VIRGINIA REGISTER OF REGULATIONS

VOL. 39 ISS. 15 PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION March 13, 2023

TABLE OF CONTENTS

Register Information Page 2043

Publication Schedule and Deadlines 2044

Periodic Reviews and Small Business Impact Reviews 2045

Notices of Intended Regulatory Action 2047

Regulations 2048

1VAC20-20. General Administration (Final) 2048
3VAC5-30. Tied-House (Fast-Track) 2048
4VAC20-510. Pertaining to Amberjack and Cobia (Final) 2052
4VAC20-720. Pertaining to Restrictions on Oyster Harvest (Final) 2053
4VAC20-1090. Pertaining to Licensing Requirements and License Fees (Final) 2054
4VAC20-1270. Pertaining to Atlantic Menhaden (Final) 2057
6VAC40-50. Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material (Proposed) 2059
8VAC50-11. Motor Vehicle Parking and Traffic Regulation (Final) 2064
12VAC5-217. Regulations of the Patient Level Data System (Notice of Extension of Emergency) 2065
12VAC5-219. Prescription Drug Price Transparency Regulation (Notice of Extension of Emergency) 2065
18VAC110-20. Regulations Governing the Practice of Pharmacy (Final) 2066
18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (Emergency) 2068
22VAC40-221. Additional Daily Supervision Rate Structure (Action Withdrawn) 2069

Guidance Documents 2071

General Notices 2072

Errata 2075

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for $263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Easton, MD and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

THE VIRGINIA REGISTER 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; James A. Leftwich, Jr., Vice-Chair; Ward L. Armstrong; Nicole Cheuk; Richard E. Gardiner; Jennifer L. McClellan; Christopher R. Nolen; Steven Popps; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade; Wren M. Williams.**

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

PUBLICATION SCHEDULE AND DEADLINES

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

March 2023 through April 2024

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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	December 4, 2023
40:9	November 29, 2023	December 18, 2023
40:10	December 13, 2023	January 1, 2024
40:11	December 27, 2023	January 15, 2024
40:12	January 10, 2024	January 29, 2024
40:13	January 24, 2024	February 12, 2024
40:14	February 7, 2024	February 26, 2024
40:15	February 21, 2024	March 11, 2024
40:16	March 6, 2024	March 25, 2024
40:17	March 20, 2024	April 8, 2024

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Waste Management Board conducted a periodic review and a small business impact review of **9VAC20-90, Solid Waste Management Permit Action Fees and Annual Fees**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated January 11, 2023, to support this decision.

The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected by it. It is written to permit only one reasonable interpretation, to adequately identify the affected entity, and, insofar as possible, in nontechnical language. This regulation satisfies the provisions of state law and is effective in meeting its goals; therefore, the regulation is being retained without amendment. The regulation continues to be needed. This regulation is consistent with the requirements of state law and partially funds the oversight of permitted solid waste management facilities. There is no corresponding federal regulation concerning the assessment of a solid waste permit application or the assessment of solid waste permit oversight fees.

No public comments were received during the periodic review comment period.

The regulation details the fees for permit actions as well as annual permit fees. The regulation may be viewed as complex by some readers since it details the adjustment by the consumer price index (inflation); however, the agency calculates the adjusted fees and amount due from the permit holder as part of the annual billing process. This regulation was last amended in 2019. Businesses that undertake activities requiring a solid waste management permit are subject to this regulation. Some fees are based on the amount of time to issue a permit action. Other fees are based on the amount of waste material managed. Small businesses generally manage less waste than businesses that are not small businesses and therefore would be subject to smaller annual fees than larger businesses.

The regulation's level of complexity is appropriate to ensure that the regulated entities are aware of the fees associated with the type of permit and operation of a solid waste facility. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of the regulation on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Sanjay Thirunagari, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1532.

STATE WATER CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-600, Designated Groundwater Management Areas**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated December 29, 2022, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare. The two existing groundwater management areas (GWMAs) continue to demonstrate conditions consistent with the designation criteria and require ongoing management through the permit program. By statute, the purpose of the regulation is to identify areas where "continued unrestricted usage of groundwater" will "contribute to pollution and shortage of groundwater, thereby jeopardizing public welfare, safety, and health." Unsustainably low water levels and saltwater intrusion within the two existing designated GWMAs continue to threaten the public welfare, safety, and health. The regulation identifies, by affected county, city, and town, the geographic boundaries of each GWMA. The regulation also describes the aquifers subject to the GWMA. The regulation is not complex and is clearly written and understandable. There are no overlapping, duplicative, or conflicting state or federal laws or regulations addressing groundwater shortages or pollution caused by groundwater withdrawals.

The department is retaining the regulation without change. The regulation continues to be beneficial to the Commonwealth. Groundwater is a primary source of drinking water for thousands of Virginians with individual homeowner wells, hundreds of municipal public water supplies, and hundreds of economic interests. All these entities require a reasonable expectation that the water supply will be available and of high quality into the future to thrive. The geographic description of the GWMAs identified in this regulation is required by statute and is the minimum necessary to identify these areas.

The regulation continues to be needed. The department did not receive any public comments during the periodic review. This regulation was last amended in 2014. The last periodic review occurred in 2018. The regulation establishes groundwater management areas and does not directly impact small businesses.

Contact Information: Scott Kudlas, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4456.

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: **12VAC5-507, Nursing Scholarships and Loan Repayment Program Requiring Service in a Long-Term Care Facility**. The review of this regulation 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 March 13, 2023, and ends April 3, 2023.

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: Sandra Serna, Director, Office of Health Equity, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7190.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Medical Assistance Services (DMAS) conducted a periodic review and a small business impact review of **12VAC30-141, Family Access to Medical Insurance Security Plan**, and determined that this regulation should be amended. The department is publishing its report of findings dated February 10, 2023, to support this decision.

The proposed regulatory amendments clarify that appeals of adverse benefit determinations by a managed care organization (MCO) may be made in accordance with 12VAC30-120-420, and appeals of adverse actions or an MCO's internal appeal decision of an adverse benefit determination may be made in accordance with 12VAC30-110-10 through 12VAC30-110-370. The proposed amendments repeal several sections as unnecessary and duplicative. The changes remove obsolete or outdated language referencing copayments and prior authorization. The amendments also repeal 12VAC30-141-670 as duplicative, merging chapter definitions into a single section at 12VAC30-141-10.

These regulatory changes are intended to reduce the overall regulatory burden on the public in accordance with Executive Order 19 (2022). The regulation is necessary for the protection of public health, safety, and welfare of Medicaid members. The regulation is clearly written and easily understandable. The regulation is not anticipated to have an adverse impact on small businesses.

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.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services conducted a periodic review and a small business impact review of **12VAC35-180, Regulations to Ensure the Protection of Subjects in Human Research**, and determined that this regulation should be amended. The department is publishing its report of findings dated December 12, 2022, to support this decision.

As long as the Commonwealth allows human research, there is a continued need for the regulation. The regulation provides a straightforward framework for the conduct of research by any institution or agency as defined in the regulation. The regulation incorporates but does not fully overlap, duplicate, or conflict with federal or state laws or regulations.

The regulation is reasonable and consistent with the statutory requirements, but some minor revisions are necessary to better align the regulation with federal requirements. The last periodic review of the regulation was in 2018. Since that time, federal regulation was updated, which requires this regulation to be updated. Therefore, the department plans to amend the regulation accordingly.

This regulation needs to remain in place to ensure the health, safety, and welfare of the individuals involved in human research. The only public comment received during the public comment period was not relevant to the regulation. The structure set out in the regulation is in accordance with other applicable federal and state laws and regulations. Since the previous periodic review, technology, economic conditions, or other factors have had no impact on Virginia's need for the regulation.

Contact Information: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending **18VAC110-21, Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians**. The purpose of the proposed action is to ensure that a pharmacist who initiates treatment for patients follows protocols that would render such treatment to be a low risk for patient harm. The rules establishing treatment protocols, appropriate notification of primary care providers, obtaining patient histories, and providing appropriate counseling of patients are necessary to ensure the health and safety of patients who receive treatment from pharmacists. Chapters 790 and 791 of the 2022 Acts of Assembly require the board to promulgate emergency regulations to provide health care services at a wider variety of locations for the general public, including pharmacies.

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

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

Public Comment Deadline: April 12, 2023.

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

VA.R. Doc. No. R23-7339; Filed February 21, 2023, 3:56 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-20. General Administration (adding 1VAC20-20-90).**

Statutory Authority: §§ 24.2-103 and 24.2-410.2 of the Code of Virginia.

Effective Date: March 2, 2023.

Agency Contact: Ashley Coles, Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, 1st Floor, Richmond, VA 23219, telephone (804) 864-8933, or email ashley.coles@elections.virginia.gov.

Summary:

Pursuant to § 24.2-410.2 of the Code of Virginia and upon recommendation of the Voter Registration System Security Advisory Group, the amendment adds a new section to General Administration (1VAC20-20) (i) restricting access to the Virginia Voter Registration System (VERIS) to individuals who enroll in a Department of Elections security awareness training program and (ii) requiring all VERIS users to participate in the security awareness training program within the timeframe developed by the department.

1VAC20-20-90. Required training for Virginia Voter Registration System users.

Access to the Virginia Voter Registration System shall be restricted to individuals enrolled in a security awareness training program approved or provided by the Virginia Department of Elections. Individuals who do not complete assigned training within the required timeframe may have their credentials revoked or limited as needed to ensure the security of the Virginia Voter Registration System.

VA.R. Doc. No. R23-7448; Filed February 23, 2023, 9:21 a.m.

TITLE 3. ALCOHOLIC BEVERAGE AND CANNABIS CONTROL

VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Fast-Track Regulation

Title of Regulation: **3VAC5-30. Tied-House (amending 3VAC5-30-30).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 12, 2023.

Effective Date: April 27, 2023.

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

Basis: Section 4.1-103 of the Code of Virginia enumerates the powers of the Virginia Alcoholic Beverage Control Authority Board, which includes the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of the Alcoholic Beverage Control Act (§ 4.1-100 et seq. of the Code of Virginia). Section 4.1-111 of the Code of Virginia provides the board with the authority to adopt regulations that it deems reasonable to carry out the provisions of the act and to amend or repeal such regulations. Section 4.1-240 of the Code of Virginia authorizes the board to accept payment by any commercially acceptable means, including checks, credit cards, debit cards, and electronic funds transfers, for the taxes, penalties, or other fees imposed on a licensee in accordance with this subtitle.

Purpose: This change is necessary to maintain consistency between regulation and practice. It is essential to protecting the health, safety, and welfare of citizens because those interests are protected through consistent application of regulations. The goal of the amendment is to achieve consistency between current practice and the provisions of the regulation. Inconsistencies between regulations and actual practices have the potential to create confusion in the regulated community and this change is intended to prevent any confusion and inform licensees of all of their options when it comes to making payment to the authority.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial because § 4.1-

240 of the Code of Virginia permits the board to accept payment by any commercially acceptable means for the taxes, penalties, or other fees imposed on a licensee. Additionally, this revision ensures the regulation aligns with the practice that has already been implemented. The revisions to the regulation do not take away any privilege currently enjoyed by licensees while giving them more flexibility in how they may make payment.

Substance: The substantive amendment adds language stating that payments to the authority may be made through the online licensing system.

Issues: The primary advantage to the public and the Commonwealth is that the regulation will be consistent with current authority practice. There are no disadvantages.

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 19. The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The Virginia Alcoholic Beverage Control Board of Directors proposes to update the regulatory text to reflect the current practice of accepting credit and debit card payments for taxes, fees, penalties, charges, and costs.

Background. The Virginia Alcoholic Beverage Control Authority (Authority) had been accepting payments for taxes, fees, penalties, charges, and costs only in cash and cash equivalents (i.e., money order, check, wire transfer) until January 1, 2022. On that day, the Authority started accepting payments for taxes, fees, penalties, charges, and costs through the Authority's online licensing system, which only accepts credit and debit cards. Therefore, the licensees and permittees have had an additional option to make such payments to the Authority by credit or debit cards in addition to cash and cash equivalents since January 1, 2022. The proposed amendment reflects in the text of the regulation the Authority's current ability to accept such payments through the Authority's online licensing system.

Estimated Benefits and Costs. Presented with an option to pay taxes, fees, penalties, charges, and costs by credit or debit cards, some licensees would start making payments by those means rather than cash or cash equivalents. Any use of cards would substitute the payments that would have been otherwise made in cash or cash equivalents. The Authority does not charge any fees or surcharges for use of cards for payments. Thus, there is no additional cost to the licensees and permittees who use this additional option. However, the use of services offered by card companies is not free. Generally, there are merchant fees also known as interchange fees per transaction plus a commission as a percentage of the payment amount.

The Authority utilizes the Virginia Department of the Treasury's statewide contract for these types of card transactions. The Treasury's contract includes hundreds of fee cells depending on the card user's credit rating, the type of the card (e.g., Visa, Mastercard, American Express, Discover, etc.), the company issuing the card (e.g., banks), and various other factors. Although fees are highly variable within small margins, the Treasury reports contract fees being 1.5 cents per transaction and a commission rate of between 1.6% to 3.5% of the payment amount, approximately 2.0% being the statewide average. The contract is with a single entity, but the contractor can serve cards issued by different companies. In other words, the Authority periodically receives an aggregate invoice for all transactions from a single entity for interchange fees rather than receiving invoices from every single card issuer.

The Authority's review of fiscal year 2022 financial records shows that collections were $69.4 million for malt beverage and wine liter tax, $17.1 million for license and permit fees, $4.5 million for wine wholesaler tax, and $253 thousand for penalties, all totaling $91.3 million involving 1,974 transactions and $46,275 payment on average per transaction. Additionally, the Authority's interchange costs are estimated to be 1.61% of the total payments overall.[2] Further, the Authority reports that one year after it has started accepting card payments, the percentage of card payments are nearing 25% of the $91.3 million total but will likely continue to increase. Based on these factors, the interchange costs could be estimated to be as follows: $365,700 if 25% of the total payments are paid by card, $733,439 if card usage reaches 50%, and $1,100,159 if the card usage reaches 75%.

On the other hand, expanded use of credit and debit cards would likely reduce the Authority's administrative costs associated with processing cash and cash equivalents. Checks can be mailed to nine locations, where there are a total of 21 cashiering staff, and each cashier processes payments for, on average, approximately six hours per day, 365 days a year. At a $15.32 hourly rate, the annual cost of processing cash and cash equivalents equates to $704,567.[3] As additional payments are made by cards, a decreasing amount of staff time would be required to process cash and cash equivalents, which would offset some of the interchange costs inherent in card transactions.

If the administrative cost savings are assumed to be linearly related to the percent of transactions that use cards, the 25% card usage combined with the 25% administrative savings would produce $189,558 (i.e., $365,700 minus 0.25*$704,567) as the net marginal cost per year; at 50% card usage, the net marginal cost would be $381,156 ($733,439 minus 0.50*$704,567); and at 75% usage, the net annual marginal cost would be $571,733 ($1,100,159 minus 0.75*$704,567). In reality, however, interchange costs and administrative cost savings would not likely be linearly related because interchange costs are largely driven by the percent fee of the payment amount rather than the number of transactions; likewise, the administrative costs are largely driven by the

number of transactions rather than the payment amount. For example, a large transaction such as a $1 million payment would create $16,100 in interchange fees but may translate to only a few hours of staff time in savings. However, this asymmetrically adverse effect of large card transactions on net marginal cost would be limited as most large transactions would likely be continued to be made by checks or wire transfers rather than cards. Although there may be significant uncertainty regarding the exact amount of net marginal cost, any net increase in payment processing costs would reduce the Authority's operating profits and consequently reduce the revenues of the Commonwealth by the same amount.

The Authority envisions that the staff time that would no longer be needed for check processing would likely be redirected to other responsibilities within the agency. To illustrate: at 25% card usage, 11,498 hours of cashiering staff time per year would be redirected to other duties; at 50% card usage, 22,995 hours of cashiering staff time per year would be available for other purposes; and at 75% card use, the number of hours of staff time savings would be 34,495.

The Authority maintains that the main intent for accepting card payments is to improve licensee and permittee customer service, although it would result in a net increase in operating costs. As mentioned, when a licensee or permittee makes a card payment for the stated amount of fees, taxes, or costs, the payment is considered to be made in full even though the net revenues from that transaction are less than the full amount because of the interchange costs involved. In essence, there is no additional cost to the payor. However, the licensee or permittee of the Authority would reap all the benefits of the card option. These benefits may include the avoidance of time that would be required to deliver cash to one of the nine locations; avoidance of time that would be spent on writing a check, mailing, or delivering it to a processing center, and the time it would take for the check to clear; and the ability to pay with credit if short on cash. All of these conveniences associated with card payments are available to the licensees and permittees at no cost. Moreover, the Treasury's statewide card contractor would likely see additional revenues as calculated above as the card payments replace the payments by cash or cash equivalents.

Finally, the proposed language would provide consistency between the current practices and the text of the regulation. Inconsistencies between regulation and actual practice have the potential to create confusion in the regulated community and this change would likely help prevent any confusion and inform licensees of all their options when it comes to making a payment to the Authority.

Businesses and Other Entities Affected. The proposed amendments allow a licensee to pay fees, taxes, or costs to the Authority by a credit or debit card. Currently, there are 21,252 licensees and 1,974 transactions per year involved in such payments. None of the licensees appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[4] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the Authority itself and consequently the Commonwealth would suffer some revenue losses as result of interchange fees that would have to paid to the statewide card processing contractor under the Treasury's contract. Thus, an adverse impact is indicated.

Small Businesses[5] Affected.[6] The Authority does not track which of the affected licensees would qualify as a small business. However, the proposed amendments do not appear to adversely affect any businesses including small businesses.

Localities[7] Affected.[8] The proposed amendments do not disproportionally affect any particular localities and do not introduce direct costs for local governments.

Projected Impact on Employment. The proposed amendments appear to increase the utilization of the services of the statewide card contractor and its demand for labor. However, whether if that contractor has any employees in Virginia is not known. The amendments also appear to free up some time of the licensees and permittees or the workers who may be handling payments on their behalf. The amendments further appear to reduce the Commonwealth's revenue collections which may or may not lead to a reduction in the state's demand for workers.

Effects on the Use and Value of Private Property. The newly added card payment option would primarily benefit the statewide card processing contractor in terms of additional revenues, which should add to the asset value of its business. 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]The Authority does not have a breakdown of the 1.61% overall estimate between credit card and debit card payments or between per transaction and percentage-based interchange fees.

[3]$704,567 =$15.32 per hour x 6 hours per day x 21 employees x 365 days. Source: the Authority.

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

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

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

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

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

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

Summary:

The amendment adds payment for taxes, fees, penalties, charges, and costs through the Virginia Alcoholic Beverage Control Authority's online licensing system as an option for licensees.

3VAC5-30-30. ~~Certain~~ Payment and recordkeeping requirements for certain transactions ~~to be for cash; "cash" defined; checks and money orders; electronic fund transfers; records and reports by sellers; payments to the board~~.

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

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

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

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

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

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

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

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

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

E. Wholesalers shall maintain on their licensed premises records of all invalid checks received from retail licensees for the payment of wine or beer, as well as any stop payment order, insufficient fund report, or any other incomplete electronic fund transfer reported by the retailer's bank in response to a wholesaler initiated electronic fund transfer from the retailer's bank account. Further, wholesalers shall report to the ~~board~~ authority any invalid checks or incomplete electronic fund transfer reports received in payment of wine or beer when either (i) any such invalid check or incomplete electronic fund transfer is not satisfied by the retailer within seven days after notice of the invalid check or a report of the incomplete electronic fund transfer is received by the wholesaler, or (ii)

the wholesaler has received, whether satisfied or not, either more than one such invalid check from any single retail licensee or received more than one incomplete electronic fund transfer report from the bank of any single retail licensee, or any combination of the two, within a period of 180 days. Such reports shall be upon a form provided by the ~~board~~ authority and in accordance with the instructions set forth in such form.

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

1. State license taxes and application fees;

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

3. Solicitors' permit fees and temporary permit fees;

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

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

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

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

VA.R. Doc. No. R23-7463; Filed February 15, 2023, 8:26 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-12; repealing 4VAC20-510-15).**

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

Effective Date: March 3, 2023.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email jennifer.farmer@mrc.virginia.gov.

Summary:

Pursuant to data presented to the Marine Resources Commission regarding best methods of assessing Cobia stock, the amendments terminate the Recreational Cobia Mandatory Reporting Program (RCMRP) and associated species permit; the data reported via RCMRP lacks a fishery-independent survey, thus is insufficient for figuring a coastwide abundance index.

4VAC20-510-12. Definitions.

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

"Amberjack" means any fish of the species Seriola dumerili.

"Cobia" means any fish of the species Rachycentron canadum.

"Mandatory Harvest Reporting Program Web Application" means the online web-based resource provided by the commission to report commercial harvest of seafood at https://webapps.mrc.virginia.gov/harvest/.

"Recreational vessel" means any vessel, kayak, charter vessel, or headboat fishing recreationally.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

~~"Virginia Saltwater Fisherman's Journal" means the online web-based resource provided by the commission to report recreational harvest of seafood at https://www.vasaltwaterjournal.com.~~

4VAC20-510-15. ~~Recreational cobia permit and mandatory reporting.~~ (Repealed.)

~~A. It shall be unlawful for any person to possess or land any cobia harvested from a recreational vessel unless the captain or operator of that recreational vessel has obtained a Recreational Cobia Permit from the Marine Resources Commission (commission). The captain or operator shall be responsible for reporting for all anglers on the recreational vessel. Any captain or operator who did not take fishing trips to target cobia during the current recreational cobia season is still required to report lack of participation.~~

~~B. It shall be unlawful for any person to possess or land any cobia harvested recreationally from shore, a pier, or any other man-made structure without first having obtained a Recreational Cobia Permit from the Marine Resources Commission. Permittees shall be responsible for reporting all trips. Any permittee who did not take fishing trips to target cobia during the current recreational cobia season is still required to report lack of participation.~~

~~C. It shall be unlawful for any recreational cobia permittee to fail to report on forms provided by the commission or through~~

~~the Virginia Saltwater Fisherman's Journal. Reports shall include MRC ID number, the date of harvest, the mode of fishing, the number of cobia kept or released, and, if fishing from a vessel, the number of persons on board.~~

~~1. Any permittee who did not take any fishing trips to target cobia during the recreational cobia season shall report the permittee's lack of participation by midnight on October 6 of that calendar year.~~

~~2. Any permittee shall report trips where cobia were targeted but not successfully caught by midnight on October 6 of that calendar year.~~

~~3. Any permittee shall report trips where cobia were caught, whether harvested, released, or possessed by midnight on October 6 of that calendar year.~~

~~D. Following October 6 of the current calendar year, any permittee who failed to report for any season shall be ineligible to receive a recreational cobia permit for the following calendar year but shall be eligible to reapply for that permit in subsequent years.~~

VA.R. Doc. No. R23-7442; Filed February 28, 2023, 2:02 p.m.

Final Regulation

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

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-40).**

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

Effective Date: March 1, 2023.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments extend the public harvest season for clean cull oysters harvested from the public oyster grounds and unassigned grounds.

4VAC20-720-40. Open oyster harvest season and areas.

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds outside of the seasons and areas set forth in this section.

B. It shall be unlawful to harvest clean cull oysters from the public oyster grounds and unassigned grounds except during the lawful seasons and from the lawful areas as described in this subsection.

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2022, through April 30, 2023 (hand tong only).

2. Milford Haven: November 1, 2022, through ~~March 31~~ April 14, 2023 (hand tong only).

3. Rappahannock River Area 9: October 1, 2022, through ~~March 31~~ April 14, 2023 (hand tong only).

4. Corrotoman Hand Tong Area: October 1, 2022, through ~~March 31~~ April 14, 2023.

5. Little Wicomico River: October 1, 2022, through December 31, 2022 (hand tong only).

6. Nomini Creek Area: October 1, 2022, through January 31, 2023 (hand tong only).

7. Yeocomico River Area: October 1, 2022, through December 31, 2022 (hand tong only).

8. Coan River Area: October 1, 2022, through December 31, 2022 (hand tong only).

9. Indian Creek Area: March 1, 2023, through ~~March 31~~ April 14, 2023 (hand tong only).

10. York River Hand Tong Area: October 1, 2022, through ~~March 31~~ April 14, 2023 (hand tong only).

11. York River Rotation Area 1: November 1, 2022, through ~~March 31~~ April 14, 2023 (hand tong only).

12. Pocomoke Sound Area Public Ground 10: November 1, 2022, through November 15, 2022 (hand tong only).

13. Pocomoke Sound Area Public Ground 9: November 1, 2022, through January 31, 2023 (hand tong only).

14. Rappahannock River Rotation Area 2: December 1, 2022, through January 31, 2023 (hand scrape only).

15. Rappahannock River Rotation Area 4: October 17, 2022, through November 30, 2022, and February 1, 2023, through February 28, 2023 (hand scrape only).

16. Rappahannock River Area 7: December 1, 2022, through December 31, 2022 (hand scrape only).

17. Rappahannock River Area 8: January 1, 2023, through January 31, 2023 (hand scrape only).

18. Great Wicomico River Rotation Area 2: December 1, 2022, through ~~January 31~~ March 14, 2023 (hand scrape only).

19. James River Areas 1, 2, and 3: October 17, 2022, through February 14, 2023 (hand scrape only).

20. Upper Chesapeake Bay - Blackberry Hangs Area: February 1, 2023, through ~~February 28~~ March 14, 2023 (hand scrape only).

21. York River Area 2: January 1, 2023, through ~~February 28~~ March 14, 2023 (hand scrape only).

22. Pocomoke Sound Area Public Ground 9: February 1, 2023, through February 28, 2023 (hand scrape only).

23. Pocomoke Sound Area Public Ground 10: November 15, 2022 through November 30, 2022 and February 1, 2023 through February 28, 2023 (hand scrape only).

24. ~~Pocomoke and~~ Tangier ~~Sounds~~ Sound Rotation Area 2: December 1, 2022, through ~~February 28~~ March 14, 2023 (dredge only).

25. Deep Rock Area: November 1, 2022, through March ~~15~~ 29, 2023 (patent tong only).

26. Rappahannock River Rotation Area 1: October 17, 2022, through ~~February 28~~ March 14, 2023 (patent tong only).

27. Seaside of the Eastern Shore (for clean cull oysters only): November 1, 2022, through ~~March 31~~ April 14, 2023 (by hand and hand tong only).

C. It shall be unlawful to harvest seed oysters from the public oyster grounds or unassigned grounds, except during the lawful seasons. The harvest of seed oysters from the lawful areas is described in this subsection.

1. James River Seed Area: October 1, 2022, through May 31, 2023 (hand tong only).

2. Deep Water Shoal State Replenishment Seed Area: October 1, 2022, through May 31, 2023 (hand tong only).

VA.R. Doc. No. R23-7474; Filed February 28, 2023, 2:08 p.m.

Final Regulation

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

Title of Regulation: **4VAC20-1090. Pertaining to Licensing Requirements and License Fees (amending 4VAC20-1090-30).**

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

Effective Date: March 3, 2023.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email jennifer.farmer@mrc.virginia.gov.

Summary:

Pursuant to Chapter 193 of the 2022 Acts of Assembly, the amendments provide an option to purchase an individual Virginia-resident saltwater recreational fishing license for two, three, or four years.

4VAC20-1090-30. License fees.

The following listing of license fees applies to any person who purchases a license for the purpose of harvesting for commercial purposes or fishing for recreational purposes during any calendar year. The fees listed below include a $1.00 agent fee.

1. COMMERCIAL LICENSES	
Commercial Fisherman Registration License	$190.00
Commercial Fisherman Registration License for a person 70 years or older	$90.00
Delayed Entry Registration	$190.00
Delayed Entry Registration License for a person 70 years or older	$90.00
Seafood Landing License for each boat or vessel	$175.00
For each Commercial Fishing Pier over or upon subaqueous beds (mandatory)	$83.00
Seafood Buyer's License -- For each boat or motor vehicle	$63.00
Seafood Buyer's License -- For each place of business	$126.00
Clam Aquaculture Product Owner's Permit	$10.00
Oyster Aquaculture Product Owner's Permit	$10.00
Clam Aquaculture Harvester's Permit	$5.00
Oyster Aquaculture Harvester's Permit	$5.00
Nonresident Harvester's License	$444.00
2. OYSTER RESOURCE USER FEES	
Any licensed commercial fisherman harvesting oysters by hand	$50.00
For any harvester using one or more gear types to harvest oysters or for any registered commercial fisherman who solely harvests or possesses any bushel limit described in 4VAC20-720-80, only one oyster resource user fee, per year, shall be paid	$300.00
On any business shucking or packing no more than 1,000 gallons of oysters	$500.00
On any business shucking or packing more than 1,000 but no more than 10,000 gallons of oysters	$1,000.00
On any business shucking or packing more than 10,000 but no more than 25,000 gallons of oysters	$2,000.00

On any business shucking or packing more than 25,000 gallons of oysters	$4,000.00
On any oyster buyer using a single truck or location	$100.00
On any oyster buyer using multiple trucks or locations	$300.00
Commercial aquaculture operation, on riparian assignment or general oyster planting grounds	$50.00
3. OYSTER HARVESTING, SHUCKING, RELAY, AND BUYERS LICENSES	
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with one boat or motor vehicle used for buying oysters	$50.00
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with multiple boats or motor vehicles used for buying oysters	$100.00
For each person taking oysters by hand, or with ordinary tongs	$10.00
For each single-rigged patent tong boat taking oysters	$35.00
For each double-rigged patent tong boat taking oysters	$70.00
Oyster Dredge Public Ground	$50.00
Oyster Hand Scrape	$50.00
To shuck and pack oysters, for any number of gallons under 1,000	$12.00
To shuck and pack oysters, for 1,000 gallons, up to 10,000	$33.00
To shuck and pack oysters, for 10,000 gallons, up to 25,000	$74.00
To shuck and pack oysters, for 25,000 gallons, up to 50,000	$124.00
To shuck and pack oysters, for 50,000 gallons, up to 100,000	$207.00
To shuck and pack oysters, for 100,000 gallons, up to 200,000	$290.00
To shuck and pack oysters, for 200,000 gallons or over	$456.00
One-day permit to relay condemned shellfish from a general oyster planting ground	$150.00
4. BLUE CRAB HARVESTING AND SHEDDING LICENSES, EXCLUSIVE OF CRAB POT LICENSES	
For each person taking or catching crabs by dip nets	$13.00
For ordinary trotlines	$13.00
For patent trotlines	$51.00
For each single-rigged crab-scrape boat	$26.00
For each double-rigged crab-scrape boat	$53.00
For up to 210 peeler pots	$36.00
For up to 20 tanks and floats for shedding crabs	$9.00
For more than 20 tanks or floats for shedding crabs	$19.00
For each crab trap or crab pound	$8.00
5. CRAB POT LICENSES	
For up to 85 crab pots	$48.00
For over 85 but not more than 127 crab pots	$79.00
For over 127 but not more than 170 crab pots	$79.00
For over 170 but not more than 255 crab pots	$79.00
For over 255 but not more than 425 crab pots	$127.00
6. HORSESHOE CRAB, LOBSTER, AND SHRIMP LICENSES	
For each person harvesting horseshoe crabs by hand	$16.00
For each boat engaged in fishing for or landing of lobster using less than 200 pots	$41.00
For each boat engaged in fishing for or landing of lobster using 200 pots or more	$166.00
For each person commercial shrimp trawling	$100.00
7. CLAM HARVESTING LICENSES	
For each person taking or harvesting clams by hand, rake, or with ordinary tongs	$24.00
For each single-rigged patent tong boat taking clams	$58.00
For each double-rigged patent tong boat taking clams	$84.00
For each boat using clam dredge (hand)	$19.00

For each boat using clam dredge (power)	$44.00
For each boat using hydraulic dredge to catch soft shell clams	$83.00
For each person taking surf clams	$124.00
Water Rake Permit	$24.00
8. CONCH (WHELK) HARVESTING LICENSES	
For each boat using a conch dredge	$58.00
For each person taking channeled whelk by conch pot	$51.00
9. FINFISH HARVESTING LICENSES	
Each pound net	$41.00
Each stake gill net of 1,200 feet in length or under, with a fixed location	$24.00
All other gill nets up to 600 feet	$16.00
All other gill nets over 600 feet and up to 1,200 feet	$24.00
Each person using a cast net or throw net or similar device	$13.00
Each fyke net head, weir, or similar device	$13.00
For fish trotlines	$19.00
Each person using or operating a fish dip net	$9.00
On each haul seine used for catching fish, under 500 yards in length	$48.00
On each haul seine used for catching fish, from 500 yards in length to 1,000 yards in length	$146.00
For each person using commercial hook and line	$31.00
For each person using commercial hook and line for catching striped bass only	$31.00
For up to 100 fish pots	$19.00
For over 100 but not more than 300 fish pots	$24.00
For over 300 fish pots	$62.00
For up to 100 eel pots	$19.00
For over 100 but not more than 300 eel pots	$24.00
For over 300 eel pots	$62.00
For each person electrofishing catfish	$100.00

10. MENHADEN HARVESTING LICENSES Any person purchasing more than one of the following licenses, as described in this subsection, for the same vessel, shall pay a fee equal to that for a single license for the same vessel.	
On each boat or vessel under 70 gross tons fishing for the purse seine menhaden reduction sector	$249.00
On each vessel 70 gross tons or over fishing for the purse seine menhaden reduction sector	$996.00
On each boat or vessel under 70 gross tons fishing for the purse seine menhaden bait sector	$249.00
On each vessel 70 gross tons or over fishing for the purse seine menhaden bait sector	$996.00
11. COMMERCIAL GEAR FOR RECREATIONAL USE	
Up to five crab pots with a terrapin excluder device	$36.00
Up to five crab pots without a terrapin excluder device	$46.00
Crab trotline (300 feet maximum)	$10.00
One crab trap or crab pound	$6.00
One gill net up to 300 feet in length	$9.00
Fish dip net	$7.00
Fish cast net	$10.00
Up to two eel pots	$10.00
12. SALTWATER RECREATIONAL FISHING LICENSE	
Individual, resident (one year)	$17.50
Individual, resident (two years)	$33.50
Individual, resident (three years)	$49.50
Individual, resident (four years)	$65.50
Individual, nonresident (one year)	$25.00
Temporary 10-Day, resident	$10.00
Temporary 10-Day, nonresident	$10.00
Recreational boat, resident	$48.00
Recreational boat, nonresident, provided a nonresident may not purchase a recreational boat license unless his boat is registered in Virginia	$76.00

Head Boat/Charter Boat, resident, six or less passengers	$190.00
Head Boat/Charter Boat, nonresident, six or less passengers	$380.00
Head Boat/Charter Boat, resident, more than six passengers, plus $5.00 per person, over six persons	$190.00
Head Boat/Charter Boat, nonresident, more than six passengers, plus $5.00 per person, over six persons	$380.00
Rental Boat, resident, per boat, with maximum fee of $703	$14.00
Rental Boat, nonresident, per boat, with maximum fee of $1270	$18.00
Commercial Fishing Pier (Optional)	$632.00
Disabled Resident Lifetime Saltwater License	$10.00
Disabled Nonresident Lifetime Saltwater License	$10.00
Reissuance of Saltwater Recreational Boat License	$5.00
13. COMBINED SPORTFISHING LICENSE This license is to fish in all inland waters and tidal waters of the Commonwealth during open season.	
Residents	$39.50
Nonresidents	$71.00
14. COMBINED SPORTFISHING TRIP LICENSE This license is to fish in all inland waters and tidal waters of the Commonwealth during open season for five consecutive days.	
Residents	$24.00
Nonresidents	$31.00
15. TIDAL BOAT SPORTFISHING LICENSE	
Residents	$126.00
Nonresidents	$201.00
16. LIFETIME SALTWATER RECREATIONAL FISHING LICENSES	
Individual Resident Lifetime License	$276.00
Individual Nonresident Lifetime License	$500.00
Individual Resident Lifetime License age 45 - 50	$132.00
Individual Nonresident Lifetime License age 45 - 50	$240.00
Individual Resident Lifetime License age 51 - 55	$99.00
Individual Nonresident Lifetime License 51 - 55	$180.00
Individual Resident Lifetime License age 56 - 60	$66.00
Individual Nonresident Lifetime License age 56 - 60	$120.00
Individual Resident Lifetime License age 61 - 64	$35.00
Individual Nonresident Lifetime License age 61 - 64	$60.00
Individual Resident Lifetime License age 65 and older	$5.00

VA.R. Doc. No. R23-7443; Filed February 28, 2023, 2:03 p.m.

Final Regulation

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

Title of Regulation: **4VAC20-1270. Pertaining to Atlantic Menhaden (amending 4VAC20-1270-30, 4VAC20-1270-50).**

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

Effective Date: March 3, 2023.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments establish the percentage Virginia receives of the coastwide total allowable catch per Addendum I to Amendment 3 of the Interstate Fishery Management Plan for Atlantic Menhaden.

4VAC20-1270-30. Total allowable landings for menhaden; allocation, accountability, overages, restrictions, closures, state-to-state transfers, and transfers between sectors.

A. Total allowable commercial landings for menhaden ~~in 2022~~ shall be equivalent to ~~334,781,533 pounds or 78.66%~~ 75.21% of the annual total allowable catch (TAC) set by the Atlantic States Marine Fisheries Commission (ASMFC) after 1.0% of the TAC is set aside by the ASMFC for episodic events.

B. Any portion of the 1.0% of the coastwide TAC set aside by the ASMFC for episodic events that is unused as of September 1 of any calendar year shall be returned to Virginia and other states according to allocation guidelines established by the ASMFC. Any such return of this portion of the coastwide TAC to Virginia shall increase the total allowable commercial landings for that year.

C. Total amount of allowable commercial landings in subsection A of this section shall be allocated as quotas among three sectors of the menhaden fishery in proportion to each sector's share of average landings from 2002 through 2011, as described in subdivisions 1, 2, and 3 of this subsection.

1. The purse seine menhaden reduction sector shall be allocated a quota of ~~301,437,292 pounds or~~ 90.04% of allowable commercial menhaden landings.

2. The purse seine menhaden bait sector shall be allocated a quota of ~~28,054,692 pounds or~~ 8.38% of allowable commercial menhaden landings.

3. The non-purse seine menhaden bait sector shall be allocated a quota of ~~5,289,548 pounds or~~ 1.58% of allowable commercial menhaden landings.

~~C.~~ D. If the total allowable commercial landings specified in subsection A of this section are exceeded in any calendar year, the total allowable commercial landings for the subsequent calendar year shall be reduced by the amount of the overage. Such overage shall be deducted from the sector of the menhaden fishery that exceeded the allocation specified in subsection ~~B~~ C of this section, with the exception of the non-purse seine menhaden bait sector, which shall move into the incidental catch provision outlined in subdivision F 3 of this section.

~~D. Any portion of the 1.0% of the coastwide total allowable catch set aside by the Atlantic States Marine Fisheries Commission for episodic events that is unused as of September 1 of any calendar year shall be returned to Virginia and other states according to allocation guidelines established by the Atlantic States Marine Fisheries Commission. Any such return of this portion of the coastwide total allowable catch to Virginia shall increase the total allowable commercial landings for that year.~~

E. It shall be unlawful for any person to take or catch menhaden using a purse seine net except in accordance with the seasons, areas, and gear restrictions as set forth in §§ 28.2-409 and 28.2-410 of the Code of Virginia.

F. It shall be unlawful to harvest or land in Virginia any menhaden after the Commissioner of the Marine Resources Commission (commissioner) projects and announces that 100% of the total allowable landings for any sector has been taken. The commissioner may reopen a fishery sector if, after all reports as described in 4VAC20-1270-60 have been received, the portion of the total allowable ~~catch~~ landings has not been harvested by that sector.

1. The commissioner shall announce the date of closure when the total allowable landings for the purse seine menhaden reduction sector is projected to be taken.

2. The commissioner shall announce the date of closure when the total allowable landings for the purse seine menhaden bait sector is projected to be taken.

3. The commissioner shall announce the date of closure when the total allowable commercial landings for the non-purse seine menhaden bait sector is projected to be taken. Once this closure is announced, any person licensed in the non-purse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per calendar day as bycatch. Any two persons licensed in the non-purse seine menhaden bait sector may possess and land up to 12,000 pounds of menhaden bycatch when working together from the same vessel using stationary multi-species gear per the ~~Atlantic States Marine Fisheries Commission~~ ASMFC incidental catch provision.

G. The commissioner may request a transfer of menhaden quota from any other state that is a member of the ~~Atlantic States Marine Fisheries Commission~~ ASMFC. If Virginia receives a transfer of menhaden quota in any calendar year from another state, the total allowable commercial landings for that calendar year shall increase by the amount of transferred quota. It shall be unlawful for this quota transfer to be applied to the Bay Cap quota as described in 4VAC20-1270-35. The commissioner may transfer menhaden quota to another state only if there is unused menhaden quota at the end of the calendar year.

H. The Marine Resources Commission shall establish a reciprocal temporary transferable quota system between the purse seine menhaden reduction sector and the purse seine menhaden bait sector. Any transfer of menhaden quota between these sectors shall be limited by the following conditions:

1. A transfer of quota to the purse seine menhaden bait sector from the purse seine reduction sector shall be allocated to each qualified licensee's percentage share of the purse seine menhaden bait sector quota.

2. No transfer of quota to the purse seine menhaden bait sector shall be authorized by the Marine Resources Commission unless all qualified individuals of the purse seine menhaden bait sector and the purse seine menhaden reduction sector agree to the transfer and document the transfer on a form provided by the Marine Resources Commission, notarized by a lawful notary public, and approved by the commissioner.

3. No transfer of quota to the purse seine reduction sector shall be authorized by the Marine Resources Commission

unless at least one qualified individual of the purse seine menhaden bait sector and the purse seine menhaden reduction sector agree to the transfer and document the transfer on a form provided by the Marine Resources Commission, notarized by a lawful notary public, and approved by the commissioner.

4. No transfer shall be authorized by the Marine Resources Commission unless the transferring qualified individuals of the purse seine menhaden bait sector and the purse seine menhaden reduction sector have submitted up-to-date records of all commercial landings of menhaden to the Marine Resources Commission prior to such transfer.

5. Quota transfers between the purse seine menhaden reduction sector and purse seine menhaden bait sector shall be effective only during the calendar year in which the transfer is approved.

4VAC20-1270-50. Non-purse seine menhaden bait sector quota allocation.

The non-purse seine menhaden bait sector's quota allocation shall be in proportion to share for each gear type of average landings from 2002 through 2011 and are as follows:

1. Cast net: 0.04% ~~or 2,116 pounds~~.

2. Dredge: 0.06% ~~or 3,174 pounds~~.

3. Fyke net: 0.04% ~~or 2,116 pounds~~.

4. Gill net: 30.31% ~~or 1,603,262 pounds~~.

5. Pound net: 67.98% ~~or 3,595,835 pounds~~.

6. Haul seine: 0.4% ~~or 21,158 pounds~~.

7. Trawl: 1.17% ~~or 61,888 pounds~~.

VA.R. Doc. No. R23-7475; Filed February 28, 2023, 2:10 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

Proposed Regulation

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

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

Public Hearing Information:

April 10, 2023 - 9:30 a.m. - Department of Forensic Science Central Laboratory, 700 North 5th Street, Richmond, Virginia 23219

Public Comment Deadline: May 12, 2023.

Agency Contact: Amy Jenkins, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or email amy.jenkins@dfs.virginia.gov.

Basis: Section 19.2-188.1 of the Code of Virginia provides that, for violations of § 4.1-1105.1 of the Code of Virginia, any law-enforcement officer shall be permitted to testify as to the results of any marijuana field test approved as accurate and reliable by the Department of Forensic Science, regarding whether or not any plant material is marijuana. Section 9.1-1110 of the Code of Virginia grants the Forensic Science Board the power and duty to adopt the regulation required pursuant to § 19.2-188.1 of the Code of the Virginia.

Purpose: In 2019, changes were made in federal and state law regarding marijuana and industrial hemp that impacted the use of marijuana field tests. Marijuana and industrial hemp are different strains of the Cannabis sativa plant. The only mechanism to distinguish hemp plant material from marijuana plant material is to conduct a quantitative analysis to determine the tetrahydrocannabinol (THC) concentration of the plant material. As a result, the department notified its customers and stakeholders on May 23, 2019, that the Duquenois-Levine field tests approved by the department under 6VAC40-50 could only presumptively identify Cannabis sativa plant material. These tests could not distinguish marijuana from industrial hemp. The department subsequently validated and purchased 4-AP (Cannabis Typification) Field Tests for use by law-enforcement agencies. The 4-AP test could not be approved because (i) it was not a Duquenois-Levine field test, and (ii) when used alone, it cannot presumptively identify Cannabis sativa plant material accurately and reliably as is required by the statute. Law-enforcement agencies were instructed to utilize the Duquenois-Levine and 4-AP tests in tandem. The Duquenois-Levine field test was used to determine whether plant material was cannabis, and the 4-AP test determined whether the plant material was more likely to be marijuana and, therefore, should be submitted to the laboratory for analysis. Simple possession of marijuana was then decriminalized by the 2020 General Assembly. In 2021, the General Assembly enacted legislation legalizing the simple possession of marijuana and creating a new statutory framework for offenses related to the possession of over a pound of marijuana and possession by persons younger than 21 years of age. As a result of these changes, and because the Duquenois-Levine field test cannot distinguish between marijuana and hemp, the regulation needs to be amended. While the department is still required under the new law to approve marijuana field tests for use at trial by law-enforcement officers for the prosecution of some marijuana offenses, there are currently no marijuana field tests

that are able to independently distinguish industrial hemp from marijuana. Accordingly, the department will need to amend the regulation to allow for the approval of field tests other than Duquenois-Levine field tests and for the possibility of presumptive mobile instruments or other technology that may become available with the ability to identify Cannabis sativa plant material and also distinguish marijuana from industrial hemp. The regulation is still necessary for the protection of public health, safety, and welfare, as the department is still required to approve field tests for the identification of marijuana under § 19.2-188.1 of the Code of Virginia. It provides necessary guidelines for the approval of marijuana field tests.

Substance: The proposed amendments are as follows:

(i) In 6VAC40-50-10, definitions are added for "cannabis plant material" and "industrial hemp"; revisions are made to the definitions of "list of approved marijuana field tests" and "marijuana field test"; and the definition for "marijuana field test kit" is stricken.

(ii) In 6VAC40-50-20, a Code of Virginia citation for underage possession of marijuana is updated.

(iii) In 6VAC40-50-30, amendments establish separate sets of instructions, criteria, and procedures for the approval of chemical tests and mobile instruments that closely parallel the requirements for approval of presumptive mobile instruments in 6VAC40-30-30; both type of field tests must be able to distinguish marijuana from industrial hemp.

(iv) In 6VAC40-50-40, amendments clarify text.

(v) In 6VAC40-50-50, amendments correct a grammatical error and include firmware and software modifications to the list of changes to a marijuana field test that could require reevaluation by the department for continued approval under § 19.2-188.1 of the Code of Virginia.

(vi) In 6VAC40-50-70, marijuana field test kits is stricken.

(vii) In 6VAC40-50-80, the fee for chemical tests is increased due to the need for additional testing to determine if the chemical tests can distinguish between marijuana and industrial hemp and the fee for mobile instruments that are submitted for evaluation is established, which considers the same required testing, in addition to the review of instructions and training materials for the instrument.

Issues: The advantage to the public of this proposed regulatory change is that the department will be able to consider for approval alternative chemical tests or mobile instruments that may become available on the market that are able to distinguish industrial hemp from marijuana. This would allow law enforcement the ability to make such determinations in the field. If suspected plant material tests positive with an approved test, law-enforcement officers would be permitted to testify to this result under § 19.2-188.1 of the Code of Virginia. An accused individual would still have the ability to request laboratory testing under § 19.2-188.1 as well. This supports the goal of public safety. There are no disadvantages for the public.

An advantage for the department of this action is that if the officer were able to testify that the suspected plant material was marijuana at trial for certain civil and misdemeanor offenses (underage possession currently), these cases could go to trial without laboratory analysis unless the accused moved for such analysis. This could potentially reduce cases submitted to the laboratory. There are no disadvantages to the department.

Advantages of the regulatory action for the Commonwealth are providing assistance for law-enforcement officers as they would have the ability to distinguish marijuana from industrial hemp in the field and that § 19.2-188.1 would permit law-enforcement officers to testify to those results in the trial of certain civil and misdemeanor cases (currently underage possession). An accused who wished to have laboratory confirmation of the field test result could move for analysis in front of the trial court.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The Board of Forensic Science (Board) proposes to amend the regulation so that alternative field tests and mobile instruments to detect marijuana may be approved by the Board. Once alternative field tests are approved under the proposed regulation, law-enforcement officials will be legally permitted to testify in court using the test results.

Background. Section 19.2-188.1 B of the Code of Virginia allows law-enforcement officers to testify as to the results of any marijuana field test approved as accurate and reliable by the Department of Forensic Science (DFS) in any trial for a violation of § 4.1-1105 of the Code of Virginia, which prohibits simple possession of marijuana by a person younger than 21 years of age.[2] The field test would be performed at the time of the arrest to permit law-enforcement officers to determine whether the plant material in the individual's possession exceeds the statutory concentration of tetrahydrocannabinol (THC) and thus meets the statutory definition of marijuana, as defined in § 4.1-600 of the Code of Virginia. This allows for the expeditious handling of these types of violations by the court without the need to wait for the analysis of the plant material by DFS, unless the defendant requests a full chemical analysis.

The regulation currently allows for the approval of Duquenois-Levine field tests to detect Cannabis sativa plant material. However, Duquenois-Levine tests cannot independently distinguish between marijuana and industrial hemp, which are both varieties of the Cannabis sativa plant.[3] Thus, although these tests were adequate when the regulation was first written, the legalization of industrial hemp at the federal level in 2018 and subsequent legislation in Virginia made Duquenois-Levine

tests obsolete.[4] DFS notified law-enforcement agencies, prosecutors, defense attorneys, and judges about the legal changes and implications for approved field tests in May 2019. DFS also tested one field test (the 4-AP) that could distinguish marijuana from industrial hemp if used in conjunction with a Duquenois-Levine test.[5] Currently, according to the agency, there are no individual tests, combination kits, or mobile instruments in wide distribution that can identify Cannabis sativa plant material and determine if it is marijuana or industrial hemp.

DFS also approves field tests for several different substances under § 19.2-188.1 A of the Code of Virginia for preliminary hearing purposes. Some marijuana field tests are approved under that section, but the plant material would be submitted to the laboratory for analysis for purposes of trial.[6] DFS has indicated that any test approved under this regulation (with the proposed changes) must be able to identify cannabis and distinguish marijuana from hemp.

The most substantive proposed amendments are summarized as follows:

· Definitions (6VAC40-50-10). New definitions would be added for "cannabis plant material" and "industrial hemp," and the definition of "marijuana" would be updated to reflect changes in federal and state law pertaining to cannabis, hemp, and marijuana. Definitions of "list of approved marijuana field tests" and "marijuana field test" would be revised to remove the words "Duquenois-Levine test." The definition of "marijuana field test" would instead specify "chemical test, combination of chemical tests, or mobile instrument," thereby expanding the scope of tests that could be approved. Lastly, the definition of "marijuana field test kit" would be eliminated because it would be made redundant by the changes to "marijuana field test."

· Authority for approval of field tests (6VAC40-50-20). An amendment would be made to reflect the new Code of Virginia provision for underage possession of marijuana as § 4.1-1105.1 of the Code of Virginia.

· Request for evaluation (6VAC40-50-30). Amendments would establish separate sets of instructions, criteria, and procedures for the approval of chemical tests and mobile instruments. (The requirements for mobile instruments closely parallel those for approval of presumptive mobile instruments set out in 6VAC40-30-30.[7]) Another requirement for both type of field tests that would be added is that they must be able to distinguish marijuana from industrial hemp.

For chemical tests, manufacturers would have to supply materials sufficient for at least 20 marijuana field tests (rather than the 10 currently required) so that 10 samples each of marijuana and industrial hemp can be evaluated. Other new requirements include submitting any foundational validation studies, exact specifications as to the chemical composition of all chemicals or reagents, their volume or weight, and the nature of their packaging. For mobile instruments, manufacturers would have to supply two nonsequentially manufactured instruments and supporting materials, including foundational validation studies and training materials, for each model for which the manufacturer requests evaluation. The instruments would be returned to the manufacturers upon completion of the evaluation.

· Maintenance of approved status (6VAC40-50-50). Proposed amendments would include firmware and software modifications to the list of changes to a marijuana field test that could require reevaluation by DFS for continued approval under § 19.2-188.1 of the Code of Virginia.

· Fees (6VAC40-50-80). The fee for chemical testing would be increased from $50 to $100. The proposed amendments would also establish a new fee of $500 payable by manufacturers of mobile instruments to recover the costs involved in evaluating each model of the mobile instrument that DFS considers for approval. As with the doubling of the chemical samples in 6VAC40-50-30, the doubling of the chemical testing fee reflects the fact that DFS will have to separately test 10 samples of marijuana and ten samples of industrial hemp, as opposed to just 10 samples of Cannabis sativa plant material.

DFS reports that the new $500 fee for evaluating mobile instruments was based on the $2,500 fee in 6VAC40-30, which became effective on October 1, 2020, and reflects the amount of time for an evaluator to review all of the materials, including instructions, training, and foundational validation studies, for a mobile instrument. For that regulation, the mobile instruments would have to be tested on multiple street drugs to see if the instrument can effectively identify those drugs. With the marijuana instruments under this regulation, DFS reports that although the examiner would still need to become familiar with the instrument's instructions and use, the testing would only need to be done for marijuana and hemp samples. Thus, DFS scientists and the Board felt that $500 was more appropriate for approval of those instruments for that limited testing. DFS further reported that these fees are not revenue generating for the agency, and only recoup the evaluation costs with staff time invested.

Estimated Benefits and Costs. The proposed amendments would allow DFS to evaluate and authorize field tests that detect marijuana at a sufficient level of accuracy and reliability for the results to be included in legal testimony in a trial. DFS reports that allowing law enforcement the ability to accurately detect marijuana in the field and testify to this result in a trial would support the goal of public safety. Persons accused of marijuana-related offenses who are awaiting trial would still be allowed to request laboratory testing, and law enforcement would still be legally required to inform the accused of their right to do so.

Businesses engaged in developing, producing, and supplying drug tests would be incentivized to develop accurate and reliable tests for marijuana, and would not be limited to Duquenois-Levine tests. Although they would have to pay chemical testing fees and/or mobile instrument testing fees, and supply twice the current quantity of chemical samples for

testing, they would stand to generate significant revenues if their products were approved by DFS because approved tests would likely be purchased by law enforcement agencies throughout the state.

DFS also reports that if law-enforcement officers were able to testify that the suspected plant material was marijuana at trial for underage possession, this would allow cases to go to trial more expeditiously than if laboratory analysis were used, unless the accused moved for such analysis. This could potentially reduce the number of cases submitted to the DFS laboratory and the time taken for such cases to go to trial, which may lead to further cost reductions for local jails to the extent that accused individuals spend fewer days in custody awaiting trial. DFS has indicated that a reduction in the cases submitted for laboratory analysis would not disadvantage the agency.

Businesses and Other Entities Affected. As mentioned previously, private businesses that may be working to develop, manufacture, and supply field tests for marijuana would benefit from allowing a broader scope of field tests to be considered for DFS approval. The number of businesses engaged in this area of research and development is currently unknown, but more businesses may enter the market since the scope of allowable tests would be expanded by the proposed changes. The proposed amendments would not impose any costs on these businesses unless they applied for approval. As mentioned previously, any fees and other costs associated with applying for approval would likely be fully recovered if the field test or mobile instrument was approved by DFS because law-enforcement agencies throughout the state would likely purchase them. Other entities that seek to conduct marijuana tests on found samples of cannabis plant material may also purchase these tests if they are widely considered to be more accurate and reliable than the tests currently available on the market.

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. Even though the proposed amendments increase fees and create a new fee, no business or other entity would be required to pay it unless they chose to apply for DFS approval of a marijuana field test. As discussed, the choice to do so would significantly benefit the applicant if their test was approved.

Small Businesses[9] Affected:[10]

Types and Estimated Number of Small Businesses Affected. Some of the businesses developing these tests may be small businesses. However, the number of businesses, including the number of small businesses, is unknown.

Costs and Other Effects. The proposed amendments would not impose any costs on small businesses unless they sought DFS approval for a field test or mobile instrument.

Alternative Method that Minimizes Adverse Impact. There are no alternatives that would minimize adverse impact and meet the objectives of the regulation.

Localities[11] Affected.[12] The proposed amendments do not disproportionally affect particular localities and do not introduce costs for local governments. Consequently, an adverse economic impact[13] is not indicated for any localities.

Projected Impact on Employment. The proposed amendments are unlikely to impact employment either by DFS or by businesses that make field tests.

Effects on the Use and Value of Private Property. The proposed amendments could increase the value of businesses that develop marijuana field tests and mobile instruments by establishing a legal pathway for them to obtain DFS approval for use in trial testimony. In particular, if a business were to develop such a test and obtain DFS approval, their products would likely be purchased by law-enforcement agencies throughout Virginia, which could yield large profits, depending on whether they faced any competition. 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 § 19.2-188.1 B of the Code of Virginia (https://law.lis.virginia.gov/vacode/title19.2/chapter12/section19.2-188.1/) and § 4.1-1105.1 of the Code of Virginia (https://law.lis.virginia.gov/vacode/title4.1/chapter11/section4.1-1105.1/)

[3]Agency Background Document (ABD), page 2.

[4]See https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf for the federal legalization of industrial hemp. See Chapters 653 and 654 of the 2019 Acts of Assembly for the legalization of industrial hemp and hemp products in Virginia: https://lis.virginia.gov/cgi-bin/legp604.exe?ses=191&typ=bil&val=ch653 and https://lis.virginia.gov/cgi-bin/legp604.exe?ses=191&typ=bil&val=ch654

[5]The ABD (p.3) states that the 4-AP test cannot currently be approved because it is not a Duquenois-Levine test and because, when used alone, it cannot presumptively identify Cannabis sativa plant material accurately and reliably, as required by statute. DFS has clarified that even under the proposed changes, the 4-AP would only be approved for use in conjunction with a Duquenois-Levine test.

[6]The corresponding regulations are in 6VAC40-30 Regulations for the Approval of Field Tests for Detection of Drugs https://law.lis.virginia.gov/admincode/title6/agency40/chapter30/

[7]See footnote 7.

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

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

[9]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]"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.

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

[13]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 the Economic Impact Analysis: The agency concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

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

6VAC40-50-10. Definitions.

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

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

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

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

"Department" means the Department of Forensic Science.

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

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

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

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

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

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

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

6VAC40-50-20. Authority for approval.

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

6VAC40-50-30. Request for evaluation.

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

Director

Department of Forensic Science

700 North Fifth Street

Richmond, VA 23219

B. ~~Materials~~ For chemical tests, materials sufficient for at least ~~10~~ 20 marijuana field tests shall be supplied by each manufacturer. The materials shall include any foundational validation studies and all instructions, precautions, color charts, flow charts, and the like ~~which~~ that are provided with the marijuana field test ~~or marijuana field test kit~~ and that

describe the use and interpretation of the tests. ~~C.~~ The manufacturer shall also include exact specifications as to the chemical composition of all chemicals or reagents, if any, used in the marijuana field tests. These shall include the volume or weight of the chemicals and the nature of their packaging. ~~Material safety~~ Safety data sheets for each chemical ~~or~~ reagent shall be sufficient for this purpose.

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

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

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

6VAC40-50-40. Notice of decision.

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

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

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

6VAC40-50-70. Liability.

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

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

6VAC40-50-80. Fees.

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

VA.R. Doc. No. R21-6809; Filed February 22, 2023, 9:05 a.m.

TITLE 8. EDUCATION

LONGWOOD UNIVERSITY

Final Regulation

REGISTRAR'S NOTICE: Longwood University is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC50-11. Motor Vehicle Parking and Traffic Regulation (repealing 8VAC50-11-10 through 8VAC50-11-70).**

Statutory Authority: § 23.1-1301 of the Code of Virginia.

Effective Date: March 1, 2023.

Agency Contact: Cameron O'Brion, University Counsel, Longwood University, 201 High Street, Farmville, VA 23909, telephone (434) 395-2001, or email obrionac@longwood.edu.

Summary:

The amendments repeal Motor Vehicle Parking and Traffic Regulation (8VAC50-11) in its entirety.

VA.R. Doc. No. R23-7371; Filed February 22, 2023, 2:32 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Extension of Emergency Regulation

Title of Regulation: **12VAC5-217. Regulations of the Patient Level Data System (amending 12VAC5-217-20).**

Statutory Authority: §§ 32.1-12 and 32.1-276.6 of the Code of Virginia.

The Governor has approved the request of the State Board of Health to extend the expiration date of the emergency regulation for 12VAC5-217 for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation is continued in effect through January 15, 2024.

On January 17, 2022, emergency amendments to 12VAC5-217 went into effect to ensure that the regulated community was reporting the admission source of any individual meeting the criteria for voluntary or involuntary psychiatric commitment, as required by Item 307 D 1 of Chapter 552 of the 2021 Acts of Assembly, Special Session I. The mandate is also included in the current appropriation act as Item 299 C 1 of Chapter 2 of the 2022 Acts of Assembly, Special Session I. These emergency regulations are set to expire on July 16, 2023. A regulatory action using the fast-track rulemaking process to make these emergency regulations permanent is being developed. Once that rulemaking is published, it will be open for public comment for 30 days before becoming effective and making the emergency regulations permanent. The Virginia Department of Health (VDH) is working to complete the fast-track rulemaking process, but there is the potential that the regulatory process will not be complete before the emergency regulations expire. The State Board of Health, which approves each stage in a regulatory action and officially promulgates the regulations, only meets once per quarter. Additionally, though VDH considers this action to be noncontroversial and appropriate for the fast-track rulemaking process, there is the potential to receive objections pursuant to § 2.2-4012.1 of the Code of Virginia, which would lengthen and further delay the process to promulgate the permanent regulations. These delays could potentially prevent the permanent regulations from becoming effective before the expiration date of the emergency regulations. As a result, it is necessary to extend the expiration date to ensure the emergency regulations do not expire before they are made permanent, which would leave VDH and the State Board of Health out of compliance with the 2021 and 2022 Appropriation Acts and ultimately cause confusion for the public and the regulated community. The emergency regulation was published in 38:11 VA.R. 999-1000 January 17, 2022.

Effective Date Extended Through: January 15, 2024.

Agency Contact: Michael Sarkissian, Director, Data and Quality, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7416, FAX (804) 864-7022, or email vdh_oim_regulations@vdh.virginia.gov.

VA.R. Doc. No. R22-6605; Filed February 9, 2023, 10:58 a.m.

Notice of Extension of Emergency Regulation

Title of Regulation: **12VAC5-219. Prescription Drug Price Transparency Regulation (adding 12VAC5-219-10 through 12VAC5-219-140).**

Statutory Authority: §§ 32.1-12 and 32.1-23.4 of the Code of Virginia.

The Governor has approved the request of the State Board of Health to extend the expiration date of the emergency regulation for 12VAC5-219 for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation is continued in effect through January 15, 2024.

On January 17, 2022, emergency amendments to 12VAC5-219 went into effect to ensure that health carriers, pharmacy benefits managers, drug wholesale distributors, and drug manufacturers submit to the Virginia Department of Health (VDH) information regarding prescription drug prices, which VDH is required to make publicly available. These emergency regulations were promulgated pursuant to Chapter 304 of the 2021 Acts of Assembly, Special Session I, and are set to expire on July 16, 2023. The proposed regulation is being developed and is currently under review by the Department of Planning and Budget. Once it is approved by the Executive Branch, it will be submitted for publication in the Virginia Register of Regulations. Upon publication, a public comment 60 days will open, after that closes, VDH will develop and submit a final regulation to make the emergency regulations permanent. VDH is working to complete the standard regulatory process to make these regulations permanent as quickly as possible, but there is the potential that the regulatory process will not be complete before the emergency regulations expire. The State Board of Health, which approves each stage in a regulatory action and officially promulgates the regulations, only meets once per quarter. VDH needs time to collect and consider public comment and meet with and reach consensus with relevant stakeholders, including Virginia Health Information, the nonprofit data services organization with which VDH contracts pursuant to the Code of Virginia. These delays could potentially prevent the permanent regulations from becoming effective before the expiration date of the emergency regulations. As a result, it is necessary to extend the expiration date to ensure the emergency regulations do not expire before they are made permanent, which would leave VDH and the State Board of Health out of compliance with the legislative mandate and ultimately cause confusion for the public and the regulated community. The emergency regulation was published in 38:11 VA.R. 1000-1010 January 17, 2022.

Effective Date Extended Through: January 15, 2024.

Agency Contact: Michael Sarkissian, Director, Data and Quality, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7416, FAX (804) 864-7022, or email vdh_oim_regulations@vdh.virginia.gov.

VA.R. Doc. No. R22-6828; Filed February 9, 2023, 10:58 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to subsection D of § 54.1-3443 of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322).**

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: April 12, 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.

Summary:

The amendments add five compounds into Schedule I as recommended by the Department of Forensic Science pursuant to § 54.1-3443 of the Code of Virginia. These compounds added by regulatory action will remain in effect for 18 months or until the compounds are placed in Schedule I by legislative action of the General Assembly.

18VAC110-20-322. Placement of chemicals in Schedule I.

A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioid. 1-(4-cinnamyl-2,6-dimethylpiperazin-1-yl)propan-1-one (other name: AP-238), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Compounds expected to have hallucinogenic properties.

a. 4-methallyloxy-3,5-dimethoxyphenethylamine (other name: Methallylescaline), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. Alpha-pyrrolidino-2-phenylacetophenone (other name: alpha-D2PV), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Cannabimimetic agents.

a. Ethyl 2-[1-pentyl-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate (other name: EDMB-PINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-phenethyl-1H-indazole-3-carboxamide (other name: ADB-PHETINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until August 16, 2023, unless enacted into law in the Drug Control Act.

B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioid. 2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1H-benzimidazole (other names: N-pyrrolidino etonitazene, etonitazepyne), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Compounds expected to have hallucinogenic properties.

a. 1-(1,3-benzodioxol-5-yl)-2-(propylamino)-1-butanone (other names: 3,4-Methylenedioxy-alpha-propylaminobutiophenone; N-propyl butylone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 2-(ethylamino)-1-phenylpentan-1-one (other names: N-ethylpentedrone, alpha-ethylaminopentiophenone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 3,4-methylenedioxy-alpha-cyclohexylaminopropiophenone (other name: Cyputylone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

d. 3,4-methylenedioxy-alpha-cyclohexylmethylamino propiophenone (other name: 3,4-Methylenedioxy-N,N-cyclohexylmethcathinone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever

the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

e. 3,4-methylenedioxy-alpha-isopropylaminobutiophenone (other name: N-isopropyl butylone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

f. 4-chloro-N-butylcathinone (other names: 4-chlorobutylcathinone, para-chloro-N-butylcathinone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

g. 4-hydroxy-N-methyl-N-ethyltryptamine (other names: 4-hydroxy MET, Metocin), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Central nervous system stimulant. 4-methylmethamphetamine (other names: N-alpha,4-trimethyl-benzeneethanamine, 4-MMA), including its salts, isomers, and salts of isomers.

4. Cannabimimetic agent. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indole-3-acetamide (other names: ADB-FUBIATA, AD-18, FUB-ACADB), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until March 14, 2024, unless enacted into law in the Drug Control Act.

C. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioid. N,N-diethyl-2-[5-nitro-2-(4-propoxybenzyl)-1H-benzimidazol-1-yl]ethanamine (other name: Protonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Compounds expected to have hallucinogenic properties. 1-(1,3-benzodioxol-5-yl)-2-(cyclohexylamino)butan-1-one (other names: Cybutylone, N-cyclohexyl Butylone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Compounds expected to have depressant properties. 8-bromo-6-(2-chlorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine (other names: Clobromazolam, Phenazolam), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. Cannabimimetic agents.

a. 5-bromo-N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1H-indazole-3-carboxamide (other name: ADB-5Br-INACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-5-bromo-1-butylindazole-3-carboxamide (other name: ADB-5'Br-BUTINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until July 31, 2024, unless enacted into law in the Drug Control Act.

D. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioid. 2-methyl-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]butanamide (other name: 2-methyl butyryl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Compounds expected to have hallucinogenic properties.

a. 1-(7-methoxy-1,3-benzodioxol-5-yl)propan-2-amine (other names: 5-methoxy-3,4-methylenedioxyam phetamine, 3-methoxy MDA, MMDA), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 1-[1-(3-chlorophenyl)cyclohexyl]-piperidine (other names: 3-Chloro Phencyclidine, 3Cl-PCP, 3-chloro PCP), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Compound expected to have depressant properties. 7-bromo-5-phenyl-1,3-dihydro-1,4-benzodiazepin-2-one (other names: Desalkylgidazepam, Bromonordiazepam), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. Compound classified as a cannabimimetic agent. Methyl N-[(5-bromo-1H-indazol-3-yl)carbonyl]-3-methyl-valinate (other name: MDMB-5Br-INACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until October 12, 2024, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R23-7427; Filed February 15, 2023, 12:30 p.m.

Emergency Regulation

EDITOR'S NOTE: The regulatory action amends 18VAC110-21-46, as it is currently effective in the Virginia Administrative Code (VAC), and 18VAC110-21-46, as it is currently effective under an emergency regulation. Changes to the permanent regulation effective in VAC are shown using strike-through (text being removed) and underline (text being added). Effective emergency text is also underlined, and changes to emergency text are bracketed.

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

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

Effective Dates: February 21, 2023, through August 20, 2024.

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.

Preamble:

Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

Pursuant to Chapters 790 and 791 of the 2022 Acts of Assembly, the amendments expand the conditions for which a pharmacist can initiate treatment. The amendments impact existing emergency regulation text necessary to conform to Chapter 214 of the 2021 Acts of Assembly; see 38:11 VA.R. 1133-1134 January 17, 2022, as well as regulatory text currently effective in the Virginia Administrative Code, which was in response to Chapter 731 of the 2020 Acts of Assembly, both regarding pharmacists initiating treatment. The amendments (i) require the pharmacist to have a bona fide pharmacist-patient relationship with the patient with whom the pharmacist initiates treatment; (ii) add nicotine replacement therapy and other tobacco-cessation therapies as drugs and therapies with which a pharmacist can initiate treatment for an adult 18 years of age or older; (iii) allow a pharmacist to initiate treatment for patients three years of age and older by administering vaccines included on the Immunization Schedule published by the Centers for Disease Control and Prevention, vaccines for COVID-19, and tests for COVID-19 and other coronaviruses; (iv) require practitioners provide notification of initiation of treatment with a patient even if no method exists to send the notification electronically in a manner compliant with Health Insurance Portability and Accountability Act (42 USC § 1320d et seq.); and (v) require the treating pharmacist to obtain a patient history and, in the case of administration of vaccines to a minor, provide the minor's parent or guardian the information that the minor should visit a pediatrician annually.

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 with whom the pharmacist has a bona fide pharmacist-patient relationship:

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;

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~~ and vaccines for COVID-19];

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; [and

10. Nicotine replacement and other tobacco-cessation therapies, including controlled substances as defined in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), together with appropriate patient counseling].

B. Notwithstanding the provisions of § 54.1-3303 of the Code of Virginia, a pharmacist may initiate treatment with, dispense, or administer the following drugs and devices to persons three years of age or older:

1. Vaccines included on the Immunization Schedule published by the Centers for Disease Control and Prevention and vaccines for COVID-19; and

2. Tests for COVID-19 and other coronaviruses.

The provisions of this subsection will become effective upon expiration of the provisions of the federal Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 related to the vaccination and COVID-19 testing of minors.

C. Pharmacists who initiate treatment with, dispense, or administer a drug ~~or,~~ device, controlled paraphernalia, or other supplies or equipment pursuant to ~~subsection~~ subsections A and B of this section shall:

1. Follow the statewide protocol adopted by the board for each drug ~~or,~~ 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 or device or that such drug or device has been dispensed or administered to the patient, provided that the patient consents to such notification. No pharmacist shall limit the ability of notification to be sent to the patient's primary care provider by requiring use of electronic mail that is secure or compliant with the federal Health Insurance Portability and Accountability Act (42 USC § 1320d et seq.). 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.

5. Obtain a history from the patient, including questioning the patient for any known allergies, adverse reactions, contraindications, or health diagnoses or conditions that would be adverse to the initiation of treatment, dispensing, or administration.

6. If administering a vaccination to a minor pursuant to subdivision B 1 of this section, provide written notice to the minor's parent or guardian that the minor should visit a pediatrician annually.

D. A pharmacist may initiate treatment with, dispense, or administer drugs, devices, controlled paraphernalia, and other supplies and equipment pursuant to this section through telemedicine services, as defined in § 38.2-3418.16 of the Code of Virginia, in compliance with all requirements of § 54.1-3303 of the Code of Virginia and consistent with the applicable standard of care.

VA.R. Doc. No. R23-7339; Filed February 21, 2023, 3:56 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Action Withdrawn

Title of Regulation: **22VAC40-221. Additional Daily Supervision Rate Structure (amending 22VAC40-221-10, 22VAC40-221-20, 22VAC40-221-30, 22VAC40-221-50, 22VAC40-221-70; adding 22VAC40-221-80; repealing 22VAC40-221-25).**

Statutory Authority: § 63.2-217 of the Code of Virginia; 42 USC § 673.

The State Board of Social Services has WITHDRAWN the regulatory action for **22VAC40-221, Additional Daily Supervision Rate Structure,** which was published as a Proposed Regulation in 37:19 VA.R. 2940-2946 May 10, 2021. This action is being withdrawn because since publication of the proposed regulation, concerns have been raised about the uniform assessment instrument used to determine the additional daily supervision rate. A workgroup, which includes

the Governor's Safe and Sound Task Force, Virginia Commission on Youth, foster parents, and other stakeholders, made several recommendations, including exploring a new uniform assessment instrument. This action is withdrawn and a new action will be initiated that will reflect the workgroup recommendations and current practices.

Agency Contact: Traci B. Jones, Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7499, or email traci.jones@dss.virginia.gov.

VA.R. Doc. No. R18-5241; Filed February 15, 2023, 5:02 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.

STATE BOARD OF HEALTH

Title of Document: Guidance on Film Processing Chemicals - Disposal or Reclamation.

Public Comment Deadline: April 12, 2023.

Effective Date: April 13, 2023.

Agency Contact: Cameron Rose, Policy Analyst, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7090, or email cameron.rose@vdh.virginia.gov.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Withdrawal of Variance Request to the State Human Rights Committee

A request to the State Human Rights Committee (SHRC) for variance to the Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services, published 39:9 VA.R. 1286 December 19, 2022, was withdrawn by the requester (RI International Chantilly Crisis Center) on February 21, 2023. Therefore, no decision or announcement of a decision on a request for variance by the SHRC is necessary.

Contact Information: Taneika Goldman, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) (804) 371-0064, FAX (833) 734-1241, or email taneika.goldman@dbhds.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for G and C Fab-Con LLC - Prince William County

An enforcement action has been proposed for G and C Fab-Con LLC for violations of State Water Control Law and regulations at the Quantico National Cemetery in Prince William County, Virginia. The proposed order is available from the Department of Environmental Quality (DEQ) contact or at https://www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact will accept written comments from March 13, 2023, through April 12, 2023.

Contact Information: Kristen Sadtler, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, or email kristen.sadtler@deq.virginia.gov.

Proposed Enforcement Action for Hourigan Construction Corp. - Virginia Beach

An enforcement action has been proposed for Hourigan Construction Corp. for violations of State Water Control Law at Joint Expeditionary Base Little Creek - Fort Story, Virginia Beach, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov from March 13, 2023, through April 12, 2023.

Contact Information: Thomas Jackson, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, or email thomas.jackson@deq.virginia.gov.

Proposed Consent Order for Kennington Place LLC - King William County

An enforcement action has been proposed for Kennington Place LLC for violations in King William County, Virginia. The Department of Environmental Quality proposes to issue a consent order to resolve violations associated with the Kennington Section 3 site. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact will accept comments by hand-delivery, email, fax, or postal mail from March 13, 2023, to April 13, 2023.

Contact Information: Matthew Richardson, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 659-2696, FAX (804) 698-4178, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for Nelson County Service Authority - Schuyler

An enforcement action has been proposed for Nelson County Service Authority (NCSA) for the Schuyler sewage treatment plant. The Department of Environmental Quality (DEQ) proposes to issue an amendment with injunctive relief to NCSA to address upgrade requirements at the plant. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email, fax, or postal mail from March 13, 2023, through April 12, 2023.

Contact Information: Celeste Horton, Enforcement Specialist, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA 22801, FAX (804) 698-4178, or email celeste.horton@deq.virginia.gov.

Proposed Enforcement Action for Nelson County Service Authority - Wintergreen Mountain

An enforcement action has been proposed for Nelson County Service Authority (NCSA) for the Wintergreen Mountain wastewater treatment plant. Department of Environmental Quality (DEQ) proposes to issue an amendment with injunctive relief to NCSA to address upgrade requirements at the plant. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email, fax, or postal mail from March 13, 2023, through April 12, 2023.

Contact Information: Celeste Horton, Enforcement Specialist, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA 22801, FAX (804) 698-4178, or email celeste.horton@deq.virginia.gov.

Proposed Consent Order for the City of Richmond

An enforcement action has been proposed for the City of Richmond for violations in Richmond, Virginia. The Department of Environmental Quality proposes to issue a consent order to resolve violations associated with the Richmond wastewater treatment plant. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov/permits-regulations/enforcement-orders. The staff contact will accept comments by hand-delivery, email, or postal mail from March 13, 2023, to April 13, 2023.

Contact Information: Matthew Richardson, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 659-2696, FAX (804) 698-4178, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for Sun Tribe Solar LLC - Fluvanna County

An enforcement action has been proposed for Sun Tribe Solar LLC for violations of State Water Control Law and regulations at the Cunningham Solar Project in Fluvanna County, Virginia. The proposed order is available from the Department of Environmental Quality contact or at https://www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact will accept written comments from March 13, 2023, through April 12, 2023.

Contact Information: Kristen Sadtler, Water Enforcement Coordinator, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, or email kristen.sadtler@deq.virginia.gov.

Proposed Enforcement Action for Virginia Electric and Power Co. d/b/a Dominion Energy Virginia - York County

An enforcement action has been proposed for Virginia Electric and Power Co. d/b/a Dominion Energy Virginia for violations of State Water Control Law in York County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov from March 13, 2023, through April 12, 2023.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 647-8060, FAX (804) 698-4178, or email russell.deppe@deq.virginia.gov.

FORENSIC SCIENCE BOARD

Approval of Field Tests for the Detection of Drugs

In accordance with 6VAC40-30, Regulations for the Approval of Field Tests for Detection of Drugs, and under the authority of the Code of Virginia, the Department of Forensic Science recently approved the following presumptive mobile instrument for the detection of drugs:

THERMO SCIENTIFIC

2 RADCLIFF ROAD

TEWKSBURY, MASSACHUSETTS 01876

TruNarc™ Handheld Narcotics Analyzer

This presumptive mobile instrument is approved in addition to the chemical field tests most recently published in the General Notices section of the Virginia Register of Regulations, 39:12 VA.R. 1519-1523 January 30, 2023.

Contact Information: Amy Jenkins, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857.

STATE BOARD OF HEALTH

Opportunity to Submit Applications - Drinking Water State Revolving Funds

The Virginia Department of Health (VDH) announces several opportunities for funding drinking water infrastructure. Applications may be submitted year-round; however, VDH will conduct one round of evaluations submitted by the deadlines described in this notice. Applications postmarked or received after the due date will be considered for funding in the following round. Funding is possible through the Drinking Water State Revolving Fund (DWSRF) Program, the Bipartisan Infrastructure Law (BIL), and the Water Supply Assistance Grant Fund (WSAG) Program if funds are available.

The fiscal year 2024 (FY2024**)** DWSRF Intended Use Plan (IUP) will use stakeholder input for decision-making. The BIL funds are broken into three different categories: DWSRF Supplemental, which has all the same eligibilities as the base DWSRF Program; DWSRF Lead Service Line, which is explained in item 4 of this notice; and DWSRF Emerging Contaminants, which is focused on perfluoroalkyl and polyfluoroalkyl substances (PFAS), but also includes the contaminants listed in the draft Fifth Contaminant Candidate List (CCL 5).

1. Public Comments and Set-Aside Suggestions Invited (Submission deadline May 5, 2023): To identify ways to improve this program, VDH seeks meaningful input from the public, the waterworks industry, or any other interested party.

Anyone may make comments or recommendations to support or revise the program. Anyone can suggest new or continuing set-aside (nonconstruction) activities. Set-aside funds help VDH assist waterworks owners prepare for future drinking water challenges and ensure the sustainability of safe drinking water.

2. Construction, Consolidation, and Refinance Fund Requests (BIL and DWSRF Application deadline May 5, 2023): Owners of community waterworks and nonprofit non-community waterworks are eligible to apply for construction funds. VDH makes selections based on criteria described in the DWSRF Program Design Manual, such as existing public health problems, noncompliance, affordability, regionalization, and the availability of matching funds. VDH anticipates a funding level of approximately $40 million for BIL funding and $25 million in DWSRF funding. The funds can be used with the DWSRF Base Program, BIL Supplemental, and BIL Emerging Contaminants.

3. 1452(k) Source Water Protection Initiatives (Application deadline May 5, 2023): Loan funds are available to (i) community and nonprofit non-community waterworks to acquire land or conservation easements, and (ii) community waterworks to establish local voluntary incentive-based protection measures.

4. Lead Service Line (LSL) Replacement Program (BIL and DWSRF Application Inventory deadline is quarterly) and LSL Replacement Program: (BIL and DWSRF Application construction deadline is May 5, 2023): To accelerate the removal of lead in drinking water, the DWSRF Program provides funding for the complete removal of the public or private portion of LSLs. In conjunction with other available funds, $2 million is set aside annually, to provide up to $5,000 dollars as grant funds (of which up to $500 may be eligible as an administrative fee) for each service line replaced on the homeowner's side of the meter. The LSL includes pipe entry into the structure (up to shut-off valve) but excludes the premise plumbing. Maximum amount of grant funding is $500,000 per funding year. In addition, up to $250,000 is available annually for LSL inventory building until investigative LSL work is complete. VDH anticipates a funding level of approximately $42 million under BIL for larger infrastructure work.

Please note that in the interest of providing funding for inventory development prior to the U.S. Environmental Protection Agency (EPA) deadline of October 16, 2024, application review and scoring will occur on a quarterly basis for inventory development only.

5. Planning and Design Funds (Accepted year-round): Owners of community waterworks and nonprofit non-community waterworks with projects serving populations of 10,000 or less are eligible to apply for planning and design funds. Waterworks may submit up to three applications per funding cycle, however only two per waterworks owner may be selected for funding. The maximum award per application is $45,000 as a grant. Projects that address conditions at a waterworks that do not comply with the Waterworks Regulations or operation permit and result in acute health risks receive the highest priority for funding, then noncompliance and chronic health risks, and then noncompliance and broader public health concerns.

The VDH's DWSRF Program Design Manual describes the features of these described opportunities for funding. After receiving public input, VDH will develop an IUP for public review and comment. The IUP will describe specific details for use of the funds. A public meeting is planned and written comments will be accepted before submittal of a final version to EPA for approval.

Applications, set-aside suggestion forms, program design manuals, and information materials are available at https://www.vdh.virginia.gov/drinking-water/fcap/drinking-water-funding-program/.

Please direct questions, comments, and information to the agency contact listed.

Contact Information: Kelly Ward, Director, Financial Construction and Assistance, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7500, or email kelly.ward@vdh.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations:* Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

VIRGINIA WASTE MANAGEMENT BOARD

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

Publication: 39:13 VA.R. 1551-1592 February 13, 2023.

Correction to Final Regulation:

Page 1590, 9VAC20-121-410 A, line 2, after "Part III" replace "(9VAC20-121-20" with "(9VAC20-121-100"

VA.R. Doc. No. R19-5395; Filed February 21, 2023, 10:07 a.m.