VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

Members of the Virginia Code Commission: **John S. Edwards, Chair; Ward L. Armstrong; Nicole Cheuk; James A. Leftwich, Jr.; Richard E. Gardiner; Jennifer L. McClellan; Christopher R. Nolen; Steven Popps; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade; Wren M. Williams.**

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PUBLICATION SCHEDULE AND DEADLINES

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

December 2022 through December 2023

Volume: Issue	Material Submitted By Noon*	Will Be Published On
39:8	November 14, 2022 **(Monday)**	December 5, 2022
39:9	November 30, 2022	December 19, 2022
39:10	December 13, 2022 **(Tuesday)**	January 2, 2023
39:11	December 27, 2022 **(Tuesday)**	January 16, 2023
39:12	January 11, 2023	January 30, 2023
39:13	January 25, 2023	February 13, 2023
39:14	February 8, 2023	February 27, 2023
39:15	February 22, 2023	March 13, 2023
39:16	March 8, 2023	March 27, 2023
39:17	March 22, 2023	April 10, 2023
39:18	April 5, 2023	April 24, 2023
39:19	April 19, 2023	May 8, 2023
39:20	May 3, 2023	May 22, 2023
39:21	May 17, 2023	June 5, 2023
39:22	May 31, 2023	June 19, 2023
39:23	June 14, 2023	July 3, 2023
39:24	June 28, 2023	July 17, 2023
39:25	July 12, 2023	July 31, 2023
39:26	July 26, 2023	August 14, 2023
40:1	August 9, 2023	August 28, 2023
40:2	August 23, 2023	September 11, 2023
40:3	September 6, 2023	September 25, 2023
40:4	September 20, 2023	October 9, 2023
40:5	October 4, 2023	October 23, 2023
40:6	October 18, 2023	November 6, 2023
40:7	November 1, 2023	November 20, 2023
40:8	November 14, 2023 **(Tuesday)**	December 4, 2023
40:9	November 29, 2023	December 18, 2023

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **6VAC40-11, Public Participation Guidelines**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins November 21, 2022, and ends December 12, 2022.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Amy Jenkins, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **12VAC5-67, Advance Health Care Directive Registry**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins November 21, 2022, and ends December 12, 2022.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Suresh Soundarajan, Office Director, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7190.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-431, Sanitary Regulations for Hotels**, and determined that this regulation should be amended. The department is publishing its report of findings dated August 11, 2022, to support this decision.

The regulation meets the criteria set forth in Executive Order 19 (2022) and the criteria set out by the Office of Regulatory Management. The regulation provides standards for the permitting of hotels in the Commonwealth of Virginia. Such standards address the following areas of public health and safety: physical plant sanitation; the provision, storage, and cleanliness of linens and towels; general housekeeping and maintenance practices; requirements for approved water supply and sewage disposal systems; vector and pest control; swimming pools, saunas, and other similar facilities, including personnel standards for the operation thereof; ice machine sanitation and operation; and a procedure for obtaining a license. These standards are necessary to protect the public health, safety, and welfare of hotel patrons and staff.

The regulation has not undergone a comprehensive review since its initial administrative codification, approximately 20 years ago. The regulation, in its current form, does not reflect existing industry standards, changes in technology or safety, or best practices for public safety. The agency is recommending that the regulation be amended.

The continued need for the regulation is established in statute and is not discretionary. The sole comment received regarding the regulation appears to highlight areas where the current requirements may not represent best practices related to the administration of the regulation or industry standards. Additional review is warranted. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with any federal or state law or regulation.

As the agency is recommending to amend the regulation, staff will engage with stakeholders and the regulated community regarding any proposed amendments to minimize the economic impact of regulations on small businesses, while maintaining appropriate regulatory standards to ensure the safety, health, and welfare of the public.

Contact Information: Briana Bill, Program Manager, Tourist Establishments and General Environmental Health Services, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 584-6340.

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **12VAC5-545, Regulations for the Nurse Educator Scholarship Program**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins November 21, 2022, and ends December 12, 2022.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Olivette Burroughs, Statewide Health Workforce Manager, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7431.

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **12VAC5-570, Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings** and **12VAC5-640, Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings**. The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins November 21, 2022, and ends December 21, 2022.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Lance Gregory, Director, Onsite Sewage and Water Services, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7491.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-440, Regulations for Summer Camps**. The purpose of the proposed action is to amend the regulation following periodic review of the chapter. The Regulations for Summer Camps protect the health and safety of campers younger than 18 years of age who participate in overnight camps for entertainment, education, recreation, religious instruction or activities, physical education, or health. Environmental health staff permit and inspect these facilities for approved water and sewage, camp location, food handling, and general sanitation. This regulatory action intends to update the regulations with modern standards for health and safety at summer camps. Proposed amendments will also conform regulation with current department policies and practices and may include amendments based on public comment and from discussions with stakeholders.

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

Statutory Authority: §§ 35.1-11 and 35.1-16 of the Code of Virginia.

Public Comment Deadline: January 4, 2023.

Agency Contact: Briana Bill, Program Manager, Tourist Establishments and General Environmental Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23235, telephone (805) 584-6340, or email briana.bill@vdh.virginia.gov.

VA.R. Doc. No. R22-7010; Filed October 20, 2022, 8:26 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending **18VAC50-30, Individual License and Certification Regulations**. The purpose of the proposed action is to exempt all individuals who have successfully completed an apprenticeship program approved by the U.S. Department of Labor or the Virginia Department of Labor and Industry from the requirement to sit for the applicable examination in order to obtain a journeyman license issued by the Board for Contractors.

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

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Comment Deadline: December 21, 2022.

Agency Contact: Marjorie King, Administrator, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, TDD (804) 527-4290, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R23-6923; Filed October 20, 2022, 8:25 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending **18VAC50-30, Individual License and Certification Regulations**. The purpose of the proposed action is to eliminate continuing education for all professions for which continuing education is not required by statute, including tradesman practicing electrical, plumbing, heating ventilation and cooling, gas fitter, liquefied petroleum gas fitter, and natural gas fitter trades. The board identified continuing education as a financial burden to its licensees with no measurable level of protection to the health, safety, and welfare of the general public. The action is in response to and in accordance with Governor Youngkin's Executive Directive 1.

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

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Comment Deadline: December 21, 2022.

Agency Contact: Marjorie King, Administrator, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, TDD (804) 527-4290, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R23-7419; Filed October 28, 2022, 12:51 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending **18VAC50-30, Individual License and Certification Regulations**. The purpose of the proposed action is to generally review the regulation to clarify and consolidate requirements, eliminate redundant language, and repeal text that restates statute. The board seeks to amend regulations that are determined to be overly burdensome or no longer applicable. The action is in response to and in accordance with Governor Youngkin's Executive Directive 1.

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

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Comment Deadline: December 21, 2022.

Agency Contact: Marjorie King, Administrator, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, TDD (804) 527-4290, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R23-7420; Filed October 28, 2022, 12:52 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending **18VAC50-30, Individual License and Certification Regulations**. The purpose of the proposed action is to amend the years of experience or vocational training required for tradesman applicants to obtain approval to sit for an examination and enter the profession for journeyman and master electrical, plumbing, heating ventilation and cooling, gas fitter, liquefied petroleum gas fitter, and natural gas fitter specialties. The board identified several areas to review and amend to lower the required years of experience while ensuring minimum competency and protection of the health, safety, and welfare of the public as its primary goal. The action is in response to and in accordance with Governor Youngkin's Executive Directive 1.

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

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Comment Deadline: December 21, 2022.

Agency Contact: Marjorie King, Administrator, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, TDD (804) 527-4290, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R23-7421; Filed October 28, 2022, 12:53 p.m.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals intends to consider amending **18VAC160-40, Onsite Sewage System Professionals Licensing Regulations**. The purpose of the proposed action is to undertake a general regulatory review of the regulation. A thorough review of the regulation is necessary to address areas where the regulation would benefit from reorganization or clarification to ensure the regulation complements current Virginia law, provides minimal burdens on regulants while still protecting the public, is clearly written and understandable, and reflects current procedures and policies of the Department of Professional and Occupational Regulation. The goals of the planned regulatory action are to review the existing regulation and propose any amendments the board determines to be necessary and appropriate. As the regulation is developed, the board will likely need to address issues surrounding (i) possible barriers to licensure, including those encountered by individuals who are properly licensed in other states; (ii) possible barriers to individuals whose work only includes pumping of septic systems; (iii) how applicants can adequately demonstrate requisite knowledge and experience in order to qualify for licensure; and (iv) the minimum standards for the conduct and practice for onsite sewage system professionals, including standards for supervision of journeyman licensees and the responsibilities of licensees to the public. These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

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

Statutory Authority: §§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Public Comment Deadline: December 21, 2022.

Agency Contact: Joseph C. Haughwout, Jr., Regulatory Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 490-2723, or email waterwasteoper@dpor.virginia.gov.

VA.R. Doc. No. R23-7122; Filed October 20, 2022, 12:52 p.m.

TITLE 1. ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

Fast-Track Regulation

Title of Regulation: **1VAC30-11. Public Participation Guidelines (amending 1VAC30-11-50).**

Statutory Authority: §§ 2.2-1102 and 2.2-4007.02 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 21, 2022.

Effective Date: January 5, 2023.

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.

Basis: The Department of General Services amends this chapter pursuant to § 2.2-1102.1 of the Code of Virginia, which authorizes the department to prescribe regulations necessary or incidental to the performance of duties or execution of powers conferred under this chapter with the director's approval. In addition, § 2.2-4007.02 of the Code of Virginia requires an agency, pursuant to its public participation guidelines, shall afford interested persons an opportunity to be accompanied by and represented by counsel or other representative when these persons present their views on a regulation.

Purpose: This regulatory change is essential to protect the health, safety, and welfare of citizens by requiring the department provide an opportunity for the public to be represented by counsel or other representatives when the department promulgates a regulatory action.

Rationale for Using Fast-Track Rulemaking Process: This action conforms 1VAC30-11, Public Participation Guidelines to Chapter 795 of the 2012 Acts of Assembly, which amended § 2.2-4007.02 B of the Code of Virginia on public participation guidelines. This action is not expected to be controversial because it is mandated by statute.

Substance: The amendment provides that interested persons may be accompanied by and represented by counsel or other representatives in the promulgation of any of the department's regulatory actions.

Issues: The primary advantage of this regulatory action for the public and the agency is that it provides the public with the opportunity to be represented by counsel or other representative regarding a regulatory action. There are no disadvantages to the public, the agency, or the Commonwealth with the amendment of this subsection.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 795 of the 2012 Acts of the Assembly,[2] the Department of General Services (DGS) proposes to specify in this regulation that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative when submitting data, views, and arguments, either orally or in writing, to the agency.

Background. Chapter 795 of the 2012 Acts of the Assembly added to the Code of Virginia § 2.2-4007.02. "Public participation guidelines" that persons interested in submitting data, views, and arguments, either orally or in writing, to the agency also be afforded an opportunity to be accompanied by and represented by counsel or other representative.

Estimated Benefits and Costs. The current Public Participation Guidelines state that: "In considering any. nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency." DGS proposes to append "and (ii) be accompanied by and represented by counsel or other representative." Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, DGS' proposal to add this language to the regulation would not change the law in effect, but would be beneficial in that it would inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

Businesses and Other Entities Affected. The proposed amendment potentially affects all individuals who comment on DGS regulatory changes. It would particularly affect those who are interested in being accompanied by and represented by counsel or other representative, and were not previously aware of this right. The proposal does not produce cost.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[3] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits

exceed the costs for all entities combined. No adverse impact is indicated for this proposal.

Small Businesses[4] Affected:[5] The proposed amendment does not appear to adversely affect small businesses.

Localities[6] Affected.[7] The proposed amendment applies statewide. No locality would be particularly affected. The proposed amendment does not introduce costs for local governments.

Projected Impact on Employment. The proposed amendment is unlikely to affect total employment.

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

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

[2]See http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795+hil

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

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

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

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

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

Agency's Response to Economic Impact Analysis: The Department of General Services has reviewed the economic impact analysis and has no comment.

Summary:

Pursuant to § 2.2-4007.02 of the Code of Virginia, the amendment provides that interested persons submitting data, views, and arguments on a regulatory action may be accompanied by and represented by counsel or another representative.

1VAC30-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a reproposed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

VA.R. Doc. No. R23-6485; Filed October 28, 2022, 2:32 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

Titles of Regulations: **9VAC25-610. Groundwater Withdrawal Regulations (amending 9VAC25-610-10; adding 9VAC25-610-95).**

9VAC25-910. General Permit for Use of Surficial Aquifer on the Eastern Shore (adding 9VAC25-910-10 through 9VAC25-910-90).

Statutory Authority: §§ 62.1-256 and 62.1-262.1 of the Code of Virginia.

Effective Date: December 21, 2022.

Agency Contact: Scott Kudlas, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4456, FAX (804) 698-4178, or email scott.kudlas@deq.virginia.gov.

Summary:

Pursuant to Chapter 755 of the 2019 Acts of Assembly, the amendments (i) adjust the existing groundwater withdrawal regulation to authorize the development of a new general permit and (ii) establish the new general permit regulation to manage the use of the surficial aquifer or water table aquifer for nonpotable activities to achieves greater long-term aquifer sustainability.

Changes to the proposed regulation (i) conform the regulation to statutorily changes shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, pursuant to Chapter 356 of the 2022 Acts of Assembly; and (ii) add accurate effective dates.

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.

9VAC25-610-10. Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the following meanings:

"Act" means the Ground Water Management Act of 1992, Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Adverse impact" means reductions in groundwater levels or changes in groundwater quality that limit the ability of any existing groundwater user lawfully withdrawing or authorized to withdraw groundwater at the time of permit or special exception issuance to continue to withdraw the quantity and quality of groundwater required by the existing use. Existing groundwater users include all those persons who have been granted a groundwater withdrawal permit subject to this chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

"Agricultural use" means utilizing groundwater for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations. Agricultural use includes withdrawals for turf farm operations, but does not include withdrawals for landscaping activities or turf installment and maintenance associated with landscaping activities.

"Applicant" means a person filing an application to initiate or enlarge a groundwater withdrawal in a groundwater management area.

"Area of impact" means the areal extent of each aquifer where more than one foot of drawdown is predicted to occur due to a proposed withdrawal.

"Beneficial use" includes domestic (including public water supply), agricultural, commercial, and industrial uses.

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

"Consumptive use" means the withdrawal of groundwater, without recycle of said waters to their source of origin.

["Controversial permit" means a water permitting action for which a public hearing has been granted pursuant to 9VAC25-610-270 and 9VAC25-610-275.]

"Department" means the Department of Environmental Quality.

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

"Draft permit" means a prepared document indicating the [~~board's~~ department's] tentative decision relative to a permit action.

"General permit" means a groundwater withdrawal permit authorizing the withdrawal of groundwater in a groundwater management area under specified conditions, including the size of the withdrawal or the aquifer or confining unit from which the withdrawal is to be made.

"Geophysical investigation" means any hydrogeologic evaluation to define the hydrogeologic framework of an area or determine the hydrogeologic properties of any aquifer or confining unit to the extent that withdrawals associated with

such investigations do not result in unmitigated adverse impacts to existing groundwater users. Geophysical investigations include pump tests and aquifer tests.

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

"Human consumption" means the use of water to support human survival and health, including drinking, bathing, showering, cooking, dishwashing, and maintaining hygiene.

"Instream beneficial uses" means uses including the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, and cultural and aesthetic values is an instream beneficial use of Virginia's waters.

"Mitigate" means to take actions necessary to assure that all existing groundwater users at the time of issuance of a permit or special exception who experience adverse impacts continue to have access to the amount and quality of groundwater needed for existing uses.

"Permit" means a groundwater withdrawal permit issued under the Ground Water Management Act of 1992 permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Permittee" means a person that currently has an effective groundwater withdrawal permit issued under the Ground Water Act of 1992.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

"Private well" means, as defined in § 32.1-176.3 of the Code of Virginia, any water well constructed for a person on land that is owned or leased by that person and is usually intended for household, groundwater source heat pump, agricultural use, industrial use, or other nonpublic water well.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views, and comments to the [~~board pursuant to § 62.1-44.15:02 of the Code of Virginia~~ department].

"Salt water intrusion" means the encroachment of saline waters in any aquifer that creates adverse impacts to existing groundwater users or is counter to the public interest.

"Special exception" means a document issued by the [~~board~~ department] for withdrawal of groundwater in unusual situations where requiring the user to obtain a groundwater withdrawal permit would be contrary to the purpose of the Ground Water Management Act of 1992. Special exceptions allow the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Supplemental drought relief well" means a well permitted to withdraw a specified amount of groundwater to meet human consumption needs during declared drought conditions after mandatory water use restrictions have been implemented.

"Surface water" means all state waters that are not groundwater as groundwater is defined in § 62.1-255 of the Code of Virginia.

"Surface water and groundwater conjunctive use system" means an integrated water supply system wherein surface water is the primary source and groundwater is a supplemental source that is used to augment the surface water source when the surface water source is not able to produce the amount of water necessary to support the annual water demands of the system.

"Surficial aquifer" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

"Water well systems provider" means any individual who is certified by the Board for Contractors in accordance with § 54.1-1128 et seq. of the Code of Virginia and who is engaged in drilling, installation, maintenance, or repair of water wells, water well pumps, ground source heat exchangers, and other equipment associated with the construction, removal, or repair of water wells, water well systems, and ground source heat pump exchangers to the point of connection to the ground source heat pump.

"Well" means any artificial opening or artificially altered natural opening, however made, by which groundwater is sought or through which groundwater flows under natural pressure or is intended to be withdrawn.

"Withdrawal system" means (i) one or more wells or withdrawal points located on the same or contiguous properties under common ownership for which the withdrawal is applied to the same beneficial use or (ii) two or more connected wells or withdrawal points which are under common ownership but are not necessarily located on contiguous properties.

9VAC25-610-95. General permits.

A. The board may issue a general permit by regulation for withdrawals of groundwater within a groundwater management area as it deems appropriate in accordance with the following:

1. A general permit may be written to cover the following:

a. Withdrawals of a certain size;

b. Withdrawals from a specific aquifer or confining unit; or

c. Other categories of withdrawals deemed appropriate by the board.

2. A general permit must clearly identify the applicable conditions of this chapter for each category or subcategory of withdrawals covered by the permit.

3. The general permit may exclude specified withdrawals or areas from coverage.

B. When the board determines on a case-by-case basis that concerns for the aquifer, water quality, or the ecosystem services that depend on the groundwater so indicate, the board may require individual applications and individual permits rather than approving coverage under a general permit regulation. Cases where an individual permit may be required include the following:

1. The wells of two or more groundwater users within the area are interfering or may reasonably be expected to interfere substantially with one another;

2. The available groundwater or surface water supply that rely on surficial aquifer input has been or may be adversely impacted or instream beneficial uses may be impacted;

3. The groundwater or surface water in the area has been or may become polluted. Such pollution includes any alteration of the physical, chemical, or biological properties of groundwater or surface waters that has a harmful or detrimental effect on the quality or quantity of such waters;

4. The applicant or permittee is not in compliance with the conditions of the general permit regulation or coverage; or

5. An applicant or permittee no longer qualifies for coverage under the general permit.

C. General permit coverage may be revoked from a permittee for any of the reasons set forth in 9VAC25-610-300 A subject to appropriate opportunity for a hearing.

D. Activities authorized under a general permit and general permit regulation shall be authorized for the fixed term stated in the applicable general permit and general permit regulation.

E. When an individual permit is issued to a permittee, the applicability of general permit coverage to the individual permittee is automatically terminated on the effective date of the groundwater withdrawal individual permit.

F. When a groundwater withdrawal general permit regulation is issued that applies to a permittee that is already covered by an individual permit, that person may request exclusion from the provisions of the general permit regulation and subsequent coverage under an individual permit.

G. General permits may be issued, modified, revoked and reissued, or terminated in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Chapter 910
General Permit for Use of Surficial Aquifer on the Eastern Shore

9VAC25-910-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the Ground Water Management Act of 1992 (§ [~~62.1-44.2~~ 62.1-254] et seq. of the Code of Virginia) and Groundwater Withdrawal Regulations (9VAC25-610), except that for the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Adverse impact" means reductions in groundwater levels or changes in groundwater quality that limit the ability of any existing groundwater user lawfully withdrawing or authorized to withdraw groundwater at the time of permit or special exception issuance to continue to withdraw the quantity and quality of groundwater required by the existing use. Existing groundwater users include all those persons who have been granted a groundwater withdrawal permit subject to this chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

"Applicant" means a person filing an application to initiate or enlarge a groundwater withdrawal in a groundwater management area.

"Area of impact" means the areal extent of each aquifer where more than one foot of drawdown is predicted to occur due to a proposed withdrawal.

"Beneficial use" includes domestic (including public water supply), agricultural, commercial, and industrial uses.

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

"Eastern Shore Groundwater Management Area" means the groundwater management area declared by the board encompassing the Counties of Accomack and Northampton.

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

"Mitigate" means to take actions necessary to assure that all existing groundwater users at the time of issuance of a permit or special exception who experience adverse impacts continue to have access to the amount and quality of groundwater needed for existing uses.

"Permit" means a groundwater withdrawal permit issued under the Ground Water Management Act of 1992 permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Permittee" means a person that currently has an effective groundwater withdrawal permit, or coverage under a general permit, issued under the Ground Water Act of 1992.

"Surface water and groundwater conjunctive use system" means an integrated water supply system wherein surface water is the primary source and groundwater is a supplemental source that is used to augment the surface water source when the surface water source is not able to produce the amount of water necessary to support the annual water demands of the system.

9VAC25-910-20. Information requirements.

Pursuant to 9VAC25-610-380, the board may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's groundwater withdrawal; and (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a general permit coverage shall provide the information requested by the board.

9VAC25-910-30. Purpose.

The purpose of this chapter is to establish a general permit for the use of the surficial aquifer in the Eastern Shore Groundwater Management Area under the provisions of 9VAC25-610. Applications for coverage under this general permit shall be processed for approval or denial by the board. Coverage or application denial by the board shall constitute the general permit action and shall follow all provisions in the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each general permit action is exempt.

9VAC25-910-40. Delegation of authority.

The director or an authorized representative may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

9VAC25-910-50. Effective date of the permit.

The general permit in 9VAC25-910-90 becomes effective on [~~(insert the effective date of the regulation)~~ December 21, 2022,] and expires on [~~(insert the date 15 years after effective date of the regulation)~~ December 21, 2037]. Any coverage that is granted pursuant to 9VAC25-910-90 shall remain in full force and effect until 11:59 p.m. on [~~(insert the date 15 years after the effective date of the regulation)~~ December 21, 2037,] unless the general permit coverage is terminated or revoked on or before that date.

9VAC25-910-60. Authorization to withdraw groundwater from the surficial aquifer of the Eastern Shore.

A. A person granted coverage under the general permit may withdraw groundwater from the surficial aquifer of the Eastern Shore Groundwater Management Area, as defined in 9VAC25-910-10, provided that:

1. The applicant submits an application in accordance with 9VAC25-910-80;

2. The applicant remits any required permit application fee;

3. The applicant receives general permit coverage from the Department of Environmental Quality under 9VAC25-910-90 and complies with the limitations and other requirements of the general permit, the general permit coverage letter, and the Ground Water Management Act of 1992 and attendant regulations; and

4. The applicant has not been required to obtain an individual permit under 9VAC25-610 for the proposed project withdrawals. An applicant that is eligible for general permit coverage may, at the applicant's discretion, seek an individual permit instead of coverage under this general permit.

B. Application may be made at any time for an individual permit in accordance with 9VAC25-610.

C. Coverage under this general permit does not relieve the permittee of the responsibility to comply with other applicable federal, state, or local statutes, ordinances, or regulations.

D. The activity to withdraw water shall not have been prohibited by state law or regulations, nor shall it contravene applicable Groundwater Withdrawal Regulations.

E. Coverage under this general permit is not required if the activity is excluded from permitting in accordance with 9VAC25-610-50.

9VAC25-910-70. Reasons to deny coverage.

A. The board shall deny application for coverage under this general permit to:

1. An activity outside the Eastern Shore Groundwater Management Area.

2. An activity in an aquifer other than the surficial aquifer of the Eastern Shore Groundwater Management Area.

3. A well with a maximum depth greater than 80 feet below land surface, unless the applicant provides geophysical logs with the application that show the maximum depth of the well is constructed within the surficial aquifer of the Eastern Shore Groundwater Management Area, as determined by department review. Wells with a maximum depth less than

or equal to 80 feet below land surface do not require submission of geophysical logs.

4. An activity that causes, may reasonably be expected to cause, or may contribute to causing more than minimal water level declines in the underlying confined aquifer system or degradation in water quality, stream or wetland hydrology, or other instream beneficial uses.

B. The board may require an individual permit in accordance with 9VAC25-610-95 B rather than granting coverage under this general permit.

9VAC25-910-80. Application.

A. The applicant shall file a complete application in accordance with this section for coverage under this general permit for use of the surficial aquifer in the Eastern Shore Groundwater Management Area.

B. A complete application for general permit coverage, at a minimum, consists of the following information, if applicable to the project:

1. The permit fee as required by Fees for Permits and Certificates (9VAC25-20);

2. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the board. The application forms are available from the Department of Environmental Quality;

3. A signature as described in 9VAC25-610-150;

4. A completed well construction report for all existing wells associated with the application submitted on the Water Well Completion Report, Form GW2;

5. For all proposed wells, the well name, proposed well depth, screen intervals, pumping rate, and latitude and longitude;

6. Locations of all existing and proposed wells associated with the application shown on a USGS 7.5-minute topographic map or equivalent computer generated map. The map shall be of sufficient detail such that all wells may be easily located for site inspection. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The map must show the outline of the property and the location of each of its existing and proposed wells and must include all springs, rivers and other surface water bodies;

7. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable;

8. Notification from the local governing body in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. If the governing body fails to respond to the applicant's request for certification within 45 calendar days of receipt of the written request, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this chapter. The applicant shall document the local governing body's receipt of the request for certification through the use of certified mail or other means that establishes proof of delivery;

9. Documentation justifying volume of groundwater withdrawal requested as described in the groundwater withdrawal application provided in accordance with subdivision B 2 of this section; and

10. Where existing or proposed wells are greater than 80 feet below land surface, a complete suite of geophysical logs (16"/64" Normal, Single Point, Self Potential, Lateral, and Natural Gamma at a scale of 20 feet per inch) shall be obtained from boreholes at the locations and depths approved by the department. At least four months prior to the scheduled geophysical logging, the permittee shall notify the department of the drilling timetable to receive further guidance needed on performing the geophysical logging and to allow scheduling of department staff to make a site visit during the drilling of the borehole and the geophysical logging. Geophysical log data collected without the oversight of the department will not be accepted by the department.

C. The board may waive the requirement for information listed in subsection B of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

D. If an application is not accepted as complete by the board under the requirements of subsection B of this section, the board will require the submission of additional information pursuant to 9VAC25-610-98.

E. An incomplete permit application for coverage under this general permit may be administratively withdrawn from processing by the board for failure to provide the required information after 60 calendar days from the date of the latest written information request made by the board. An applicant may request a suspension of application review by the board. A submission by the applicant making such a request shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project after the time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

9VAC25-910-90. General permit.

An owner whose application is accepted by the board will receive coverage under the following permit and shall comply with the requirements in the permit and be subject to all requirements of 9VAC25-610.

GENERAL PERMIT FOR GROUNDWATER WITHDRAWALS FROM THE SURFICIAL AQUIFER OF THE EASTERN SHORE GROUNDWATER MANAGEMENT AREA.

Effective date: [~~(insert the effective date of the regulation)~~ December 21, 2022].

Expiration date: [~~(insert the date 15 years after the effective date of the regulation)~~ December 21, 2037].

Pursuant to § 62.1-256 of the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia) and Groundwater Withdrawal Regulations (9VAC25-610), the State Water Control Board hereby authorizes the permittee to withdraw and use groundwater in accordance with this permit.

The authorized withdrawals shall be in accordance with the information submitted with the application, this cover page, Part I – Operating Conditions, and Part II – Conditions Applicable to All Groundwater Withdrawal Permits, as set forth in this general permit.

PART I
Operating Conditions

A. Authorized withdrawal. The withdrawal of groundwater shall be limited to the wells identified in the groundwater withdrawal application submitted in accordance with 9VAC25-910-80.

B. Reporting.

1. Water withdrawn from each well shall be recorded monthly at the end of each month, and reported to the department annually, in paper or electronic format, on a form provided by the department, by July 10 for the respective previous 12 months. Records of water use shall be maintained by the permittee in accordance with Part II F 1 through F 4 of this general permit.

2. The permittee shall report any amount in excess of the permitted withdrawal limit by the fifth day of the month following the month when such a withdrawal occurred. Failure to report may result in compliance or enforcement activities.

C. Water conservation and management plan.

1. The permittee shall conduct an annual water audit quantifying the flows of the water in the system to understand its usage, reduce losses, and improve water conservation. The audit shall include:

a. Documentation of an annual review of the amount of water used compared with the expected need of the system to ensure that the water system uses the minimum amount of water necessary;

b. A list of any new water saving equipment, procedures, or improvements installed or water saving processes implemented during the previous year;

c. Documentation of implementation and evaluation of a leak detection and repair process; including documented quarterly visual monitoring during withdrawal periods where the permittee will locate and correct system leaks; and

d. A Groundwater Withdrawal Water Conservation and Management Audit Form, completed in its entirety, provided by the department.

2. Results of the annual audit shall be maintained onsite and available to the department upon request.

3. When a drought emergency is declared by the Commonwealth of Virginia in the Eastern Shore Drought Evaluation Region or in accordance with the county or locality drought management ordinance, the permittee shall implement either the provisions directed by the Commonwealth or the drought management ordinance, whichever is the most restrictive. The permittee shall be responsible for determining when drought emergencies are declared. The permittee shall retain records documenting that mandatory conservation measures were implemented during declared drought emergencies.

D. Mitigation plan. In cases where the area of impact does not remain on the property owned by the applicant or existing groundwater withdrawers will be included in the area of impact, the applicant shall provide and implement a plan to mitigate all adverse impacts on existing groundwater users. Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as enforceable permit conditions:

1. The rebuttable presumption that water level declines that cause adverse impacts to existing wells within the area of impact are due to the proposed withdrawal;

2. A commitment by the applicant to mitigate undisputed adverse impacts due to the proposed withdrawal in a timely fashion;

3. A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant; and

4. The requirement that the claimant provide documentation that the claimant is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens and any other construction information that the claimant possesses; the location of the well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.

E. Property rights. The issuance of coverage under this general permit neither conveys property rights in either real or

personal property or exclusive privileges nor authorizes injury to private property, an invasion of personal property rights, or an infringement of federal, state, or local laws or regulations. The fact that an owner obtains coverage under this general permit shall not constitute a defense in a civil action involving private rights.

F. Well tags. Each well that is included in the coverage under this general permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records, at a minimum, the DEQ well identification number, the groundwater withdrawal permit number, the total depth of the well, and the screened intervals in the well. Such well identification plates shall be in a format specified by the board and are available from the department.

G. Well abandonment. The permittee shall permanently abandon out-of-service wells in accordance with the Virginia Department of Health regulations and shall submit documentation to the Department of Environmental Quality within 30 calendar days of abandonment. At least two weeks prior to the scheduled abandonment, the permittee shall notify the department of the scheduled abandonment date.

PART II
Conditions Applicable to All Groundwater Withdrawal Permits

A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this permit shall be construed to relieve the permit holder of the duty to comply with all applicable federal and state statutes, regulations, and prohibitions. Any permit violation is a violation of the law and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit application.

B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a permit has been granted in order to maintain compliance with the conditions of the permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to avoid all adverse impacts that may result from this withdrawal as defined in 9VAC25-610-10 and to provide mitigation of the adverse impact in accordance with Part I D of this general permit.

D. Inspection, entry, and information requests. Upon presentation of credentials, the permittee shall allow the board, the department, or any duly authorized agent of the board, at reasonable times and under reasonable circumstances, (i) to enter upon the permittee's property, public or private; (ii) to have access to, inspect, and copy any records that must be kept as part of the permit conditions; and (iii) to inspect any facilities, well, water supply system, operations, or practices (including sampling, monitoring and withdrawal) that are regulated or required under the permit. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained in this general permit shall make an inspection time unreasonable during an emergency.

E. Duty to provide information. The permittee shall furnish to the board or department, within a reasonable time, information that the board may request to determine whether cause exists for modifying, revoking, reissuing, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the board or department, upon request, copies of records required to be kept by regulation or this permit.

F. Water withdrawal volume records requirements.

1. The permittee shall maintain a copy of the permit on-site and shall make the permit available upon request.

2. Measurements taken for the purpose of monitoring shall be representative of the metered activity.

3. The permittee shall retain records of all metering information, including (i) all calibration and maintenance records, (ii) copies of all reports required by the permit, and (iii) records of all data used to complete the application for the permit for a period of at least three years from the date of the expiration of coverage under this general permit. This period may be extended by request of the board at any time.

4. Records of metering information shall include, as appropriate:

a. The date, exact place and time of measurements;

b. The names of the individuals that performed measurements;

c. The date the measurements were performed; and

d. The results of the measurements.

G. Water withdrawal volume metering and equipment requirements. Each well or impoundment or impoundment system shall have an in-line totalizing flow meter to read gallons, cubic feet, or cubic meters installed prior to beginning the permitted use. Meters shall produce volume determinations within plus or minus 10% of actual flows.

1. A defective meter or other device shall be repaired or replaced within 30 business days of discovery.

2. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals. The period during which the meter was defective must be clearly identified in the groundwater withdrawal report required by Part I B of this general permit. An alternative method for determining flow may be approved by the board on a case-by-case basis.

H. Well construction. At least 30 calendar days prior to the scheduled construction of any well, the permittee shall notify

the department of the construction timetable and shall receive prior approval of the well location and acquire the DEQ well number. All wells shall be constructed in accordance with the following requirements.

1. A well site approval letter or well construction permit shall be obtained from the Virginia Department of Health prior to construction of the well.

2. For wells constructed with a maximum depth greater than 80 feet, a complete suite of geophysical logs (16"/64" Normal, Single Point, Self-Potential, Lateral, and Natural Gamma) shall be completed for the well and submitted to the department along with the corresponding completion report.

3. The permittee's determination of the surficial aquifer depth shall be submitted to the department for review and approval, or approved on site by the department's geologist, prior to installation of any pump.

4. A completed Uniform Water Well Completion Report, Form GW-2 and any additional water well construction documents shall be submitted to the department within 30 calendar days of the completion of any well and prior to the initiation of any withdrawal from the well. The assigned DEQ well number shall be included on all well documents.

I. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the department within 30 business days of the proposed transfer of the title to the facility or property, unless permission for a later date has been granted by the board;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II I 2 b of this general permit.

J. Notice of planned change. The permittee shall give notice to the department at least 30 business days prior to any planned alterations or additions to the permitted water withdrawal system.

K. Revocation and termination of coverage.

1. General permit coverage may be revoked in accordance with 9VAC25-610-290 and 9VAC25-610-300.

2. The permittee may terminate coverage under this general permit by filing a complete notice of termination with the department. The notice of termination may be filed after one or more of the following conditions have been met:

a. Operations have ceased at the facility and there are no longer withdrawals from the surficial aquifer.

b. A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a Change of Ownership Agreement Form has been submitted.

c. All groundwater withdrawals associated have been covered by an individual groundwater withdrawal permit.

d. Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

3. The notice of termination shall contain the following information:

a. The owner's name, mailing address, telephone number, and email address, if available;

b. The facility name and location;

c. The general permit number;

d. A completed Termination Agreement Form obtained from the department; and

e. The basis for submitting the notice of termination, including:

(1) A statement indicating that a new owner has assumed responsibility for the facility;

(2) A statement indicating that operations have ceased at the facility, and there are no longer groundwater withdrawals from the surficial aquifer;

(3) A statement indicating that all groundwater withdrawals have been covered by an individual Groundwater Withdrawal permit; or

(4) A statement indicating that termination of coverage is being requested for another reason (state the reason); and

(5) The following certification: "I certify under penalty of law that all groundwater withdrawals from the surficial aquifer at the identified facility that are authorized by this general permit have been eliminated, or covered under a groundwater withdrawal individual permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to withdraw groundwater in accordance with the general permit, and that withdrawing groundwater is unlawful where the withdrawal is not authorized by a groundwater withdrawal permit or otherwise excluded from permitting. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Virginia Groundwater Management Act."

4. The notice of termination shall be signed in accordance with 9VAC25-610-150.

L. Continuation of coverage. Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete application at least 90 calendar days prior to the expiration date of the permit, or a later submittal established by the board, which cannot extend beyond the expiration date of the original permit. The permittee is authorized to continue to withdraw until such time as the board either:

1. Issues coverage to the owner under this general permit; or

2. Notifies the owner that the withdrawal is not eligible for coverage under this general permit.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain coverage under a new permit. All permittees with currently effective permit coverage shall submit a new application at least 90 calendar days before the expiration date of the existing permit, unless permission for a later date has been granted in writing by the board. The board shall not grant permission for application to be submitted later than the expiration date of the existing permit.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (9VAC25-910)

Application for an Eastern Shore Surficial Aquifer Groundwater Withdrawal General Permit, DEQ Form GWP-ESGP Application (eff. 9/2020)

Eastern Shore Surficial Aquifer General Permit Annual Groundwater Withdrawal Report, DEQ Form GWP-ESGP-Reporting (eff. 12/2020)

Eastern Shore Surficial Aquifer General Permit Groundwater Withdrawal Water Conservation and Management Audit Form, DEQ Form GWP-ESGP-WCMP (eff. 12/2020)

Groundwater Withdrawal Permit Uncontested Termination Agreement Form, DEQ Form GWP-Termination (rev. 12/2020)

Local Government Ordinance Form, DEQ Form GWP-LGOF (rev. 8/2019)

Uniform Water Well Completion Report, Form GW-2 (rev. 8/2016)

VA.R. Doc. No. R20-6091; Filed October 24, 2022, 4:41 p.m.

Final Regulation

Titles of Regulations: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-50, 9VAC25-720-60, 9VAC25-720-70, 9VAC25-720-120).**

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1313(e) of the Clean Water Act.

Effective Date: December 21, 2022.

Agency Contact: Allan Brockenbrough, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 836-2321, FAX (804) 698-4178, or email allan.brockenbrough@deq.virginia.gov.

Summary:

The final amendments to 9VAC25-720 (i) establish total phosphorous (TP) wasteload allocations (WLAs) to meet revised water quality criteria for chlorophyll-a in the tidal James River Basin; (ii) reassign unneeded total nitrogen (TN) and TP WLAs from industries that have either closed or otherwise eliminated their need for a WLA to the Nutrient Offset Fund for future use; and (iii) make minor amendments to 9VAC25-720, including name changes, the correction of one technical error, WLA transfers associated with previously approved trades or waste water treatment plant consolidation projects, and moving previously adopted WLAs from 9VAC25-820-80 to 9VAC25-720-60 C. Final amendments to 9VAC25-820 incorporate the amendments to the Water Quality Management Planning Regulation and the provisions of the Enhanced Nutrient Removal Certainty Program pursuant to Chapters 363 and 364 of the 2021 Acts of Assembly, Special Session I.

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

9VAC25-720-50. Potomac-Shenandoah River Basin.

EDITOR'S NOTE: Subsections A and B of 9VAC25-720-50 are not amended; therefore, that text is not set out.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
B37R	~~Coors Brewing Company~~ Molson Coors - Shenandoah Brewery	VA0073245	54,820	4,112
B14R	ACSA - Fishersville Regional ~~STP~~ WWTP	VA0025291	48,729	3,655
B32R	~~INVISTA - Waynesboro~~ The Lycra Company (Outfall 101)	VA0002160	78,941	1,009
B39R	Luray ~~STP~~ WWTP	VA0062642	19,492	1,462
B35R	Massanutten ~~PSA~~ Public Service Corporation STP	VA0024732	18,273	1,371
B37R	Merck ~~- Stonewall WWTP~~ Sharp & Dohme Corp. - Elkton Plant (Outfall 101)[1]	VA0002178	43,835	4,384
B12R	ACSA - Middle River Regional ~~STP~~ WWTP	VA0064793	82,839 [1]	6,213 [2]
B23R	North River WWTF [3 1]	VA0060640	~~253,391~~ 260,226 [1]	~~19,004~~ 19,574 [2]
B22R	~~VA Poultry Growers~~ VPGC, LLC - Hinton	VA0002313	27,410	1,371
B38R	~~Pilgrims Pride - Alma~~ Nutrient Offset Fund	Formerly VA0001961	18,273	914
B31R	ACSA - Stuarts Draft WWTP	VA0066877	48,729	3,655
B32R	Waynesboro ~~STP~~ WWTP	VA0025151	48,729 [1]	3,655 [2]
B23R	ACSA - Weyers Cave ~~STP~~ WWTP	VA0022349	6,091	457
B58R	Berryville ~~STP~~ WWTP	VA0020532	8,528	640
B55R	Front Royal ~~STP~~ WWTP	VA0062812	48,729 [1]	3,655 [2]
B49R	Georges Chicken LLC	VA0077402	31,065	1,553

B48R	Mt. Jackson STP	VA0026441	8,528	640
B45R	Broadway Regional WWTF	VA0090263	29,481	2,211
B49R	Stoney Creek SD STP	VA0028380	7,309	548
B51R	Strasburg STP	VA0020311	11,939	895
B50R	Woodstock STP	VA0026468	24,364	1,827
A06R	Basham Simms WWTF	VA0022802	18,273	1,371
A09R	Broad Run WRF	VA0091383	134,005 [1]	3,350 [2]
A08R	Leesburg WPCF	VA0092282	121,822 [1]	9,137 [2]
A06R	Round Hill Town ~~WWTF~~ WWTP	VA0026212	9,137	685
A25R	~~DSC~~ VA American Water Prince William - Section 1 WWTF	VA0024724	42,029 [1]	2,522 [2]
A25R	~~DSC~~ VA American Water Prince William - Section 8 WWTF	VA0024678	42,029 [1]	2,522 [2]
A25E	H L Mooney WWTF	VA0025101	219,280 [1]	13,157 [2]
A22R	UOSA - Centreville	VA0024988	1,315,682	16,446
A19R	Vint Hill ~~WWTF~~ WWTP	VA0020460	11,573	868
B08R	Opequon WRF [2 4]	VA0065552	121,851 [1]	11,512 [2]
B08R	Parkins ~~Mills STP~~ Mill WWTF	VA0075191	60,911 [1]	4,568 [2]
A13E	Alexandria Renew Enterprises[3] WWTP [5 3]	VA0025160	493,381 [1]	29,603 [2]
A12E	Arlington County Water PCF	VA0025143	365,467 [1]	21,928 [2]
A16R	Noman M Cole Jr ~~PCF~~ PCP	VA0025364	612,158 [1]	36,729 [2]
A12R	Blue Plains (VA Share)	DC0021199	581,458	26,166
A26R	USMC Quantico ~~WWTF~~ Mainside STP	VA0028363	20,101	1,206
A28R	Aquia ~~WWTF~~ WWTP	VA0060968	73,093 [1]	4,386 [2]

A31E	Colonial Beach ~~STP~~ WWTP	VA0026409	18,273	1,827
A30E	KGCSA - Dahlgren ~~WWTF~~ District WWTP	VA0026514	9,137	914
A29E	~~King George County Service Authority~~ KGCSA - Fairview Beach WWTP	VA0092134	1,827	183
A30E	~~US NSWC Dahlgren WWTF~~ Naval Support Facility Dahlgren	VA0021067	6,578	658
A31R	KGCSA - Purkins Corner ~~STP~~ WWTP	VA0070106	1,096	110
	~~Unallocated Reserve WLA~~ Nutrient Offset Fund		9,137	685
	TOTALS:		~~5,156,169~~ 5,214,628	~~246,635~~ 254,334

Notes:

~~[1] Merck Stonewall – (a) these wasteload allocations will be subject to further consideration, consistent with the Chesapeake Bay TMDL, as it may be amended, and possible reduction upon "full-scale" results showing the optimal treatment capability of the 4-stage Bardenpho technology at this facility consistent with the level of effort by other dischargers in the region. The "full-scale" evaluation will be completed by December 31, 2011, and the results submitted to DEQ for review and subsequent board action; (b) in any year when credits are available after all other exchanges within the Shenandoah-Potomac River Basin are completed in accordance with § 62.1-44.19:18 of the Code of Virginia, Merck shall acquire credits for total nitrogen discharged in excess of 14,619 lbs/yr and total phosphorus discharged in excess of 1,096 lbs/yr; and (c) the allocations are not transferable and compliance credits are only generated if discharged loads are less than the loads identified in clause (b).~~

[~~[1] Effective January 1, 2026, the total nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:~~

~~TN WLA (lbs/yr) = Annual average treated flow (MGD) x 4.0 mg/l x 8.345 x 365~~

~~Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.~~

~~[2] Effective January 1, 2026, the total phosphorus wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:~~

~~TP WLA (lbs/yr) = Annual average treated flow (MGD) x 0.30 mg/l x 8.345 x 365~~

~~Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.~~]

[~~3~~ 1] North River WWTF WLA includes 6,835 lbs/yr of TN and 570 lbs/yr of TP from the consolidation of the McGaheysville STP (VA0072931).

[2 ~~4~~] Opequan WRF: (a) the TN WLA is derived based on 3 mg/l of TN and 12.6 MGD; (b) the TN WLA includes an additional allocation for TN in the amount of 6,729 lbs/yr by means of a landfill leachate consolidation and treatment project; and (c) the TP WLA is derived based on 0.3 mg/l of TP and 12.6 MGD.

[3 ~~5~~] Wasteload allocations for localities served by combined sewers are based on dry weather design flow capacity. During wet weather flow events the discharge shall achieve a TN concentration of 4.0 mg/l and TP concentration of 0.18 mg/l.

9VAC25-720-60. James River Basin.

EDITOR'S NOTE: Subsections A and B of 9VAC25-720-60 are not amended; therefore, that text is not set out.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers.

The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
I37R	Buena Vista STP	VA0020991	41,115	~~3,426~~ 2,778
I09R	Covington STP	VA0025542	54,820	~~4,568~~ 3,705
H02R	Georgia Pacific	VA0003026	122,489	~~49,658~~ 40,273
I37R	~~Lees Carpets~~ Mohawk Industries, Inc.	VA0004677	30,456	~~12,182~~ 9,880
I35R	Lexington-Rockbridge WQCF	VA0088161	54,820	~~4,568~~ 3,705
I09R	Low Moor STP	VA0027979	9,137	~~761~~ 617
I09R	Lower Jackson River STP	VA0090671	~~63,957~~ 47,516	~~5,330~~ 3,211
I09R	Nutrient Offset Fund	Formerly VA0090671	16,441	1,112
I04R	~~MeadWestvaco~~ WestRock Virginia LLC - Covington	VA0003646	394,400	~~159,892~~ 96,711
H12R	Amherst STP	VA0031321	10,964	~~914~~ 741
H05R	BWX Technologies Inc.	VA0003697	187,000	~~1,523~~ 1,235
H05R	Greif Inc.	VA0006408	73,246	~~29,694~~ 24,082
H31R	Lake Monticello ~~STP~~ WWTP	VA0024945	~~18,182~~ 14,164	~~1,515~~ 957
H31R	Nutrient Offset Fund	Formerly VA0024945	4,018	272
H05R	Lynchburg STP[1]	VA0024970	536,019 [5]	~~33,501~~ 27,169 [4]
H28R	Moores Creek ~~Regional STP~~ Advanced WRRF [6 8]	VA0025518	~~274,100~~ 282,994 [3]	~~22,842~~ 19,637 [4]
H38R	Powhatan CC STP	VA0020699	8,588	~~716~~ 581
J11R	Crewe WWTP	VA0020303	9,137	~~761~~ 617
J01R	Farmville WWTP	VA0083135	43,856	~~3,655~~ 2,964
G02E	~~The Sustainability Park, LLC~~ Nutrient Offset Fund	Formerly VA0002780	25,583	~~1,919~~ 768

G01E	E I du Pont - Spruance	VA0004669	201,080	~~7,816~~ 6,339
G01E	Falling Creek WWTP	VA0024996	~~153,801~~ 182,738 [3]	~~15,380~~ 6,153 [4]
G01E	Henrico County WWTP	VA0063690	1,142,085 [3]	~~114,209~~ 45,689 [4]
G03E	~~Honeywell - Hopewell~~ AdvanSix Resins and Chemicals LLC	VA0005291	1,090,798	~~51,592~~ 40,541
G03R	Hopewell WWTP	VA0066630	1,827,336 [7]	~~76,139~~ 30,459 [8]
G15E	HRSD – Boat Harbor STP	VA0081256	~~740,000~~ 473,524 [3] [304,593[3]]	~~76,139~~ 43,175 [4] [38,074[3] 30,459[4] 22,844[5]]
G11E	HRSD – James River STP	VA0081272	~~1,250,000~~ 378,819 [3] [243,674[3]]	~~60,911~~ 34,540 [4] [30,459[3] 24,367[4] 18,276[5]]
G10E	HRSD – Williamsburg STP	VA0081302	~~800,000~~ 426,171 [3] [274,133[3]]	~~68,525~~ 38,858 [4] [34,267[3] 27,413[4] 20,560[5]]
G02E	Philip Morris – Park 500	VA0026557	139,724	~~2,650~~ 1,060
G01E	Proctors Creek WWTP	VA0060194	411,151 [3]	~~41,115~~ 16,448 [4]
G01E	Richmond WWTP[1]	VA0063177	1,096,402 [5]	~~68,525~~ 27,413 [4]
G02E	Dominion-Chesterfield[2]	VA0004146	~~272,036~~ 243,099	~~210~~ 170
J15R	South Central WW Authority	VA0025437	350,239 [3]	~~35,024~~ 14,011 [4]
~~G07R~~	~~Chickahominy WWTP~~	~~VA0088480~~	~~6,167~~	~~123~~
G05R	Tyson Foods – Glen Allen	VA0004031	19,552	[~~409~~ 424]
G11E	HRSD – Nansemond STP	VA0081299	~~750,000~~ 568,228 [3] [365,511[3]]	~~91,367~~ ~~45,689[3]~~ 51,811 [4] [36,551[4]

				27,413[5]]
G15E	HRSD – Army Base STP	VA0081230	~~610,000~~ 340,937 [~~3~~] [219,307[3]]	~~54,820~~ 31,086 [~~4~~] [27,413[3] 21,931[4] 16,448[5]]
G15E	HRSD – VIP WWTP	VA0081281	~~750,000~~ 757,638 [~~3~~] [487,348[3]]	~~121,822~~ 69,081 [~~4~~] [60,919[3] 48,735[4] 36,551[5]]
G15E	HRSD – JH Miles [~~MS4~~[9]]	[VA0003263]	153,500	17,437
C07E	HRSD – Ches.-Elizabeth STP [~~10~~]	VA0081264	[1,100,000 454,596[6,7]]	~~41,450~~[7] 41,448 [7]
G01E	~~Tranlin/Vastly~~ Nutrient Offset Fund	Formerly Tranlin/Vastly	80,000	0
	TOTALS		~~14,901,739~~ ~~14,256,335~~[6] ~~11,250,901~~[3] [~~12,256,851~~ 12,949,784]	~~1,283,088~~ ~~1,046,325~~[3] ~~998,960~~[4] ~~951,596~~[5] [~~753,932~~ 757,068]

Notes:

[1]Wasteload allocations for localities served by combined sewers are based on dry weather design flow capacity. During wet weather flow events the discharge shall achieve a TN concentration of 8.0 mg/l and a TP concentration of 1.0 mg/l.

[2]~~Wasteload allocations are "net" loads, based on the portion of the nutrient discharge introduced by the facility's process waste streams, and not originating in raw water intake.~~ Dominion-Chesterfield wasteload allocations shall be transferred to the Nutrient Offset Fund on January 1, following the retirement of the last coal fired generating unit. 82,240 lbs/yr of TN WLA shall be held in reserve and may be made available by the department for an expansion of the Proctor's Creek WWTP provided that the expanded facility provides treatment to achieve an annual average TN concentration of 3.0 mg/l or less and the Falling Creek WWTP is designed to meet its individual TN WLA.

[3] [Effective January 1, 2026. ~~the total nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:~~

~~TN WLA (lbs/yr) = Annual average treated flow (MGD) x 4.0 mg/l x 8.345 x 365~~

~~Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.~~]

[4] [Effective January 1, 2030. ~~the total phosphorus wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:~~

~~TP WLA (lbs/yr) = Annual average treated flow (MGD) x 0.30 mg/l x 8.345 x 365~~

~~Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.~~]

[5] [Effective January 1, 2032. ~~the total nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:~~

~~TN WLA (lbs/yr) = Annual average treated flow (MGD) x 8.0 mg/l x 8.345 x 365~~

~~Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.~~]

[6] [Effective January 1, 2022. ~~The Moores Creek Advanced WRRF WLA includes 8,894 lbs/yr of total nitrogen and 1,112 lbs/yr of total phosphorus from the consolidation of the Camelot WWTP (VA0025488).~~]

[7] [Effective January 1, 2026, the HRSD – Chesapeake-Elizabeth STP wasteload allocations for total nitrogen and total phosphorus are transferred to the Nutrient Offset Fund. ~~the total nitrogen wasteload allocation for any given calendar year is the lesser of (i) the value listed in this table and (ii) the floating wasteload allocation calculated as follows:~~

~~TN WLA (lbs/yr) = Annual average treated flow (MGD) x 12.0 mg/l x 8.345 x 365~~

~~Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.~~

[8] ~~Effective January 1, 2026, the total phosphorus wasteload allocation for any given calendar year is the lesser of (i) the value listed in this table and (ii) the floating wasteload allocation calculated as follows:~~

~~TP WLA (lbs/yr) = Annual average treated flow (MGD) x 0.50 mg/l x 8.345 x 365~~

~~Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.~~

[9] ~~The former J. H. Miles wasteload allocations acquired by HRSD in accordance with an agreement dated December 21, 2015 may be used to fulfill HRSD commitments to provide nutrient credits to municipal separate storm sewer systems only.~~

[10] ~~Effective January 1, 2023, the total nitrogen and total phosphorus wasteload allocations for the HRSD Chesapeake-Elizabeth STP transfer to the Nutrient Offset Fund.~~

[8] The Moores Creek Advanced WRRF WLA includes 8,894 lbs/yr of total nitrogen and 1,112 lbs/yr of total phosphorus from the consolidation of the Camelot WWTP (VA0025488).]

9VAC25-720-70. Rappahannock River Basin.

EDITOR'S NOTE: Subsections A and B of 9VAC25-720-70 are not amended; therefore, that text is not set out.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers.

The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
E09R	Culpeper WWTP	VA0061590	73,093 [1]	5,483 [2]
E02R	Marshall WWTP	VA0031763	7,797	585
E13R	Orange STP	VA0021385	36,547	2,741
E11R	Rapidan ~~STP~~ WWTP	VA0090948	7,309	548
E02R	~~Fauquier County Water & Sewer Authority~~ Remington WWTP	VA0076805	24,364	1,827
E02R	Clevengers Village WWTP	VA0080527	10,964	822
E02R	Warrenton Town STP	VA0021172	30,456	2,284
E18R	Wilderness WWTP	VA0083411	15,228	1,142
E20E	FMC WWTF	VA0068110	48,737 [1]	3,655 [2]
E20E	Fredericksburg WWTF	VA0025127	54,820 [1]	4,112 [2]
E21E	Haymount WWTF	VA0089125	7,066	530

E24E	Haynesville CC WWTP	VA0023469	2,802	210
E21E	KGCSA - Hopyard ~~Farms STP~~ Farm [~~WWTP~~ WWTF]	VA0089338	6,091	457
E20E	Little Falls Run WWTF	VA0076392	97,458 [~~1~~]	7,309 [~~2~~]
E20E	Massaponax WWTF	VA0025658	114,505 [~~1~~]	[~~8,405~~[2] 8,588]
E23R	Montross Westmoreland WWTP	VA0072729	1,584	119
E21E	KGCSA - Oakland Park STP	VA0086789	1,706	128
E23E	Tappahannock WWTP	VA0071471	9,746	731
E26E	HRSD - Urbanna ~~WWTP~~ STP	VA0026263	1,218	91
E21R	US Army - Ft. A P Hill WWTP	VA0032034	6,457	484
E23E	Warsaw ~~Aerated Lagoons~~ WWTP	VA0026891	3,655	274
C01E	Omega Protein - Reedville	VA0003867	21,213	1,591
C01E	Reedville Sanitary District	VA0060712	2,436	183
C01E	Kilmarnock ~~WTP~~ WWTP	VA0020788	6,091	457
	~~Unallocated Reserve WLA~~ Nutrient Offset Fund		22,904	1,900
	TOTALS:		~~614,245~~ 614,247	[~~46,068~~ 46,251]

[~~[1] Effective January 1, 2026, the total nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:~~

~~TN WLA (lbs/yr) = Annual average treated flow (MGD) x 4.0 mg/l x 8.345 x 365~~

~~Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.~~

~~[2] Effective January 1, 2026, the total phosphorus wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:~~

~~TP WLA (lbs/yr) = Annual average treated flow (MGD) x 0.30 mg/l x 8.345 x 365~~

~~Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.~~]

9VAC25-720-120. York River Basin.

EDITOR'S NOTE: Subsections A and B of 9VAC25-720-120 are not amended; therefore, that text is not set out.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
F20R	Caroline County ~~STP~~ Regional WWTP	VA0073504	9,137	609

F01R	Gordonsville STP	VA0021105	17,177	1,145
F04R	Ashland WWTP	VA0024899	36,547	2,436
F09R	Doswell WWTP	VA0029521	18,273	1,218
F09R	~~Bear Island Paper Company~~ 819 Virginia LLC	VA0029521	47,328	10,233
F27E	~~Plains Marketing L.P. Yorktown~~ Nutrient Offset Fund	Formerly VA0003018	167,128	17,689
F27E	HRSD - York River STP	VA0081311	275,927 [~~1~~] [228,444[1]]	18,395 [~~2~~]
F14R	Parham Landing WWTP	VA0088331	36,547	2,436
F14E	~~RockTenn~~ WestRock CP LLC - West Point	VA0003115	259,177	56,038
F12E	Totopotomoy WWTP	VA0089915	182,734 [~~1~~]	12,182 [~~2~~]
F25E	HRSD - West Point STP	VA0075434	10,964	731
	TOTALS:		1,060,939 ~~1,013,456~~[1]	123,112

[~~Notes:~~]

[1]Effective January 1, [2026. ~~the total nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:~~

~~TNWLA (lbs/yr) = Annual average treated flow (MGD) x 4.0 mg/l x 8.345 x 365~~

~~Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.~~

~~[2]Effective January 1, 2026, the total phosphorus wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:~~

~~TP WLA (lbs/yr) = Annual average treated flow (MGD) x 0.30 mg/l x 8.345 x 365~~

~~Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.~~]

9VAC25-820-40. Compliance plans.

A. By [~~July 1, 2022~~ February 1, 2023], every owner of a facility subject to reduced individual total nitrogen or total phosphorous wasteload allocations as identified in 9VAC25-820-80 shall either individually or through the Virginia Nutrient Credit Exchange Association submit compliance plans to the department for approval.

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

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

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

b. Request that their individual wasteload allocations become effective on January 1, [~~2022~~ 2023].

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

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

9VAC25-820-70. General permit.

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

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

GENERAL PERMIT FOR TOTAL NITROGEN AND TOTAL PHOSPHORUS DISCHARGES AND NUTRIENT TRADING IN THE CHESAPEAKE WATERSHED IN VIRGINIA
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

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

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

[~~Part I~~
~~SPECIAL CONDITIONS APPLICABLE TO ALL FACILITIES~~

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

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

~~GENERAL PERMIT FOR TOTAL NITROGEN AND TOTAL PHOSPHORUS DISCHARGES AND NUTRIENT TRADING IN THE CHESAPEAKE WATERSHED IN VIRGINIA~~
~~AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW~~

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

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

PART I
SPECIAL CONDITIONS APPLICABLE TO ALL FACILITIES

A. Authorized activities.

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

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

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

subject to the requirements of this general permit upon the department's approval of the registration statement.

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

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

3. Continuation of permit coverage.

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

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

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

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

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

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

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

B. Wasteload allocations.

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

2. Except as described in subdivisions 2 c and 2 d of this subsection, an owner of two or more facilities covered by this general permit and discharging to the same tributary may apply for and receive an aggregated mass load limit for delivered total nitrogen and an aggregated mass load limit for delivered total phosphorus reflecting the total of the water quality-based total nitrogen and total phosphorus wasteload allocations or permitted design capacities established for such facilities individually.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The regional facility shall be eligible to generate credits.

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

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

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

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

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

C. Schedule of compliance. ~~The significant dischargers in the James River Basin shall meet aggregate discharged wasteload allocations of 8,968,864 lbs/yr TN and 545,558 lbs/yr TP by January 1, 2023.~~

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

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

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

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

b. Owners of facilities listed in 9VAC25-820-80 [B] that waive their compliance schedules in accordance with 9VAC25-820-40 A 2 b shall have an individual compliance date of January 1, [~~2022~~ 2023].

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

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

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

E. Monitoring requirements.

1. Discharges shall be monitored by the permittee during weekdays as specified in the table below unless the department determines that weekday only sampling results in a non-representative load. Weekend monitoring or alternative monthly load calculations to address production schedules or seasonal flows shall be submitted to the department for review and approval on a case-by-case basis. Facilities that exhibit instantaneous discharge flows that vary from the daily average discharge flow by less than 10% may submit a proposal to the department to use an alternative sample type; such proposals shall be reviewed and approved by the department on a case-by-case basis.

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

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

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

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

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

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

where:

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

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

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

d = number of discharge days in the calendar month

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

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

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

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

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

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

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

where:

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

ML = total monthly load (lb/mo)

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

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

where:

AL = calendar year annual load (lb/yr)

ML = total monthly load (lb/mo)

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

[~~6. Facilities with approved reclamation and reuse programs that choose to base their floating wasteload allocations on treated flow shall measure and report the total annual flow discharged to the reuse distribution system.~~]

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

G. Requirement to register; exclusions.

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

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

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

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

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

H. Registration statement.

1. The registration statement shall contain the following information:

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

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

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

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

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

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

[~~g. For facilities subject to a floating wasteload allocation as listed in 9VAC25-820-80 with an approved reclamation and reuse system, an indication of whether the allocation should be based on discharged or treated flow. Facilities choosing to base their floating wasteload allocation on treated flow shall provide a water reclamation and reuse flow schematic and a description of how total flows discharged to the reuse distribution system will be measured.~~]

2. The registration statement shall be submitted to the DEQ Central Office, Office of VPDES Permits. Following notification from the department of the start date for the required electronic submission of Notices of Intent to Discharge forms (i.e., registration statements), as provided

for in 9VAC25-31-1020, such form submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. ~~At least three months' notice shall be provided between the notification from the department and the date after which such forms must be submitted electronically.~~ [~~There shall be at least three months of notice provided between the notification from the department and the date after which such forms must be submitted electronically.~~ At least three months' notice shall be provided between the notification from the department and the date after which such forms must be submitted electronically.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. Compliance with wasteload allocations.

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

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

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

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

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

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

b. The credits are generated by one or more permitted facilities in the same tributary, except that owners of permitted facilities in the Eastern Shore Basin may also acquire credits from owners of permitted facilities in the Potomac and Rappahannock tributaries. Owners of

Eastern Shore Basin facilities may acquire credits from the owners of Potomac tributary facilities at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from the owners of a Rappahannock tributary facility by the owner of an Eastern Shore Basin facility;

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

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

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

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

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

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

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

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

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

Part II

SPECIAL CONDITIONS APPLICABLE TO NEW AND EXPANDED FACILITIES

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

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

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

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

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

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

a. The applicable wasteload allocation assigned to discharges from the facility in this general permit, for expanding significant dischargers with a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

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

c. Zero, for facilities with a new discharge.

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

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

1. Such allocations may be acquired from one or a combination of the following:

a. Acquisition of all or a portion of the wasteload allocations or point source nitrogen or point source phosphorus credits from the owners of one or more permitted facilities, based on delivered pounds by the respective trading parties as listed by the department;

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

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

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

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

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

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

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

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

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

c. Until such time as the board finds that no allocations are reasonably available in an individual tributary, acquisition of allocations through payments made into the Nutrient Offset Fund established in § 10.1-2128.2 of the Code of Virginia; or

d. Acquisition of allocations through such other means as may be approved by the department on a case-by-case basis. This includes allocations granted by the board to an owner of a facility that is authorized by a VPA permit to land apply domestic sewage if:

(1) The VPA permit was issued before July 1, 2005;

(2) The allocation does not exceed the facility's permitted design capacity as of July 1, 2005;

(3) The waste treated by the facility that is covered under the VPA permit will be treated and discharged pursuant to a VPDES permit for a new discharge; and

(4) The owner installs state-of-the-art nutrient removal technology at such a facility.

2. Acquisition of allocations or point source nitrogen or point source phosphorus credits is subject to the following conditions:

a. The allocations or credits shall be generated and applied to an offset obligation in the same calendar year in which the credit is generated;

b. The allocations or credits shall be generated in the same tributary;

c. Such acquisition does not affect any requirement to comply with local water quality-based limitations, as determined by the board;

d. The allocations are authenticated (i.e., verified to have been generated) by the permittee as required by the facility's individual VPDES permit, utilizing procedures approved by the board, no later than February 1 immediately following the calendar year in which the allocations are applied; and

e. If obtained from the owner of a permitted point source, the allocations shall be generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's wasteload allocations.

f. Such allocations or credits shall be secured for a period of five years with each registration under the general permit.

3. Priority of options. The board shall give priority to allocations or credits acquired in accordance with subdivisions 1 a, b, and d of this subsection. The board shall approve allocations acquired in accordance with subdivision 1 c of this subsection only after the owner has demonstrated that he has made a good faith effort to acquire sufficient allocations in accordance with subdivisions 1 a and 1 b of this subsection, and that such allocations are not reasonably available taking into account timing, cost and other relevant factors. Such demonstration may include providing a record of solicitation, or other demonstration that point source allocations or nonpoint source allocations are not available for sale in the tributary in which the permittee's facility discharge is located.

4. Annual allocation acquisitions from the Nutrient Offset Fund. The cost for each pound of nitrogen and each pound of phosphorus shall be determined at the time payment is made to the Nutrient Offset Fund, based on the higher of (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost, as determined by the department on an annual basis, of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired.

Part III

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved, or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the discharge on the quality of state waters or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee that discharges or causes or allows a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part III F, or that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharge not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include, but are not limited to, any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this paragraph:

a. Any unanticipated bypass; and

b. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

NOTE: The immediate (within 24 hours) reports required in Part III G, H, and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at ~~https://portal.deq.virginia.gov/prep/Report/Create~~ https://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx [.]. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. ~~Where~~ When the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement or submitted incorrect information in a permit registration statement or in any report to the department, the permittee shall promptly submit such facts or information.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act (33 USC § 1251 et seq.) that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the Clean Water Act within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or of disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or of disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits and other information requested by the board shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual

or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action, permit coverage termination, or denial of a permit coverage renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights or any infringement of federal, state, or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U) and "upset" (Part III V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass after considering its adverse effects if the board determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part III I; and

d. The permittee complied with remedial measures required under Part III S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized ~~representative, including~~ representative (including an authorized contractor acting as a representative of the ~~administrator,~~ administrator) upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours or whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permit coverage. Permit coverage is not transferable to any person except after notice to the department. Coverage under this permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the board;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement described in Part III Y 2.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

9VAC25-820-80. Facilities subject to reduced ~~inidividual~~ individual total nitrogen and total phosphorus wasteload allocations.

~~The James River facilities identified in this section are subject to reduced individual total nitrogen and total phosphorus wasteload allocations as indicated.~~

Facility	VPDES No.	Phase 1 Total Nitrogen (lbs/yr)	Phase 2 Total Nitrogen (lbs/yr)	Phase 2 Total Phosphorus (lbs/yr)
Buena Vista STP	VA0020991	N/A	N/A	2,778
Covington STP	VA0025542	N/A	N/A	3,705
GP Big Island LLC	VA0003026	N/A	N/A	40,273
Mohawk Industries, Inc.	VA0004677	N/A	N/A	9,880
Lexington - Rockbridge Regional WQCF	VA0088161	N/A	N/A	3,705
Alleghany County - Low Moor STP	VA0027979	N/A	N/A	617
Lower Jackson River STP	VA0090671	N/A	N/A	1,852
Clifton Forge STP	VA0022772	N/A	N/A	2,470
MeadWestvaco	VA0003646	N/A	N/A	96,771
Amherst - Rutledge Creek WWTP	VA0031321	N/A	N/A	741
BWX Technologies Inc.	VA0003697	N/A	N/A	1,235
Greif Inc.	VA0006408	N/A	N/A	24,082
Lake Monticello STP	VA0024945	N/A	N/A	1,229
Lynchburg STP (DWF only)	VA0024970	N/A	N/A	27,169
RWSA - Moores Creek Regional STP	VA0025518	N/A	N/A	18,525
Powhatan CC STP	VA0020699	N/A	N/A	581
Crewe WWTP	VA0020303	N/A	N/A	617
Farmville WWTP	VA0083135	N/A	N/A	2,964
Richmond WWTP (DWF only)	VA0063177	N/A	N/A	55,574
E. I. DuPont - Spruance	VA0004669	N/A	N/A	6,339
Chesterfield County - Falling Creek WWTP	VA0024996	N/A	N/A	12,473
Chesterfield County - Proctors Creek WWTP	VA0060194	N/A	N/A	33,344

Dominion - Chesterfield (Net)	VA0004146	N/A	N/A	170
Henrico County WWTP	VA0063690	N/A	N/A	92,623
The Sustainability Park LLC	VA0002780	N/A	N/A	1,556
Philip Morris USA - Park 500	VA0026557	N/A	N/A	2,149
Honeywell - Hopewell	VA0005291	N/A	N/A	41,841
Hopewell Regional WTF	VA0066630	N/A	N/A	61,749
South Central WW Authority WWTF	VA0025437	N/A	N/A	28,404
Tyson Foods - Glen Allen	VA0004031	N/A	N/A	409
Chickahominy WWTP	VA0088480	N/A	N/A	123
HRSD - Boat Harbor STP	VA0081256	N/A	N/A	43,177
HRSD - James River STP	VA0081272	N/A	N/A	34,541
HRSD - Williamsburg STP	VA0081302	N/A	N/A	38,859
HRSD - Nansemond STP	VA0081299	N/A	N/A	51,812
HRSD - Army Base STP	VA0081230	N/A	N/A	31,087
HRSD - Virginia Initiative Plant WWTP	VA0081281	N/A	N/A	69,083
HRSD - Chesapeake - Elizabeth STP	VA0081264	N/A	N/A	41,450
HRSD Aggregate Nutrient Discharge*	N/A	4,400,000	3,400,000	310,010
JH Miles and Company	VA0003263	N/A	N/A	17,437
*HRSD James River Aggregate includes Boat Harbor STP (VA0081256), James River STP (VA0081272), Williamsburg STP (VA0081302), Nansemond STP (VA0081299), Army Base STP (VA0081230), Virginia Initiative STP (VA0081281), and Chesapeake - Elizabeth STP (VA0081264).				

[A. Floating wasteload allocations.

Facility	VPDES No.
ACSA – Middle River Regional WWTP	VA0064793
North River WWTF	VA0060640
Waynesboro WWTP	VA0025151
Front Royal WWTP	VA0062812
Broad Run WRF	VA0091383
Leesburg WPCF	VA0092282
VA-American Water Prince William – Section 1 WWTF	VA0024724
VA-American Water Prince William – Section 8 WWTF	VA0024678
H. L. Mooney WWTF	VA0025101
Opequan WRF	VA065552
Parkins Mill WWTF	VA0075191
Alexandria Renew Enterprises WWTP	VA0025160
Arlington County WPCF	VA0025143
Noman M Cole Jr PCP	VA0025364
Aquia WWTP	VA0060968
Culpeper WWTP	VA0061590
FMC WWTF	VA0068110
Fredericksburg WWTF	VA0025127
Little Falls Run WWTF	VA0076392
Massaponax WWTF	VA0025658
HRSD – York River STP	VA0081311
Totopotomoy WWTP	VA0089915
Lynchburg STP	VA0024970
Moores Creek Advanced WRRF	VA0025518
Falling Creek WWTP	VA0024996
Henrico County WWTP	VA0063690
Hopewell WWTP	VA0066630
HRSD – Boat Harbor STP	VA0081256
HRSD – James River STP	VA0081272
HRSD – Williamsburg STP	VA0081302
Proctor's Creek WWTP	VA0060194
Richmond WWTP	VA0063177
South Central Wastewater Authority WWTP	VA0025437

~~HRSD - Nansemond STP~~	~~VA0081299~~
~~HRSD - Army Base STP~~	~~VA0081230~~
~~HRSD - VIP WWTP~~	~~VA0081281~~

A. Enhanced Nutrient Removal Certainty Program facilities.

Facility	VPDES No.
HRSD - York River STP	VA0081311
HRSD - Boat Harbor STP	VA0081256
HRSD - James River STP	VA0081272
HRSD - Williamsburg STP	VA0081302
HRSD - Nansemond STP	VA0081299
HRSD - Army Base STP	VA0081230
HRSD - VIP WWTP	VA0081281]

B. Chlorophyll-a based total phosphorus wasteload allocations.

Facility	VPDES No.
Richmond WWTP	VA0063177
Falling Creek WWTP	VA0024996
Proctor's Creek WWTP	VA0060194
Henrico County WWTP	VA0063690
Phillip Morris - Park 500	VA0026557
Hopewell WWTP	[~~VA0063690~~ VA0066630]
South Central Wastewater Authority WWTP	VA0025437

VA.R. Doc. No. R20-6191; Filed November 1, 2022, 2:08 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Titles of Regulations: **14VAC5-341. Rules Governing Standards for the Content of Dwelling Property Insurance Policies (amending 14VAC5-341-10).**

14VAC5-342. Rules Governing Standards for the Content of Homeowners Insurance Policies (amending 14VAC5-342-10).

Statutory Authority: §§ 12.1-13, 38.2-223, and 38.2-2108 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: December 5, 2022.

Agency Contact: Jackie Myers, Chief Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9630, or email jackie.myers@scc.virginia.gov.

Summary:

The proposed amendments extend the deadline to submit filings for compliance to May 1, 2023 for policies

delivered or issued for delivery in Virginia on and after December 31, 2023.

AT RICHMOND, OCTOBER 27, 2022

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2022-00154

Ex Parte: In the matter of amending Rules Governing Standards for the Content of Dwelling Property Insurance Policies and Rules Governing Standards for the Content of Homeowners Insurance Policies

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code. Section 38.2-2108 of the Code provides that the Commission may establish standards for the content of policies written to insure owner-occupied dwellings issued or delivered in the Commonwealth.

The rules and regulations issued by the Commission pursuant to §§ 38.2-223 and 38.2-2108 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: law.lis.virginia.gov/admincode/title14/agency5/.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to the Rules Governing Standards for the Content of Dwelling Property Insurance Policies (14 VAC 5-341-10 et seq.) and Rules Governing Standards for the Content of Homeowners Insurance Policies (14 VAC 5-342-10 et seq.) ("Amended Rules").[2] Specifically, and solely, the Bureau proposes changing the deadline to submit filings for compliance from December 31, 2022 to May 1, 2023; and proposes to require compliance for policies delivered or issued for delivery in Virginia from those with effective dates on and after July 1, 2023, to those with effective dates on and after December 31, 2023. The Bureau believes the proposed Amended Rules will facilitate effective and efficient review and approval of filings of dwelling property and homeowners insurance policies in compliance with the Commission's regulations.

NOW THE COMMISSION, having considered the Bureau's proposal, is of the opinion and finds that reasonable notice of the proposed Amended Rules should be given, interested parties should be afforded an opportunity to be heard in accordance with the Commission's Rules of Practice and Procedure, 5VAC5-20-10 et seq., and the proposed Amended Rules should be considered for adoption with a proposed effective date of December 31, 2022.

Accordingly, IT IS ORDERED THAT:

(1) The proposed Amended Rules are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider, the proposed Amended Rules shall file such comments or hearing request on or before December 5, 2022, with the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: scc.virginia.gov/pages/Case-Information. All comments shall refer to Case No. INS-2022-00154.

(3) The Bureau shall file its response to any comments filed pursuant to Ordering Paragraph (2) on or before December 7, 2022.

(4) The Bureau shall provide notice of the proposed Amended Rules to all carriers licensed in Virginia to write fire and homeowners insurance and to all interested persons.

(5) The Commission's Office of General Counsel shall cause a copy of this Order, together with the proposed Amended Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed Amended Rules on the Commission's website: scc.virginia.gov/pages/Case-Information.

(7) The Bureau shall file with the Clerk of the Commission a certificate of compliance with the notice requirements of Ordering Paragraph (4) above.

A COPY hereof shall be sent electronically by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219-3424, at MBrowder@oag.state.va.us; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Rebecca Nichols.

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[1]The Commission adopted the current Rules Governing Standards for the Content of Dwelling Property Insurance Policies (14 VAC 5-341-10 et seq.) and Rules Governing Standards for the Content of Homeowners Insurance Policies (14VAC5-342-10 et seq.) effective January 1, 2022. See Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte:

In the matter of Repealing Rules Governing Standards for the Content of Fire Insurance or Fire Insurance in Combination with Other Coverages, Adopting New Rules Governing Standards for the Content of Dwelling Property Insurance Policies and Adopting New Rules Governing Standards for the Content of Homeowners Insurance Policies, Case No. INS-2021-00092, 2021 S.C.C. Ann. Rept. 132, Order Repealing and Adopting Regulations (Dec. 17, 2021).

[2]The Bureau proposes amendments to 14VAC5-341-10 B and 14VAC5-342-10 B, which contain identical language.

14VAC5-341-10. Scope and applicability.

A. This chapter sets forth the standards of content for policies of dwelling property insurance covering solely owner-occupied dwellings, including condominium units. This chapter applies to insurers licensed to do business in Virginia and issuing policies of dwelling property insurance pursuant to the provisions of Chapter 21 (§ 38.2-2100 et seq.) of Title 38.2 of the Code of Virginia.

B. Compliance with this chapter is required for policies delivered or issued for delivery in Virginia with effective dates on and after ~~July 1~~ December 31, 2023. Insurers and rate service organizations shall submit filings for compliance with this chapter no later than ~~December 31, 2022~~ May 1, 2023.

C. No insurer shall represent to a prospective purchaser or a policyholder that a dwelling property policy subject to the provisions of this chapter is a homeowners policy as defined in § 38.2-130 of the Code of Virginia.

D. This chapter does not apply to policies that:

1. Are lender-placed;

2. Insure owner-occupied farms;

3. Insure manufactured homes as defined in § 46.2-100 of the Code of Virginia, except for policies insuring manufactured homes as defined in § 46.2-653.1 of the Code of Virginia;

4. Are issued pursuant to Chapter 27 (§ 38.2-2700 et seq.) of Title 38.2 of the Code of Virginia;

5. Are issued pursuant to Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia; or

6. Primarily insure the personal property of renters.

E. Insurers shall file with the commission all policies or endorsements for approval before use.

F. Policies and endorsements shall not be less favorable than the provisions set forth in this chapter. Insurers may provide broader and more favorable coverages, terms, and conditions than those set forth in this chapter. Insurers may use any policy language that is not less favorable to the insured and complies with provisions of this chapter.

14VAC5-342-10. Scope and applicability.

A. This chapter sets forth the standards of content for policies of homeowners insurance, including policies insuring owner-occupied condominium units. This chapter applies to insurers licensed to do business in Virginia and issuing policies of homeowners insurance and condominium unit owners insurance pursuant to Chapter 21 (§ 38.2-2100 et seq.) of Title 38.2 of the Code of Virginia.

B. Compliance with this chapter is required for policies delivered or issued for delivery in Virginia with effective dates on and after ~~July 1~~ December 31, 2023. Insurers and rate service organizations shall submit filings for compliance with this chapter no later than ~~December 31, 2022~~ May 1, 2023.

C. Pursuant to § 38.2-130 of the Code of Virginia, homeowners insurance policies are indivisible package policies that insure owner-occupied dwellings.

D. This chapter does not apply to policies that:

1. Are lender-placed;

2. Insure owner-occupied farms;

3 Insure manufactured homes as defined in § 46.2-100 of the Code of Virginia, except for policies insuring manufactured homes as defined in § 46.2-653.1 of the Code of Virginia;

4. Primarily insure the personal property of renters;

5. Are issued pursuant to Chapter 27 (§ 38.2-2700 et seq.) of Title 38.2 of the Code of Virginia; or

6. Are issued pursuant to Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia.

E. Insurers shall file with the commission all policies and endorsements for approval before use.

F. Policies and endorsements shall not be less favorable than the provisions set forth in this chapter. Insurers may provide broader and more favorable coverages, terms, and conditions than those set forth in this chapter. Insurers may use any policy language that is not less favorable to the insured and complies with provisions of this chapter.

VA.R. Doc. No. R23-5997; Filed October 27, 2022, 3:23 p.m.

TITLE 16. LABOR AND EMPLOYMENT

VIRGINIA EMPLOYMENT COMMISSION

Fast-Track Regulation

Title of Regulation: **16VAC5-10. Definitions and General Provisions (amending 16VAC5-10-10).**

Statutory Authority: § 60.2-111 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 21, 2022.

Effective Date: January 9, 2023.

Agency Contact: Jacob Shuford, Regulatory Coordinator, Virginia Employment Commission, 6606 West Broad Street, Henrico, VA 23230, telephone (804) 486-2360, FAX (804) 786-9034, or email jacob.shuford@vec.virginia.gov.

Basis: Statutory authority for this regulatory action is derived from §§ 60.2-113, 60.2-611, and 60.2-612 of the Code of Virginia, which authorize the Virginia Employment Commission to adopt, amend, or rescind such rules and regulations deemed necessary, including methods of procedure and regulations concerning parties reporting to or filing claims with the commission, to further the mandated goal of greater employment stabilization throughout the Commonwealth of Virginia.

Purpose: The commission must take all necessary steps to aid employment stabilization in the Commonwealth of Virginia under its duty to administer the Virginia Unemployment Compensation Act (§ 60.2-100 et seq. of the Code of Virginia) for the welfare of the citizens of the Commonwealth through unemployment benefits, labor exchange system, job services programs, and solvency of the administered trust fund. Adapting to the shift away from brick and mortar local offices through an increased utilization of technology and stream lining of claim filing processes are necessary to gain efficiency in the pursuit of those mandated goals.

Rationale for Using Fast-Track Rulemaking Process: This action is noncontroversial because the amendments are merely updating definitions so that the agency regulations better align with the Code of Virginia and current agency practices and procedures.

Substance: Changes are recommended for the following definitions within 16VAC5-10-10: Definitions:

1. Amend the term "area of high unemployment" to delete "served by a particular field office" and replace "first of the last two" with "most recent."

2. Combined-wage claimant is amended to replace "more than" with "Virginia and" add "other" to the phrase "one other state and who has filed a claim."

3. Continued claim is amended to add "or weekly" to the term (i.e. "continued or weekly claim").

4. Field office is amended to replace the term "field office" with "workforce center."

5. Initial claim is amended to delete ", additional, or reopened."

6. Interstate benefit payment plan is amended to replace "the plan approved by the National Association of State Workforce Agencies" with "an approved plan"

7. Interstate claimant is amended to delete "or more."

8. Jurisdiction is amended to add ", or any other area owned or possessed by the United States" to the end of the definition.

9. New claim is amended to delete "person at" and replace "field office, or other location designated" with "manner prescribed."

10. Partially unemployed individual is amended to delete both appearances of "full time."

11. Regional adjudication centers is amended to replace term with "adjudication center" and replace "a regional" with "an" and delete ", including one-stop centers."

12. State is amended to rewrite as "refers to the Commonwealth of Virginia, including land or premises located therein, owned, held or possessed by the United States, the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands."

13. Telephone hearing is amended to add "or special" after "before the appeals" and before "examiner by way of."

Issues: The primary advantage to the public is increased clarity into agency terms associated with the modernized claims process, increased usage of technology, and shift from away from brick and mortar local offices. Specifically, this action is updating the definitions reflecting those changes. There are no disadvantages to the public. The Commonwealth will benefit by aligning the definitions with current practices, gaining efficiency with the updated systems, streamlining the claims filing process, and modernizing operations. There are no disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The Virginia Employment Commission (VEC) proposes to update definitions regarding unemployment claim processing.

Background. VEC is charged with aiding employment stabilization under its duty to administer the Virginia Unemployment Compensation Act for the welfare of the citizens of the Commonwealth through unemployment benefits, the labor exchange system, job services programs, and solvency of the administered trust fund. This chapter of the regulation contains definitions and general provisions.

VEC reports that the federal Workforce Innovation and Opportunity Act required dramatic changes in how it delivered services across the Commonwealth. Consequently, starting in September 2018, VEC modernized its unemployment claim filing process by shifting away from pen-and-paper based claim filing to online filing, which necessitates changes to this regulation regarding benefits, interstate and multistate claimants, and adjudication. VEC is proposing to make these changes to different chapters through individual regulatory actions.[2] This action updates the definitions to reflect the changes necessitated by the other actions.

Estimated Benefits and Costs. This action updates definitions that are necessitated by the proposed changes in other chapters

of this regulation to reflect the modernized unemployment claim process. The changes to definitions in this action do not have any significant economic effect other than providing internal consistency of language throughout this regulation.

Businesses and Other Entities Affected. The proposed amendments apply to all individuals and businesses required to file or report an unemployment claim or event.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[3] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the proposed changes in this action are not expected to have a significant economic effect. Thus, no individual or business appears to be adversely affected by the proposed changes to definitions.

Small Businesses[4] Affected.[5] The proposed amendments do not appear to adversely affect small businesses.

Localities[6] Affected.[7] The proposed amendments do not disproportionately affect any particular localities and do not introduce costs for local governments.

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

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

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

[2]https://townhall.virginia.gov/l/viewstage.cfm?stageid=9615

https://townhall.virginia.gov/l/viewstage.cfm?stageid=9616

https://townhall.virginia.gov/l/viewstage.cfm?stageid=9617

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

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

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

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

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

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget. The agency concurs with this analysis.

Summary:

The amendments update definitions to reflect the modernized unemployment claim process and accurately reflect the claims filing process as the agency increasingly moves away from local offices and into a modernized claim filing process.

16VAC5-10-10. Definitions.

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

"Act" means the Virginia Unemployment Compensation Act as set out in Title 60.2 (§ 60.2-100 et seq.) of the Code of Virginia.

"Additional claim" means a claim for unemployment compensation benefits filed within an existing benefit year by a claimant who has had an intervening period of employment since filing a prior claim.

"Adjudication center" means a service location designated by the commission as an official station for agency staff who are primarily involved in adjudication of disputed benefit and tax liability issues. An adjudication center may be co-located with or incorporated into other agency service locations.

"Agency" means any officer, board, commission, or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

"Agent state" means any state in which an individual files a claim for benefits from another state.

"Area of high unemployment" means that geographic area of Virginia, including all cities and counties ~~served by a particular field office,~~ where the average unemployment rate as determined by the commission has been 10% or more during the ~~first of the last two~~ more recent completed calendar quarters.

"Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment

insurance law of any state or under any federal program in which such compensation is payable in accordance with applicable state law.

"Cash value of remuneration" means the value of rent, housing, lodging, board, or any other payment in kind, in addition to or in lieu of money wages, as agreed upon by the employing unit and the worker at the time of entering into the contract of hire or thereafter. If there is no such agreement, the value thereof shall be an amount equal to a fair estimate of what the worker would, according to his custom and station, pay for similar goods, services, or accommodations in the same community at premises other than those provided by the employing unit.

"Combined-wage claimant" means a claimant who has covered wages under the unemployment compensation law of ~~more than~~ Virginia and one other state and who has filed a claim under the Interstate Arrangement for Combining Employment and Wages.

"Commission" means the Virginia Employment Commission as defined in § 60.2-108 of the Code of Virginia.

"Continued claim" or "weekly claim" means a request for the payment of unemployment compensation benefits ~~which~~ that is made after the filing of an initial claim.

"Days" means consecutive calendar days unless the use of the term in this chapter specifies otherwise.

"Ex parte communication" means any communication with the presiding appeals examiner or special examiner, regardless of the medium, not in the agency's record regarding substantive, procedural, or other matters that could be reasonably expected to influence the outcome of the case or case decision pending before the agency and for which reasonable notice to all parties is not given at the time of the communication. "Parties" shall include claimants and any employers or employing units that have a direct interest in the outcome of the pending case.

~~"Field office" means an office of the commission, which may include one-stop centers, job information, referral services, and unemployment insurance services.~~

"Initial claim" means any new~~, additional, or reopened~~ claim for unemployment compensation benefits.

"In-person hearing" means a hearing where the parties, witnesses, and representatives personally appear before the appeals examiner or special examiner.

"Interested jurisdiction" means any participating jurisdiction to which an election submitted under 16VAC5-50-10 et seq. is sent for its approval and "interested agency" means the agency of such jurisdiction.

"Interstate Benefit Payment Plan" means ~~the~~ an approved plan ~~approved by the National Association of State Workforce Agencies~~ under which benefits shall be payable to unemployed individuals absent from the state ~~(or states)~~ in which benefit credits have been accumulated.

"Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one ~~or more~~ liable ~~states~~ state through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the commission finds that this exclusion would create undue hardship on such claimants in specified areas.

"Jurisdiction" means ~~any state of~~ the Commonwealth of Virginia, including land or premises located therein, owned, held, or possessed by the United States, the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

"Liable employer" means the employing unit for whom a claimant last worked during 30 days, whether or not such days were consecutive, or for 240 hours prior to filing an initial, additional, or reopened claim for benefits.

"Liable state" means any state against which an individual files, through another state, a claim for benefits.

"Mass separation" means a separation (permanently, for an expected duration of at least seven days, or for any indefinite period) at or about the same time and for the same reasons (i) of at least 20% of the total number of workers employed in an establishment~~, or~~; (ii) of at least 50% of the total number of workers employed in any division or department of any establishment~~,~~; or (iii) notwithstanding any of the foregoing, a separation at or about the same time and for the same reason of 25 or more workers employed in a single establishment.

"New claim" means a claim for unemployment compensation benefits filed in ~~person at~~ a ~~field office, or other location designated~~ manner prescribed by the commission, by an individual who does not have an existing benefit year established.

"Notification lists" means lists used by the commission to notify interested parties of regulatory actions pursuant to this chapter. Such lists may include electronic mailing lists maintained through a state website or regular mailing lists maintained by the commission.

"Partially unemployed individual" means an individual who during a particular week (i) had earnings, but less than his weekly benefit amounts, (ii) was employed by a regular employer, and (iii) worked, but less than his normal customary ~~full-time~~ hours for such regular employer because of lack of ~~full-time~~ work.

"Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the Interstate Arrangement for Combining Employment and Wages and whose adherence thereto has not terminated.

"Part-total unemployment" means the unemployment of any individual in any week of less than full-time work in which he earns some remuneration (but less than his weekly benefit amount) and during which he is not attached to a regular employer; or, in any week in which he has wages such as holiday or vacation pay ~~which~~ that are less than his weekly benefit amount, but where no actual work has been performed regardless of his attachment to a regular employer.

"Paying state" means (i) the state in which a combined-wage claimant files a combined-wage claim, if the claimant qualifies for unemployment benefits in that state on the basis of combined employment and wages, and combining will increase either the weekly benefit amount or the maximum benefit amount~~,~~; or (ii) if the state in which a combined-wage claimant files a combined-wage claim is not the paying state under the criterion set forth in clause (i) ~~above~~ of this definition, or if the combined-wage claim is filed in Canada or the U.S. Virgin Islands, then the paying state shall be that state where the combined-wage claimant was last employed in covered employment among the states in which the claimant qualifies for unemployment benefits on the basis of combined employment and wages.

~~"Regional adjudication centers" means a service location designated by the commission as an official station for agency staff who are primarily involved in adjudication of disputed benefit and tax liability issues. A regional adjudication center may be co-located with or incorporated into other agency service locations, including one-stop centers.~~

"Reopened claim" means the first claim for unemployment compensation benefits filed within an existing benefit year after a break in the claim series caused by any reason other than intervening employment.

"Services customarily performed by an individual in more than one jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

"Severance and dismissal pay" means, for the purpose of taxation and benefits, all payments made by an employer at or subsequent to an employee's separation, except that payments ~~which~~ that are exclusively for services performed prior to separation shall not be treated as severance or dismissal pay. Such payments may be allocated by the employer for any period following separation so long as such allocation is at a weekly rate at least equal to the average weekly wage received by such employee during the last calendar quarter preceding the separation, and will in such cases be deemed to have been paid in those weeks covered by the allocation. If no allocation is made by the employer, such payments will be deemed allocated to the last day of work.

"Split hearing" means an in-person hearing where one or more parties, representatives, or witnesses are allowed to participate telephonically.

"State" means ~~one of~~ the Commonwealth of Virginia, including land or premises located therein, owned, held, or possessed by the United States, the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands~~, and the District of Columbia~~.

"Telephone hearing" means a hearing where all parties, witnesses, and representatives participate before the appeals or special examiner by way of a telephone conference call.

"Total unemployment" means the unemployment of an individual for any week in which he performs no work and has no wages payable to him, regardless of whether or not he is attached to an employing unit's payroll.

"Transferring state" means a state in which a combined-wage claimant had covered employment and wages in the base period of a paying state, and ~~which~~ that transfers such employment and wages to the paying state for its use in determining the benefit rights of such claimant under its law.

"Workforce center" means an office of the commission, which may include one-stop centers, job information, referral services, and unemployment insurance services.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Fast-Track Regulation

Title of Regulation: **18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology (amending 18VAC30-21-10 through 18VAC30-21-120, 18VAC30-21-160; adding 18VAC30-21-141).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 21, 2022.

Effective Date: January 5, 2023.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4130, FAX (804) 527-4471, or email audbd@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the

Board of Audiology and Speech-Language Pathology the authority to promulgate regulations to administer the regulatory system.

Purpose: A National Practitioner Data Bank (NPDB) report is being requested for all applicants for health profession licensure in order to be sure there are no indications that an applicant might present a risk to public health and safety and no grounds for denial of licensure.

Rationale for Using Fast-Track Rulemaking Process: This action is appropriate for the fast-track rulemaking process because it is primarily clarification of current requirements plus an additional pathway in audiology to facilitate licensure. It will not be controversial because the requirement for a report from NPDB is consistent with other professions licensed by boards of the Department of Health Professions, the cost is minimal, and there has never been a comment in opposition to such a requirement.

Substance: The board has completed a periodic review of regulations for 18VAC30-21 and is proposing amendments to (i) reorganize and clarify certain provisions for ease of understanding and compliance; (ii) eliminate unnecessary provisions such as posting of a license in every location; (iii) add a pathway for licensure in audiology based on an applicant's graduate degree and passage of the examination; and (iv) add a requirement for a report from NPDB for applicants for initial licensure and reactivation or reinstatement of a license that has been inactive or lapsed for five or more years.

Issues: The primary advantage to the public is greater clarity in the wording of the regulation for ease of compliance. There are no disadvantages. There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The Board of Audiology and Speech-Language Pathology (Board) proposes to amend the regulation as follows: (i) eliminate the requirement to post a license in every location, (ii) require a report from the National Practitioner Data Bank for initial licensure and for reinstatement of licenses that have been lapsed for five or more years, (iii) add a pathway for licensure in audiology based on one's graduate degree and passing a qualifying examination conducted by an accredited body recognized by the Board, and (iv) make other clarifying changes to ensure understanding and compliance of the regulation.

Background. Pursuant to a periodic review of the regulation,[2] the Board proposes to make a number of changes that would clarify and update the requirements for initial licensure, license renewal and reinstatement, continuing education, recordkeeping, and unprofessional conduct. The most substantive changes are summarized as follows: In 18VAC30-21-20, Required licenses, the current requirement that a licensee shall "post his license in a place conspicuous to the public in each facility in which the licensee is employed" would be removed. The Department of Health Professions (DHP) reports that any verification as to whether a license is current must be done online and that a hard copy of the initial license is not informative as to its currency. Further, audiologists and speech language pathologists may work in multiple locations within the facilities that employ them, making it impractical to post a license in a "conspicuous place." Thus, this requirement would be removed. A more general requirement that "licensees shall provide a copy of their license upon request" would be maintained in this section.

In 18VAC30-21-50, Application requirements, applicants would be required to submit a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB).[3] DHP reports that an NPDB report is being added to the requirements for all applicants for health profession licensure in order to be sure there are no indications that an applicant might present a risk to public health and safety and no grounds for denial of licensure. This requirement would also be added to 18VAC30-21-110, which contains requirements for reactivating an inactive license, and to 18VAC30-21-120, which contains requirements for reinstating a lapsed license.

In 18VAC30-21-110 and 18VAC30-21-120, the NPDB report would only be required for applicants whose licenses have been inactive or lapsed for five or more years.

In 18VAC30-21-50, Application requirements, the regulation currently requires, "If licensed or certified in another United States jurisdiction, verification of the status of the license or certification from each jurisdiction in which licensure or certification is held." The proposed change would add "or has ever been held" so that an applicant who had been licensed in another jurisdiction would have to provide verification of that license even if it was no longer active.[4] As with the NPDB report, this requirement would also be added to 18VAC30-21-110 and 18VAC30-21-120, specifically for applicants whose licenses have been inactive or lapsed for at least five year.

In 18VAC30-21-60, Qualifications for Initial Licensure, the proposed changes would list the requirements for audiologists separately from the requirements for speech pathologists, and add an option for audiology license applicants.

Specifically, audiologists can currently be licensed based on (i) a current and unrestricted Certificate of Clinical Competence issued by the American Speech-Language and Hearing Association (ASHA) or the American Board of Audiology (ABA) or other accrediting body recognized by the Board, and (ii) documentation of having passed a qualifying examination from an accrediting body recognized by the Board. The Board seeks to add a third option whereby an applicant for licensure in audiology who has graduated from an accredited audiology program and passed the national examination could be licensed prior to or without ASHA or ABA certification.[5]

Applicants for licensure in speech-language pathology would need a current and unrestricted Certificate of Clinical Competence issued by ASHA; DHP has clarified that this requirement is identical to current practice, since ASHA is the only accrediting body for speech-language pathology. The requirements for school speech-pathology licensure would remain the same.

In 18VAC30-21-80, Qualifications for Licensure by Endorsement, the Board proposes to expand the time period for qualifying for licensure by endorsement from within 12 months to within 24 months of graduation to allow more time for out-of-state applicants to become employed in Virginia. All other requirements would remain the same.

In 18VAC30-21-90, Continuing education requirements for renewal of an active license, the Board seeks to delete the allowance for a licensee to carry over up to ten contact hours of continuing education in excess of the number required for renewal. The Board reports that the current language about the carry-over is too confusing, and the current continuing education requirement of ten hours per year is not burdensome since they can be accrued in-service or online. This section would also be amended to delete the mandate for a periodic audit; this change is intended to give the Board some flexibility since it has not audited during the past two years during the pandemic.

Recordkeeping requirements that are currently part of 18VAC30-21-160, Unprofessional Conduct, would be moved to a new 18VAC30-21-141, Recordkeeping. The recordkeeping requirements would not be changed in any way. 18VAC30-21-50, 18VAC30-21-80, 18VAC30-21-110, and 18VAC30-21-120, which contain license application requirements, state that licenses may be denied to an applicant or licensee who has been determined to have committed and act in violation of 18VAC30-21-160. Thus, moving the recordkeeping requirements to a separate section preserves those requirements while ensuring that any violations cannot be treated as grounds for disciplinary action or license refusal in the same way that violating the other stipulations of 18VAC30-21-160 would warrant.

Estimated Benefits and Costs. The NPDB report requirement would create new costs for all new applicants, as well as those seeking to reinstate or activate a license after five years of letting it lapse or be inactive. DHP reports that it costs $4.00 for an applicant to request their NPDB report, which is unlikely to prevent anyone from seeking licensure, including reinstatement.[6] Individuals who have been licensed in other U.S. jurisdictions may face new costs if they have to verify old licenses that are no longer active from multiple jurisdictions. However, requiring the NPDB report protects potential employers and clients of audiologists and speech-language pathologists by allowing greater transparency and oversight across jurisdictions regarding prior disciplinary actions.

The proposed amendment to allow audiologists who have graduated from an accredited program and passed the national examination to obtain licenses would benefit those individuals by saving them the monetary and time costs of pursuing further certification by ASHA or ABA. This change is expected to "expedite the license application process for a few individuals each year."[7]

The proposed amendments to the requirements for licensure by endorsement would benefit individuals who graduate from audiology or speech pathology programs in other states, obtain licenses there, and subsequently move to Virginia. These graduates would have an additional year to find jobs in Virginia and pursue licensure by endorsement, even though the other requirements (certification by ASHA or ABA, taking the national exam) would be the same as if they were applying for an initial license.

Businesses and Other Entities Affected. DHP reports that there are currently 528 licensed audiologists, 4,272 licensed speech-language pathologists, and 318 school speech-language pathologists. However, most of the proposed amendments affect future applicants for licenses. Current license holders would only be affected if (a) they seek to re-activate an inactive license or reinstate a lapsed license after five or more years since they last had an active license, or (b) if they were carrying over up to ten hours of continuing education credits from the previous year and had to do more continuing education to make up the difference. Future applicants would face costs associated with the NPDB report; some of them would benefit from the new pathway to licensure for audiologists.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[8] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposal to require NPDB reports from license applicants would create new costs for them. Thus, an adverse impact is indicated.

Small Businesses[9] Affected.[10] The proposed amendments do not appear to adversely affect small businesses. Some audiologists and speech-language pathologists may be employed by small businesses, or self-employed. However, the proposed amendments do not appear to create new costs for

them. Thus, an adverse economic impact[11] on small businesses is not indicated.

Localities[12] Affected.[13] The proposed amendments do not introduce costs for local governments. No locality would be disproportionately affected by the proposed changes. Consequently, an adverse economic impact[14] is not indicated for any localities.

Projected Impact on Employment. The proposed amendments do not appear to affect total employment. Although new applicants for licenses would face new costs associated with requesting and submitting the NPDB report, these costs are expected to be modest relative to the other application fees and unlikely to affect the number of individuals seeking licensure as audiologists or speech pathologists in Virginia.

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

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

[2]See https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=1956.

[3]See https://www.npdb.hrsa.gov/.

[4]This change is related to the NPDB report requirement in that the NPDB report includes any disciplinary actions that may have been taken in other states. Having applicants verify licenses/certifications held in other states provides a way for the Board to cross-reference the report.

[5]DHP states that both types of certification (ABA and ASHA) require practice experience. However, audiology students in an accredited program acquire supervised practical experience within their degree program, so they can be licensed based on their degree and passage of the examination. The certification indicating practical experience is not essential for those applicants. See page 8 of the Agency Background Document (ABD) at https://townhall.virginia.gov/l/GetFile.cfm?File=18\5876\9476\AgencyStatement_DHP_9476_v2.pdf.

[6]See ABD, page 5.

[7]See ABD, page 5.

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

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

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

[11]Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

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

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

[14]Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

Agency's Response to Economic Impact Analysis: The Board of Audiology and Speech-Language Pathology concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The amendments (i) reorganize and clarify certain provisions for ease of understanding and compliance; (ii) eliminate unnecessary provisions such as posting of a license in every location; (iii) add a pathway for licensure in audiology based on an applicant's graduate degree and passage of the examination; and (iv) add a requirement for a report from the National Practitioner Data Bank for applicants for initial licensure and reactivation or reinstatement of a license that has been inactive or lapsed for five or more years.

18VAC30-21-10. Definitions.

A. The words and terms "audiologist," "board," "practice of audiology," "practice of speech-language pathology," "speech-language disorders," and "speech-language pathologist" when used in this chapter shall have the meanings ascribed to them in § 54.1-2600 of the Code of Virginia.

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

"ABA" means the American Board of Audiology.

"Active practice" means a minimum of 160 hours of professional practice as an audiologist or speech-language pathologist for each 12-month period immediately preceding application for licensure. Active practice may include supervisory, administrative, educational, research, or consultative activities or responsibilities for the delivery of such services.

"ASHA" means the American Speech-Language-Hearing Association.

"Client" means a patient or person receiving services in audiology or speech-language pathology.

~~"Contact hour" means 60 minutes of time spent in continuing learning activities.~~

"Limited cerumen management" means the identification and removal of cerumen from the cartilaginous outer one-third portion of the external auditory canal in accordance with minimum standards and procedures set forth in this chapter.

"School speech-language pathologist" means a person licensed pursuant to § 54.1-2603 of the Code of Virginia to provide speech-language pathology services solely in public school divisions.

"Supervision" means that the audiologist or speech-language pathologist is responsible for the entire service being rendered or activity being performed, is available for consultation, and is providing regular monitoring and documentation of clinical activities and competencies of the person being supervised.

18VAC30-21-20. Required licenses~~; posting of licenses~~.

A. There shall be separate licenses for the practices of audiology and speech-language pathology. It is prohibited for any person to practice as an audiologist or a speech-language pathologist unless the person has been issued the appropriate license.

B. A licensee shall ~~post his license in a place conspicuous to the public in each facility in which the licensee is employed and holds himself out to practice. If it is not practical to post the license, the licensee shall~~ provide a copy of his license upon request.

18VAC30-21-30. Records; accuracy of information.

A. All changes of name, address of record, or public address, if different from the address of record, shall be furnished to the board within 30 days after the change occurs.

B. A licensee who has changed his name shall submit as legal proof to the board a copy of the marriage certificate, a certificate of naturalization, or a court order evidencing the change. A duplicate license with the changed name shall be issued by the board upon receipt of such evidence and the required fee.

C. All notices required by law and by this chapter to be mailed by the board to any ~~registrant or~~ licensee shall be validly served when mailed to the latest address of record on file with the board.

18VAC30-21-40. Fees required.

A. The following fees shall be paid as applicable for licensure:

1. Application for audiology or speech-language pathology license	$135
2. Application for school speech-language pathology license	$70
3. Verification of licensure requests from other states	$20
4. Annual renewal of audiology or speech-language pathology license	$75
5. Late renewal of audiology or speech-language pathology license	$25
6. Annual renewal of school speech-language pathology license	$40
7. Late renewal of school speech-language pathology license	$15
8. Reinstatement of audiology or speech-language pathology license	$135
9. Reinstatement of school speech-language pathology license	$70
10. Duplicate wall certificate	$25
11. Duplicate license	$5
12. Handling fee for returned check or dishonored credit card or debit card	$50
13. Inactive license renewal for audiology or speech-language pathology	$40
14. Inactive license renewal for school speech-language pathology	$20
15. Application for provisional license	$50
16. Renewal of provisional license	$25

B. Fees shall be made payable to the Treasurer of Virginia and shall not be refunded once submitted.

~~C. The renewal fees due by December 31, 2018, shall be as follows:~~

~~1. Annual renewal of audiology or speech-language pathology license~~	~~$55~~
~~2. Annual renewal of school speech-language pathology license~~	~~$30~~

18VAC30-21-50. Application requirements.

A. A person seeking a provisional license or licensure as an audiologist, a speech-language pathologist, or a school speech-language pathologist shall submit:

1. A completed and signed application;

2. The applicable fee prescribed in 18VAC30-21-40, or in the case of an application for licensure as an audiologist, a speech-language pathologist, or a school speech-language pathologist ~~following issuance of~~ issued a provisional license pursuant to 18VAC30-21-70 A, the difference

between the provisional licensure fee and the application licensure fee;

3. Documentation as required by the board to determine if the applicant has met the qualifications for licensure;

4. An attestation that the applicant has read, understands, and will comply with the statutes and regulations governing the practice of audiology or speech-language pathology; and

5. ~~If licensed or certified in another United States jurisdiction, verification~~ Verification of the status of the license or certification from each United States jurisdiction in which licensure or certification is held~~.~~ or has ever been held; and

6. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank.

B. An incomplete application package shall be retained by the board for a period of one year from the date the application is received by the board. If an application is not completed within the year, an applicant shall reapply and pay a new application fee.

18VAC30-21-60. Qualifications for initial licensure.

A. The board may grant an initial license to an applicant for licensure in audiology ~~or speech-language pathology~~ who:

1. Holds a current and unrestricted Certificate of Clinical Competence issued by ASHA ~~or~~;

2. ~~Has passed the qualifying examination from an accrediting body recognized by the board.~~ Holds a current and unrestricted certification issued by the ~~American Board of Audiology~~ ABA or any other accrediting body recognized by the board~~. Verification of currency shall be in the form of a certified letter from a recognized accrediting body issued within six months prior to filing an application for licensure;~~ and provides documentation of having passed the qualifying examination from an accrediting body recognized by the board; or

3. Provides documentation of (i) graduation from an audiology program accredited by the Council on Academic Accreditation of ASHA or an equivalent accrediting body as recognized by the board; and (ii) having passed the qualifying examination from an accrediting body recognized by the board.

B. The board may grant an initial license to an applicant for licensure in speech-language pathology who holds a current and unrestricted Certificate of Clinical Competence issued by ASHA.

C. The board may grant a license to an applicant as a school speech-language pathologist who holds a master's degree in speech-language-pathology.

~~C. Any individual who holds an active, renewable license issued by the Virginia Board of Education with a valid endorsement in speech-language pathology on June 30, 2014, shall be deemed qualified to obtain a school speech-language pathologist license from the board until July 1, 2016, or the date of expiration of such person's license issued by the Virginia Board of Education, whichever is later.~~

D. The board may refuse to issue a license to any applicant who has been determined to have committed an act in violation of 18VAC30-21-160.

18VAC30-21-70. Provisional licensure.

A. Provisional license to qualify for initial licensure. An applicant may be issued a provisional license in order to obtain clinical experience required for certification by ASHA, ~~the American Board of Audiology~~ ABA, or any other accrediting body recognized by the board. To obtain a provisional license in order to qualify for initial licensure, the applicant shall submit documentation that he has:

1. Passed the qualifying examination from an accrediting body recognized by the board; and

2. Either:

a. For provisional licensure in audiology, successfully completed all the didactic coursework required for the doctoral degree as documented by a college or university whose audiology program is accredited by the Council on Academic Accreditation of ASHA or an equivalent accrediting body as recognized by the board; or

b. For provisional licensure in speech-language pathology, successfully completed all the didactic coursework required for a graduate program in speech-language pathology as documented by a college or university whose program is accredited by the Council on Academic Accreditation of ~~the American Speech-Language-Hearing Association~~ ASHA or an equivalent accrediting body as recognized by the board.

B. Provisional license to qualify for endorsement or reentry into practice. An applicant may be issued a provisional license in order to qualify for licensure by endorsement pursuant to 18VAC30-21-80, reactivation of an inactive license pursuant to subsection C of 18VAC30-21-110, or reinstatement of a lapsed license pursuant to subsection B of 18VAC30-21-120.

C. All provisional licenses shall expire 18 months from the date of issuance and may be renewed for an additional six months by submission of a renewal form and payment of a renewal fee. Renewal of a provisional license beyond 24 months shall be for good cause shown ~~as determined by a committee of the board~~.

D. The holder of a provisional license in audiology shall only practice under the supervision of a licensed audiologist, and the holder of a provisional license in speech-language pathology shall only practice under the supervision of a licensed speech-language pathologist. The provisional licensee shall be

responsible and accountable for the safe performance of those direct client care tasks to which he has been assigned.

E. Licensed audiologists or speech-language pathologists providing supervision shall:

1. ~~Notify the board electronically or in writing of the intent to provide supervision for a provisional licensee;~~

~~2.~~ Have an active, current license and at least three years of active practice as an audiologist or speech-language pathologist prior to providing supervision;

~~3.~~ 2. Document the frequency and nature of the supervision of provisional licensees;

~~4.~~ 3. Be responsible and accountable for the assignment of clients and tasks based on their assessment and evaluation of the provisional licensee's knowledge and skills; and

~~5.~~ 4. Monitor clinical performance and intervene if necessary for the safety and protection of the clients.

F. The identity of a provisional licensee shall be disclosed to the client prior to treatment and shall be made a part of the client's file.

18VAC30-21-80. Qualifications for licensure by endorsement.

A. An applicant for licensure in audiology or speech-language pathology who has been licensed in another United States jurisdiction shall apply for licensure in Virginia in accordance with application requirements in 18VAC30-21-50 and ~~submission of~~ shall submit documentation of:

1. Evidence of active practice in another United States jurisdiction for at least one of the past three years or practice for six months with a provisional license in accordance with 18VAC30-21-70 and by providing evidence of a recommendation for licensure by the applicant's supervisor. An applicant who graduated from an accredited program in audiology or speech-language pathology within 24 months immediately preceding application may be issued a license without evidence of active practice if the applicant holds a current and unrestricted Certificate of Clinical Competence in the area in which the applicant seeks licensure issued by ASHA or certification issued by ABA or any other accrediting body recognized by the board; and

2. One of the following:

a. Ten continuing education hours for each year in which the applicant has been licensed in the other jurisdiction, not to exceed 30 hours, ~~or a~~ and passage of the qualifying examination from the accrediting body recognized by the board;

b. A current and unrestricted Certificate of Clinical Competence in the area in which the applicant seeks licensure issued by ASHA ~~or certification issued by the American Board of Audiology or any other accrediting body recognized by the board. Verification of currency shall be in the form of a certified letter from a recognized accrediting body issued within six months prior to filing an application for licensure;~~

~~2. Passage of the qualifying examination from an accrediting body recognized by the board;~~

~~3. Current status of licensure in any other United States jurisdiction showing that the license is current and unrestricted or, if lapsed, is eligible for reinstatement and that no disciplinary action is pending or unresolved. The board may deny a request for licensure to any applicant who has been determined to have committed an act in violation of 18VAC30-21-160; and~~

~~4. Evidence of active practice in another United States jurisdiction for at least one of the past three years or practice for six months with a provisional license in accordance with 18VAC30-21-70 and by providing evidence of a recommendation for licensure by the applicant's supervisor. An applicant who graduated from an accredited program in audiology or speech-language pathology within 12 months immediately preceding application may be issued a license without evidence of active practice if the applicant holds a current and unrestricted Certificate of Clinical Competence in the area in which the applicant seeks licensure issued by ASHA or certification issued by the American Board of Audiology or any other accrediting body recognized by the board.~~; or

c. A current and unrestricted certification issued by ABA and passage of the qualifying examination from the accrediting body recognized by the board.

B. The board may refuse to issue a license to any applicant who has been determined to have committed an act in violation of 18VAC30-21-160.

18VAC30-21-90. Renewal requirements.

A. A person who desires to renew his license shall, not later than ~~December 31 of 2018~~ June 30 of each year, submit the renewal notice and applicable renewal fee. ~~Beginning with calendar year 2020, the renewal of licensure deadline shall be June 30 of each year. For calendar year 2019, no renewal is required.~~ A licensee who fails to renew his license by the expiration date shall have a lapsed license, and practice with a lapsed license may constitute grounds for disciplinary action by the board.

B. A person who fails to renew his license by the expiration date may renew at any time within one year of expiration by submission of a renewal notice, the renewal fee and late fee, and ~~statement~~ an attestation of compliance with continuing education requirements.

18VAC30-21-100. Continuing education requirements for renewal of an active license.

A. In order to renew an active license, a licensee shall complete at least 10 ~~contact~~ hours of continuing education prior to the renewal date each year. ~~Up to 10 contact hours of continuing education in excess of the number required for renewal may be transferred or credited to the next renewal year.~~ One hour of the 10 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. Continuing education shall be activities, programs, or courses related to audiology or speech-language pathology, depending on the license held, and offered or approved by one of the following accredited sponsors or organizations sanctioned by the profession:

1. The Speech-Language-Hearing Association of Virginia or a similar state speech-language-hearing association of another state;

2. The American Academy of Audiology;

3. The American Speech-Language-Hearing Association;

4. The Accreditation Council on Continuing Medical Education of the American Medical Association offering Category I continuing medical education;

5. Local, state, or federal government agencies;

6. Colleges and universities;

7. International Association of Continuing Education and Training; or

8. Health care organizations accredited by The Joint Commission or DNV GL Healthcare.

C. If the licensee is dually licensed by this board as an audiologist and speech-language pathologist, a total of no more than 15 hours of continuing education are required for renewal of both licenses with a minimum of 7.5 contact hours in each profession.

D. A licensee shall be exempt from the continuing education requirements for the first renewal following the date of initial licensure in Virginia under 18VAC30-21-60.

E. The licensee shall retain all continuing education documentation for a period of three years following the renewal of an active license. Documentation from the sponsor or organization shall include the title of the course, the name of the sponsoring organization, the date of the course, and the number of hours credited.

F. The board may grant an extension of the deadline for continuing education requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date of each year.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

H. The board ~~shall~~ may periodically conduct an audit for compliance with continuing education requirements. Licensees selected for an audit conducted by the board shall ~~complete the Continuing Education Form and~~ provide all supporting documentation within 30 days of receiving notification of the audit.

I. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

18VAC30-21-110. Inactive licensure; reactivation for audiologists, speech-language pathologists, or school speech-language pathologists.

A. An audiologist, speech-language pathologist, or school speech-language pathologist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be required to maintain continuing education requirements and shall not be entitled to perform any act requiring a license to practice audiology or speech-language pathology in Virginia.

B. A licensee whose license has been inactive and who requests reactivation of an active license shall file an application, pay the difference between the inactive and active renewal fees for the current year, and provide documentation of ~~current ASHA~~:

1. Current certification issued by ASHA or ABA; or

~~of having completed~~ 2. Completion of 10 continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed 30 contact hours.

C. A licensee who does not reactivate within five years shall meet the requirements of subsection B of this section and shall ~~either~~ provide:

1. ~~Meet the requirements for initial licensure as prescribed by 18VAC30-21-60 or~~ A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank;

2. ~~Provide documentation of a current license in another jurisdiction in the United States and evidence active~~ Verification of the status of any license or certification from each United States jurisdiction in which licensure or certification is held or has ever been held; and

3. Evidence of either:

a. Active practice for at least one of the past three years, or

~~practice~~ b. Practice in accordance with 18VAC30-21-70 with a provisional license for six months and ~~submit~~ a recommendation for licensure from ~~his~~ one's supervisor.

D. ~~If the licensee holds licensure in any other state or jurisdiction, he shall provide evidence that no disciplinary action is pending or unresolved.~~ The board may deny a request for reactivation to any licensee who has been determined to have committed an act in violation of 18VAC30-21-160.

18VAC30-21-120. Reinstatement of a lapsed license for audiologists, speech-language pathologists, or school speech-language pathologists.

A. A person may renew a lapsed license within one year of expiration by following the requirements for late renewal in subsection B of 18VAC30-21-90.

B. When a license has not been renewed within one year of the expiration date, a person may apply to reinstate his license by submission of ~~a~~ reinstatement application, payment of the reinstatement fee, and submission of documentation of ~~a~~ either:

1. A current Certificate of Clinical Competence issued by ASHA or certification issued by ~~the American Board of Audiology~~ ABA or any other accrediting body recognized by the board; or ~~at~~

2. At least 10 continuing education hours for each year the license has been lapsed, not to exceed 30 contact hours, obtained during the time the license in Virginia was lapsed.

~~B.~~ C. A licensee who does not reinstate within five years shall meet the requirements of subsection ~~A~~ B of this section and shall ~~either~~ provide:

1. ~~Reinstate by meeting the requirements for initial licensure as prescribed by 18VAC30-21-60~~ A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); ~~or~~

2. ~~Provide documentation of a current license in another United States jurisdiction and evidence of active~~ Verification of the status of any license or certification from each United States jurisdiction in which licensure or certification is or has ever been held; and

3. Evidence of either:

a. Active practice for at least one of the past three years; or

~~practice~~ b. Practice in accordance with 18VAC30-21-70 with a provisional license for six months and ~~submit~~ a recommendation for licensure from ~~his~~ one's supervisor.

~~C. If the licensee holds licensure in any other state or jurisdiction, he shall provide evidence that no disciplinary action is pending or unresolved.~~ D. The board may deny a request for reinstatement to any licensee who has been determined to have committed an act in violation of 18VAC30-21-160.

18VAC30-21-141. Recordkeeping.

A licensee shall:

1. Comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of client records or related to provision of client records to another practitioner or to the client or the client's personal representative.

2. Properly manage and keep timely, accurate, legible, and complete client records, to include the following:

a. For licensees who are employed by a health care institution, school system, or other entity, in which the individual practitioner does not own or maintain the practitioner's own records, failure to maintain client records in accordance with the policies and procedures of the employing entity; or

b. For licensees who are self-employed or employed by an entity in which the individual practitioner does own and is responsible for client records, failure to maintain a client record for a minimum of six years following the last client encounter with the following exceptions:

(1) For records of a minor child, the minimum time is six years from the last client encounter or until the child reaches the age of 18 years or becomes emancipated, whichever is longer; or

(2) Records that have previously been transferred to another practitioner or health care provider or provided to the client or the client's personal representative as documented in a record or database maintained for a minimum of six years.

3. Comply with requirements of § 54.1-2405 of the Code of Virginia for notification and transfer of patient records in conjunction with closure, sale, or relocation of one's practice.

18VAC30-21-160. Unprofessional conduct.

The board may refuse to issue a license to any applicant, suspend a license for a stated period of time or indefinitely, reprimand a licensee or place his license on probation with such terms and conditions and for such time as it may designate, impose a monetary penalty, or revoke a license for any of the following:

1. Guarantee of the results of any speech, voice, language, or hearing consultative or therapeutic procedure or exploitation of clients by accepting them for treatment when benefit cannot reasonably be expected to occur or by continuing treatment unnecessarily;

2. Diagnosis or treatment of speech, voice, language, and hearing disorders solely by written correspondence, provided this shall not preclude:

a. Follow-up by written correspondence or electronic communication concerning individuals previously seen; or

b. Providing clients with general information of an educational nature;

3. Failure to comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of client records or related to provision of client records to another practitioner or to the client or his personal representative;

4. ~~Failure to properly manage and keep timely, accurate, legible, and complete client records, to include the following:~~

~~a. For licensees who are employed by a health care institution, school system, or other entity, in which the individual practitioner does not own or maintain his own records, failure to maintain client records in accordance with the policies and procedures of the employing entity; or~~

~~b. For licensees who are self-employed or employed by an entity in which the individual practitioner does own and is responsible for client records, failure to maintain a client record for a minimum of six years following the last client encounter with the following exceptions:~~

~~(1) For records of a minor child, the minimum time is six years from the last client encounter or until the child reaches the age of 18 or becomes emancipated, whichever is longer; or~~

~~(2) Records that have previously been transferred to another practitioner or health care provider or provided to the client or his personal representative as documented in a record or database maintained for a minimum of six years;~~

~~5.~~ Engaging or attempting to engage in a relationship with a client that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a client or a client's family, including ~~but not limited to~~ sexual misconduct with a client or a member of the client's family or other conduct that results or could result in personal gain at the expense of the client;

~~6.~~ 5. Incompetence or negligence in the practice of the profession;

~~7.~~ 6. Failure to comply with applicable state and federal statutes or regulations specifying the consultations and examinations required prior to the fitting of a new or replacement prosthetic aid for any communicatively impaired person;

~~8.~~ 7. Failure to refer a client to an appropriate health care practitioner when there is evidence of an impairment for which assessment, evaluation, care, or treatment might be necessary;

~~9.~~ 8. Failure to supervise persons who assist in the practice of audiology or speech-language pathology as well as failure to disclose the use and identity of unlicensed assistants;

~~10.~~ 9. Conviction of a felony or a misdemeanor involving moral turpitude;

~~11.~~ 10. Violating or cooperating with others in violating any of the provisions of ~~Chapters~~ Chapter 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.), or 26 (§ 54.1-2600 et seq.) of Title 54 of the Code of Virginia or the regulations of the board;

~~12.~~ 11. Publishing or causing to be published in any manner an advertisement relating to his professional practice that is false, deceptive, or misleading;

~~13.~~ 12. Inability to practice with skill and safety;

~~14.~~ 13. Fraud, deceit, or misrepresentation in provision of documentation or information to the board or in the practice of audiology or speech-language pathology;

~~15.~~ 14. Aiding and abetting unlicensed activity; or

~~16.~~ 15. Revocation, suspension, restriction, or any other discipline of a license or certificate to practice or surrender of license or certificate while an investigation or administrative proceedings are pending in another regulatory agency in Virginia or another jurisdiction.

VA.R. Doc. No. R23-7007; Filed November 1, 2022, 3:26 p.m.

BOARD FOR CONTRACTORS

Final Regulation

Title of Regulation: **18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-40).**

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

Effective Date: January 1, 2023.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

Summary:

The amendments lower the current vocational training requirement for certified backflow prevention device workers who have fewer than seven years of experience in water distribution systems to a minimum of 32 hours.

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.

18VAC50-30-40. Evidence of ability and proficiency.

A. Applicants for examination to be licensed as a journeyman shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in the trade and 240 hours of formal vocational training in the trade. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 80 hours of formal training, but not to exceed 200 hours;

2. Four years of practical experience and 80 hours of vocational training for liquefied petroleum gas fitters and natural gas fitter providers except that no substitute experience will be allowed for liquefied petroleum gas and natural gas workers;

3. An associate degree or a certificate of completion from at least a two-year program in a tradesman-related field from an accredited community college or technical school as evidenced by a transcript from the educational institution and two years of practical experience in the trade for which licensure is desired;

4. A bachelor's degree received from an accredited college or university in an engineering curriculum related to the trade and one year of practical experience in the trade for which licensure is desired; or

5. An applicant with 10 years of practical experience in the trade as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects, or current or past clients attesting to the applicant's work in the trade, may be granted permission to sit for the journeyman's level examination without having to meet the educational requirements.

B. Applicants for examination to be licensed as a master shall furnish evidence that one of the following experience standards has been attained:

1. Evidence that they have one year of experience as a licensed journeyman; or

2. An applicant with 10 years of practical experience in the trade, as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects, or current or past clients, attesting to the applicant's work in the trade, may be granted permission to sit for the master's level examination without having to meet the educational requirements.

C. Individuals who have successfully passed the Class A contractors trade examination prior to January 1, 1991, administered by the Virginia Board for Contractors in a certified trade shall be deemed qualified as a master in that trade in accordance with this chapter.

D. Applicants for examination to be certified as a backflow prevention device worker shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in water distribution systems and ~~40~~ a minimum of 32 hours of formal vocational training in a school approved by the board; or

2. Applicants with seven or more years of experience may qualify with 16 hours of formal vocational training in a school approved by the board.

The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

E. An applicant for certification as an elevator mechanic shall:

1. Have three years of practical experience in the construction, maintenance, and service/repair of elevators, escalators, or related conveyances; 144 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 40 hours of formal training, but not to exceed 120 hours;

2. Have three years of practical experience in the construction, maintenance, and service/repair of elevators, escalators, or related conveyances and a certificate of completion of the elevator mechanic examination of a training program determined to be equivalent to the requirements established by the board; or

3. Successfully complete an elevator mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as evidenced by providing a certificate of completion or other official document, and satisfactorily complete a written examination administered by the board.

F. Pursuant to § 54.1-1129.1 A of the Code of Virginia, an applicant for examination as a certified water well systems provider shall provide satisfactory proof to the board of at least:

1. One year of full-time practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board to qualify for examination as a trainee water well systems provider;

2. Three years of practical experience in the drilling, installation, maintenance, or repair of water wells or water

well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 24 hours of formal vocational training in the trade to qualify for examination as a journeyman water well systems provider; or

3. Six years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 48 hours of formal vocational training in the trade to qualify for examination as a master water well systems provider.

G. An applicant for certification as an accessibility mechanic shall:

1. Have three years of practical experience in the construction, installation, maintenance, service, repair, and testing of wheelchair lifts, incline chairlifts, dumbwaiters, residential elevators, or related conveyances; 80 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 20 hours of formal training, but not to exceed 60 hours;

2. Have three years of practical experience in the construction, installation, maintenance, service, repair, and testing of wheelchair lifts, incline chairlifts, dumbwaiters, residential elevators, or related conveyances and a certificate of completion of an accessibility mechanic examination of a training program determined to be equivalent to the requirements established by the board; or

3. Successfully complete an accessibility mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as evidenced by providing a certificate of completion or other official document, and satisfactorily complete a written examination administered by the board.

H. An applicant for a limited use/limited application (LULA) endorsement shall:

1. Hold a current certification as an accessibility mechanic issued by the board.

2. Have one year of practical experience in the construction, installation, maintenance, service, repair, and testing of limited use/limited application elevators and complete a vocational education program approved by the board; and satisfactorily complete a written examination administered by the board; or complete a limited use/limited application elevator training program determined to be equivalent to the requirements established by the board.

I. Pursuant to § 54.1-1145 B of the Code of Virginia, an applicant for licensure as a residential building energy analyst shall provide satisfactory proof to the board of:

1. The completion of a residential building energy analyst training program approved by the board;

2. The completion of a minimum of five residential building energy analyses under the supervision of a licensed residential building energy analyst;

3. Current membership in good standing with a certifying organization approved by the board; and

4. Maintaining a minimum of $100,000 of general liability insurance from a company authorized to provide such insurance in the Commonwealth of Virginia unless the individual is employed by a company that holds a valid residential building energy analyst firm license issued by the board.

The applicant shall provide information for the past five years prior to application on any outstanding past-due debts, outstanding judgments, outstanding tax obligations, defaults on bonds, or pending or past bankruptcies.

J. Individuals applying for initial licensure as residential building energy analysts who meet the criteria of § 54.1-1145 C of the Code of Virginia are not required to meet the eligibility standards for licensure found in subsection I of this section.

VA.R. Doc. No. R21-6447; Filed October 28, 2022, 2:35 p.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Final Regulation

Titles of Regulations: **18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators (amending 18VAC95-20-175, 18VAC95-20-310, 18VAC95-20-340, 18VAC95-20-390, 18VAC95-20-400).**

18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (amending 18VAC95-30-70, 18VAC95-30-100, 18VAC95-30-160 through 18VAC95-30-190).

Statutory Authority: §§ 54.1-2400 and 54.1-3102 of the Code of Virginia.

Effective Date: December 21, 2022.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Henrico, VA 23233-1463, telephone (804) 367-4595, FAX (804) 527-4413, or email corie.wolf@dhp.virginia.gov.

Summary:

The amendments (i) clarify and enhance training and supervision requirements for prospective nursing home and assisted living facility administrators receiving pre-licensure training in an administrator-in-training (AIT)

program; (ii) establish an additional pathway for individuals to qualify for AIT training in the assisted living setting and strengthen the current requirement for college or university coursework to include coursework in business or human services; (iii) offer continuing education credit for preceptors who supervise AITs and enhance the training and continuing education received by both AITs and administrators related to mental impairments, including dementia and Alzheimer's; and (iv) specify limitations on the assisted living facilities that qualify for an AIT program.

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.

18VAC95-20-175. Continuing education requirements.

A. In order to renew a nursing home administrator license, an applicant shall attest on his renewal application to completion of 20 hours of approved continuing education for each renewal year.

1. Up to 10 of the 20 hours may be obtained through Internet or self-study courses and up to 10 continuing education hours in excess of the number required may be transferred or credited to the next renewal year.

2. Up to two hours of the 20 hours required for annual renewal may be satisfied through delivery of services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic.

3. At least two hours of continuing education for each renewal year shall relate to the care of residents with mental or cognitive impairments, including Alzheimer's disease and dementia.

4. A licensee who serves as the registered preceptor in an approved AIT or Assisted Living Facility AIT program may receive one hour of continuing education credit for each week of training up to a maximum of 10 hours of self-study course credit for each renewal year.

5. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following initial licensure.

B. In order for continuing education to be approved by the board, it shall (i) be related to health care administration and shall be approved or offered by NAB, an accredited institution, or a government agency or (ii) as provided in subdivision A 2 of this section.

C. Documentation of continuing education.

1. The licensee shall retain in ~~his~~ the licensee's personal files for a period of three renewal years complete documentation of continuing education including evidence of attendance or participation as provided by the approved sponsor for each course taken.

2. Evidence of attendance shall be an original document provided by the approved sponsor and shall include:

a. Date the course was taken;

b. Hours of attendance or participation;

c. Participant's name; and

d. Signature of an authorized representative of the approved sponsor.

3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion on forms provided by the board and evidence of attendance or participation as provided by the approved sponsor.

D. The board may grant an extension of up to one year or an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the administrator, such as a certified illness, a temporary disability, mandatory military service, or officially declared disasters. The request for an extension shall be received in writing and granted by the board prior to the renewal date.

18VAC95-20-310. Required hours of training.

A. The AIT program shall consist of 2,000 hours of continuous training in a facility as prescribed in 18VAC95-20-330 to be completed within 24 months. An extension may be granted by the board on an individual case basis. The board may reduce the required hours for applicants with certain qualifications as prescribed in ~~subsection~~ subsections B and C of this section.

B. An AIT applicant with prior health care work experience may request approval to receive a maximum 1,000 hours of credit toward the total 2,000 hours as follows:

1. The applicant shall have been employed full time for four of the past five consecutive years immediately prior to application as an assistant administrator or director of nursing in a training facility as prescribed in 18VAC95-20-330, or as the licensed administrator of an assisted living facility;

2. The applicant with experience as a hospital administrator shall have been employed full time for three of the past five years immediately prior to application as a hospital administrator-of-record or an assistant hospital administrator in a hospital setting having responsibilities in all of the following areas:

a. Regulatory;

b. Fiscal;

c. Supervisory;

d. Personnel; and

e. Management; or

3. The applicant who holds a license as a registered nurse shall have held an administrative level supervisory position for at least four of the past five consecutive years, in a training facility as prescribed in 18VAC95-20-330.

C. An AIT applicant with the following educational qualifications shall meet these requirements:

1. An applicant with a master's or a baccalaureate degree in a health care-related field that meets the requirements of 18VAC95-20-221 with no internship shall complete 320 hours in an AIT program;

2. An applicant with a master's degree in a field other than health care shall complete 1,000 hours in an AIT program;

3. An applicant with a baccalaureate degree in a field other than health care shall complete 1,500 hours in an AIT program; or

4. An applicant with 60 semester hours of education in an accredited college or university shall complete 2,000 hours in an AIT program.

D. An AIT shall be required to serve weekday, evening, night and weekend shifts and to receive training in all areas of nursing home operation. An AIT shall receive credit for no more than 40 hours of training per week.

E. An AIT shall complete training on the care of residents with cognitive or mental impairments, including Alzheimer's disease and dementia.

18VAC95-20-340. Supervision of trainees.

A. Training shall be under the supervision of a preceptor who is registered or recognized by a licensing board.

B. A preceptor may supervise no more than two AIT's at any one time.

C. A preceptor shall:

1. Provide direct instruction, planning, and evaluation in the training facility;

2. Shall be routinely present with the trainee for on-site supervision in the training facility as appropriate to the experience and training of the AIT and the needs of the residents in the facility; and

3. Shall continually evaluate the development and experience of the AIT to determine specific areas in the Domains of Practice that need to be addressed.

18VAC95-20-390. Training plan.

Prior to the beginning of the AIT program, the preceptor shall develop and submit for board approval a training plan that shall include and be designed around the specific training needs of the administrator-in-training. The training plan shall address the Domains of Practice approved by NAB that is in effect at the time the training program is submitted for approval. An AIT program shall include training in each of the learning areas ~~in the Domains of Practice~~ as outlined in the NAB AIT Manual.

18VAC95-20-400. Reporting requirements.

A. The preceptor shall maintain progress reports on forms prescribed by the board for each month of training. The preceptor shall document in the progress report evidence of on-site supervision of the AIT training.

B. The AIT's ~~certificate~~ final report of completion ~~plus~~ with the accumulated original monthly reports shall be submitted by the preceptor to the board within 30 days following the completion of the AIT program.

18VAC95-30-70. Continuing education requirements.

A. In order to renew an assisted living administrator license, an applicant shall attest on ~~his~~ the applicant's renewal application to completion of 20 hours of approved continuing education for each renewal year.

1. Up to 10 of the 20 hours may be obtained through Internet or self-study courses and up to 10 continuing education hours in excess of the number required may be transferred or credited to the next renewal year.

2. Up to two hours of the 20 hours required for annual renewal may be satisfied through delivery of services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic.

3. At least two hours of continuing education for each renewal year shall relate to the care of residents with mental or cognitive impairments, including Alzheimer's disease and dementia.

4. A licensee who serves as the registered preceptor in an approved ALF AIT program may receive one hour of continuing education credit for each week of training up to a maximum of 10 hours of self-study course credit for each renewal year.

5. A licensee is exempt from completing continuing education requirements for the first renewal following initial licensure in Virginia.

B. In order for continuing education to be approved by the board, it shall (i) be related to the Domains of Practice for residential care/assisted living and approved or offered by NAB, an accredited educational institution, or a governmental agency or (ii) be as provided in subdivision A 2 of this section.

C. Documentation of continuing education.

1. The licensee shall retain in his personal files for a period of three renewal years complete documentation of continuing education including evidence of attendance or participation as provided by the approved sponsor for each course taken.

2. Evidence of attendance shall be an original document provided by the approved sponsor and shall include:

a. Date the course was taken;

b. Hours of attendance or participation;

c. Participant's name; and

d. Signature of an authorized representative of the approved sponsor.

3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion on forms provided by the board and evidence of attendance or participation as provided by the approved sponsor.

D. The board may grant an extension of up to one year or an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the administrator, such as a certified illness, a temporary disability, mandatory military service, or officially declared disasters. The request for an extension shall be submitted in writing and granted by the board prior to the renewal date.

18VAC95-30-100. Educational and training requirements for initial licensure.

A. To be qualified for initial licensure as an assisted living facility administrator, an applicant shall hold a high school diploma or general education diploma (GED) and hold one of the following qualifications:

1. Administrator-in-training program.

a. Complete at least 30 semester hours <u>of postsecondary education</u> in an accredited college or university ~~in any subject~~ <u>with at least 15 of the 30 semester hours in business or human services or a combination thereof</u> and 640 hours in an ALF AIT program as specified in 18VAC95-30-150;

b. Complete an educational program as a licensed practical nurse and hold a current, unrestricted license or multistate licensure privilege and 640 hours in an ALF AIT program;

c. Complete an educational program as a registered nurse and hold a current, unrestricted license or multistate licensure privilege and 480 hours in an ALF AIT program;

d. Complete at least 30 semester hours in an accredited college or university with courses in the content areas of (i) ~~client/resident~~ <u>client or resident</u> care, (ii) human resources management, (iii) financial management, (iv) physical environment, and (v) leadership and governance, and 480 hours in an ALF AIT program;

e. Hold a master's or a baccalaureate degree in health care-related field or a comparable field that meets the requirements of subsection B of this section with no internship or practicum and 320 hours in an ALF AIT program; ~~or~~

f. Hold a master's or baccalaureate degree in an unrelated field and 480 hours in an ALF AIT program; <u>or</u>

<u>g. Have at least three years of health care experience, to include at least one consecutive year in a managerial or supervisory role, in a health care setting within the five years prior to application and 640 hours in an ALF AIT program. For purposes of this qualification, these definitions shall apply: (i) "health care experience" means full-time equivalency experience in providing care to residents or patients in a health care setting; (ii) "health care setting" means a licensed home health organization, licensed hospice program, licensed hospital or nursing home, licensed assisted living facility, licensed adult day program, or licensed mental health or developmental services facility; and (iii) "managerial or supervisory role" means an employment role that includes management responsibility and supervision of two or more staff.</u>

2. Certificate program.

Hold a baccalaureate or higher degree in a field unrelated to health care from an accredited college or university and successfully complete a certificate program with a minimum of 21 semester hours study in a health care-related field that meets course content requirements of subsection B of this section from an accredited college or university and successfully complete not less than a 320-hour internship or practicum that addresses the Domains of Practice as specified in 18VAC95-30-160 in a licensed assisted living facility as part of the certificate program under the supervision of a preceptor; or

3. Degree and practical experience.

Hold a baccalaureate or higher degree in a health care-related field that meets the course content requirements of subsection B of this section from an accredited college or university and have completed not less than a 320-hour internship or practicum that addresses the Domains of Practice as specified in 18VAC95-30-160 in a licensed assisted living facility as part of the degree program under the supervision of a preceptor.

B. To meet the educational requirements for a degree in a health care-related field, an applicant must provide an official transcript from an accredited college or university that documents successful completion of a minimum of 21 semester hours of coursework concentrated on the administration and management of health care services to include a minimum of six semester hours in the content area set out in subdivision 1 of this subsection, three semester hours in each of the content areas in subdivisions 2 through 5 of this

subsection, and three semester hours for an internship or practicum.

1. Customer care, supports, and services;

2. Human resources;

3. Finance;

4. Environment;

5. Leadership and management.

18VAC95-30-160. Required content of an ALF administrator-in-training program.

A. Prior to the beginning of the training program, the preceptor shall develop and submit for board approval a training plan that shall include and be designed around the specific training needs of the administrator-in-training. The training plan shall include the tasks and the knowledge and skills required to complete those tasks as approved by NAB as the domains of practice for residential care/assisted living in effect at the time the training is being provided. An ALF AIT program shall include training in each of the learning areas ~~in the domains of practice~~ as outlined in the NAB AIT Manual.

B. An ALF AIT shall be required to serve weekday, evening, night, and weekend shifts and to receive training in all areas of an assisted living facility operation.

C. An AIT shall receive credit for no more than 40 hours of training per week.

D. An ALF AIT shall complete training on the care of residents with cognitive or mental impairments, including Alzheimer's disease and dementia.

18VAC95-30-170. Training facilities.

A. Training in an ALF AIT program or for an internship shall be conducted only in:

1. An assisted living facility or unit licensed by the Virginia Board of Social Services or by a similar licensing body in another jurisdiction;

2. An assisted living facility owned or operated by an agency of any city, county, or the Commonwealth or of the United States government; or

3. An assisted living unit located in and operated by a licensed hospital as defined in § 32.1-123 of the Code of Virginia, a state-operated hospital, or a hospital licensed in another jurisdiction.

B. ~~A new ALF AIT program or internship shall not be conducted in a~~ Training in an ALF AIT program or for an internship shall not be conducted in:

1. An assisted living facility with a provisional license as determined by the Department of Social Services in which the AIT program is a new ALF AIT program;

2. An assisted living facility with a conditional license as determined by the Department of Social Services in which the AIT applicant is the owner of the facility;

3. A facility that is licensed as residential only and does not require an administrator licensed by the Board of Long-Term Care Administrators; or

4. An assisted living facility with a licensed resident capacity of fewer than 20 residents.

18VAC95-30-180. Preceptors.

A. Training in an ALF AIT program shall be under the supervision of a preceptor who is registered or recognized by Virginia or a similar licensing board in another jurisdiction.

B. To be registered by the board as a preceptor, a person shall:

1. Hold a current, unrestricted Virginia assisted living facility administrator or nursing home administrator license;

2. Be employed full time as an administrator in a training facility for a minimum of two of the past four years immediately prior to registration or be a regional administrator with on-site supervisory responsibilities for a training facility;

3. Provide evidence that he has completed the online preceptor training course offered by NAB; and

4. Submit an application and fee as prescribed in 18VAC95-30-40. The board may waive such application and fee for a person who is already approved as a preceptor for nursing home licensure.

C. A preceptor shall:

1. Provide direct instruction, planning, and evaluation;

2. Be routinely present ~~with~~ for on-site supervision of the trainee in the training facility as appropriate to the experience and training of the ALF AIT and the needs of the residents in the facility; and

3. Continually evaluate the development and experience of the trainee to determine specific areas needed for concentration.

D. A preceptor may supervise no more than two trainees at any one time.

E. A preceptor for a person who is serving as an acting administrator while in an ALF AIT program shall be present in the training facility for face-to-face instruction and review of the trainee's performance for a minimum of four hours per week.

F. To renew registration as a preceptor, a person shall:

1. Hold a current, unrestricted Virginia assisted living facility or nursing home license and be employed by or have ~~an~~ a written agreement with a training facility for a preceptorship; and

2. Meet the renewal requirements of 18VAC95-30-60.

18VAC95-30-190. Reporting requirements.

A. The preceptor shall maintain progress reports on forms prescribed by the board for each month of training. The preceptor shall document in the progress report evidence of on-site supervision of the AIT training. For a person who is serving as an acting administrator while in an ALF AIT program, the preceptor shall include in the progress report evidence of face-to-face instruction and review for a minimum of ~~two~~ four hours per week.

B. The trainee's ~~certificate~~ final report of completion ~~plus~~ with the accumulated original monthly reports shall be submitted by the preceptor to the board within 30 days following the completion of the program.

VA.R. Doc. No. R21-6286; Filed October 28, 2022, 3:20 p.m.

BOARD OF PHARMACY

Final Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-150).**

18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (adding 18VAC110-21-46).

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

Effective Date: December 21, 2022.

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

Summary:

Pursuant to Chapter 731 of the 2020 Acts of Assembly, the amendments (i) list drugs and devices that may be initiated by a pharmacist for a patient older than 18 years of age and (ii) provide the protocol to notify a primary care provider, maintain patient records, and protect patient privacy. A change to the proposed regulation adds "controlled paraphernalia or other supplies or equipment" to the types of treatment a pharmacist may initiate.

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.

18VAC110-20-150. Physical standards for all pharmacies.

A. The prescription department shall not be less than 240 square feet. The patient waiting area or the area used for counseling, devices, cosmetics, and proprietary medicines shall not be considered a part of the minimum 240 square feet. The total area shall be consistent with the size and scope of the services provided.

B. Access to stock rooms, rest rooms, and other areas other than an office that is exclusively used by the pharmacist shall not be through the prescription department. A rest room in the prescription department, used exclusively by pharmacists and personnel assisting with dispensing functions, may be allowed provided there is another rest room outside the prescription department available to other employees and the public. This subsection shall not apply to prescription departments in existence prior to November 4, 1993.

C. The pharmacy shall be constructed of permanent and secure materials. Trailers or other moveable facilities or temporary construction shall not be permitted.

D. The entire area of the location of the pharmacy practice, including all areas where drugs are stored, shall be well lighted and well ventilated; the proper storage temperature shall be maintained to meet USP-NF specifications for drug storage.

E. The prescription department counter work space shall be used only for the compounding and dispensing of drugs and necessary recordkeeping.

F. A sink with hot and cold running water shall be within the prescription department. A pharmacy issued a limited-use permit that does not stock prescription drugs as part of its operation is exempt from this requirement.

G. Adequate refrigeration facilities equipped with a monitoring thermometer for the storage of drugs requiring cold storage temperature shall be maintained within the prescription department if the pharmacy stocks such drugs.

H. A pharmacy stocking drugs requiring cold storage temperature shall record the temperature daily and adjust the thermostat as necessary to ensure an appropriate temperature range. The record shall be maintained manually or electronically for a period of two years.

I. The physical settings of a pharmacy in which a pharmacist initiates treatment with, dispenses, or administers drugs [~~and,~~] devices [, controlled paraphernalia, or other supplies or equipment] pursuant to § 54.1-3303.1 of the Code of Virginia and 18VAC110-21-46 shall protect patient confidentiality and comply with the Health Insurance Portability and Accountability Act, 42 USC § 1320d et seq.

18VAC110-21-46. Initiation of treatment by a pharmacist.

A. Pursuant to § 54.1-3303.1 of the Code of Virginia, a pharmacist may initiate treatment with, dispense, or administer the following drugs and devices to persons 18 years of age or older:

1. Naloxone or other opioid antagonist, including such controlled paraphernalia as defined in § 54.1-3466 of the Code of Virginia as may be necessary to administer such naloxone or other opioid antagonist;

2. Epinephrine;

3. Injectable or self-administered hormonal contraceptives, provided the patient completes an assessment consistent with the United States Medical Eligibility Criteria for Contraceptive Use;

4. Prenatal vitamins for which a prescription is required;

5. Dietary fluoride supplements, in accordance with recommendations of the American Dental Association for prescribing of such supplements for persons whose drinking water has a fluoride content below the concentration recommended by the U.S. Department of Health and Human Services; and

6. Medications covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost to purchase an over-the-counter equivalent of the same drug.

B. Pharmacists who initiate treatment with, dispense, or administer a drug or device pursuant to subsection A of this section shall:

1. Follow the statewide protocol adopted by the board for each drug or device.

2. Notify the patient's primary health care provider that treatment has been initiated with such drug or device or that such drug or device has been dispensed or administered to the patient, provided that the patient consents to such notification. If the patient does not have a primary health care provider, the pharmacist shall counsel the patient regarding the benefits of establishing a relationship with a primary health care provider and, upon request, provide information regarding primary health care providers, including federally qualified health centers, free clinics, or local health departments serving the area in which the patient is located. If the pharmacist is initiating treatment with, dispensing, or administering injectable or self-administered hormonal contraceptives, the pharmacist shall counsel the patient regarding seeking preventative care, including (i) routine well-woman visits, (ii) testing for sexually transmitted infections, and (iii) pap smears.

3. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

a. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or the patient's personal representative; or

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

4. Perform the activities in a manner that protects patient confidentiality and complies with the Health Insurance Portability and Accountability Act, 42 USC § 1320d et seq.

VA.R. Doc. No. R21-6488; Filed October 19, 2022, 3:52 p.m.

Proposed Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-150).**

18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (adding 18VAC110-21-46).

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

Public Hearing Information:

December 6, 2022 - 9:05 a.m. - Department of Health Professions, Perimeter Center Conference Center, 2nd floor, Board Room 4, 9960 Mayland Drive, Henrico, Virginia

Public Comment Deadline: January 20, 2023.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system. Section 54.1-3303.1 of the Code of Virginia allows initiating of treatment with and dispensing and administering of controlled substances by pharmacists.

Purpose: The purpose of the regulation is to ensure that a pharmacist who initiates treatment for patients follows a protocol that would render such dispensing to be low risk for patient harm. The rules establishing protocols, appropriate notification of primary care providers, maintenance of records, and patient privacy are necessary to ensure this activity protects the health and safety of patients who receive such treatment from pharmacists.

Substance: The substantive provision is the addition of 18VAC110-21-46, which sets out the listing of drugs and devices a pharmacist is authorized to initiate under § 54.1-3303.1 of the Code of Virginia and the requirements for such initiation of treatment, including adherence to established protocols, notification to medical providers, maintenance of records, and protection of patient privacy.

Issues: The advantage to the public will be access to certain prescription drugs and devices directly from a pharmacist rather than being required to go to a health care practitioner with prescriptive authority and incur additional cost. A pharmacist who follows the protocols established for initiation of treatment would be providing drugs and devices that are considered to be low risk for any patient harm. There should be no disadvantages to the public. There are no advantages or disadvantages to this agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to make permanent certain changes that are currently implemented through an emergency regulation, which was promulgated in response to a 2021 legislative mandate.[2] The proposed amendments would primarily expand the scope of treatment that pharmacists would be allowed to initiate to include (i) vaccines included on the Immunization Schedule published by the Centers for Disease Control and Prevention (CDC) or have a current emergency use authorization (EUA) from the U.S. Food and Drug Administration (FDA), (ii) tuberculin purified protein derivative for tuberculosis testing, and (iii) certain controlled substances for the prevention of human immunodeficiency virus (HIV).

Background. Chapter 731 of the 2020 Acts of Assembly allowed pharmacists to initiate treatment with opioid antagonists (such as naloxone), injectable or self-administered hormonal contraceptives, prenatal vitamins that require prescriptions, dietary fluoride supplements, and medications covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost of an over-the-counter equivalent of the same drug. The legislation included conditions that would have to be met for pharmacists to initiate treatment, including that the treatment setting comply with the Health Insurance Portability and Accountability Act (HIPAA), and directed the Board to promulgate regulations to implement the provisions of the Act within 280 days of its enactments.[3]

Chapter 731 also directed the Board to establish a working group to provide recommendations regarding the development of protocols for other types of treatments that pharmacists could initiate and to then submit its findings and recommendations to the Governor and the Chairs of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by November 1, 2020.[4] The report filed with the General Assembly indicates that working group members voted unanimously (or nearly unanimously) to make the following recommendations:[5]

(i) Pharmacists should be authorized to order and administer vaccines included on the immunization schedule published by the CDC for persons 18 years of age and older, to require reporting to the Virginia Immunization Information System (VIIS), and to require that pharmacists inform the patient's primary care provider of the vaccine administration.

(ii) Pharmacists should be authorized to initiate treatment with and dispense and administer tuberculin purified protein derivative for tuberculosis testing.

(iii) Pharmacists should be authorized to initiate treatment with and dispense and administer controlled substances for the prevention of HIV, including controlled substances prescribed for pre-exposure and post-exposure prophylaxis pursuant to CDC guidelines and recommendations.[6]

(iv) Pharmacists should be authorized to dispense and administer devices, controlled paraphernalia, and possibly other durable medical equipment to lower out-of-pocket expenses, for which the patient's health insurance provider requires a prescription.[7]

Subsequently, Chapter 231 of the 2021 Acts of Assembly incorporated the working group's recommendations in statute and directed the Board to promulgate regulations implementing the changes made by the Act within 280 days of its enactment. Accordingly, the following summarized proposed changes would mirror the statutory changes in the 2021 legislative mandate.[8] In 18VAC110-20-150, physical standards for all pharmacies would be amended to require that the physical setting of a pharmacy in which a pharmacist treats with, dispenses, or administers drugs, devices, controlled paraphernalia, and other supplies and equipment comply with HIPAA. In 18VAC110-21-46, initiation of treatment by a pharmacist would be amended as follows:

Subsection A would authorize a pharmacist to initiate treatment with, dispense, or administer certain "controlled paraphernalia, and other supplies and equipment" in addition to certain drugs and devices.

Subdivision 6 would be amended to include "controlled paraphernalia and other supplies and equipment" covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-pf-pocket cost to purchase an over-the-counter equivalent of the same controlled paraphernalia or other supplies and equipment. This provision currently only applies to "drugs and devices."

Subdivisions 7, 8, and 9 would be added to subsection A to add vaccines listed on the CDC's immunization schedule, including those that have an EUA from the US FDA, tuberculin purified protein derivative for tuberculosis testing, and controlled substances for the prevention of HIV pursuant to the CDC's guidelines and recommendations.

Subsection B would be amended to require that pharmacists follow the statewide protocol when dispensing or administering "controlled paraphernalia, and other supplies and equipment" in addition to following these requirements with the currently authorized treatment with drugs and devices. Additionally, subsection B would be amended to require that pharmacists report

vaccinations to VIIS in accordance with the requirements of § 32.1-46.01 of the Code of Virginia.

Estimated Benefits and Costs. The proposed amendments would largely benefit individuals seeking vaccinations, tuberculosis testing, or HIV prophylaxis by allowing them to obtain the necessary treatment at pharmacies instead of going to a physician. Pharmacies often have extended hours of operation compared to physicians' offices, may not require advance appointments, and may be more conveniently located for some people.

The proposed amendments would also benefit individuals who need controlled paraphernalia (such as insulin pen needles, hypodermic syringes, or glucometers) that is covered by their insurance so that their out-of-pocket expenditures would be lower than if they purchased over-the-counter equivalents. These individuals could now get these controlled paraphernalia at a lower price from their local pharmacy, without having to obtain a prescription from their health care provider ex ante or trying to obtain reimbursements from their insurance carrier ex post.

Providing controlled paraphernalia and other medical supplies at a lower price to some consumers would not necessarily result in revenue losses for the pharmacies, and could lead to higher revenues. Pharmacies would likely recover some portion of the remainder of the retail price from insurers, as they currently do for drugs, and may experience a modest increase in the overall quantity sold. Thus the extent to which pharmacies' revenue may increase would depend on the dollar-value of insurance reimbursements and the increase in quantity sold as a result of lower out-of-pocket costs to some consumers.

Pharmacies would benefit from the additional revenue that would be collected as a result of pharmacists being authorized to provide an expanded range of services. Pharmacies could face some additional costs arising from ensuring HIPAA compliance of the physical location and the requirement that vaccinations be reported to VIIS. However, the proposed regulation would only authorize, not require, pharmacists to initiate treatment and provide vaccines or other drugs, devices or controlled paraphernalia. Additional revenue to pharmacies where pharmacists elect to initiate treatment would likely cover the costs associated with providing these additional services.

Businesses and Other Entities Affected. The Department of Health Professions (DHP) reports that there are 15,326 licensed pharmacists, but not all pharmacists would be directly affected.[9] DHP also reports that pharmacists are not licensed by specialty (compounding, radiopharmaceutical, hospital, etc.), nor are they identified by work setting. Only pharmacists working in retail pharmacies, who dispense drugs directly to consumers, would be directly affected by the proposed amendments.

DHP also reports that there are 1,769 licensed pharmacies, but only pharmacies that dispense to a consumer would be directly affected by the proposed changes.[10] Data provided by DHP indicates that at least 1,063 pharmacy licenses are held by retail pharmacy chains or by retail grocery chains that have pharmacies, and another 10 pharmacy licenses are held by public health centers (run by city or community services board) or student health centers at colleges and universities. Thus, at least 61% of licensed pharmacies appear to be affected by the proposed changes. The remaining 696 pharmacy licenses include 187 hospitals, including teaching hospitals, and 509 independent health centers, free clinics, and independent pharmacies. Many of these places likely dispense directly to customers, but the exact number could not be identified based on the list of licensed entities alone, and would require significantly more time to verify individually.

Some physicians' offices may be indirectly affected by the proposed changes to the extent that current and prospective patients substitute office visits with pharmacist-initiated treatment, leading to revenue losses for these entities. The changes proposed here would specifically affect physicians that prescribe controlled paraphernalia and other medical supplies, and those that provide vaccinations, tuberculosis testing, and HIV prophylactics. This could include some of the roughly 187 hospitals with pharmacy licenses mentioned previously, provided they do not already dispense directly to consumers and only to the extent that current and future patients choose to substitute physician-initiated treatment for pharmacist-initiated treatment.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[11] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the proposed amendments do not create any new costs for pharmacies that could not be directly recouped, and would likely increase pharmacies' net revenue. However, some physicians' offices may experience a reduction in net revenue to the extent that the proposed amendments cause a substitution towards pharmacist-initiated treatment by existing and prospective patients. Thus, an adverse impact is indicated for physicians' offices.

Small Businesses[12] Affected:[13] The proposed amendments could benefit some small businesses, such as independent pharmacies and health centers with retail pharmacies, while hurting some others, such as physicians' offices.[14]

Types and Estimated Number of Small Businesses Affected. As mentioned previously, there are up to 509 small, independently-operated pharmacies and health centers that would benefit to the extent that they dispense directly to consumers. The number of physicians' offices that are small businesses (without a pharmacy license) that may be adversely impacted by revenue losses is not known.

Costs and Other Effects. Physicians' offices and small for-profit hospitals, including ones with pharmacy licenses that do not dispense directly to consumers, may lose revenue to the

extent that their current and prospective patients substitute physician-initiated treatment for pharmacist-initiated treatment as a result of the proposed changes. Small hospitals with pharmacy licenses that do not currently dispense directly to consumers may choose to start doing so, and may take other measures to expand their availability, in an effort to reduce or prevent revenue losses. However, they would likely incur some costs to implement such changes. Thus, an adverse economic impact[15] is indicated for physicians' offices and small for-profit hospitals because there do not appear to be any offsetting direct benefits to these small businesses.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact to physicians and small hospitals and meet the intended policy goals of safely expanding access for consumers by allowing pharmacist-initiated treatment.

Localities[16] Affected.[17] At least five pharmacy licenses appear to be held by cities or community services boards, which receive funding from local governments, specifically the City of Alexandria (two licenses), Norfolk City community services board, Bedford County and Fairfax County.[18] The proposed amendments do not introduce costs for local governments. Accordingly, no additional funds would be required, and an adverse economic impact is not indicated.

Projected Impact on Employment. The proposed amendments do not appear to affect total employment in the short run. Any expansion in the scope of responsibilities for pharmacists could lead to an increase in the demand for pharmacists. Even if pharmacists are able to delegate some of their existing responsibilities to pharmacy technicians, this would lead to an increased demand for pharmacy technicians. This may induce more individuals to enter these professions and increase the pharmacist and pharmacy technician labor force in the long run. The proposed amendments are unlikely to affect physicians' offices and hospitals to a sufficient degree to adversely impact the employment of physicians, nurses, or other medical personnel.

Effects on the Use and Value of Private Property. The proposed amendments would increase the scope of services provided by privately owned pharmacies, including large retail pharmacy chains and grocery store chains that have pharmacies as well as small independent pharmacies, to the extent that they dispense directly to consumers. This is likely to increase the net revenue for these entities and could lead to a modest increase in the value of these businesses. At the same time, the proposed amendments may modestly reduce the value of some private clinics and hospitals to the extent that their revenues are reduced by patients switching to pharmacist-initiated treatment. The proposed amendments do not affect real estate development costs.

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

[2]See https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9452 for the Emergency/NOIRA; the emergency provisions are due to expire on June 21, 2023. See https://townhall.virginia.gov/l/viewmandate.cfm?mandateid=1202 for the legislative mandate.

[3]See https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5604 for that regulatory action and https://townhall.virginia.gov/l/viewmandate.cfm?mandateid=1061 for the corresponding legislative mandate. The emergency provisions will remain in effect until July 2, 2022, unless extended for six months, as requested, until January 1, 2023. The proposed stage that would make those emergency provisions permanent has been completed, and received no public comments.

[4]The working group consisted of members of the Board of Pharmacy, Board of Medicine, Virginia Department of Health (VDH), Department of Medical Assistance Services, administrators and faculty members from various pharmacy schools and medical schools in Virginia, and representatives from the following organizations: Virginia Association of Health Plans, Virginia Pharmacist Association, Medical Society of Virginia, Virginia Society of Health-Systems Pharmacists, Virginia Association of Chain Drug Stores, and National Association of Chain Drug Stores.

[5]See https://rga.lis.virginia.gov/Published/2020/RD480 for the full report. A number of other conditions that had been proposed for the working group's consideration in Chapter 731 did not receive unanimous support.

[6]Working group members from VDH specifically referred to their experience working with pharmacists to perform HIV testing to indicate that a well-constructed statewide protocol could meet public need and that pre- and post-exposure prophylaxis could be built into the protocol.

[7]The working group noted that the term "drugs" as defined in law does not include "devices" such as glucometers, controlled paraphernalia such as insulin pen needles and hypodermic syringes, and possibly other durable medical equipment.

[8]Note that the proposed text intentionally duplicates changes that have been made under action 5604 (see fn 3). Thus, if the emergency provisions in that action expire without extension before the final stage has been completed, the provisions of Chapter 731 of the 2020 Acts will remain in effect until June 21, 2023 under the emergency provisions of this action (5861), and would be made permanent by the proposed stage being reviewed here. However, the economic impacts of the initial changes have been analyzed at the proposed stage for action 5604 and will not be repeated here; see https://townhall.virginia.gov/l/GetFile.cfm?File=30\5604\9242\EIA_DHP_9242_v1.pdf.

[9]See Agency Background Document (ABD) page 7: https://townhall.virginia.gov/l/GetFile.cfm?File=30\5861\9562\AgencyStatement_DHP_9562_v2.pdf.

[10]Ibid.

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

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

[13]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping,

and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[14]Some of these small businesses include local chains with roughly two to twelve locations. They are independent in the sense that they do not belong to a national chain. The proposed amendments would also benefit a number of free clinics and other health centers that may operate as a non-profit rather than a traditional business, but would otherwise meet the criteria for small businesses as defined in footnote 12.

[15]Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

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

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

[18]There may be more locality funded pharmacies and health centers. These are difficult to identify since many health centers or pharmacies named after a county could be private entities, so only names with "health department" or "city of" were included in this estimate.

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

Summary:

Pursuant to Chapter 214 of the 2021 Acts of Assembly, the proposed amendments add drugs and devices that may be initiated by a pharmacist and the authority to dispense controlled paraphernalia or other supplies or equipment to 18VAC110-21-46, a section added by an emergency regulatory action in 2020 (37:12 VA.R. 1316-1317 September 14, 2020), which will become effective as a permanent regulation on December 21, 2022. The amendments (i) define drugs, devices, and controlled paraphernalia pursuant to applicable statute; (ii) add "other supplies and equipment available over-the-counter, covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost to purchase an over-the-counter equivalent of the same drug, device, controlled paraphernalia, or other supplies or equipment"; (iii) include on the list vaccines on the Immunization Schedule published by the Centers for Disease Control and Prevention (CDC) or that have a current emergency use authorization from the U.S. Food and Drug Administration; (iv) include on the list tuberculin purified protein derivative for tuberculosis testing; and (v) include on the list controlled substances for the prevention of human immunodeficiency virus, including controlled substances prescribed for pre-exposure and post-exposure prophylaxis pursuant to guidelines and recommendations of the CDC.

18VAC110-20-150. Physical standards for all pharmacies.

A. The prescription department shall not be less than 240 square feet. The patient waiting area or the area used for counseling, devices, cosmetics, and proprietary medicines shall not be considered a part of the minimum 240 square feet. The total area shall be consistent with the size and scope of the services provided.

B. Access to stock rooms, rest rooms, and other areas other than an office that is exclusively used by the pharmacist shall not be through the prescription department. A rest room in the prescription department, used exclusively by pharmacists and personnel assisting with dispensing functions, may be allowed provided there is another rest room outside the prescription department available to other employees and the public. This subsection shall not apply to prescription departments in existence prior to November 4, 1993.

C. The pharmacy shall be constructed of permanent and secure materials. Trailers or other moveable facilities or temporary construction shall not be permitted.

D. The entire area of the location of the pharmacy practice, including all areas where drugs are stored, shall be well lighted and well ventilated; the proper storage temperature shall be maintained to meet USP-NF specifications for drug storage.

E. The prescription department counter work space shall be used only for the compounding and dispensing of drugs and necessary recordkeeping.

F. A sink with hot and cold running water shall be within the prescription department. A pharmacy issued a limited-use permit that does not stock prescription drugs as part of its operation is exempt from this requirement.

G. Adequate refrigeration facilities equipped with a monitoring thermometer for the storage of drugs requiring cold storage temperature shall be maintained within the prescription department if the pharmacy stocks such drugs.

H. A pharmacy stocking drugs requiring cold storage temperature shall record the temperature daily and adjust the thermostat as necessary to ensure an appropriate temperature range. The record shall be maintained manually or electronically for a period of two years.

I. The physical settings of a pharmacy in which a pharmacist initiates treatment with, dispenses, or administers drugs, devices, controlled paraphernalia, and other supplies and equipment pursuant to § 54.1-3303.1 of the Code of Virginia and 18VAC110-21-46 shall protect patient confidentiality and comply with the Health Insurance Portability and Accountability Act, 42 USC § 1320d et seq.

18VAC110-21-46. Initiation of treatment by a pharmacist.

A. Pursuant to § 54.1-3303.1 of the Code of Virginia, a pharmacist may initiate treatment with, dispense, or administer the following drugs, devices, controlled paraphernalia, and

other supplies and equipment to persons 18 years of age or older:

1. Naloxone or other opioid antagonist, including such controlled paraphernalia as defined in § 54.1-3466 of the Code of Virginia as may be necessary to administer such naloxone or other opioid antagonist;

2. Epinephrine;

3. Injectable or self-administered hormonal contraceptives, provided the patient completes an assessment consistent with the United States Medical Eligibility Criteria for Contraceptive Use;

4. Prenatal vitamins for which a prescription is required;

5. Dietary fluoride supplements in accordance with recommendations of the American Dental Association for prescribing of such supplements for persons whose drinking water has a fluoride content below the concentration recommended by the U.S. Department of Health and Human Services;

6. Drugs and devices as defined in § 54.1-3401 of the Code of Virginia, controlled paraphernalia as defined in § 54.1-3466 of the Code of Virginia, and other supplies and equipment available over the counter, covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost to purchase an over-the-counter equivalent of the same drug, device, controlled paraphernalia, or other supplies or equipment;

7. Vaccines included on the Immunization Schedule published by the Centers for Disease Control and Prevention or that have a current emergency use authorization from the U.S. Food and Drug Administration;

8. Tuberculin purified protein derivative for tuberculosis testing; and

9. Controlled substances for the prevention of human immunodeficiency virus, including controlled substances prescribed for pre-exposure and post-exposure prophylaxis pursuant to guidelines and recommendations of the Centers for Disease Control and Prevention.

B. Pharmacists who initiate treatment with, dispense, or administer a drug, device, controlled paraphernalia, or other supplies or equipment pursuant to subsection A of this section shall:

1. Follow the statewide protocol adopted by the board for each drug, device, controlled paraphernalia, or other supplies or equipment.

2. Notify the patient's primary health care provider that treatment has been initiated with such drug, device, controlled paraphernalia, or other supplies or equipment or that such drug, device, controlled paraphernalia, or other supplies or equipment have been dispensed or administered to the patient, provided that the patient consents to such notification. If the patient does not have a primary health care provider, the pharmacist shall counsel the patient regarding the benefits of establishing a relationship with a primary health care provider and, upon request, provide information regarding primary health care providers, including federally qualified health centers, free clinics, or local health departments serving the area in which the patient is located. If the pharmacist is initiating treatment with, dispensing, or administering injectable or self-administered hormonal contraceptives, the pharmacist shall counsel the patient regarding seeking preventative care, including (i) routine well-woman visits, (ii) testing for sexually transmitted infections, and (iii) pap smears. If the pharmacist is administering a vaccine pursuant to this section, the pharmacist shall report such administration to the Virginia Immunization Information System in accordance with the requirements of § 32.1-46.01 of the Code of Virginia.

3. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

a. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or the patient's personal representative; or

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

4. Perform the activities in a manner that protects patient confidentiality and complies with the Health Insurance Portability and Accountability Act, 42 USC § 1320d et seq.

VA.R. Doc. No. R22-6989; Filed October 28, 2022, 3:48 p.m.

Final Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-111).**

18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (amending 18VAC110-21-10, 18VAC110-21-20, 18VAC110-21-40, 18VAC110-21-140, 18VAC110-21-150, 18VAC110-21-170, 18VAC110-21-180; adding 18VAC110-21-135, 18VAC110-21-141; repealing 18VAC110-21-160).

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

Effective Date: December 21, 2022.

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

Summary:

The amendments conform regulation to Chapters 102 and 237 of the 2020 Acts of Assembly, including (i) establishing the requirements for registration as a pharmacy technician

trainee for a person enrolled in a training program and engaging in tasks that may be delegated to a technician; (ii) specifying the certification examinations that are acceptable for registration as a pharmacy technician; and (iii) setting out the requirement for accreditation of training programs that will become effective on July 1, 2022.

A change to the proposed regulation specifies that passage of the national examination is not required for reinstatement applicants who have maintained a national certification.

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.

18VAC110-20-111. Pharmacy technicians.

A. Every pharmacy that employs or uses pharmacy technicians shall maintain a site-specific training program and manual for training pharmacy technicians to work at that pharmacy. The program shall include training consistent with that specific pharmacy practice to include~~, but not be limited to,~~ training in proper use of site-specific computer programs and equipment, proper use of other equipment used at the pharmacy in performing technician duties, and pharmacy calculations consistent with the duties at that pharmacy.

B. Every pharmacy shall maintain documentation of successful completion of the site specific training program for each pharmacy technician for the duration of the employment and for a period of two years from date of termination of employment. Documentation for currently employed pharmacy technicians shall be maintained on site or at another location where the records are readily retrievable upon request for inspection. After employment is terminated, such documentation may be maintained at an off-site location where it is retrievable upon request.

C. Every pharmacy that employs or uses a person enrolled in ~~an approved~~ a pharmacy technician training program pursuant to § 54.1-3321 ~~D~~ of the Code of Virginia shall allow such person to conduct tasks restricted to pharmacy technicians ~~for no more than nine months without that person becoming registered as a pharmacy technician with the board as set forth in 18VAC110-20-101. Every pharmacy using such a person shall have documentation on site and available for inspection showing that the person is currently enrolled in an approved training program and the start date for each pharmacy technician in training~~ only if the person is currently registered as a pharmacy technician trainee.

18VAC110-21-10. Definitions.

In addition to words and terms defined in §§ 54.1-3300 and 54.1-3401 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"ACPE" means the Accreditation Council for Pharmacy Education.

"ASHP" means the American Society of Health-System Pharmacists.

"Board" means the Virginia Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the board.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Foreign school of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.

"FPGEC certificate" means the certificate given by the Foreign Pharmacy Equivalency Committee of NABP that certifies that the holder of such certificate has passed the Foreign Pharmacy Equivalency Examination and a credential review of foreign training to establish educational equivalency to board approved schools of pharmacy and has passed approved examinations establishing proficiency in English.

"Inactive license" means a license that is registered with the Commonwealth but does not entitle the licensee to practice, and the holder of which is not required to submit documentation of CE necessary to hold an active license.

"NABP" means the National Association of Boards of Pharmacy.

"NHA" means National Healthcareer Association.

"Pharmacy technician trainee" means a person who is registered with the board and is currently enrolled in an approved pharmacy technician training program ~~and is performing~~ to perform duties restricted to pharmacy technicians for the purpose of obtaining practical experience in accordance with provisions of subsection G of § 54.1-3321 ~~D~~ of the Code of Virginia.

"PTCB" means the Pharmacy Technician Certification Board, co-founded by the American Pharmaceutical Association and the American Society of Health System Pharmacists, as the national organization for the voluntary examination and certification of pharmacy technicians.

18VAC110-21-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	$235
2. Pharmacy intern registration	$20
3. Pharmacy technician trainee registration	$20
4. Pharmacy technician registration	$35
~~4.~~ 5. Approval of a pharmacy technician training program	$200
~~5.~~ 6. Approval of a continuing education program	$130

D. Annual renewal fees.

1. Pharmacist active license – due no later than December 31	$120
2. Pharmacist inactive license – due no later than December 31	$60
3. Pharmacy technician registration – due no later than December 31	$35
4. Pharmacy technician training program	$100 every two years

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license or registration within one year of the expiration date or within two years in the case of a pharmacy technician training program. In addition, engaging in activities requiring a license or registration after the expiration date of such license or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license	$40
2. Pharmacist inactive license	$20
3. Pharmacy technician registration	$15
4. Pharmacy technician training program	$20

F. Reinstatement fees. Any person or entity attempting to renew a license or registration more than one year after the expiration date, or more than two years after the expiration date in the case of a pharmacy technician training program, shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

1. Pharmacist license	$275
2. Pharmacist license after revocation or suspension	$650
3. Pharmacy technician registration	$45
4. Pharmacy technician or pharmacy technician trainee registration after revocation or suspension	$165
5. A pharmacy technician training program that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus a reinstatement fee of $75. A pharmacy technician training program that ceases operation and wishes to resume shall not be eligible for reinstatement but shall apply for a new registration.	

G. Miscellaneous fees.

1. Duplicate wall certificate	$50
2. Handling fee for returned check or a dishonored credit card or debit card	$50
3. Duplicate license or registration	$15
4. Verification of licensure or registration	$35

18VAC110-21-40. Unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-3316 of the Code of Virginia:

1. Failing to comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records or related to providing patient records to another practitioner or to the patient or the patient's personal representative;

2. Willfully or negligently breaching the confidentiality of a patient unless otherwise required or permitted by applicable law;

3. Failing to maintain the confidentiality of information received from the Prescription Monitoring Program, obtaining such information for reasons other than to assist in determining the validity of a prescription to be filled, or misusing information received from the program;

4. Engaging in disruptive or abusive behavior in a pharmacy or other health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient;

5. Engaging or attempting to engage in a relationship with a patient that constitutes a professional boundary violation in

which the practitioner uses his professional position to take advantage of the vulnerability of a patient or the patient's family, including sexual misconduct with a patient or a member of the patient's family or other conduct that results or could result in personal gain at the expense of the patient;

6. Failing to maintain adequate safeguards against the diversion of controlled substances;

7. Failing to appropriately respond to a known dispensing error in a manner that protects the health and safety of the patient;

8. Delegating a task within the practice of pharmacy to a person who is not adequately trained to perform such a task;

9. Failing by the pharmacist in charge to ensure that pharmacy interns ~~and~~, pharmacy technicians, and pharmacy technician trainees working in the pharmacy are registered and that such registration is current;

10. Failing to exercise professional judgment in determining whether a prescription meets the requirements of law before dispensing;

11. Obtaining money or property of a patient or client by fraud or misrepresentation;

12. Providing false information or failing to cooperate with an employee of the Department of Health Professions in the conduct on an investigation or inspection;

13. Violating any provision of this chapter, 18VAC110-20, or Chapter 33 (§ 54.1-3300 et seq.) or 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia;

14. Performing any act likely to deceive, defraud, or harm the public; or

15. Having a restriction of a license to practice pharmacy or a registration as a pharmacy technician in another jurisdiction in the United States.

18VAC110-21-135. Registration as a pharmacy technician trainee.

A. A person desiring to gain practical pharmacy experience toward completion of a pharmacy technician training program in Virginia shall first register with the board as a pharmacy technician trainee on a form provided by the board prior to engaging in the duties of a pharmacy technician pursuant to § 54.1-3321 of the Code of Virginia.

B. In order to be eligible to register as a pharmacy technician trainee, an applicant shall be enrolled in a pharmacy technician training program. An expiration date, not to exceed two years, shall be assigned to the registration to cover the estimated time period for the trainee to complete the practical pharmacy experience required for completion of the training program and pass the required examination. If the trainee is no longer enrolled in the training program, takes a voluntary break from the program, or is otherwise not actively progressing toward completion of such program, the registration is no longer valid and shall be returned to the board immediately.

C. A pharmacy technician trainee shall be directly monitored by a supervising pharmacist who holds a current active license and assumes full responsibility for the training and supervision of the trainee.

D. A pharmacy technician trainee shall notify the board in writing of any change in address of record within 14 days of such change.

18VAC110-21-140. Application for registration as a pharmacy technician [~~(Effective until July 1, 2022)~~].

A. Any person wishing to apply for registration as a pharmacy technician shall submit the application fee and an application on a form approved by the board.

B. To be registered as a pharmacy technician, an applicant shall provide evidence of the following:

1. Satisfactory completion of a board-approved training program; and

2. A passing score on a board-approved examination.

C. In lieu of the requirements of subsection B of this section, an applicant may provide evidence of current PTCB certification or NHA certification.

~~D. A pharmacy technician trainee enrolled in an approved pharmacy technician training program pursuant to § 54.1-3321 D of the Code of Virginia may perform tasks restricted to pharmacy technicians for no more than nine consecutive months from the date the trainee begins performing duties restricted to a pharmacy technician without becoming registered as a pharmacy technician.~~

18VAC110-21-141. Requirements for pharmacy technician training [~~(Effective July 1, 2022)~~].

A. Any person wishing to apply for registration as a pharmacy technician shall submit the application fee and an application on a form approved by the board.

B. To be registered as a pharmacy technician, an applicant shall provide evidence of the following:

1. Completion of a pharmacy technician training program that is:

a. Jointly accredited by the ASHP and ACPE;

b. An accredited training program operated through the Department of Education's Career and Technical Education Program;

c. Operated through a federal agency or branch of the military; or

d. Accredited by an accreditation body approved by the board.

2. Successfully having passed a national certification examination administered by PTCB or NHA.

C. A pharmacy technician who has previously practiced in another United States jurisdiction may be eligible to obtain registration as a pharmacy technician upon documentation of previous practice and having passed a national certification examination administered by PTCB or NHA.

D. A person who successfully completed or was enrolled in a board-approved pharmacy technician training program but did not successfully pass a national examination prior to July 1, 2022, may be eligible to obtain registration as a pharmacy technician after successfully passing a national certification examination administered by PTCB or NHA and submitting to the board documentation of such completion or enrollment in a board-approved pharmacy technician training program and passing examination score.

E. A person who passed a national certification examination administered by PTCB or NHA but did not complete a board-approved pharmacy technician training program prior to July 1, 2022, may be eligible to obtain registration as a pharmacy technician upon documentation of having passed such examination.

18VAC110-21-150. Criteria for approval for training programs (Effective until July 1, 2022).

A. Any person wishing to apply for approval of a pharmacy technician training program shall submit the application fee, a sample certificate, and an application on a form approved by the board and meet the criteria established in this section.

B. The curriculum of a training program for pharmacy technicians shall include instruction in applicable current laws and regulations and in the tasks that may be performed by a pharmacy technician to include the following or any other task restricted to pharmacy technicians in regulation:

1. The entry of prescription information and drug history into a data system or other recordkeeping system;

2. The preparation of prescription labels or patient information;

3. The removal of the drug to be dispensed from inventory;

4. The counting, measuring, or compounding of the drug to be dispensed;

5. The packaging and labeling of the drug to be dispensed and the repackaging thereof;

6. The stocking or loading of automated dispensing devices or other devices used in the dispensing process; and

7. The acceptance of refill authorization from a prescriber or the prescriber's authorized agent provided there is no change to the original prescription.

C. Each program shall have a program director who shall be either (i) a pharmacist with a current license in any jurisdiction and who is not currently suspended or revoked in any jurisdiction in the United States; (ii) a pharmacy technician with at least one year of experience performing technician tasks who holds a current registration in Virginia or current PTCB certification and who is not currently suspended or revoked as a pharmacy technician in any jurisdiction; or (iii) other person approved and deemed qualified by the board to be a program director.

D. Instructors for the core components listed in subsection B of this section shall meet the requirements for the program director listed in subsection C of this section. The program director may serve as an instructor.

E. The length of the program shall be sufficient to prepare a program participant to sit for the board-approved examination and demonstrate entry-level competency.

F. The program shall maintain records of program participants either on site or at another location where the records are readily retrievable upon request for inspection. A program shall provide a certificate of completion, including the program approval number, to participants who successfully complete the program and provide verification of completion of the program for a participant upon request by the board. Records shall be maintained for two years from date of completion or termination of program.

G. The program shall report within 14 days any substantive change in the program to include a change in program name, program certificate, program director, instructors, name of institution or business if applicable, address, program content, length of program, or location of records.

H. A pharmacy technician training program approval expires after two years, after which the program may apply for renewal. For continued approval, the program shall submit the renewal application, renewal fee, and a self-evaluation report on a form provided by the board at the time of renewal notification. Renewal of a program's approval is at the discretion of the board, and the decision to renew shall be based on documentation of continued compliance with the criteria set forth in this section.

18VAC110-21-160. ~~Examination.~~ (Repealed.)

~~A. The board shall approve one or more examinations to test entry-level competency for pharmacy technicians. In order to be approved, a competency examination shall be developed in accordance with and meet the recognized acceptable test measurement standards of the Joint Technical Standards for Education and Psychological Testing (American Psychological Association, current edition), and shall be administered by an independent third party.~~

~~B. The board may contract with an examination service for the development and administration of a competency examination.~~

~~C. The board shall determine the minimum passing standard on the competency examination.~~

~~D. Any requests for testing accommodations under the Americans with Disabilities Act shall be in accordance with the provisions of 18VAC110-21-80 F.~~

18VAC110-21-170. Renewal and reinstatement of registration.

A. Pharmacy technician registrations expire on December 31 and shall be renewed annually prior to that date by the submission of a renewal fee, renewal form, and an e-profile number issued by NABP. A pharmacy technician newly registered on or after July 1 shall not be required to renew that registration until December 31 of the following year. Failure to receive the application for renewal shall not relieve the pharmacy technician of the responsibility for renewing the registration by the expiration date.

B. A pharmacy technician who fails to renew his registration by the expiration date may renew his registration at any time within one year of its expiration by submission of the renewal fee and late fee, renewal form, and attestation of having met the continuing education requirements.

C. A pharmacy technician who fails to renew his registration for more than one year following expiration and who wishes to reinstate such registration shall submit an application for reinstatement, pay the current renewal fee and a reinstatement fee, and submit documentation showing compliance with continuing education requirements. Reinstatement is at the discretion of the board and may be granted by the executive director of the board provided no grounds exist to deny said reinstatement. Practicing as a pharmacy technician with a lapsed registration shall be illegal and may subject the registrant to disciplinary action by the board.

D. A person who fails to reinstate a pharmacy technician registration within five years of expiration shall ~~not be eligible for reinstatement and shall repeat an approved training program and repeat and pass the examination or hold current PTCB certification before applying to be reregistered~~:

1. Take and pass a national certification examination administered by PTCB or NHA [, unless national certification is currently maintained];

2. Document completion of 20 hours of continuing education; and

3. Pay the current renewal fee and a reinstatement fee.

18VAC110-21-180. Requirements for continued competency.

A. A pharmacy technician shall be required to have completed a minimum of 0.5 CEUs or five contact hours of approved continuing education for each annual renewal of registration. Hours in excess of the number required for renewal may not be transferred or credited to another year.

B. An approved continuing education program shall meet the requirements as set forth in 18VAC110-21-120 B or 18VAC110-21-130 B.

C. Upon written request of a pharmacy technician, the board may grant an extension of up to one year in order for the pharmacy technician to fulfill the continuing education requirements for the period of time in question. The granting of an extension shall not relieve the pharmacy technician from complying with current year requirements. Any subsequent extension shall be granted for good cause shown.

D. Up to one hour of the five hours required for annual renewal may be satisfied through delivery of pharmacy services as a pharmacy technician, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

E. ~~Original documentation~~ Documentation showing successful completion of continuing education programs shall be maintained by the pharmacy technician for a period of two years following the renewal of his registration. The pharmacy technician shall provide such documentation to the board upon request in a manner to be determined by the board.

VA.R. Doc. No. R20-6513; Filed October 19, 2022, 3:53 p.m.

BOARD OF PSYCHOLOGY

Final Regulation

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-10, 18VAC125-20-150, 18VAC125-20-160).**

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

Effective Date: December 21, 2022.

Agency Contact: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email jaime.hoyle@dhp.virginia.gov.

Summary:

Chapter 1162 of the 2020 Acts of Assembly mandates membership of the Commonwealth of Virginia in the Psychology Interjurisdictional Compact and requires the

Board of Psychology to promulgate regulations to implement the provisions. The amendments add definitions consistent with the compact and revise the standards of practice and the grounds for disciplinary action to cover persons practicing with an E.Passport or temporary authorization to practice in Virginia through the compact.

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.

18VAC125-20-10. Definitions.

The following words and terms, in addition to the words and terms defined in ~~§~~ §§ 54.1-3600 and 54.1-3606.2 of the Code of Virginia, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"APA" means the American Psychological Association.

"APPIC" means the Association of Psychology Postdoctoral and Internship Centers.

"ASPPB" means the Association of State and Provincial Psychology Boards.

"Board" means the Virginia Board of Psychology.

"CAEP" means Council for the Accreditation of Educator Preparation.

"Compact" means the Psychology Interjurisdictional Compact.

"Conversion therapy" means any practice or treatment as defined in § 54.1-2409.5 A of the Code of Virginia.

"CPA" means Canadian Psychological Association.

"Demonstrable areas of competence" means those therapeutic and assessment methods and techniques for the populations served and for which one can document adequate graduate training, workshops, or appropriate supervised experience.

"E.Passport" means a certificate issued by ASPPB that authorizes telepsychology services in a compact state.

"Face-to-face" means in person.

"Intern" means an individual who is enrolled in a professional psychology program internship.

"Internship" means an ongoing, supervised, and organized practical experience obtained in an integrated training program identified as a psychology internship. Other supervised experience or on-the-job training does not constitute an internship.

"IPC" means an interjurisdictional practice certificate issued by ASPPB that grants temporary authority to practice in a compact state.

"NASP" means the National Association of School Psychologists.

"Practicum" means the pre-internship clinical experience that is part of a graduate educational program.

"Practicum student" means an individual who is enrolled in a professional psychology program and is receiving pre-internship training and seeing clients.

"Professional psychology program" means an integrated program of doctoral study in clinical or counseling psychology or a master's degree or higher program in school psychology designed to train professional psychologists to deliver services in psychology.

"Regional accrediting agency" means one of the six regional accrediting agencies recognized by the U.S. Secretary of Education established to accredit senior institutions of higher education.

"Residency" means a post-internship, post-terminal degree, supervised experience approved by the board.

"Resident" means an individual who has received a doctoral degree in a clinical or counseling psychology program or a master's degree or higher in school psychology and is completing a board-approved residency.

"School psychologist-limited" means a person licensed pursuant to § 54.1-3606 of the Code of Virginia to provide school psychology services solely in public school divisions.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual consultation, guidance, and instruction with respect to the skills and competencies of the person supervised.

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

18VAC125-20-150. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Psychologists respect the rights, dignity, and worth of all people and are mindful of individual differences. Regardless of the delivery method, whether face-to-face or by use of technology, these standards shall apply to the practice of psychology.

B. Persons regulated by the board and persons practicing in Virginia with an E.Passport or an IPC shall:

1. Provide and supervise only those services and use only those techniques for which they are qualified by education, training, and appropriate experience;

2. Delegate to persons under their supervision only those responsibilities such persons can be expected to perform competently by education, training, and experience;

3. Maintain current competency in the areas of practices through continuing education, consultation, or other procedures consistent with current standards of scientific and professional knowledge;

4. Accurately represent their areas of competence, education, training, experience, professional affiliations, credentials, and published findings to ensure that such statements are neither fraudulent nor misleading;

5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services. Make appropriate consultations and referrals consistent with the law and based on the interest of patients or clients;

6. Refrain from undertaking any activity in which their personal problems are likely to lead to inadequate or harmful services;

7. Avoid harming, exploiting, misusing influence, or misleading patients or clients, research participants, students, and others for whom they provide professional services and minimize harm when it is foreseeable and unavoidable;

8. Not engage in, direct, or facilitate torture, which is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, or in any other cruel, inhuman, or degrading behavior that causes harm;

9. Withdraw from, avoid, adjust, or clarify conflicting roles with due regard for the best interest of the affected party and maximal compliance with these standards;

10. Make arrangements for another professional to deal with emergency needs of clients during periods of foreseeable absences from professional availability and provide for continuity of care when services must be terminated;

11. Conduct financial responsibilities to clients in an ethical and honest manner by:

a. Informing clients of fees for professional services and billing arrangements as soon as is feasible;

b. Informing clients prior to the use of collection agencies or legal measures to collect fees and provide opportunity for prompt payment;

c. Obtaining written consent for fees that deviate from the practitioner's usual and customary fees for services;

d. Participating in bartering only if it is not clinically contraindicated and is not exploitative; and

e. Not obtaining, attempting to obtain, or cooperating with others in obtaining payment for services by misrepresenting services provided, dates of service, or status of treatment.;

12. Be able to justify all services rendered to clients as necessary for diagnostic or therapeutic purposes;

13. Construct, maintain, administer, interpret, and report testing and diagnostic services in a manner and for purposes that are current and appropriate;

14. Design, conduct, and report research in accordance with recognized standards of scientific competence and research ethics. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from patients prior to involving them as participants in human research, with the exception of retrospective chart reviews;

15. Report to the board known or suspected violations of the laws and regulations governing the practice of psychology;

16. Accurately inform a client or a client's legally authorized representative of the client's diagnoses, prognosis, and intended treatment or plan of care. A psychologist shall present information about the risks and benefits of the recommended treatments in understandable terms and encourage participation in the decisions regarding the patient's care. When obtaining informed consent treatment for which generally recognized techniques and procedures have not been established, a psychologist shall inform clients of the developing nature of the treatment, the potential risks involved, alternative treatments that may be available, and the voluntary nature of their participation;

17. Clearly document at the outset of service delivery what party the psychologist considers to be the client and what, if any, responsibilities the psychologist has to all related parties;

18. Determine whether a client is receiving services from another mental health service provider, and if so, document efforts to coordinate care;

19. Document the reasons for and steps taken if it becomes necessary to terminate a therapeutic relationship (e.g., when it becomes clear that the client is not benefiting from the relationship or when the psychologist feels endangered). Document assistance provided in making arrangements for the continuation of treatment for clients, if necessary, following termination of a therapeutic relationship; and

20. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to confidentiality, persons regulated by the board shall:

1. Keep confidential their professional relationships with patients or clients and disclose client information to others only with written consent except as required or permitted by law. Psychologists shall inform clients of legal limits to confidentiality;

2. Protect the confidentiality in the usage of client information and clinical materials by obtaining informed consent from the client or the client's legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using clinical information in teaching, writing, or public presentations; and

3. Not willfully or negligently breach the confidentiality between a practitioner and a client. A disclosure that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

D. In regard to client records, persons regulated by the board shall:

1. Maintain timely, accurate, legible, and complete written or electronic records for each client. For a psychologist practicing in an institutional setting, the recordkeeping shall follow the policies of the institution or public facility. For a psychologist practicing in a noninstitutional setting, the record shall include:

a. The name of the client and other identifying information;

b. The presenting problem, purpose, or diagnosis;

c. Documentation of the fee arrangement;

d. The date and clinical summary of each service provided;

e. Any test results, including raw data, or other evaluative results obtained;

f. Notation and results of formal consults with other providers; and

g. Any releases by the client;

2. Maintain client records securely, inform all employees of the requirements of confidentiality and dispose of written, electronic, and other records in such a manner as to ensure their confidentiality; and

3. Maintain client records for a minimum of five years or as otherwise required by law from the last date of service, with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining 18 years of age;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have been transferred pursuant to § 54.1-2405 of the Code of Virginia pertaining to closure, sale, or change of location of one's practice.

E. In regard to dual relationships, persons regulated by the board shall:

1. Not engage in a dual relationship with a person under supervision that could impair professional judgment or increase the risk of exploitation or harm. Psychologists shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in sexual intimacies or a romantic relationship with a student, supervisee, resident, intern, therapy patient, client, or those included in collateral therapeutic services (such as a parent, spouse, or significant other of the client) while providing professional services. For at least five years after cessation or termination of professional services, not engage in sexual intimacies or a romantic relationship with a therapy patient, client, or those included in collateral therapeutic services. Consent to, initiation of, or participation in sexual behavior or romantic involvement with a psychologist does not change the exploitative nature of the conduct nor lift the prohibition. Because sexual or romantic relationships are potentially exploitative, psychologists shall bear the burden of demonstrating that there has been no exploitation, based on factors such as duration of therapy, amount of time since therapy, termination circumstances, client's personal history and mental status, and adverse impact on the client;

3. Not engage in a personal relationship with a former client in which there is a risk of exploitation or potential harm or if the former client continues to relate to the psychologist in his professional capacity; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

F. Upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons licensed by the board shall advise their clients of their right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

18VAC125-20-160. Grounds for disciplinary action or denial of licensure.

The board may take disciplinary action or deny a license or registration or authorization to practice in Virginia with an E.Passport or an IPC for any of the following causes:

1. Conviction of a felony, or a misdemeanor involving moral turpitude (i.e., relating to lying, cheating, or stealing);

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

3. Conducting practice in such a manner so as to make it a danger to the health and welfare of clients or to the public;

4. Engaging in intentional or negligent conduct that causes or is likely to cause injury to a client;

5. Performing functions outside areas of competency;

6. Demonstrating an inability to practice psychology with reasonable skill and safety to clients by reason of illness or substance misuse, or as a result of any mental, emotional, or physical condition;

7. Failing to comply with the continuing education requirements set forth in this chapter;

8. Violating or aiding and abetting another to violate any statute applicable to the practice of the profession, including § 32.1-127.1:03 of the Code of Virginia relating to health records;

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

10. Performing an act or making statements that are likely to deceive, defraud, or harm the public;

11. Having a disciplinary action taken against a health or mental health license, certification, registration, or application in Virginia or other jurisdiction or surrendering such a license, certification, or registration in lieu of disciplinary action;

12. Failing to cooperate with an employee of the Department of Health Professions in the conduct of an investigation;

13. Failing to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia, or abuse of aged and incapacitated adults as required in § 63.2-1606 of the Code of Virginia; or

14. Violating any provisions of this chapter, including practice standards set forth in 18VAC125-20-150.

VA.R. Doc. No. R21-6421; Filed October 19, 2022, 3:55 p.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (http://www.townhall.virginia.gov) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

BOARD OF ACCOUNTANCY

Titles of Documents: Guidelines for Accreditation of Educational Institutions.

Virginia Board of Accountancy Policy #9 - Inactive Status Procedure for Approval/Denial/Appeal.

Public Comment Deadline: December 21, 2022.

Effective Date: December 22, 2022.

Agency Contact: Vasa Clarke, Regulatory Coordinator, Board of Accountancy, 9960 Mayland Drive, Suite 402, Henrico, VA 23233, or email vasa.clarke@boa.virginia.gov.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

BOARD OF COUNSELING

BOARD OF DENTISTRY

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

BOARD OF HEALTH PROFESSIONS

BOARD OF LONG-TERM CARE ADMINISTRATORS

BOARD OF MEDICINE

BOARD OF NURSING

BOARD OF OPTOMETRY

BOARD OF PHARMACY

BOARD OF PHYSICAL THERAPY

BOARD OF PSYCHOLOGY

BOARD OF SOCIAL WORK

BOARD OF VETERINARY MEDICINE

DEPARTMENT OF HEALTH PROFESSIONS

Title of Document: Subpoenas for Disciplinary Hearings.

Public Comment Deadline: December 21, 2022.

Effective Date: December 22, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

STATE BOARD OF EDUCATION

Title of Document: Guidelines for Alternate Routes to Licensure in Response to House Bill 2486 of the 2019 Virginia General Assembly.

Public Comment Deadline: December 21, 2022.

Effective Date: December 22, 2022.

Agency Contact: Jim Chapman, Regulatory and Legal Coordinator, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, or email jim.chapman@doe.virginia.gov.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Titles of Documents: Disposition of Disciplinary Cases for Practicing on an Expired License.

Guidance on Time Credit for Continuing Education.

Initiating Disciplinary Action Against Funeral Establishments or Managers of Record for Failing to Respond to Inspection Deficiencies.

Public Comment Deadline: December 21, 2022.

Effective Date: December 22, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

DEPARTMENT OF GENERAL SERVICES

Title of Document: Procedures for Using the Total Cost of Ownership Calculator and Requesting Exemptions to the Requirement to Purchase Electric Vehicles.

Public Comment Deadline: December 21, 2022.

Effective Date: December 22, 2022.

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, or email rhonda.bishton@dgs.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: Face-to-Face Supervisory, Services Facilitation and Case Management Visits.

Public Comment Deadline: December 21, 2022.

Effective Date: December 22, 2022.

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

DEPARTMENT OF MOTOR VEHICLES

Title of Document: Virginia Department of Motor Vehicles Medical Waiver Guidance.

Public Comment Deadline: December 21, 2022.

Effective Date: December 22, 2022.

Agency Contact: Melissa K. Velazquez, Legislative Director, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-1844, or email melissa.velazquez@dmv.virginia.gov.

BOARD OF PHYSICAL THERAPY

Titles of Documents: Disposition of Disciplinary Cases for Practicing on Expired Licenses.

Guidance on Electromyography, Sharp Debridement, and Removal of Sutures, Staples, or Surgical Drains and the Practice of Physical Therapy.

Guidance on Telehealth.

Physical Therapy Services in Home Health.

Procedures for Auditing Continued Competency Requirements.

Requirement for License for Instructors in Physical Therapy Program; Guidance on Use of Professional Degree in Conjunction with Licensure Designation.

Supervision of Unlicensed Support Personnel in any Setting.

Public Comment Deadline: December 21, 2022.

Effective Date: December 22, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Title of Document: Division of Child Support Enforcement Program Manual.

Public Comment Deadline: December 21, 2022.

Effective Date: December 22, 2022.

Agency Contact: Karin Clark, Regulatory Coordinator, Department of Social Services, 801 East Main Street, Room 1507, Richmond, VA 23219, telephone (804) 726-7017, or email karin.clark@dss.virginia.gov.

STATE WATER CONTROL BOARD

Title of Document: Chesapeake Bay Preservation Act Locality Website Publication Guidance.

Public Comment Deadline: December 21, 2022.

Effective Date: December 22, 2022.

Agency Contact: Stephanie Bellotti, Guidance and Regulation Coordinator, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (571) 866-6513, or email stephanie.bellotti@deq.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for The Apple House LLC

An enforcement action has been proposed for The Apple House LLC for violations at The Apple House waste water treatment plant in Warren County. The Virginia Department of Environmental Quality (DEQ) proposes to issue a consent order with penalty and injunctive relief to The Apple House LLC to address noncompliance with State Water Control Law. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov from November 21, 2022, to December 21, 2022.

Contact Information: Eric Millard, Enforcement Specialist Senior, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, or email eric.millard@deq.virginia.gov.

Prince Edward Solar Farm Notice of Intent for Small Renewable Energy Project (Solar) - Prince Edward County

CEP Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary document for a permit by rule for a small renewable energy project (solar) in Prince Edward County. Prince Edward Solar Farm will be located on privately owned land approximately six miles south of Farmville, east of Farmville Road and Route 15 and bisected by Rice Creek Road and Route 647. Centroid latitude and longitude coordinates are 37.184107, -78.395486. The project will have a maximum generating capacity of 25 megawatts alternating current across approximately 305 acres. The project includes the utilization of approximately 84,375 single-axis trackers that will be a maximum height of 15 inches.

Contact Information: Susan Tripp, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 664-3470, or email susan.tripp@deq.virginia.gov.

Virginia Department of Environmental Quality Notice of Release of the Final 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report

The Virginia Department of Environmental Quality (DEQ) released the Final 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report on October 26, 2022.

The Integrated Report combines both the § 305(b) Water Quality Assessment and the § 303(d) Report on Impaired Waters. The draft report was available for public comment July 4, 2022, through August 5, 2022. Comments were received from the public and several water quality organizations across the state. The Environmental Protection Agency approved the final report on October 21, 2022.

The final report, public comment response document, and map images are available at https://www.deq.virginia.gov/water/water-quality/assessments/integrated-report. Questions regarding the report can be directed to the agency contact listed.

Contact Information: Sandra Mueller, Office of Water Monitoring and Assessment, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1388, or email sandra.mueller@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Chapter V of all Provider Manuals

The text in Chapter V that appears in all provider manuals has been updated. This text will be added to the beginning of Chapter V for each manual. The text is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until November 25, 2022.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Chapter VI of all Provider Manuals

The text in Chapter VI that appears in all provider manuals has been updated. This text will be added to the beginning of Chapter VI for each manual. The text is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until November 27, 2022.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Durable Medical Equipment Provider Manual Chapter II

The draft Durable Medical Equipment Provider Manual Chapter II is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until December 2, 2022.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical

Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Nursing Facility Provider Manual Chapter II

The draft Nursing Facility Provider Manual Chapter II is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until December 2, 2022.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Residential Treatment Services Provider Manual Chapter II

The draft Residential Treatment Services Provider Manual Chapter II is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until December 2, 2022.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations:* Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.