurance as specified in this part to cover the difference. If the value of the trust fund is greater than the total amount of the cost estimate, the owner may submit a written request to the director for release of the amount that is in excess of the cost estimate; and

2. Whenever the cost estimate changes. If the value of the fund is less than the amount of the new cost estimate, the owner shall, within 60 days of the change in the cost estimate, deposit a sufficient amount into the fund so that its value after payment at least equals the amount of the new estimate, or obtain other financial assurance as specified in this part to cover the difference. If the value of the trust fund is greater than the total amount of the cost estimate, the owner may submit a written request to the director for release of the amount that is in excess of the cost estimate.

E. [The department shall withdraw funds from the trust when the owner has failed to monitor, operate and maintain, perform long-term maintenance for, or repair or replace, as applicable, the practices utilized by the nutrient credit-generating project in accordance with this chapter and the nutrient credit certification. The department shall use the funds to pay for the performance of monitoring, operation, and maintenance, or the performance of long-term maintenance, or repair and replacement, as applicable, of the practices utilized by the nutrient credit-generating project.

F.] Subject to the limitations and requirements outlined in 9VAC25-900-260 and 9VAC25-900-270, if the owner substitutes other financial assurance as specified in this part for all or part of the trust fund, the owner may submit a written request to the director for release of the amount in excess of the current cost estimate covered by the trust fund.

[~~F.~~ G.] Within 60 days after receiving a request from the owner for release of funds as described in subsections [~~E~~ F] and [~~G~~ H] of this section, the director shall instruct the trustee to release to the owner such funds as the director deems appropriate, if any, in writing.

[~~G.~~ H.] The director shall agree to terminate the trust when:

1. The owner substitutes alternate financial assurance as specified in this part; or

2. The director notifies the owner that the owner is no longer required by this part to maintain financial assurance for the [~~operation and maintenance or replacement of the~~] nutrient credit-generating [~~entity's structural BMPs~~ project].

[~~H.~~ I.] The trust agreement shall be worded as described in 9VAC25-900-350, except that instructions in parentheses are to be replaced with the [appropriate] information and the

[~~parantheses~~ parentheses] deleted, and the trust agreement shall be accompanied by a formal certification of acknowledgment and Schedules A and B.

9VAC25-900-300. Surety bond.

A. An owner may satisfy the requirements of this part by obtaining a surety bond that conforms to the requirements of this section and by submitting an originally signed duplicate of the bond to the department. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. Under the terms of the bond, the surety shall become liable on the bond obligation when the owner fails to perform as guaranteed by the bond.

C. The bond shall guarantee that the owner or any other authorized person [~~will~~ shall perform all or any of the following activities for which the bond is used to satisfy the requirements of this part]:

1. Operate and maintain [, monitor, repair,] or replace any [~~structural BMPs~~ practices] for achieving nutrient reductions at the nutrient credit-generating [~~entity~~ project] in question and in accordance with the nutrient credit certification; or,

2. Operate and maintain [, monitor, repair,] or replace any [~~structural BMPs~~ practices] following an order to do so that has been issued by the department or by a court.

D. The owner shall compare the cost estimate with the penal sum of the bond:

1. Annually, at least 60 days prior to the anniversary date of the initial approval by the department of the release of credits for exchange. If the penal sum of the bond is less than the amount of the cost estimate, the owner shall, by the anniversary date of the initial approval by the department of the release of credits for exchange, increase the penal sum of the bond so that its value at least equals the amount of the cost estimate, or obtain other financial assurance as specified in this part to cover the difference. If the penal sum of the bond is greater than the total amount of the cost estimate, the owner may submit a written request to the director for permission to reduce the penal sum of the bond to the amount of the cost estimate; and

2. Whenever the cost estimate changes. If the penal sum of the bond is less than the amount of the new cost estimate, the owner shall, within 60 days of the change in the cost estimate, increase the penal sum of the bond so that its value at least equals the amount of the new estimate, or obtain other financial assurance as specified in this part to cover the difference. If the penal sum of the bond is greater than the total amount of the cost estimate, the owner may submit a written request to the director for permission to reduce the penal sum of the bond to the amount of the cost estimate.

E. The surety bond shall guarantee that the owner shall provide alternate evidence of financial assurance as specified in this part within 60 days after receipt by the department of a notice of cancellation of the bond from the surety.

F. The bond shall remain in force for its term unless the surety sends written notice of cancellation by certified mail to the owner and to the department. Cancellation cannot occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the department as shown on the signed return receipt. The surety shall provide written notification to the department by certified mail no less than 120 days prior to the expiration date of the bond that the bond will expire and the date the bond will expire.

G. The department shall cash the surety bond [~~if it~~:

1. When it] is not replaced 60 days prior to expiration with alternate evidence of financial assurance acceptable to the department [;] or [~~if~~]

2. If] the owner [~~fails to fulfill the conditions of the bond.~~ has failed to monitor, operate and maintain, or repair or replace, as applicable, the practices utilized by the nutrient credit-generating project in accordance with this chapter and the nutrient credit certification. The department shall use the funds from the surety bond to pay for the performance of monitoring, operation, and maintenance or repair and replacement, as applicable, of the practices utilized by the nutrient credit-generating project.]

H. The department shall return the original surety bond to the surety for termination when:

1. The owner substitutes acceptable alternate evidence of financial assurance; or

2. The [~~department~~ director] notifies the owner that the owner is no longer required by this part to maintain evidence of financial assurance for [~~operation and maintenance or replacement of the~~] nutrient credit-generating [~~entity's structural BMPs~~ project].

I. The surety bond shall be worded as described in 9VAC25-900-350, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

9VAC25-900-310. Letter of credit.

A. An owner may satisfy the requirements of this part by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section and by submitting an originally signed duplicate of the letter of credit to the department. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated

and examined by a federal agency or the Virginia State Corporation Commission.

B. The letter of credit shall be irrevocable and issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the current expiration date, it shall, at least 120 days before the expiration date, notify both the owner and the department by certified mail of that decision. The 120-day period will begin on the date of receipt of letter of credit's notice of cancellation by the department as shown on the signed return receipt. If the letter of credit is canceled by the issuing institution, the owner shall obtain alternate evidence of financial assurance to be in effect prior to the expiration date of the letter of credit.

C. The owner shall compare the cost estimate with the face amount of the letter of credit:

1. Annually, at least 60 days prior to the anniversary date of the initial approval by the department of the release of credits for exchange. If the face amount of the letter of credit is less than the amount of the cost estimate, the owner shall, by the anniversary date of the initial approval by the department of the release of credits for exchange, increase the face amount of the letter of credit so that its value at least equals the amount of the cost estimate, or obtain other financial assurance as specified in this part to cover the difference. If the face amount of the letter of credit is greater than the total amount of the cost estimate, the owner may submit a written request to the director for permission to reduce the face amount of the letter of credit to the amount of the cost estimate; and

2. Whenever the cost estimate changes. If the face amount of the letter of credit is less than the amount of the new cost estimate, the owner shall, within 60 days of the change in the cost estimate, increase the face amount of the letter of credit so that its value at least equals the amount of the new estimate or obtain other financial assurance as specified in this part to cover the difference. If the face amount of the letter of credit is greater than the total amount of the cost estimate, the owner may submit a written request to the director for permission to reduce the face amount of the letter of credit to the amount of the cost estimate.

D. The issuing institution may cancel the letter of credit only if alternate evidence of financial assurance acceptable to the department is substituted as specified in this part or if the owner is released by the department from the requirements of financial assurance.

E. The department shall cash the letter of credit when:

1. The issuing institution has provided proper notification, as outlined in subsection B of this section, of its intent not to renew the letter of credit, and the owner has not, within 30 days prior to expiration, replaced the letter of credit with alternate evidence of financial assurance acceptable to the department; or

2. The owner has failed to [monitor,] operate [,] and maintain or [repair or] replace [, as applicable,] the [practices utilized by the] nutrient credit-generating [~~entity's structural BMPs~~ project] in accordance with this chapter and the nutrient credit certification. [The department shall use the funds from the letter of credit to pay for the performance of monitoring, operation, and maintenance or repair and replacement, as applicable, of the practices utilized by the nutrient credit-generating project.]

F. The department shall return the original letter of credit to the issuing institution for termination when:

1. The owner substitutes acceptable alternate evidence of financial assurance; or

2. The department notifies the owner that the owner is no longer required by this part to maintain evidence of financial assurance for [~~the structural BMPs at his~~ the] nutrient credit-generating [~~entity~~ project].

G. The letter of credit shall be worded as described in 9VAC25-900-350, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

9VAC25-900-320. Certificate of deposit.

A. An owner may satisfy the requirements of this chapter, wholly or in part, by obtaining a certificate of deposit and assigning all rights, title, and interest in the certificate of deposit to the department, conditioned so that the owner shall [~~operate and maintain or replace the structural BMPs at~~ perform the applicable monitoring, operation, and maintenance or repair or replacement for the practices utilized by] the nutrient credit-generating [~~entity~~ project]. The issuing institution shall be an entity that has the authority to issue certificates of deposit in the Commonwealth of Virginia and whose operations are regulated and examined by a federal agency or the Virginia State Corporation Commission. The owner must submit the originally signed assignment and the originally signed certificate of deposit, if applicable, to the department.

B. [~~The amount of the certificate of deposit shall be at least equal to the approved cost estimate.~~] The owner shall [~~maintain the certificate of deposit and assignment until such time as the owner is released by the department from financial assurance.~~ compare the cost estimate with the amount of the certificate of deposit:

1. Annually, at least 60 days prior to the anniversary date of the initial approval by the department of the release of credits for exchange. If the amount of the certificate of deposit is less than the amount of the cost estimate, the

owner shall, by the anniversary date of the initial approval by the department of the release of credits for exchange, increase the amount of the certificate of deposit so that its value at least equals the amount of the cost estimate, or obtain other financial assurance as specified in this part to cover the difference. If the amount of the certificate of deposit is greater than the total amount of the cost estimate, the owner may submit a written request to the director for permission to withdraw funds from the certificate of deposit to the amount of the cost estimate; and

2. Whenever the cost estimate changes. If the amount of the certificate of deposit is less than the amount of the new cost estimate, the owner shall, within 60 days of the change in the cost estimate, increase the amount of certificate of deposit so that its value at least equals the amount of the new estimate or obtain other financial assurance as specified in this part to cover the difference. If the amount of the certificate of deposit is greater than the total amount of the cost estimate, the owner may submit a written request to the director for permission to withdraw funds from the certificate of deposit to the amount of the cost estimate.]

C. The owner shall be entitled to demand, receive, and recover the interest and income from the certificate of deposit as it becomes due and payable as long as the market value of the certificate of deposit used continues to at least equal the amount of the current approved cost estimate.

D. The department shall cash the certificate of deposit if the owner has failed to [monitor,] operate [,] and maintain or [repair or] replace [~~his~~, as applicable, the practices utilized by the] nutrient credit-generating [~~entity's structural BMPs~~ project] in accordance with this chapter and the nutrient credit certification. [The department shall use the funds from the certificate of deposit to pay for the performance of monitoring, operation, and maintenance or repair and replacement, as applicable, of the practices utilized by the nutrient credit-generating project.]

E. [~~Whenever the approved cost estimate increases to an amount greater than the amount of the certificate of deposit, the owner shall, within 60 days of the increase, cause the amount of the certificate of deposit to be increased to an amount at least equal to the new estimate or obtain another certificate of deposit to cover the increase. F.~~] The department shall return the original assignment and certificate of deposit, if applicable, to the issuing institution for termination when:

1. The owner substitutes acceptable alternate evidence of financial assurance as specified in this part; or

2. The department notifies the owner that the owner is no longer required [by this part] to maintain evidence of financial assurance [~~for the structural BMPs~~].

[~~G.~~ F.] The assignment shall be worded as described in 9VAC25-900-350, except that instructions in parentheses shall be replaced with the relevant information and the parentheses deleted.

9VAC25-900-330. Insurance.

A. An owner may demonstrate financial assurance for [~~replacement~~ applicable] costs [~~and~~ for monitoring, repair, or replacement or] operation and maintenance by obtaining insurance that conforms to the requirements of this section. The insurance shall be effective before the credits are released by the department for exchange. The insurer must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia. The owner shall provide the department with [~~an original~~ a] signed copy of the insurance policy. The department shall be listed as an additional insured on the policy, but the department shall not be obligated for payment of the premium in any manner.

B. The insurance policy shall guarantee that funds will be available to fund [~~the replacement of the structural BMPs and reasonable and necessary costs for the operation and maintenance of the structural BMPs~~ (i) for projects using wetland or stream restoration, the cost for fulfilling the requirements of the monitoring plan or (ii) for projects using structural BMPs, the reasonable and necessary cost of repair, replacement, or operation and maintenance or any combination of these activities.

C. The owner shall compare the cost estimate with the liability limit of the insurance policy:

1. Annually, at least 60 days prior to the anniversary date of the initial approval by the department of the release of credits for exchange. If the liability limit of the insurance policy is less than the amount of the cost estimate, the owner shall, by the anniversary date of the initial approval by the department of the release of credits for exchange, increase the liability limit of the insurance policy so that it at least equals the amount of the cost estimate, or obtain other financial assurance as specified in this part to cover the difference. If the liability limit of the insurance policy is greater than the total amount of the cost estimate, the owner may submit a written request to the director for permission to lower the liability limit of the insurance policy to the amount of the cost estimate; and

2. Whenever the cost estimate changes. If the liability limit of the insurance policy is less than the amount of the new cost estimate, the owner shall, within 60 days of the change in the cost estimate, increase the liability limit of the insurance policy so that it at least equals the amount of the new estimate or obtain other financial assurance as specified in this part to cover the difference. If the liability limit of the insurance policy is greater than the total amount of the cost estimate, the owner may submit a written request to the director for permission to lower the

liability limit of the insurance policy to the amount of the cost estimate].

[~~C.~~ D.] The insurance policy shall be issued and maintained for [~~a face amount~~ an overall liability limit] at least equal to the current cost estimate for applicable [~~costs for replacement and operation and maintenance.~~ activities covered under the policy (i.e., monitoring, repair, and replacement or operation and maintenance).] The term [~~face amount~~ "overall liability limit"] means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the [~~face amount~~ overall liability limit] although the insurer's future liability will be lowered by the amount of the payments.

[~~D.~~ E.] The insurance policy shall provide that the insurer shall pay [, as applicable,] for the [monitoring, repair, or] replacement [~~and~~ or] operation and maintenance of the [~~structural BMPs~~ nutrient credit-generating project's practices]. Justification and documentation of the expenditures must be submitted to and approved by the director. Requests for payment will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of [monitoring, repair, or] replacement [~~and~~ or] operation and maintenance of the [~~structural BMP~~ nutrient credit-generating project's practices], or if the director approves the payment. The insurer shall notify the director when a payment has been made.

[~~E.~~ F.] Each policy shall contain a provision allowing assignment of the policy to a successor owner. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

[~~F.~~ G.] The insurance policy shall provide that the insurer may not cancel, [~~or terminate, or fail to renew the policy~~] except for failure to pay the premium. [In addition, the policy shall provide that, subject to payment of premium, it will automatically renew on an annual basis for a period of up to 10 years.] The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel [or terminate] the policy by sending notice of cancellation [or termination] by certified mail to the owner and to the department 120 days in advance of cancellation [or termination]. Within 60 days of receipt of notice from the insurer that it [~~does not intend~~ intends either] to [~~renew~~ cancel or terminate] the policy, the owner shall obtain alternate financial assurance and submit it to the department.

[~~G.~~ H.] The owner may cancel the insurance policy only if alternate financial assurance is substituted as specified in this part, or if the owner is no longer required to demonstrate financial responsibility.

[~~H.~~ I.] Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the United States Code, naming an owner as debtor, the owner shall notify the director by certified mail of such commencement.

[~~I.~~ J.] The wording of the insurance endorsement shall be identical to the wording specified in 9VAC25-900-350. ACORD Certificates of Insurance are not valid proof of insurance.

9VAC25-900-340. Incapacity of financial providers or owner.

A. An owner that fulfills the requirements of this part by obtaining a trust fund, a letter of credit, a surety bond, or an insurance policy shall be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing a surety bond, letter of credit, or insurance policy to issue such mechanisms. The owner or operator shall establish other financial assurance within 60 days of such event.

B. An owner shall notify the director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the United States Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. [~~A guarantor of a corporate guarantee as specified in 9VAC20-70-220 shall make such a notification if he is named as debtor, as required under the terms of the corporate guarantee.~~]

9VAC25-900-350. Wording of the financial assurance mechanism.

A. The wording of the financial assurance mechanisms shall be as provided in this section.

B. Wording of trust agreements.

(NOTE: Instructions in parentheses are to be replaced with the [~~relevant~~ applicable] information [for the nutrient credit-generating project's practices (i.e., structural BMPs or wetland/stream restoration)] and [the non-relevant information and] parentheses deleted.)

TRUST AGREEMENT

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

Whereas, the State Water Control Board has established certain regulations applicable to the Grantor, requiring that the owner of a nutrient credit-generating [~~entity~~ project] must provide assurance that funds will be available when needed for (operation and maintenance and/or [repair or] replacement of the [~~entity,~~ project's structural BMPs)

(monitoring and/or long-term maintenance of the project's wetland/stream restoration),]

Whereas, the Grantor has elected to establish a trust to provide (all or part of) such financial assurance for the [~~entity~~ project] identified herein,

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

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

Section 1. Definitions. As used in this Agreement:

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

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

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

Section 2. Identification of [~~Entity~~ Project] and Cost Estimates. This Agreement pertains to [~~entity(ies)~~ project(s)] and cost estimates identified on attached Schedule A.

(NOTE: On Schedule A, for each [~~entity~~ project,] list, as applicable, name, address, and the current [cost estimates for] operation and maintenance and/or [repair or] replacement [~~,~~ for the project's structural BMPs; or the current] cost estimates [for the monitoring and/or long-term maintenance of the project's wetland/stream restoration,] or portions thereof, for which financial assurance is demonstrated by this Agreement.)

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

Section 4. Payment for (operation and maintenance and/or [repair or] replacement [for the project's structural BMPs) (monitoring and/or long-term maintenance for the project's wetland/stream restoration]). The Trustee will make such payments from the Fund as the Department of Environmental Quality, Commonwealth of Virginia will direct, in writing, to provide for the payment of the costs of (operation and maintenance and/or [repair or] replacement [~~)~~ for the project's structural BMPs) (monitoring and/or long-term maintenance for the project's wetland/stream restoration]) of the [~~entity~~ project] covered by this Agreement. The Trustee will reimburse the Grantor or other persons as specified by the Department of Environmental Quality, Commonwealth of Virginia, from the Fund for (operation and maintenance and/or [repair or] replacement [for the project's structural BMPs) (monitoring and/or long-term maintenance for the project's wetland/stream restoration]) expenditures in such amounts as the Department of Environmental Quality will direct, in writing. In addition, the Trustee will refund to the Grantor such amounts as the Department of Environmental Quality specifies in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

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

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

A. Securities or other obligations of the Grantor, or any other owner of the [~~entity,~~ project,] or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the federal or a state government;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of the appointment by the successor trustee, the Trustee will assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee and the date on which he assumes administration of the trust will be specified in writing and sent to the Grantor, the director of the Department of Environmental Quality, Commonwealth of Virginia, and the present trustees by certified mail 10 days before such change

becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section will be paid as provided in Section 9.

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

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

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

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

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

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

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

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is substantively identical to the wording specified in 9VAC25-900-350 B, as such regulations were constituted on the date shown immediately below.

(Signature of Grantor)

By: (Title) (Date)

Attest:

(Title) (Date)

(Seal)

(Signature of Trustee)

By

Attest:

(Title)

(Seal) (Date)

Certification of Acknowledgment:

COMMONWEALTH OF VIRGINIA

STATE OF _____

CITY/COUNTY OF _____

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

(Signature of Notary Public)

C. Wording of surety bond guaranteeing performance or payment.

(NOTE: Instructions in parentheses are to be replaced with the [~~relevant~~ applicable] information [for the nutrient credit-generating project's practices (i.e., structural BMPs or wetland/stream restoration)] and [the non-relevant information and] parentheses deleted.)

PERFORMANCE OR PAYMENT BOND

Date bond executed: _____

Effective date: _____

Principal: (legal name and business address) _____

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

State of incorporation: _____

Surety: (name and business address) _____

Name, address, and [~~(operation and maintenance and/or replacement)~~] cost estimate [or estimates] for the [~~entity~~ project]: _____

Penal sum of bond: $_____

Surety's bond number: _____

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

Whereas, said Principal is required to have from the Department of Environmental Quality, Commonwealth of Virginia, in order to own or operate the, nutrient credit-generating [~~entity~~ project] identified above, and

Whereas, said Principal is required to provide financial assurance for (operation and maintenance and/or [repair or] replacement [for the project's structural BMPs) (monitoring and/or long-term maintenance for the project's wetland/stream restoration]) of the [~~entity~~ project] as a condition of an order issued by the department,

Now, therefore the conditions of this obligation are such that if the Principal shall faithfully perform (operation and maintenance and/or [repair or] replacement [of structural BMPs) (monitoring wetland/stream restoration]), whenever required to do so, of the [~~entity~~ project] identified above in accordance with the order or the (operation and maintenance and/or [repair or] replacement [of structural BMPs) (monitoring wetland/stream restoration]) submitted to receive and other requirements of as such plan and may be amended or renewed pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall faithfully perform (operation and maintenance and/or [repair or] replacement [of structural BMPs) (monitoring wetland/stream restoration]) following an order to begin (operation and maintenance and/or [repair or] replacement [of structural BMPs) (monitoring wetland/stream restoration]) issued by the Commonwealth of Virginia's Department of Environmental Quality or by a court, or following a notice of termination of the permit,

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

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of the requirements of the Department's regulations, the Surety must either perform (operation and maintenance and/or [repair or] replacement [of structural BMPs) (monitoring wetland/stream restoration]) in accordance with the approved plan and other requirements or forfeit the (operation and maintenance and/or [repair or] replacement [of structural BMPs) (monitoring wetland/stream restoration]) amount guaranteed for the nutrient credit-generating [~~entity~~ project] to the Commonwealth of Virginia.

Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of an order to begin operation and maintenance and/or replacement) the Surety must either perform (operation and maintenance and/or [repair or] replacement [of structural BMPs) (monitoring wetland/stream restoration]) in accordance with the order or forfeit the amount of the (operation and maintenance and/or [repair or] replacement [of structural BMPs) (monitoring wetland/stream restoration]) guaranteed for the nutrient credit-generating [~~entity~~ project] to the Commonwealth of Virginia.

The Surety hereby waives notification of amendments to the operation and maintenance and/or replacement, orders,

applicable laws, statutes, rules, and regulations and agrees that such amendments shall in no way alleviate its obligation on this bond.

For purposes of this bond, (operation and maintenance and/or [repair or] replacement [of structural BMPs) (monitoring wetland/stream restoration]) shall be deemed to have been completed when the Director of the Department of Environmental Quality, Commonwealth of Virginia, determines that the conditions of the approved plan have been met.

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

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

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

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and I hereby certify that the wording of this surety bond is substantively identical to the wording specified in 9VAC25-900-350 C as such regulations were constituted on the date shown immediately below.

Principal

Signature(s): _____

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

Corporate Surety

Name and Address: _____

State of Incorporation: _____

Liability Limit: $___

Signature(s): _____

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

Corporate Seal:

D. Wording of irrevocable standby letter of credit.

(NOTE: Instructions in parentheses are to be replaced with the [~~relevant~~ applicable] information [for the nutrient credit-generating project's practices (i.e., structural BMPs or wetland/stream restoration)] and [the non-relevant information and] parentheses deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT

Director

Department of Environmental Quality

P.O. Box 1105

Richmond, Virginia 23218

Dear (Sir or Madam):

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

1. Your sight draft, bearing reference to this letter of credit No ____ together with

2. Your signed statement declaring that the amount of the draft is payable pursuant to regulations issued under the authority of the Department of Environmental Quality, Commonwealth of Virginia.

The following amounts are included in the amount of this letter of credit: (Insert the nutrient credit-generating [~~entity~~ project] name and address, and the [~~operation and maintenance and/or replacement~~ appropriate] cost estimate [or estimates], or portions thereof, for which financial assurance is demonstrated by this letter of credit.)

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

as shown on the signed return receipt or while a compliance procedure is pending, whichever is later.

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

I hereby certify that I am authorized to execute this letter of credit on behalf of (issuing institution) and I hereby certify that the wording of this letter of credit is substantively identical to the wording specified in 9VAC25-900-350 D as such regulations were constituted on the date shown immediately below.

Attest:

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

(Signature) (Date)

This credit is subject to the most recent edition of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600, and any subsequent revisions thereof approved by a congress of the International Chamber of Commerce and adhered to by us. If this credit expires during an interruption of business as described in Article 36 of said Publication 600, the bank hereby specifically agrees to effect payment if this credit is drawn against within thirty (30) days after resumption of our business.

E. Assignment of certificate of deposit account.

City _____, 20___

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

This assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No. _____

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

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

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

Additional Security. This assignment shall secure the payment of any financial obligation of the (name of owner) to the Virginia Department of Environmental Quality for [( ] operation and maintenance and/or [repair or] replacement [of structural BMPs) (monitoring wetland/stream restoration]) at the [~~(entity~~ (project] name) located (physical address).

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial assurance obligations of (name of owner) to the Virginia Department of Environmental Quality for [( ] operation and maintenance and/or [repair or] replacement [ ) (monitoring)] at the [~~(entity~~ (project] name and address). The undersigned authorizes the Virginia Department of Environmental Quality to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia Department of Environmental Quality's discretion to fund [( ] operation and maintenance and/or [repair or] replacement [ ) (monitoring)] at the [~~(entity~~ (project] name) or in the event of (owner) failure to comply with the 9VAC25-900. The undersigned agrees that the Virginia Department of Environmental Quality may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. (The undersigned) agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.

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

_____ SEAL

(Owner)

_____

(print owner's name)

_____ SEAL

(Owner)

_____

(print owner's name)

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

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

The accrued interest on the Certificate of Deposit indicated above shall be maintained to capitalize versus being mailed by check or transferred to a deposit account.

(Signature) (Date)

(print name)

(Title)

F. Wording of insurance endorsement.

ENDORSEMENT.

[~~{~~( ] NOTE: [~~The instructions~~ Instructions] in [~~brackets~~ parentheses] are to be replaced [~~by~~ with] the [~~relevant~~ applicable] information [~~and~~ for] the [~~brackets~~ nutrient credit-generating project's practices (i.e., structural BMPs or restoration) and the non-relevant information and parentheses] deleted. [ )]

Name: [~~{~~( ] name of each covered location [~~}~~)]

Address: [~~{~~( ] address of each covered location [~~}~~)]

Policy number:

Period of coverage: [~~{~~( ] current policy period [~~}~~)]

Name of Insurer:

Address of Insurer:

Name of insured:

Address of insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides insurance covering the [( ] operation and maintenance and/or [repair or] replacement of the nutrient credit-generating project's structural BMPs) (monitoring of the nutrient credit-generating project's wetland/stream restoration)] in connection with the insured's obligation to demonstrate financial responsibility under the 9VAC25-900).

[~~{~~( ] List] the name(s) and address(es) of the nutrient credit-generating [~~entity(s)}~~ project(s))]

for [~~{insert: "operation~~ (the operation] and maintenance and/or [repair or] replacement of the nutrient credit-generating [~~entity~~ project's structural BMPs) (monitoring of the nutrient credit-generating project's wetland/stream restoration)] in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy;

The limits of liability are [~~{insert the~~ (provide the] dollar amount of the operation and [maintenance, monitoring,] and/or [repair or] replacement [ )], exclusive of legal defense costs, which, if applicable, are subject to a separate limit under the policy. This coverage is provided under [~~{~~(provide the] policy number [ )]. The effective date of said policy is [~~{date}~~ (insert the effective date)].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (d) for occurrence policies and (a) through (e) for claims-made policies of this paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

b. The insurer is liable for the payment of amounts within any deductible applicable to the policy to the provider of [monitoring,] operation and maintenance and/or [repair or] replacement, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-900.

c. Whenever requested by the State Water Control Board, the insurer agrees to furnish to State Water Control Board a signed duplicate original of the policy and all endorsements.

d. The insurer may not [~~fail to renew~~ cancel or terminate] the policy [during the policy period] except for failure to pay the premium. [The policy shall automatically renew at the department's discretion on an annual basis for a period of up to ten years.] The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy.

e. The insured may cancel the insurance policy only if alternate financial assurance is substituted as specified in 9VAC25-900, or if the owner is no longer required to demonstrate financial responsibility in accordance with 9VAC25-900.

f. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 120 days after a copy of such written notice is received by the insured and the State Water Control Board.

[~~{~~( ] Insert for claims made policies: [~~}~~)]

g. The insurance covers claims otherwise covered by the policy that are reported to the insurer within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy

renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this endorsement is in no respect less favorable than the coverage specified in 9VAC25-900. I further certify that the insurer is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the Commonwealth of Virginia.

[~~(~~] Signature of authorized representative of insurer [~~)~~]

[~~(~~] Name of the person signing [~~)~~]

[~~(~~] Title of the person signing [~~),~~] authorized representative of [~~(~~] name of the insurer [~~)~~]

[~~(~~] Address of the representative [~~)~~]

(Title of person signing)

Signature of witness or notary:

(Date)

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-900)

DCR Specifications for No. FR-3, Woodland Buffer Filter Area, Virginia Agricultural Cost Share BMP Manual, Program Year [~~2014, July 2013,~~ 2018 (rev. March 2016)], Department of Conservation and Recreation

DCR Specifications for No. SL-8B, Small Grain Cover Crop for Nutrient Management and Residue Management, Virginia Agricultural Cost Share BMP Manual, Program Year [~~2014, July 2013,~~ 2018 (rev. March 2017),] Department of Conservation and Recreation

DCR Specifications for No. WP-2, Stream Protection, Virginia Agricultural Cost Share BMP Manual, Program Year [~~2014, July 2013,~~ 2018 (rev. March 2016),] Department of Conservation and Recreation

DCR Specifications for No. WQ-1, Grass Filter Strips, Virginia Agricultural Cost Share BMP Manual, Program Year [~~2014, July 2013,~~ 2018 (rev. March 2016),] Department of Conservation and Recreation

[Virginia's Forestry Best Management Practices for Water Quality Technical Manual, Fifth Edition 2011, Department of Forestry. Available at http://www.dof.virginia.gov/infopubs/BMP-Technical-Guide_pub.pdf.

Virginia Chesapeake Bay TMDL Phase I Watershed Implementation Plan, November 29, 2010, Department of Environmental Quality

Virginia Chesapeake Bay TMDL Phase II Watershed Implementation Plan, March 30, 2012, Department of Environmental Quality]

VA.R. Doc. No. R13-3379; Filed March 22, 2019, 9:29 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 b of the Code of Virginia, which excludes regulations that are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved. 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: **12VAC5-412. Regulations for Licensure of Abortion Facilities (amending 12VAC5-412-80, 12VAC5-412-100, 12VAC5-412-180, 12VAC5-412-190, 12VAC5-412-200, 12VAC5-412-220, 12VAC5-412-280, 12VAC5-412-300, 12VAC5-412-320, 12VAC5-412-330, 12VAC5-412-350, 12VAC5-412-360, 12VAC5-412-370).**

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

Effective Date: May 15, 2019.

Agency Contact: Robert Payne, Director, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2109, FAX (804) 527-4502, or email robert.payne@vdh.virginia.gov.

Summary:

The Circuit Court of Henrico County issued an Order in Melendez v. State Board of Health (Case No. CL17-1164) that suspended the amendments made to 13 sections of 12VAC5-412 in 2017. This action amends those 13 sections to return them to the standards that were in effect prior to the 2017 amendments.

Amendments reinstate (i) the prior standard by which the State Health Commissioner evaluates variance requests and the requirements for variance requests; (ii) the requirement that the person responsible for granting access to patient records be on premises within one hour of a surveyor's arrival and that patient lists be produced upon a surveyor's request within two hours; (iii) the requirement that a physician remain on the premises until the last patient is discharged; (iv) the requirement that the physician give a discharge order; (v) the requirement to

have drugs capable of treating several enumerated conditions; (vi) requirements related to safety and security policies and procedures, maintenance, firefighting equipment and systems, and building design and construction standards; and (vii) the requirement to report incidents reported to the malpractice insurance carrier or in compliance with the federal Safe Medical Devices Act of 1990. The amendments reintroduce requirements that protocols related to patients' rights must be consistent with the Joint Commission Standards of Ambulatory Care and that infection prevention plans must be consistent with the "Guide to Infection Prevention in Outpatient Settings: Minimum Expectations for Safe Care," published by the U.S. Centers for Disease Control and Prevention. The amendments eliminate the prohibition against removing copies of personnel records from the premises unless redacted and the qualification that clinical records or charts include certain information only if medically indicated.

12VAC5-412-80. Allowable variances.

~~A. Upon the finding that the enforcement of one or more of these regulations would be clearly impractical, the commissioner shall have the authority to waive, either temporarily or permanently, the enforcement of one or more of these regulations, provided safety and patient care and services are not adversely affected.~~

~~B. Modification of any individual standard herein for any purpose shall require advance written approval from the OLC.~~

A. The commissioner may authorize a temporary variance only to a specific provision of this chapter. In no event shall a temporary variance exceed the term of the license. An abortion facility may request a temporary variance to a particular standard or requirement contained in a particular provision of this chapter when the standard or requirement poses an impractical hardship unique to the abortion facility and when a temporary variance to it would not endanger the safety or well-being of patients. The request for a temporary variance shall describe how compliance with the current standard or requirement constitutes an impractical hardship unique to the abortion facility. The request should include proposed alternatives, if any, to meet the purpose of the standard or requirement that will ensure the protection and well-being of patients. At no time shall a temporary variance be extended to general applicability. The abortion facility may withdraw a request for a temporary variance at any time.

B. The commissioner may rescind or modify a temporary variance if: (i) conditions change; (ii) additional information becomes known that alters the basis for the original decision; (iii) the abortion facility fails to meet any conditions attached to the temporary variance; or (iv) results of the temporary variance jeopardize the safety or well-being of patients.

C. Consideration of a temporary variance is initiated when a written request is submitted to the commissioner. The commissioner shall notify the abortion facility in writing of the receipt of the request for a temporary variance. The licensee shall be notified in writing of the commissioner's decision on the temporary variance request. If granted, the commissioner may attach conditions to a temporary variance to protect the safety and well-being of patients.

D. If a temporary variance is denied, expires, or is rescinded, routine enforcement of the standard or requirement to which the temporary variance was granted shall be resumed.

12VAC5-412-100. On-site inspection.

A. An OLC representative shall make periodic unannounced on-site inspections of each abortion facility as necessary, but not less often than biennially. If the department finds, after inspection, noncompliance with any provision of this chapter, the abortion facility shall receive a written licensing report of such findings. The abortion facility shall submit a written plan of correction in accordance with provisions of 12VAC5-412-110.

B. The abortion facility shall make available to the OLC's representative any requested records and shall allow access to interview the agents, employees, contractors, and any person under the abortion facility's control, direction, or supervision. If copies of records are removed from the premises, patient names and addresses contained in such records shall be redacted by the abortion facility before removal.

C. If the OLC's representative arrives on the premises to conduct a survey and the administrator, the nursing director, or a person authorized to give access to patient records is not available on the premises, such person or the designated alternate shall be available on the premises within one hour of the surveyor's arrival. A list of patients receiving services on the day of the survey as well as a list of all of the abortion facility's patients for the previous 12 months shall be provided to the surveyor within two hours of arrival if requested. Failure to be available or to respond shall be grounds for penalties in accordance with § 32.1-27 of the Code of Virginia and denial, suspension, or revocation of the facility's license in accordance with 12VAC5-412-130.

12VAC5-412-180. Personnel.

A. Each abortion facility shall have a staff that is adequately trained and capable of providing appropriate service and supervision to patients. The abortion facility shall develop, implement, and maintain policies and procedures to ensure and document appropriate staffing by licensed clinicians based on the level, intensity, and scope of services provided.

B. The abortion facility shall obtain written applications for employment from all staff. The abortion facility shall obtain and verify information on the application as to education,

training, experience, and appropriate professional licensure, if applicable.

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

D. The abortion facility shall develop, implement, and maintain policies and procedures to document that its staff participate in initial and ongoing training and education that is directly related to staff duties and appropriate to the level, intensity, and scope of services provided. This shall include documentation of annual participation in fire safety and infection prevention in-service training.

E. Job descriptions.

1. Written job descriptions that adequately describe the duties of every position shall be maintained.

2. Each job description shall include position title, authority, specific responsibilities, and minimum qualifications.

3. Job descriptions shall be reviewed at least annually, kept current, and given to each employee and volunteer when assigned to the position and when revised.

F. A personnel file shall be maintained for each staff member. The records shall be completely and accurately documented, readily available, including by electronic means and systematically organized to facilitate the compilation and retrieval of information. The file shall contain a current job description that reflects the individual's responsibilities and work assignments, and documentation of the person's in-service education, and professional licensure, if applicable.

G. Personnel policies and procedures shall include, but not be limited to:

1. Written job descriptions that specify authority, responsibility, and qualifications for each job classification;

2. Process for verifying current professional licensing or certification and training of employees or independent contractors;

3. Process for annually evaluating employee performance and competency;

4. Process for verifying that contractors and their employees meet the personnel qualifications of the abortion facility; and

5. Process for reporting licensed and certified health care practitioners for violations of their licensing or certification standards to the appropriate board within the Department of Health Professions.

H. A personnel file shall be maintained for each staff member. Personnel record information shall be safeguarded against loss and unauthorized use. Employee health related information shall be maintained separately within the employee's personnel file. ~~Unless redacted, copies of personnel files shall not be removed from the premises.~~

12VAC5-412-190. Clinical staff.

A. Physicians and nonphysician health care practitioners shall constitute the clinical staff. Clinical privileges of physician and nonphysician health care practitioners shall be clearly defined.

B. Abortions shall be performed by physicians who are licensed to practice medicine in Virginia and who are qualified by training and experience to perform abortions. The abortion facility shall develop, implement, and maintain policies and procedures to ensure and document that abortions that occur in the abortion facility are only performed by physicians who are qualified by training and experience.

C. A physician shall remain on the premises until all patients are medically stable, sign the discharge order, and be readily available and accessible until the last patient is discharged. Licensed health care practitioners trained in post-procedure assessment shall remain on the premises until the last patient has been discharged. The physician shall give a discharge order after assessing a patient or receiving a report from such trained health care practitioner indicating that a patient is safe for discharge. The abortion facility shall develop, implement, and maintain policies and procedures that ensure there is an appropriate evaluation of medical stability prior to discharge of the patient and that ~~adequately~~ adequate trained health care practitioners remain with the patient until she is discharged from the abortion facility.

D. Licensed practical nurses, working under direct supervision and direction of a physician or a registered nurse, may be employed as components of the clinical staff.

12VAC5-412-200. Patients' rights.

A. Each abortion facility shall establish a protocol relating to the rights and responsibilities of patients consistent with the current edition of the Joint Commission Standards of Ambulatory Care. The protocol shall include a process reasonably designed to inform patients of their rights and responsibilities, in a language or manner they understand. Patients shall be given a copy of their rights and responsibilities upon admission.

B. The abortion facility shall establish and maintain complaint handling procedures which specify the:

1. System for logging receipt, investigation, and resolution of complaints; and

2. Format of the written record of the findings of each complaint investigated.

C. The abortion facility shall designate staff responsible for complaint resolution, including:

1. Complaint intake, including acknowledgment of complaints;

2. Investigation of the complaint;

3. Review of the investigation findings and resolution for the complaint; and

4. Notification to the complainant of the proposed resolution within 30 days from the date of receipt of the complaint.

D. Any patient seeking an abortion shall be given a copy of the complaint procedures, in a language or manner she understands, at the time of admission to service.

E. The abortion facility shall provide each patient or her designee with the name, mailing address, and telephone number of the:

1. Abortion facility contact person; and

2. OLC Complaint Unit, including the toll-free complaint hotline number. Patients may submit complaints anonymously to the OLC. The abortion facility shall display a copy of this information in a conspicuous place.

F. The abortion facility shall maintain documentation of all complaints received and the status of each complaint from date of receipt through its final resolution. Records shall be maintained for no less than three years.

12VAC5-412-220. Infection prevention.

A. The abortion facility shall have an infection prevention plan that encompasses the entire abortion facility and all services provided, and which is consistent with the provisions of the current edition of "Guide to Infection Prevention in Outpatient Settings: Minimum Expectations for Safe Care," published by the U.S. Centers for Disease Control and Prevention. An individual with training and expertise in infection prevention shall participate in the development of infection prevention policies and procedures and shall review them to assure they comply with applicable regulations and standards.

1. The process for development, implementation, and maintenance of infection prevention policies and procedures and the regulations or guidance documents on which they are based shall be documented.

2. All infection prevention policies and procedures shall be reviewed at least annually by the administrator and appropriate members of the clinical staff. The annual review process and recommendations for changes/updates shall be documented in writing.

3. A designated person in the abortion facility shall have received training in basic infection prevention, and shall also be involved in the annual review.

B. Written infection prevention policies and procedures shall include, but not be limited to:

1. Procedures for screening incoming patients and visitors for acute infectious illnesses and applying appropriate measures to prevent transmission of community-acquired infection within the abortion facility;

2. Training of all personnel in proper infection prevention techniques;

3. Correct hand-washing technique, including indications for use of soap and water and use of alcohol-based hand rubs;

4. Use of standard precautions;

5. Compliance with bloodborne pathogen requirements of the U.S. Occupational Safety and Health Administration;

6. Use of personal protective equipment;

7. Use of safe injection practices;

8. Plans for annual retraining of all personnel in infection prevention methods;

9. Procedures for monitoring staff adherence to recommended infection prevention practices; and

10. Procedures for documenting annual retraining of all staff in recommended infection prevention practices.

C. Written policies and procedures for the management of the abortion facility, equipment, and supplies shall address the following:

1. Access to hand-washing equipment and adequate supplies (e.g., soap, alcohol-based hand rubs, disposable towels or hot air driers);

2. Availability of utility sinks, cleaning supplies, and other materials for cleaning, disposal, storage, and transport of equipment and supplies;

3. Appropriate storage for cleaning agents (e.g., locked cabinets or rooms for chemicals used for cleaning) and product-specific instructions for use of cleaning agents (e.g., dilution, contact time, management of accidental exposures);

4. Procedures for handling, storing, and transporting clean linens, clean/sterile supplies, and equipment;

5. Procedures for handling/temporary storage/transport of soiled linens;

6. Procedures for handling, storing, processing, and transporting regulated medical waste in accordance with applicable regulations;

7. Procedures for the processing of each type of reusable medical equipment between uses on different patients. The procedure shall address: (i) the level of cleaning/disinfection/sterilization to be used for each type of equipment; (ii) the process (e.g., cleaning, chemical disinfection, heat sterilization); and (iii) the method for verifying that the recommended level of disinfection/sterilization has been achieved. The procedure shall reference the manufacturer's recommendations and any applicable state or national infection control guidelines;

8. Procedures for appropriate disposal of nonreusable equipment;

9. Policies and procedures for maintenance/repair of equipment in accordance with manufacturer recommendations;

10. Procedures for cleaning of environmental surfaces with appropriate cleaning products;

11. An effective pest control program, managed in accordance with local health and environmental regulations; and

12. Other infection prevention procedures necessary to prevent/control transmission of an infectious agent in the abortion facility as recommended or required by the department.

D. The abortion facility shall have an employee health program that includes:

1. Access to recommended vaccines;

2. Procedures for assuring that employees with communicable diseases are identified and prevented from work activities that could result in transmission to other personnel or patients;

3. An exposure control plan for bloodborne pathogens;

4. Documentation of screening and immunizations offered/received by employees in accordance with statute, regulation, or recommendations of public health authorities, including documentation of screening for tuberculosis and access to hepatitis B vaccine; and

5. Compliance with requirements of the U.S. Occupational Safety and Health Administration for reporting of workplace-associated injuries or exposure to infection.

E. The abortion facility shall develop, implement, and maintain policies and procedures for the following patient education, follow up, and reporting activities:

1. A procedure for surveillance, documentation, and tracking of reported infections; and

2. Policies and procedures for reporting conditions to the local health department in accordance with the Regulations for Disease Reporting and Control (12VAC5-90), including outbreaks of disease.

12VAC5-412-280. Emergency equipment and supplies.

An abortion facility shall maintain medical equipment, supplies, and drugs appropriate and adequate to manage potential emergencies based on the level, scope, and intensity of services provided. Such medical equipment, supplies, and drugs shall be determined by the physician and shall be consistent with the current edition of the American Heart Association's Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care. Drugs shall include, at a minimum, those to treat the following conditions:

1. Cardiopulmonary arrest;

2. Seizure;

3. Respiratory distress;

4. Allergic reaction;

5. Narcotic toxicity;

6. Hypovolemic shock; and

7. Vasovagal shock.

Part V
Support Services - Health Information Records and Reports

12VAC5-412-300. Health information records.

An accurate and complete clinical record or chart shall be maintained on each patient. The record or chart shall contain sufficient information to satisfy the diagnosis or need for the medical or surgical service. ~~If medically indicated, it~~ It shall include, but not be limited to the following:

1. Patient identification;

2. Admitting information, including patient history and physical examination;

3. Signed consent;

4. Confirmation of pregnancy;

5. Procedure report to include:

a. Physician orders;

b. Laboratory tests, pathologist's report of tissue, and radiologist's report of x-rays;

c. Anesthesia record;

d. Operative record;

e. Surgical medication and medical treatments;

f. Recovery room notes;

g. Physicians' and nurses' progress notes;

h. Condition at time of discharge;

i. Patient instructions (preoperative and postoperative); and

j. Names of referral physicians or agencies; and

6. Any other information required by law to be maintained in the health information record.

12VAC5-412-320. Required reporting.

A. Abortion facilities shall comply with the fetal death and induced termination of pregnancy reporting provisions in the Board of Health Regulations Governing Vital Records (12VAC5-550-120).

B. The abortion facility shall report the following events to OLC:

1. Any patient, staff, or visitor death;

2. Any serious injury to a patient;

3. Medication errors that necessitate a clinical intervention other than monitoring; ~~and~~

4. A death or significant injury of a patient or staff member resulting from a physical assault that occurs within or on the abortion facility grounds; and

5. Any other incident reported to the malpractice insurance carrier or in compliance with the federal Safe Medical Devices Act of 1990 (21 USC § 301 et seq. - Pub. L. No. 101-629).

C. Notification of the events listed in subsection B of this section shall be required within 24 hours of occurrence. Each notice shall contain the:

1. Abortion facility name;

2. Type and circumstance of the event being reported;

3. Date of the event; and

4. Actions taken by the abortion facility to protect patient and staff safety and to prevent recurrence.

D. Compliance with this section does not relieve the abortion facility from complying with any other applicable reporting or notification requirements, such as those relating to law-enforcement or professional regulatory agencies.

E. Records that are confidential under federal or state law shall be maintained as confidential by the OLC and shall not be further disclosed by the OLC, except as required or permitted by law.

F. Abortion facilities shall ensure that employees mandated to report suspected child abuse or neglect under § 63.2-1509 of the Code of Virginia comply with the reporting requirements of § 63.2-1509 of the Code of Virginia.

Part VI
Functional Safety and Maintenance

12VAC5-412-330. Abortion facility security and safety.

The abortion facility shall develop, implement, and maintain policies and procedures to ensure safety within the abortion facility and on its grounds and to minimize hazards to all occupants. The policies and procedures shall include, but not be limited to ~~safety~~:

1. Abortion facility security;

2. Safety rules and practices pertaining to personnel, equipment, gases, liquids, drugs, supplies, and services; and

3. Provisions for disseminating safety related information to employees and users of the abortion facility.

12VAC5-412-350. Maintenance.

A. The abortion facility's structure, its component parts, and all equipment, such as elevators, heating, cooling, ventilation, and emergency lighting, shall be kept in good repair and operating condition. Areas used by patients shall be maintained in good repair and kept free of hazards. All wooden surfaces shall be sealed with nonlead-based paint, lacquer, varnish, or shellac that will allow sanitization.

B. When patient monitoring equipment is utilized, a written preventive maintenance program shall be developed and implemented. This equipment shall be checked and/or tested in accordance with manufacturer's specifications at periodic intervals, not less than annually, to ensure proper operation and a state of good repair. After repairs and/or alterations are made to any equipment, the equipment shall be thoroughly tested for proper operation before it is returned to service. Records shall be maintained on each piece of equipment to indicate its history of testing and maintenance.

12VAC5-412-360. ~~(Repealed.)~~ Firefighting equipment and systems.

A. Each abortion facility shall establish a monitoring program for the internal enforcement of all applicable fire and safety laws and regulations and shall designate a responsible employee for the monitoring program.

B. All fire protection and alarm systems and other firefighting equipment shall be inspected and tested in accordance with the current edition of the Virginia Statewide Fire Prevention Code (§ 27-94 et seq. of the Code of Virginia) to maintain them in serviceable condition.

C. All corridors and other means of egress or exit from the building shall be maintained clear and free of obstructions in accordance with the current edition of the Virginia Statewide Fire Prevention Code (§ 27-94 et seq. of the Code of Virginia).

Part VII
Design and Construction

12VAC5-412-370. Local and state codes and standards.

~~All construction of new buildings and additions or major renovations to existing buildings for occupancy as an abortion facility shall comply with all applicable state and local codes and ordinances.~~

Abortion facilities shall comply with state and local codes, zoning, and building ordinances and the Virginia Uniform Statewide Building Code (13VAC5-63). In addition, abortion facilities shall comply with Part 1 and Sections 3.1-1 through 3.1-8 and Section 3.7 of Part 3 of the 2010 Guidelines for Design and Construction of Health Care Facilities of the Facilities Guidelines Institute, which shall take precedence over the Virginia Uniform Statewide Building Code pursuant to § 32.1-127.001 of the Code of Virginia.

Entities operating as of the effective date of this chapter as identified by the department through submission of Reports of Induced Termination of Pregnancy pursuant to 12VAC5-550-120 or other means and that are now subject to licensure may be licensed in their current buildings if such entities submit a plan with the application for licensure that will bring them into full compliance with this provision within two years from the date of licensure.

In order to determine whether the abortion facility is in compliance with this provision, the commissioner may obtain additional information from the facility or its architect concerning the design and construction of the facility.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-412)

Guidelines for Design and Construction of Health Care Facilities, 2010 Edition, Part 1 and Sections 3.1-1 through 3.1-8 and 3.7 of Part 3, Facilities Guidelines Institute (formerly of the American Institute of Architects), Washington, D.C.

Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care, 2015, American Heart Association, 7272 Greenville Avenue, Dallas, TX 75231-4596 (https://eccguidelines.heart.org/index.php/circulation/cpr-ecc-guidelines-2/)

Sexually Transmitted Diseases Treatment Guidelines, 2015, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services (http://www.cdc.gov/std/tg2015/default.htm)

Guide to Infection Prevention for Outpatient Settings: Minimum Expectations for Safe Care, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services (http://www.cdc.gov/HAI/prevent/prevent_pubs.html)

Standards for Ambulatory Care, Rights and Responsibilities of the Individual, 2011, The Joint Commission, 1515 W. 22nd Street, Suite 1300W, Oak Brook, IL 60523, telephone 1-877-223-2866, email jcrcustomerservice@pbd.com

Bloodborne Pathogens - OSHA's Bloodborne Pathogens Standard, OSHA Fact Sheet and Quick Reference Guide, 2011 U.S. Occupational Safety and Health Administration

VA.R. Doc. No. R19-5858; Filed March 19, 2019, 4:50 p.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES 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 regulation, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-85. Recording and Reporting Occupational Injuries and Illnesses (amending 16VAC25-85-1904.41).**

Statutory Authority: § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: May 15, 2019.

Agency Contact: Jay Withrow, Director of Legal Support, Department of Labor and Industry, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-9873, or email jay.withrow@doli.virginia.gov.

Summary:

In a final rule, federal Occupational Safety and Health Administration (OSHA) adopted amendments (i) rescinding the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 and 301 and (ii) requiring covered employers to submit their employer identification number electronically with their injury and illness data, which will facilitate use of the data and may help reduce duplicative employer reporting.

In this regulatory action, the Safety and Health Codes Board is adopting this final rule.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1904 (Recording and

Reporting Occupational Injuries and Illnesses) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of the document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Statement of Final Agency Action: On March 19, 2019, the Safety and Health Codes Board adopted federal OSHA's Final Rule for Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records to OSHA, as published in 84 FR 380 through 84 FR 406 on January 25, 2019, with an effective date of May 15, 2019.

Federal Terms and State Equivalents: When the regulations, as set forth in the final rule for Recording and Reporting Occupational Injuries and Illnesses, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
February 25, 2019	May 15, 2019

VA.R. Doc. No. R19-5884; Filed March 21, 2019, 3:19 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 regulation, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.1427, 16VAC25-175-1926.1430).**

Statutory Authority: § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: May 15, 2019.

Agency Contact: Jennifer Rose, Safety Director, Department of Labor and Industry, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-7776, or email jennifer.rose@doli.virginia.gov.

Summary:

In a final rule, federal Occupational Safety and Health Administration (OSHA) updated the standard for cranes and derricks in construction by (i) clarifying an employer's duty to ensure the competency of crane operators through training, certification or licensing, and evaluation; (ii) altering a provision that required different levels of certification based on the rated lifting capacity of equipment; and (iii) establishing minimum requirements for determining operator competency.

In this regulatory action, the Safety and Health Codes Board is adopting this final rule.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1926 (Construction Industry Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219 and in the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Statement of Final Agency Action: On March 19, 2019, the Safety and Health Codes Board adopted federal OSHA's Final Rule for Cranes and Derricks in Construction: Operator Qualification, as published in 83 FR 56198 through 83 FR 56247 on November 9, 2018, with an effective date of May 15, 2019.

Federal Terms and State Equivalents: When the regulations, as set forth in the Safety and Health Regulations for Construction, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
November 9, 2018	May 15, 2019

VA.R. Doc. No. R19-5763; Filed March 21, 2019, 9:53 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Final Regulation

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

Title of Regulation: **18VAC48-30. Condominium Regulations (amending 18VAC48-30-560).**

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Effective Date: May 15, 2019.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

Summary:

The amendment corrects a cross reference to the Code of Virginia.

18VAC48-30-560. Transition of control of unit owners' association.

Upon transition of control of the association to the unit owners following the period of declarant control, the declarant shall, in addition to the requirements contained in subsection ~~C~~ H of § 55-79.74 of the Code of Virginia, notify the board in writing of the date of such transition and provide the name and contact information for members of the board of directors of the unit owners' association or the association's common interest community manager.

VA.R. Doc. No. R19-5850; Filed March 21, 2019, 2:30 p.m.

DEPARTMENT OF HEALTH PROFESSIONS

Final Regulation

REGISTRAR'S NOTICE: The Department of Health Professions is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 18 of the Code of Virginia, which exempts regulations for the implementation of the Health Practitioners' Monitoring Program, Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 of the Code of Virginia.

Title of Regulation: **18VAC76-10. Regulations Governing the Health Practitioners' Monitoring Program for the Department of Health Professions (amending 18VAC76-10-10, 18VAC76-10-65, 18VAC76-10-70).**

Statutory Authority: § 54.1-2516 of the Code of Virginia.

Effective Date: May 15, 2019.

Agency Contact: Peggy Woods, Program Manager, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4418, FAX (804) 527-4475, or email peggy.woods@dhp.virginia.gov.

Small Business Impact Review Report of Findings: This final regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Summary:

The amendments (i) eliminate an unnecessary definition and (ii) clarify the process by which boards are notified that a participant in the Health Practitioners' Monitoring Program is noncompliant and may no longer be eligible for a stay of disciplinary action.

18VAC76-10-10. Definitions.

The words and terms used in this chapter shall have the definitions ascribed to them in § 54.1-2515 of the Code of Virginia or shall have the following meanings, unless the context clearly indicates otherwise:

~~"Committee" means the Health Practitioners' Monitoring Program Committee as defined in § 54.1-2515 of the Code of Virginia.~~

"Contractor" means an entity with whom the director has contracted for implementation and operation of monitoring services.

"Director" means the Director of the Department of Health Professions.

"Program" means the Health Practitioners' Monitoring Program for the Virginia Department of Health Professions.

18VAC76-10-65. Authority of the chairperson of the committee.

~~A. The chairperson of the committee, following consultation with and briefing by the program manager, shall advise the relevant board that a participant is noncompliant and is no longer eligible for a stay.~~

~~B.~~ The chairperson may act on behalf of the committee when a scheduled meeting is canceled due to failure to convene a quorum.

18VAC76-10-70. Procedures for consultation with health regulatory boards.

A. The committee or its designee shall consult with the relevant health regulatory board prior to making a determination on stayed disciplinary action; such consultation may include the following:

1. Eligibility of a practitioner for stayed disciplinary action;

2. The implications of the impairment on practice in the profession;

3. The circumstances of the impairment related to a possible violation of laws or regulation; or

4. Any other issues related to disciplinary action or the eligibility, treatment, and recovery of a practitioner.

B. The committee, following consultation with and briefing by the program manager, shall advise the relevant board that a participant is noncompliant and may no longer be eligible for a stay.

VA.R. Doc. No. R19-5861; Filed March 22, 2019, 11:35 a.m.

REAL ESTATE BOARD

Final Regulation

REGISTRAR'S NOTICE: The Real Estate 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 Real Estate Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC135-20. Virginia Real Estate Board Licensing Regulations (amending 18VAC135-20-10, 18VAC135-20-101, 18VAC135-20-165).**

Statutory Authority: §§ 54.1-201 and 54.1-2105 of the Code of Virginia.

Effective Date: June 1, 2019.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email reboard@dpor.virginia.gov.

Summary:

Pursuant to Chapters 60, 86, 223, and 224 of the 2018 Acts of Assembly, the amendments (i) include broker supervision requirements as part of continuing education, (ii) add real estate teams to the definition of "supervising broker," and (iii) add supervising real estate teams to the duties of supervising brokers.

Part I
General

18VAC135-20-10. Definitions.

The following words and terms when used in this chapter unless a different meaning is provided or is plainly required by the context shall have the following meanings:

"Active" means any broker or salesperson who is under the supervision of a principal or supervising broker of a firm or sole proprietor and who is performing those activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

"Actively engaged" means active licensure with a licensed real estate firm or sole proprietorship in performing those activities as defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia for an average of at least 40 hours per week. This requirement may be waived at the discretion of the board in accordance with § 54.1-2105 of the Code of Virginia.

"Actively engaged in the brokerage business" means anyone who holds an active real estate license.

"Associate broker" means any individual licensee of the board holding a broker's license other than one who has been designated as the principal broker.

"Client" means a person who has entered into a brokerage relationship with a licensee as defined by § 54.1-2130 of the Code of Virginia.

"Firm" means any sole proprietorship (nonbroker owner), partnership, association, limited liability company, or corporation, other than a sole proprietorship (principal broker owner), which is required by 18VAC135-20-20 B to obtain a separate brokerage firm license. The firm's licensed name may be any assumed or fictitious name properly filed with the board.

"Inactive status" ~~refers to~~ means any broker or salesperson who is not under the supervision of a principal broker or supervising broker, who is not active with a firm or sole proprietorship, and who is not performing any of the activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

"Independent contractor" means a licensee who acts for or represents a client other than as a standard agent and whose duties and obligations are governed by a written contract between the licensee and the client.

"Licensee" means real estate brokers and salespersons as defined in Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or real estate firms.

"Principal broker" means the individual broker who shall be designated by each firm to assure compliance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, and this chapter, and to receive communications and notices from the board ~~which~~ that may affect the firm or any licensee

active with the firm. In the case of a sole proprietorship, the licensed broker who is the sole proprietor shall have the responsibilities of the principal broker. The principal broker shall have responsibility for the activities of the firm and all its licensees. The principal broker shall have signatory authority on all escrow accounts maintained by the firm.

"Principal to a transaction" means a party to a real estate transaction including without limitation a seller or buyer, landlord or tenant, optionor or optionee, licensor or licensee. For the purposes of this chapter, the listing or selling broker, or both, are not by virtue of their brokerage relationship, principals to the transaction.

"Sole proprietor" means any individual, not a corporation, limited liability company, partnership, or association, who is trading under the individual's name, or under an assumed or fictitious name pursuant to the provisions of Chapter 5 (§ 59.1-69 et seq.) of Title 59.1 of the Code of Virginia.

"Standard agent" means a licensee who acts for or represents a client in an agency relationship. A standard agent shall have the obligations as provided in Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia.

"Supervising broker" means (i) the individual broker who shall be designated by the principal broker to supervise the provision of real estate brokerage services by the associate brokers and salespersons assigned to branch offices or real estate teams or (ii) the broker, who may be the principal broker, designated by the principal broker to supervise a designated agent as stated in § 54.1-2130 of the Code of Virginia.

18VAC135-20-101. Qualification for renewal; continuing education requirements.

As a condition of renewal, and pursuant to § 54.1-2105.03 of the Code of Virginia, all active salespersons, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course ~~or courses~~ of not less than a total of 16 classroom, correspondence, or other distance learning instruction hours during each licensing term, except for salespersons who are renewing for the first time and are required to complete 30 hours of post-license education regardless of whether their licenses are active or inactive. All active brokers, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course ~~or courses~~ of not less than a total of 24 classroom, correspondence, or other distance learning instruction hours during each licensing term. Active licensees called to active duty in the Armed Forces of the United States may complete these courses within six months of their release from active duty. Inactive brokers and salespersons are not required to complete the continuing education course as a condition of renewal (see 18VAC135-20-70, Activation or transfer of license).

1. Providers shall be those as defined in 18VAC135-20-350;

2. ~~Effective until January 1, 2016, for salespersons, eight of the required 16 hours shall include two hours in fair housing laws, three hours in ethics and standards of conduct and a minimum of one hour each in legal updates and emerging trends, real estate agency and real estate contracts. For brokers, 16 of the 24 required hours shall include eight hours in supervision and management of real estate agents and the management of real estate brokerage firms, two hours in fair housing laws, three hours in ethics and standards of conduct and a minimum of one hour each in legal updates and emerging trends, real estate agency and real estate contracts. Effective January 1, 2016, for~~ For salespersons, eight of the required 16 hours shall include two hours in fair housing laws~~,~~; three hours in ethics and standards of conduct~~,~~; and a minimum of one hour each in legal updates and emerging trends, to include flood zone areas and the National Flood Insurance Program, real estate agency, and real estate contracts. For brokers, 16 of the 24 required hours shall include eight hours in supervision and management of real estate agents and the management of real estate brokerage firms, two hours of which shall include an overview of the broker supervision requirements under this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia; two hours in fair housing laws~~,~~; three hours in ethics and standards of conduct~~,~~; and a minimum of one hour each in legal updates and emerging trends, to include flood zone areas and the National Flood Insurance Program, real estate agency, and real estate contracts. If the licensee submits a notarized affidavit to the board that certifies that he does not practice residential real estate brokerage, residential management, or residential leasing and shall not do so during the licensing term, training in fair housing shall not be required; instead such licensee shall receive training in other applicable federal and state discrimination laws and regulations. The remaining hours shall be on subjects from the following list:

a. Property rights;

b. Contracts;

c. Deeds;

d. Mortgages and deeds of trust;

e. Types of mortgages;

f. Leases;

g. Liens;

h. Real property and title insurance;

i. Investment;

j. Taxes in real estate;

k. Real estate financing;

l. Brokerage and agency contract responsibilities;

m. Real property management;

n. Search, examination and registration of title;

o. Title closing;

p. Appraisal of real property;

q. Planning subdivision developments and condominiums;

r. Regulatory statutes;

s. Housing legislation;

t. Fair housing;

u. Real Estate Board regulations;

v. Land use;

w. Business law;

x. Real estate economics;

y. Real estate investments;

z. Federal real estate law;

aa. Commercial real estate;

bb. Americans With Disabilities Act;

cc. Environmental issues impacting real estate;

dd. Building codes and design;

ee. Local laws and zoning;

ff. Escrow requirements;

gg. Ethics and standards of conduct; and

hh. Common interest ownership.

3. ~~Effective until January 1, 2016, salespersons holding licenses in other jurisdictions must complete eight hours, which shall include fair housing laws, legal updates and emerging trends, ethics and standards of conduct, and real estate agency and real estate contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this section. Brokers holding licenses in other jurisdictions must complete 16 hours that shall include supervision and management of real estate agents and the management of real estate brokerage firms, fair housing laws, legal updates and emerging trends, ethics and standards of conduct, and real estate agency and real estate contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this section. Effective January 1, 2016, salespersons~~ Salespersons holding licenses in other jurisdictions must complete eight hours~~, which~~ that shall include fair housing laws~~,~~ and legal updates and emerging trends, to include flood zone areas and the National Flood Insurance Program, ethics and standards of conduct, ~~and~~ real estate agency, and real estate contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this section. Brokers holding licenses in other jurisdictions must complete 16 hours that shall include supervision and management of real estate agents and the management of real estate brokerage firms, two hours of which shall include an overview of the broker supervision requirements under this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia; fair housing laws~~,~~; legal updates and emerging trends, to include flood zone areas and the National Flood Insurance Program~~,~~; ethics and standards of conduct~~,~~; and real estate agency and real estate contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this section.

4. The board may approve additional subjects at its discretion and in accordance with § 54.1-2105.03 of the Code of Virginia.

5. Credit for continuing education course completion is given for each class hour/clock hour as defined in 18VAC135-20-350.

6. Licensees are responsible for retaining for three years and providing proof of continuing education. Proof of course completion shall be made on a form prescribed by the board. Failure to provide documentation of completion as directed by the board ~~will~~ may result in the license not being renewed ~~and/or~~, disciplinary action pursuant to this chapter, or both.

7. Instructors who are also licensees of the board may earn continuing education credit for teaching continuing education courses.

8. Any continuing education credits completed by the licensee in excess of that required in the current license term that are obtained in the six months immediately prior to the license expiration date shall carry over into the next two-year renewal period.

18VAC135-20-165. Duties of supervising broker.

Each place of business ~~and~~, each branch office, and each real estate team shall be supervised by a supervising broker. The supervising broker shall exercise reasonable and adequate supervision of the provision of real estate brokerage services by associate brokers and salespersons assigned to the branch office or real estate team. The supervising broker may designate another broker to assist in administering the provisions ~~of~~ required by this section~~. The supervising broker does not relinquish overall responsibility~~, but such designation does not relieve the supervising broker of responsibility for the supervision of the acts of all licensees assigned to the branch office or real estate team. Factors to be

considered in determining whether the supervision is reasonable and adequate include ~~but are not limited to~~ the following:

1. The availability of the supervising broker to all licensees under the supervision of the broker to review and approve all documents, including ~~but not limited to~~ leases, contracts affecting the firm's clients, brokerage agreements, and advertising;

2. The availability of training and written procedures and policies that provide, without limitation, clear guidance in the following areas:

a. Proper handling of escrow deposits;

b. Compliance with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management;

c. Advertising;

d. Negotiating and drafting of contracts, leases, and brokerage agreements;

e. Use of unlicensed individuals;

f. Agency or independent contractor relationships;

g. Distribution of information on new or changed statutory or regulatory requirements;

h. Disclosure of matters relating to the condition of the property; and

i. Such other matters as necessary to assure the competence of licensees to comply with this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

3. The availability of the supervising broker in a timely manner to supervise the management of the brokerage services;

4. The supervising broker ensures the brokerage services are carried out competently and in accordance with the provisions of this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia;

5. The supervising broker undertakes reasonable steps to ensure compliance by all licensees assigned to the branch office, including ~~but not limited to~~ ensuring the licensees have an active, current license;

6. The supervising broker undertakes reasonable steps to ensure only licensees undertake activities requiring a license, including ~~but are not limited to~~:

a. Show property;

b. Hold an open house;

c. Answer questions on listings, title, financing, closing, contracts, brokerage agreements, and legal documents;

d. Discuss, explain, interpret, or negotiate a contract, listing, lease agreement, or property management agreement with anyone outside the firm; and

e. Negotiate or agree to any commission, commission split, management fee, or referral fee.

7. The supervising broker shall provide adequate supervision over the unlicensed employees or assistants under the supervision of a broker as they perform the following permitted activities:

a. Perform general clerical duties, including answering the phones, responding by electronic media, and providing information shown on the listing;

b. Submit listings and changes to MLS;

c. Follow up on loan commitments after contracts have been ratified;

d. Have keys made for listings;

e. Compute commission checks;

f. Place signs on properties;

g. Act as a courier service;

h. Schedule appointments;

i. Record and deposit earnest money deposits, security deposits, and advance rents;

j. Prepare contract forms for approval of the licensee and supervising broker;

k. Prepare promotional materials and advertisements for approval of the licensee and supervising broker;

l. Assemble closing documents;

m. Obtain required public information from governmental entities;

n. Monitor license and personnel files;

o. Order routine repairs as directed by licensee;

p. ~~Are compensated~~ Receive compensation for their work at a predetermined rate that is not contingent upon the occurrence of a real estate transaction; and

q. Perform any other activities undertaken in the regular course of business for which a license is not required.

8. If a supervising broker is located more than 50 miles from the place of business or the branch office and there are licensees who regularly conduct business assigned to the branch office or at the place of business, the supervising broker must certify in writing on a quarterly basis on a form provided by the board that the supervising broker complied with the requirements of this section; ~~and~~

9. The supervising broker must maintain the records required in this section for three years. The records must be furnished to the board's agent upon request;

10. The supervising broker ensures that affiliated real estate teams or business entities are operating in accordance with the provisions of this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia; and

11. The supervising broker ensures that all brokerage agreements include the name and contact information of the supervising broker.

VA.R. Doc. No. R19-5870; Filed March 25, 2019, 1:39 p.m.

EXECUTIVE ORDER NUMBER THIRTY (2019)

Appointing the Secretary of Natural Resources as the Commonwealth's Natural Resources Trustee

Directive

By virtue of the authority vested in me as Governor, by Article V, Section 7 of the Constitution of Virginia and § 2.2-104 of the Code of Virginia, I hereby appoint the Secretary of Natural Resources as the trustee of the Commonwealth's natural resources pursuant to § 107(f)(2)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")(42 USC § 9607(f)(2)(B)); § 311(f)(5) of the Federal Water Pollution Control Act ("Clean Water Act")(33 USC § 1321(f)(5)); and § 1006(b)(3) of the Oil Pollution Act ("OPA")(33 USC § 2706(b)(3)). The Secretary of Natural Resources shall faithfully execute the duties and responsibilities set forth in 40 CFR §§ 300.605 and 300.615, subject to Virginia law.

Effective Date of this Executive Order

This Executive Order shall become effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 21st day of March, 2019.

/s/ Ralph S. Northam
Governor

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 initial or additional 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 comment period.

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

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Title of Document: Property Lines Along Public Roads Without Recorded Fee Simple Right of Way.

Public Comment Deadline: May 15, 2019.

Effective Date: May 16, 2019.

Agency Contact: Trisha Henshaw, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-0362, or email trisha.henshaw@dpor.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

Titles of Documents:

Approved Health Education Certifying Agencies.

Barber Schools Previously Approved to Teach Training Equivalent to the Master Barber Curriculum.

Cosmetology Instructors May Teach Nail or Wax Instructor Programs.

Master Barber Applicants Who Have Already Completed Training Equivalent to the Master Barber Curriculum.

Public Comment Deadline: May 15, 2019.

Effective Date: May 16, 2019.

Agency Contact: Trisha Henshaw, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-0362, or email trisha.henshaw@dpor.virginia.gov.

STATE BOARD OF HEALTH

Titles of Documents:

Virginia Bleeding Disorders Program Guidelines for Health Insurance Case Management, Premium Assistance, and Copay Assistance.

Virginia Bleeding Disorders Program Pool of Funds Guidelines.

Public Comment Deadline: May 15, 2019.

Effective Date: May 16, 2019.

Agency Contact: Ryan Garnowski, Department of Health, 109 Governor Street, Richmond, VA 23219, email ryan.garnowski@vdh.virginia.gov.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Title of Document: Virginia License Plate Scholarship Guidelines.

Public Comment Deadline: May 15, 2019.

Effective Date: May 16, 2019.

Agency Contact: Melissa Wyatt, State Council of Higher Education for Virginia, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-4113, or email melissacollumwyatt@schev.edu.

BOARD OF MEDICINE

Title of Document: Authority of Licensed Nurse Practitioners to Write Do Not Resuscitate Orders (DNR Orders).

Public Comment Deadline: May 15, 2019.

Effective Date: May 16, 2019.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

BOARD OF NURSING

Titles of Documents:

Authority of Licensed Nurse Practitioners to Write Do Not Resuscitate Orders (DNR Orders).

Patient Abandonment by Care Providers.

Removal of Venous and Arterial Sheaths by Unlicensed Personnel.

Requests for Review and Challenges of NCLEX.

Public Comment Deadline: May 15, 2019.

Effective Date: May 16, 2019.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

BOARD OF SOCIAL WORK

Title of Document: Guidance Document on the Practice of Conversion Therapy.

Public Comment Deadline: May 15, 2019.

Effective Date: May 16, 2019.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

ANNUAL LIST

Section 2.2-4103.1 of the Code of Virginia requires annual publication in the Virginia Register of Regulations of guidance document lists from state agencies. A guidance document is defined as "…any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations..." Agencies are required to maintain a complete, current list of all guidance documents and make the full text of such documents available to the public.

Generally, the format for the guidance document list is: document number (if any), title of document, date issued or last revised, and citation of Virginia Administrative Code regulatory authority or Code of Virginia statutory authority. Questions concerning documents or requests for copies of documents should be directed to the contact person listed by the agency.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

Copies of the following documents may be viewed during regular work days from 9 a.m. until 4 p.m. at the Virginia Department of Rail and Public Transportation (DRPT), 600 East Main Street, Suite 2102, Richmond, VA 23219. Copies may be obtained (a fee may apply). DRPT may be contacted at (804) 786-4440. Additional information is available online at www.drpt.virginia.gov.

Guidance Documents:

Public Transportation and Transportation Demand Management Grant Program and Application Guidance Fiscal Year 2019, https://olga.drpt.virginia.gov/Documents/forms/FY%202019%20DRPT%20Grant%20Application%20Guidance.pdf

Capital Assistance Help Document, https://olga.drpt.virginia.gov/Documents/help/capitalassistance.pdf

Demonstration Project Assistance Help Document, https://olga.drpt.virginia.gov/documents/help/Help%20-%20Demonstration%20Project%20Application.pdf

Federal Transit Administration (FTA) Section 5303 - Metropolitan Planning Program Help Document, https://olga.drpt.virginia.gov/Documents/help/fta5303.pdf

FTA Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Program Help Document, https://olga.drpt.virginia.gov/Documents/help/fta5310.pdf

FTA Section 5317 - New Freedom Program Help Document, https://olga.drpt.virginia.gov/Documents/help/fta5317.pdf

I-95 Hot lanes - Capital Help Document, https://olga.drpt.virginia.gov/Documents/help/capitalassistance.pdf

I-95 Hot lanes - Operating Grant Program and Application Guidance Fiscal Year 2019, https://olga.drpt.virginia.gov/Documents/forms/FY%202019%20DRPT%20Grant%20Application%20Guidance.pdf

Intercity Operating and Capital Fund Program Guidance, https://olga.drpt.virginia.gov/documents/forms/IPROC%20Fy18%20Application%20Procedures.pdf

Mid-Cycle Grant Application Program Guidance, https://olga.drpt.virginia.gov/documents/forms/Mid%20Cycle%20Grant%20Application.pdf

Operating Assistance Help Document, https://olga.drpt.virginia.gov/documents/help/2017-10-17%20Operating%20Application%20Training%20and%20Help%20Document.pdf

Public Transportation Internship Program Help Document, https://olga.drpt.virginia.gov/Documents/help/internprogram.pdf

Rail Enhancement Fund Program Guidance, https://olga.drpt.virginia.gov/documents/forms/updated%20-%20ref%20procedure%20manual%20-%20december17.pdf

Rail Industrial Access Program Guidance, http://www.drpt.virginia.gov/media/2178/2016-ria-program-procedure-staff-manual-2016.pdf

Rail Preservation Fund Program Guidance, https://olga.drpt.virginia.gov/Documents/help/rpf.pdf

Rural Transportation Assistance Program Grant Program and Application Guidance Fiscal Year 2019, https://olga.drpt.virginia.gov/Documents/forms/FY%202019%20DRPT%20Grant%20Application%20Guidance.pdf

Senior Transportation Help Document, https://olga.drpt.virginia.gov/Documents/help/seniortransportation.pdf

Small Urban Training Program Grant Program and Application Guidance Fiscal Year 2019, https://olga.drpt.virginia.gov/Documents/forms/FY%202019%20DRPT%20Grant%20Application%20Guidance.pdf

Transportation Demand Management Operating Help Document, https://olga.drpt.virginia.gov/Documents/help/tdmoperating.pdf

Technical Assistance Help Document, https://olga.drpt.virginia.gov/Documents/help/technicalassistance.pdf

Transportation Management Project Help Document, https://olga.drpt.virginia.gov/Documents/help/tmp.pdf

DEPARTMENT OF ENVIRONMENTAL QUALITY

First Solar Development LLC - Withdrawal of Notice of Intent - Small Renewable Energy Project (Solar) - Montgomery County

First Solar Development LLC has provided the Department of Environmental Quality a withdrawal of a notice of intent to submit documentation for a permit by rule for a small renewable energy project (solar) in Montgomery County. The original notice of intent was published in the Virginia Register of Regulations on April 3, 2017.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4319, or email mary.major@deq.virginia.gov.

Grasshopper Solar LLC - Withdrawal of Notice of Intent - Small Renewable Energy Project (Solar) - Mecklenburg County

Grasshopper Solar LLC has provided the Department of Environmental Quality a withdrawal of a notice of intent to submit documentation for a permit by rule for a small renewable energy project (solar) in Mecklenburg County. The original notice of intent was published in the Virginia Register of Regulations on December 12, 2016, and a modified notice was published on December 25, 2017.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4319, or email mary.major@deq.virginia.gov.

VEPCO/Grasshopper Solar Project Notice of Intent - Small Renewable Energy Project (Solar) - Mecklenburg County

Dominion Energy Services Inc., on behalf of Virginia Electric and Power Company, has provided the Department of Environmental Quality with a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) to be located in Mecklenburg County, pursuant to 9VAC15-60. The project is an 80-megawatts facility to be located across roughly 927 acres on one parcel in Mecklenburg County north of Chase City with borders along Routes 49 and 671.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4319, or email mary.major@deq.virginia.gov.

Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality is conducting a periodic review and small business impact review of **9VAC15-20, Guidelines for the Preparation of Environmental Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins April 15, 2019, and ends May 6, 2019.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Melissa Porterfield, Office of Regulatory Affairs, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

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

DEPARTMENT OF GENERAL SERVICES

Revision to Fees for Drinking Water Laboratory Certification

The Division of Consolidated Laboratory Services (DCLS), Department of General Services, published a notice in 35:13 VA.R. 1833-1835 February 18, 2019 seeking comment on the revision to fees charged for certifying drinking water laboratories under 1VAC30-41-270 as required by subdivision I 2 of 1VAC30-41-270.

No comments were received. The revision to the fees will stand as published. The following fees are effective for May 1, 2019, through April 30, 2020, for drinking water laboratory certification under 1VAC30-41-270.

TESTING CATEGORY	FEE ($)
Microbiological testing	
1 - 2 methods	647
3 - 5 methods	754

6+ methods	862
Inorganic chemistry, nonmetals testing	
1 - 2 methods	700
3 - 5 methods	915
6 - 8 methods	1132
9+ methods	1347
Inorganic chemistry, metals testing	
1 - 2 methods	1077
3 - 5 methods	1292
6+ methods	1506
Organic chemistry	
1 - 2 methods	1132
3 - 5 methods	1347
6 - 8 methods	1561
9+ methods	1778
Radiochemistry	
1 - 2 methods	1186
3 - 5 methods	1400
6+ methods	1616
Asbestos	
1 - 2 methods	969
3 - 5 methods	1186
6+ methods	1400

How fees are calculated: DCLS calculates a laboratory's total fee by adding the fees for the number of test methods in each category in the fee table for which the laboratory is certified or applies to be certified. Contact lab_cert@dgs.virginia.gov for more information about the fee category for a specific method.

Additional fees:

Additional fees apply when a laboratory:

- Applies for modification of certification under 1VAC30-41-110
- Is moving its location when the move requires DCLS to perform an onsite assessment
- Requests reinstatement of certification when DCLS requires an onsite assessment

Hourly review fee and calculation of total fee. The fee to be charged is the sum of the total hourly charges for all reviewers plus any onsite assessment costs incurred. The hourly charge per reviewer is $66. The charge per reviewer is determined by multiplying the number of hours expended in the review by $66.

Onsite review and travel expenses. If an onsite review is required, travel time and onsite review time will be charged at the same hourly rate of $66 and any travel expenses will be added.

When to pay: Payment is due at the time the application is made or annually thereafter upon receipt of the invoice from DCLS. Annual billing precedes the expiration of the current certificate.

How to pay: Fees may be paid by check, draft, or postal money order payable to the Treasurer, Commonwealth of Virginia, or submitted electronically, if available. Payment must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit interagency transfers for the amount of the fee. Laboratories may also pay fees using credit cards. All fees must be sent to the following address, or submitted electronically, if available: DCLS, Attn: Lab Certification, 600 North 5th Street, Richmond, VA 23219. A fee payment form is available on the Drinking Water page of the DCLS website at www.dgs.virginia.gov/dcls.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Medical Assistance Services conducted a small business impact review of **12VAC30-5, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Department of Medical Assistance Services is publishing its report of findings dated March 26, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The regulations are not anticipated to have an adverse impact on small businesses.

Contact Information: Jimeequa Williams, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-3508, FAX (804) 786-1680, or email jimeequa.williams@dmas.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Medical Assistance Services conducted a small business impact review of **12VAC30-95, Standards Established and Methods Used for Fee-for-Service Reimbursement**, and determined that this regulation should be retained in its current form. The Department of Medical Assistance Services is publishing its report of findings dated

March 26, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The regulations are not likely to create any costs or other effects on small businesses and are not anticipated to have an adverse impact on small businesses.

Contact Information: Jimeequa Williams, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-3508, FAX (804) 786-1680, or email jimeequa.williams@dmas.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Medical Assistance Services conducted a small business impact review of **12VAC30-100, State Programs**, and determined that this regulation should be retained in its current form. The Department of Medical Assistance Services is publishing its report of findings dated March 26, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The regulations are not anticipated to have an adverse impact on small businesses.

Contact Information: Jimeequa Williams, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-3508, FAX (804) 786-1680, or email jimeequa.williams@dmas.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Medical Assistance Services conducted a small business impact review of **12VAC30-121, Commonwealth Coordinated Care Program**, and determined that this regulation should be retained in its current form. The Department of Medical Assistance Services is publishing its report of findings dated March 26, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The regulations are not anticipated to have an adverse impact on small businesses.

Contact Information: Jimeequa Williams, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-3508, FAX (804) 786-1680, or email jimeequa.williams@dmas.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Medical Assistance Services conducted a small business impact review of **12VAC30-150, Uninsured Medical Catastrophe Fund**, and determined that this regulation should be retained in its current form. The Department of Medical Assistance Services is publishing its report of findings dated March 26, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The regulations are not anticipated to have an adverse impact on small businesses.

Contact Information: Jimeequa Williams, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-3508, FAX (804) 786-1680, or email jimeequa.williams@dmas.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD

Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality is conducting a periodic review and small business impact review of **9VAC20-130, Solid Waste Planning and Recycling Regulations**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins April 15, 2019, and ends May 6, 2019.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

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

STATE WATER CONTROL BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Water Control Board conducted a small business impact review of **9VAC25-780, Local and Regional Water Supply Planning**, and determined that this regulation should be retained in its current form. The State Water Control Board is publishing its report of findings dated March 12, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The regulation continues to be needed to ensure the availability of water resources for the public while protecting water resources for other beneficial uses. No comments were received during the public comment period. The regulation contains requirements for water supply planning to be conducted on local and regional levels. Localities also must plan how they will meet their future water supply needs and potentially increased demands for the future. The regulation has been written in a format to minimize the complexity of the regulation. The requirement for local and regional water supply plans to be developed is a state requirement, and there is no equivalent federal requirement for these plans to be developed. This regulation is consistent with current state law.

This regulation was last amended in 2015 to correct citations referenced in the regulation. The regulation requires local plans to be updated and resubmitted every 10 years, and changes in technology or economic conditions are reflected in the revised plan. This regulation does not directly regulate small businesses. Localities develop local water supply plans and may choose to include provisions in their plan that minimize impacts on small businesses.

Contact Information: Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Proposed Enforcement Action for B.E.I. Refueling Services Inc.

An enforcement action has been proposed for B.E.I. Refueling Services Inc. for violation of the State Water Control Law in Buchanan County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Ralph T. Hilt will accept comments by email at ralph.hilt@deq.virginia.gov, FAX at (276) 676-4899, or postal mail at Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, from April 16, 2019, through May 15, 2019.

Proposed Consent Order for Milestone Metals Inc.

An enforcement action has been proposed for Milestone Metals Inc. for violations of the State Water Control Law and regulations at the Milestone Metals facility located in Fairfax, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Milestone Metals facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Benjamin Holland will accept comments by email at benjamin.holland@deq.virginia.gov or by postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from April 16, 2019, through May 15, 2019.

Proposed Consent Special Order for Robinson Chicken Farm

An enforcement action is proposed for Robinson Chicken Farm for alleged violations that occurred at 121 Taylor Lane, Cartersville, Virginia. The State Water Control Board proposes to issue a consent special order to Robinson Chicken Farm to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Jeff Reynolds will accept comments by email at jefferson.reynolds@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060 from April 15, 2019, to May 15, 2019.

Amendment of Water Quality Management Planning Regulation

Notice of action: The State Water Control Board (board) is considering the amendment of the regulation on water quality management planning in accordance with the Public Participation Procedures for Water Quality Management Planning. A regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality (DEQ) on the proposed amendment. The purpose of the amendment to the state's Water Quality Management Planning Regulation (9VAC25-720) is to adopt 20 new and three revised total maximum daily load (TMDL) wasteload allocations (WLAs).

Public comment period: April 15, 2019, through May 15, 2019.

Description of proposed action: DEQ staff will propose amendments of the state's Water Quality Management Planning regulation for the Potomac-Shenandoah River Basin (9VAC25-720-50 A), James River Basin (9VAC25-720-60 A), and the Rappahannock River Basin (9VAC25-720-70 A).

Statutory authority for promulgating these amendments can be found in § 62.1-44.15 of the Code of Virginia.

Staff intends to recommend that the board (1) approve the three TMDL reports as the plan for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, (2) authorize inclusion of the three TMDL reports in the appropriate Water Quality Management Plan, and (3) adopt 20 new and three revised TMDL wasteload allocations as part of the state's Water Quality Management Planning Regulation in accordance with § 2.2-4006 A 14 and B of the Code of Virginia.

The TMDL reports were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article 2 of the Virginia Administrative Process Act. The reports were subject to the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDL.

As of July 1, 2014, TMDL WLAs can receive State Water Control Board approval prior to EPA approval due to amendments outlined in § 2.2-4006 A 14 of the Code of Virginia. The three TMDL reports in this public notice have been reviewed by EPA for required TMDL elements, however, remain in draft form awaiting State Water Control Board approval. The draft reports can be found at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx.

Affected waterbodies and localities for the 20 new and three revised TMDL wasteload allocations:

Potomac-Shenandoah River Basin (9VAC25-720-50 A)

"Revision of the Benthic Total Maximum Daily Load (TMDL) Developed for the Blacks Run and Cooks Creek Watershed Located in the City of Harrisonburg and Rockingham County"

- The Blacks Run and Cooks Creek TMDL, located in the City of Harrisonburg and Rockingham County, propose sediment reductions for the Blacks Run and Cooks Creek watershed and provides revised sediment wasteload allocations of 1,310,000 lbs/year and 1,543,000 lbs/year

- The Blacks Run and Cooks Creek TMDL, located in the City of Harrisonburg and Rockingham County, proposes total phosphorus reductions for the Cooks Creek watershed and provides a revised total phosphorus waste load allocations of 2,060 lbs/year.

James River Basin (9VAC25-720-60 A):

"Bacteria and Sediment Total Maximum Daily Load (TMDL) Development for the James River and Tributaries Located in Botetourt and Craig Counties Virginia"

- The James River and tributaries TMDL, located in Botetourt and Craig Counties, proposes E. coli reductions for the Sinking Creek, Barbours Creek, Lapsley Run, Little Patterson Creek, Upper Craig Creek, Middle Craig Creek, Lower Craig Creek, and Catawba Creek watersheds and a portion of the James River watershed and provides new E. coli wasteload allocations of 1.17E+9 counts/year, 2.36E+9 counts/year, 2.45E+8 counts/year, 5.38E+8 counts/year, 3.93E+9 counts/year, 1.54E+10 counts/year, 2.07E+10 counts/year, 3.00E+9 counts/year, and 4.19E+10 counts/year.

- The James River and tributaries TMDL, located in Botetourt and Craig Counties, proposes sediment reductions for the Catawba Creek watershed and provides a new sediment wasteload allocation of 29.44 tons/year.

Rappahannock River Basin (9VAC25-720-70 A):

"Bacteria Total Maximum Daily Load (TMDL) Development for the Rappahannock River and Tributaries Located in Caroline, Essex, King George, Richmond, and Westmoreland Counties Virginia"

- The Rappahannock River and tributaries TMDL, located in Caroline, Essex, King George, Richmond, and Westmoreland Counties, proposes E. coli reductions for Mill Creek, Jetts Creek, Portobago Creek, Stillwater Creek, Baylors Creek, Elmwood Creek, Peedee Creek (nontidal), and unnamed tributary of Peedee Creek watersheds and provides new E. coli wasteload allocations of 1.19E+12 cfu/year, 6.41E+10 cfu/year, 1.06E+11 cfu/year, 3.50E+10 cfu/year, 4.72E+10 cfu/year, 5.14E+10 cfu/year, 2.62E+10 cfu/year, and 1.30E+9 cfu/year.

- The Rappahannock River and tributaries TMDL, located in Caroline, Essex, King George, Richmond, and Westmoreland Counties, proposes Enterococci reductions for a portion of Peedee Creek (tidal) and a portion of the Rappahannock River (tidal) watersheds and provides new Enterococci wasteload allocations of 2.07E+10 cfu/day and 3.11E+12 cfu/day.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens who submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: The TMDL reports are available on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx and by contacting the DEQ

representative listed for any report. The electronic copies are in PDF or Word format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: Kelly Meadows, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4291, FAX (804) 698-4032, or email kelly.meadows@deq.virginia.gov.

Intent to Reauthorize Use of Virginia Aquatic Resources Trust Fund as a Form of Compensatory Mitigation under 9VAC25-210-10

Pursuant to § 62.1-44.15:20-23 of the Code of Virginia and 9VAC25-210-116 D, the State Water Control Board (the board) is giving notice of its intent to reauthorize the Virginia Aquatic Resources Trust Fund (VARTF), one of several acceptable forms of compensatory mitigation for permitted impacts to state waters, including streams and wetlands, to use the revised program instrument (instrument), after considering public comment for a 30-day period starting April 15, 2019. The instrument sets out to confirm and update guidelines, responsibilities, and standards for the establishment, use, operation, and maintenance of the VARTF program for impacts authorized by Department of Army permits or Virginia Water Protection Permits, and in other cases if agreed upon by the U.S. Army Corps of Engineers, Virginia Department of Environmental Quality, and The Nature Conservancy. The Nature Conservancy intends to achieve no net loss of existing wetland acreage and functions and no net loss of stream functions pursuant to § 62.1- 44.15:21 B of the Code of Virginia and to accomplish mitigation projects in Virginia efficiently and at beneficial economies of scale to provide for a significant net gain of aquatic resource functions and values where possible.

The Nature Conservancy (TNC) remains the sponsor of VARTF, an existing in-lieu fee compensatory mitigation program, which has been in operation in the Commonwealth of Virginia since 1995, in accordance with a Memorandum of Understanding between TNC and the U.S. Army Corps of Engineers (the Corps), as amended in 2003. In 2011, the Virginia Department of Environmental Quality (DEQ) participated on a work group with the Corps, TNC, the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (USFWS), and the National Oceanic and Atmospheric Administration (NOAA) to develop the instrument, bringing VARTF into compliance with the Federal Mitigation Rule (33 CFR 332), which governs compensatory mitigation for activities authorized by Corps permits, as well as Virginia State Water Control Law and DEQ's Virginia Water Protection Permit (VWPP) program. In 2016, DEQ reauthorized the instrument for a three-year period.

The purpose of this reauthorization is to improve the guidelines, responsibilities, and standards set forth in 2016 for the establishment, use, operation, and maintenance of VARTF in compliance with State Water Control Law and the VWPP program. The revised instrument satisfies the requirements set forth by the VWPP program in 9VAC25-210-116 D, including dedication to the achievement of no net loss of wetland acreage and functions or stream functions and water quality benefits, consultation with DEQ on site selection, provision of annual reports detailing projects and contributions by watershed, commitment to a program audit every five years, and a mechanism to establish fee amounts. VARTF demonstrated through the 2018 annual report and VARTF program update letter significant improvements since the 2016 reauthorization. Lastly, VARTF continues to work in collaboration with the interagency review team for in-lieu fee programs on efforts to advance the VARTF program over time.

The board proposes to reauthorize VARTF to use the revised instrument, continuing as a compensatory mitigation option for a 10-year period ending July 14, 2029. DEQ's approval will remain in effect until July 14, 2029, provided that the conditions of the instrument are met. Instrument revisions include aligning the instrument with the recently updated Mitigation Banking Instrument (2018), providing transparency through program operation changes, improving long-term management to ensure long-term site sustainability, and increasing fees to cover growing costs of implementing projects. The revised instrument also includes the following condition: if TNC has not identified a suitable site to offset advance credit sales within two years of that sale, then TNC will release a request for proposal to offset the liability by third-party mitigation providers.

Approval of VARTF may be made by letter, after accepting and considering public comments on its approval of VARTF for at least a 30-day public comment period pursuant to 9VAC25-210-116 D. A copy of this public notice, links to the VARTF Program Instrument and Exhibits, and the 2018 VARTF Annual Report will be available by April 15, 2019, on the DEQ website Wetlands and Streams Public Notice page at http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/PublicNotices.aspx, under the Program and Regulatory section, or by calling or emailing David L. Davis, Department of Environmental Quality Office of Wetlands and Stream Protection.

Written comments, including those by email, must be received no later than 11:59 p.m. on May 15, 2019, and should be submitted to David L. Davis using the listed contact information. Only those comments received within the comment period will be considered by the board. Written comments shall include the name, address, and telephone number of the writer; shall reference "VARTF Reauthorization" in the subject line; and shall contain a complete, concise statement of the factual basis for comments.

Contact Information: David L. Davis, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, or email vwppublicnotices@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

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

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

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

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ERRATA

BOARD OF DENTISTRY

Title of Regulation: **18VAC60-21. Regulations Governing the Practice of Dentistry.**

Publication: 32:5 VA.R. 706-729 November 2, 2015

Correction to Final Regulation:

Page 726, 18VAC60-21-330 C, after "§ 54.1-2400.2" replace "G" with "[~~G~~ H]"

VA.R. Doc. No. R10-2362; Filed April 1, 2019, 4:24 p.m.