VIRGINIA REGISTER OF REGULATIONS

VOL. 41 ISS. 4 PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION October 7, 2024

TABLE OF CONTENTS

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 INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

If the Governor finds that the final regulation contains changes made after publication of the proposed regulation that have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, unless the agency determines that the changes have minor or inconsequen111tial impact.

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

October 2024 through October 2025

Volume: Issue	Material Submitted By Noon*	Will Be Published On
41:5	October 2, 2024	October 21, 2024
41:6	October 16, 2024	November 4, 2024
41:7	October 30, 2024	November 18, 2024
41:8	November 13, 2024	December 2, 2024
41:9	November 26, 2024 **(Tuesday)**	December 16, 2024
41:10	December 11, 2024	December 30, 2024
41:11	December 23, 2024 **(Monday)**	January 13, 2025
41:12	January 8, 2025	January 27, 2025
41:13	January 22, 2025	February 10, 2025
41:14	February 5, 2025	February 24, 2025
41:15	February 19, 2025	March 10, 2025
41:16	March 5, 2025	March 24, 2025
41:17	March 19, 2025	April 7, 2025
41:18	April 2, 2025	April 21, 2025
41:19	April 16, 2025	May 5, 2025
41:20	April 30, 2025	May 19, 2025
41:21	May 14, 2025	June 2, 2025
41:22	May 28, 2025	June 16, 2025
41:23	June 11, 2025	June 30, 2025
41:24	June 25, 2025	July 14, 2025
41:25	July 9, 2025	July 28, 2025
41:26	July 23, 2025	August 11, 2025
42:1	August 6, 2025	August 25, 2025
42:2	August 20, 2025	September 8, 2025
42:3	September 3, 2025	September 22, 2025
42:4	September 17, 2025	October 6, 2025
42:5	October 1, 2025	October 20, 2025

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Initial Agency Notice

Title of Regulation: **18VAC65-20. Regulations Governing the Practice of Funeral Services.**

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Name of Petitioner: Jon Gary Henninger.

Nature of Petitioner's Request: The petitioner requests that the Board of Funeral Directors and Embalmers amend 18VAC65-20-580 to exempt certain religious funeral homes that do not practice embalming from the requirement to equip preparation rooms with the instruments and apparatus of embalming under subdivision 6 of 18VAC65-20-580.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on October 7, 2024. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which opens October 7, 2024, and closes November 6, 2024. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. That meeting is currently scheduled for January 14, 2025. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: November 6, 2024.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4479, or email fanbd@dhp.virginia.gov.

VA.R. Doc. No. PFR25-06; Filed September 09, 2024, 9:59 a.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider promulgating **8VAC20-860, Virginia Early Childhood Unified Measurement and Improvement System (VQB5)**. The purpose of the proposed action is to establish new regulations for the Virginia Early Childhood Unified Measurement and Improvement System, which is known as VQB5. The board fulfilled the requirements of § 22.1-289.05 of the Code of Virginia by establishing Guidelines for VQB5 Practice Year 1 (approved in June 2021), Guidelines for VQB5 Practice Year 2 (approved in June 2022), and VQB5 Guidelines for 2023-2024 (approved in June 2023). As of the 2023-2024 school year, VQB5 is fully implemented and includes 3,288 programs for children from birth to five years of age, including school-based preschools, Head Start and Early Head Start programs, and child care centers and family day homes that participate in the child care subsidy or other forms of public subsidy. This proposed regulatory action is intended to formally establish the requirements for VQB5. Regulatory requirements include specifying which sites are legislatively required to participate, explaining the key activities that participating sites must complete, and outlining the consequences for refusal to participate.

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

Statutory Authority: §§ 22.1-16 and 22.1-289.05 of the Code of Virginia.

Public Comment Deadline: December 6, 2024.

Agency Contact: Jim Chapman, Regulatory and Legal Coordinator, Department of Education, James Monroe Building, 25th Floor, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2540, or email jim.chapman@doe.virginia.gov.

VA.R. Doc. No. R25-8072; Filed September 11, 2024, 12:46 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

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 Counseling intends to consider amending **18VAC115-20, Regulations Governing the Practice of Professional Counseling**. The purpose of the proposed action is to implement the provisions of Chapters 684 and 685 of the 2023 Acts of Assembly, which enacts Virginia's entry into the Counseling Compact. The intended proposed amendments include (i) establishing related fees, practice privileges, and renewal of practice privileges and (ii) making technical changes to definitions consistent with the compact and to regulatory text to incorporate individuals practicing in Virginia under a compact privilege into disciplinary and practice provisions. The Commission for the Counseling Compact has not yet issued rules for member states; these rules will influence the proposed and final regulation.

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

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

Public Comment Deadline: November 6, 2024.

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

VA.R. Doc. No. R25-7562; Filed September 4, 2024, 1:35 p.m.

TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Regulation

Title of Regulation: **9VAC15-60. Small Renewable Energy Projects (Solar) Permit by Rule (amending 9VAC15-60-10 through 9VAC15-60-140).**

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

Public Hearing Information:

November 19, 2024 - 10 a.m. - Bank of America Building, Third Floor Conference Room, 1111 East Main Street, Richmond, VA 23219.

Public Comment Deadline: December 6, 2024.

Agency Contact: Susan Tripp, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 664-3470, or email susan.tripp@deq.virginia.gov.

Basis: Section 10.1-1197.6 of the Code of Virginia requires the Department of Environmental Quality (DEQ) to promulgate regulations necessary to carry out appropriate powers and duties for permitting activities. Chapter 688 of the 2022 Acts of Assembly expands definitions and requirements for significant adverse impacts and requires DEQ to develop regulations in response to this expansion.

Purpose: This regulatory action is necessary in order for DEQ to carry out the requirements of Chapter 688 of the 2022 Acts of Assembly. The regulatory action is essential to protect the health, safety, and welfare of Virginia citizens because it establishes necessary requirements to protect Virginia's prime agricultural soils and forest lands that may be affected by the construction and operation of small renewable energy projects.

Substance: The Small Renewable Energy Projects (Solar) Permit by Rule (9VAC15-60) establishes the specific criteria required for a complete application to construct and operate a solar project in Virginia. Substantive proposed amendments include: (i) adding and clarifying definitions; (ii) adding prime agricultural soils and forest lands to the existing requirement for the analysis of the beneficial and adverse impacts to natural resources; (iii) adding mitigation plan requirements for prime agricultural soils and forest lands; (iv) clarifying the timeframe for submitting a notice of intent; (v) clarifying that avoidance mitigation as it relates to cemeteries is required to ensure consistency with state law; (vi) clarifying requirements for site plans and public participation requirements; (vii) specifying the operation, recordkeeping, and reporting requirements; (ix) clarifying which sizes of projects are exempt from permitting and the procedures for modification or transfer of ownership of a permitted facility; (x) incorporating other provisions previously identified in the 2019 solar permit by rule amendments, excluding fees; and (xii) improving overall regulatory structure, procedures, and use.

Issues: The primary advantage of the regulation is the overall minimization of environmental damage as a result of the siting of solar facilities. The amendments encourage the avoidance of damage to prime soils and forest lands while ensuring that any damage that does occur is appropriately mitigated and continues to facilitate the employment of solar power while establishing more protective mitigation measures. A potential disadvantage of the amendments is the increased cost to developers due to the implementation of the additional mitigation requirements. The increased cost may discourage developers from locating facilities in Virginia.

The advantage to the department is the continued implementation of an overall streamlined process for authorizing solar facilities. The disadvantage includes the increased number of elements that will need to be reviewed and verified by department staff within the same 90-day authorization issuance deadline.

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 the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. In response to Chapter 688 of the 2022 Acts of Assembly,[2] the Department of Environmental Quality (DEQ) proposes to (i) require conservation easements and in-lieu fees as the two types of mitigation for those solar projects that are deemed by Chapter 688 to have a significant adverse impact to prime agricultural soils, contiguous forest lands, or lands enrolled in a program for forestry preservation; (ii) consider threatened and endangered insects as wildlife for mitigation purposes; (iii) require permit applicants to submit a pollinator smart/bird habitat scorecard; (iv) establish several new timeframes to avoid delays in project construction; and (v) increase the exemption from notification or certification requirements from projects with 500 Kilowatt to one Megawatt (MW) electric generation capacity. In addition, the proposal includes several clarifying and structural changes to the regulatory language.

Background. This regulation became effective in 2012,[3] and it required the applicant to prepare a mitigation plan if DEQ determined that significant adverse impacts to wildlife or historic resources or both were likely. According to DEQ, the program has grown rapidly and in 2017 a legislative modification increased the size of projects eligible for a permit-by-rule[4] from 100 MW to 150 MW.5 This increase in capacity has resulted in larger projects that seek permits, which correlates to an increase in the acreage per project.[5] This increased impact on the acreage of land affected has led to concerns about the loss of prime agricultural soils and forest land as part of this impact. Chapter 688 addressed these concerns for solar projects by declaring that, "A project will be

deemed to have a significant adverse impact if it would disturb more than 10 acres of prime agricultural soils or 50 acres of contiguous forest lands, or if it would disturb forest lands enrolled in a program for forestry preservation pursuant to subdivision 2 of § 58.1-3233."[6]

The addition of this language in the statute effectively requires DEQ to require mitigation for impacts to prime agricultural soils and forest lands that are above the legislative thresholds. Notably, no such mitigation is automatically required for solar projects that are below these thresholds, although a mitigation plan for endangered insects or historic resources may be required for any project if the initial analysis indicates a need. However, the legislation makes the presumption that any project above these thresholds requires mitigation. These aspects of the regulatory approach thus result from the legislation itself, and not the regulation.

In this regulatory action, DEQ proposes two types of mitigation for solar projects that exceed the statutorily mandated thresholds for impacts to prime agricultural soils, contiguous forest lands that satisfy the legislative criteria, and C1 or C2 ecological cores, as follows:[7]

1. Conservation Easements: The use of conservation easements would require the direct protection of land via the acquisition of a conservation easements by the applicant.[8] This would be accomplished by requiring a certain mitigation ratio of the area conserved to the area disturbed (e.g., a ratio of one to two would require one acre to be conserved for every two acres of disturbance). Although the proposal allows for reduced mitigation ratios under certain cases (e.g., for land containing riparian forest buffers within the easement, or for lands where partial mitigation options have been taken on site to avoid grading, or removal of topsoil, etc.), the following primary mitigation ratios are proposed:

a. One to one ratio for disturbance of more than 10 acres of prime agricultural soils;

b. One to one ratio for disturbance of more than 50 acres of contiguous forest lands;

c. One to one ratio for disturbance of forest lands enrolled in a program for forestry preservation;

d. Seven to one ratio for disturbance of forest land categorized as Ecological Core C1; and

e. Two to one ratio for disturbance of forest land categorized as Ecological Core C2.

2. In-Lieu Fees: In this alternative mitigation approach, "in lieu" of acquiring conservation easements, the applicant would pay a fee to a third party designated by DEQ. The in-lieu fee would be used to acquire conservation easements. The amount of the in-lieu fee is calculated to approximately equal the cost to the applicant of acquiring the required conservation easements.

Furthermore, regardless of whether the applicant obtains an easement or pays the in-lieu fee, the proposal would require that if a draft mitigation plan was not provided by the applicant as part of the initial application, the applicant must develop a mitigation plan and conduct a 45-day public comment period as per the legislation. Any application for a small renewable energy project received for which an interconnection request is applied for and received by December 31, 2024, would not be subject to these new provisions. This regulation would also be amended to incorporate provisions that were previously included in a 2019 regulatory action that was not implemented.[9] These provisions include changes that would consider threatened and endangered insects as wildlife for mitigation purposes; require submission of a pollinator smart/bird habitat scorecard; establish several new timeframes to avoid delays in project construction; increase the exemption from notification or certification requirements from projects with 500 Kilowatt to one MW generation capacity. The remaining changes would clarify definitions, the timeframe for submitting a notice of intent, the use of avoidance mitigation as it relates to cemeteries, the requirements for site plans, public participation requirements, recordkeeping and reporting requirements, and the procedures for modifying or transferring ownership of a permitted facility. In summary, this regulatory action is necessary in order for DEQ to carry out the requirements of Chapter 688; it would also be utilized to address certain requirements from a 2019 regulatory action and to clarify some of the existing requirements.

Estimated Benefits and Costs. Implementation of Chapter 688 of the 2022 Acts of General Assembly: In the absence of Chapter 688, a solar project permittee would be mainly concerned with permit application costs, the cost of acquiring land for the project, ongoing operational costs, and the revenues expected from the solar project operation. It is worth noting that the legislation does not change these considerations for the applicant but adds other considerations in terms of additional costs for the permit application and the cost of either obtaining conservation easements, either directly by the applicant or indirectly via the in-lieu fee, or the avoidance of sites containing the protected resources. Notably, because an easement must be obtained either directly or indirectly, these costs would be incurred in addition to the cost of purchasing the protected land for the project itself. To the degree these costs increase the overall cost of a solar project on protected land, they act as a disincentive to the development of solar projects on protected land. All other things being equal, therefore, an applicant would face a financial incentive to use non-protected lands for solar projects up until the point where the cost of using non-protected land equals the cost of using protected land. These incentives only apply to solar projects, however, and not to other kinds of development, wherein disincentives for the use of protected land may not exist. In light of this context, which results from the legislation, an analysis of the regulatory change must factor in benefits that may not necessarily accrue to the solar project owner but may accrue to the public in the form of effects on the general welfare. So, the ensuing discussion of the regulatory change addresses the additional economic costs and benefits beyond

those that would have been expected if Chapter 688 had not been enacted. In other words, the economic analysis of a regulatory change compares the situation that existed before the regulation was amended to the situation that exists after the regulation is amended, and specifically assesses those changes that result from the regulation itself and not the legislation. That said, the legislation and consequently the proposed regulation strive to strike a balance between two competing goals.[10] On one hand, solar development proponents are concerned with fair treatment of agricultural and forest lands impacted by solar projects in comparison to the treatment of those lands by other potential uses. This group aims to avoid constraints on land that is impacted by solar projects that are not imposed on other uses of the same land. Therefore, a key concern for solar development proponents is that the regulatory framework not become so onerous and complex that solar energy is no longer economically feasible in Virginia. On the other hand, advocates for the protection of prime agricultural soils and forest lands are concerned that these resources cannot be replaced if converted to solar use. They argue that once prime agricultural soils and forest lands have been disturbed through subsoil compaction and loss of structure, they cannot be restored to their pre-disturbance levels of prime productivity. Because Virginia's largest industry in terms of land use is agriculture and forestry, the loss of prime soils and forest lands is viewed by this group as a direct threat to important economic and natural resources. Accordingly, such loss must be avoided, minimized when possible, and mitigated when an impact cannot be avoided. This is particularly true for C1 and C2 ecological cores, which by definition form continuous wildlife corridors and constitute potentially irreplaceable habitat and reservoirs of native species. In the context of these competing interests, the legislation's main impact was to deem certain solar projects as having a significant adverse impact and therefore subjecting such projects to mitigation and the associated costs. These projects are those that would disturb more than 10 acres of prime agricultural soils or 50 acres of contiguous forest lands, or that would disturb forest lands enrolled in a program for forestry preservation pursuant to subdivision 2 of § 58.1-3233 of the Code of Virginia. One such cost is the increased cost of preparing an application for a solar project. Under the proposal, all applicants would incur additional costs to map and calculate the impact of the proposed development on prime agricultural soils, contiguous forest lands, and C1 and C2 ecological cores to determine if they fit the legislation's criteria. The regulation identifies geographic information system resources that may be used to identify these resources without physical surveys. DEQ reports that based on informal interviews of consultants, the additional time required to map and calculate the impacts on these resources may average approximately eight hours. Assuming a rate of $100 per hour for consultant time, this increased cost per application is estimated to be $800. Based on data from 2019-2023, there were 13.2 permits issued per year. Thus, the additional application costs would aggregate to approximately $10,560 for all project applicants in a typical year. More significantly, other compliance costs would be related to the cost of acquiring conservation easements, whether the applicant plans to secure such easements directly by himself or indirectly via the payment of the in-lieu fee to a third party to obtain the required conservation easement. The components of the in-lieu fee would include the projected administrative costs and the predicted cost of a perpetual easement necessary to protect the required acreage of land (easement cost). The administrative costs are not currently known, but would include DEQ staff time, legal fees, due-diligence costs, stewardship fees paid to the holder, etc. The regulation would be amended to stipulate that the per-acre easement cost is the higher of either $3,000 per acre or the change in the value of land as a result of solar use. Because the administrative costs are applied to the entire project, they are not calculated on a per-acre basis. Thus, the total compliance costs associated with the in-lieu fee are the sum of the administrative costs (fixed) and the easement cost (per acre). More precisely, the regulation would be amended to stipulate that the proposed in-lieu fee of a perpetual easement would be equal to "the greater of (i) $3,000 per acre adjusted annually by the percent change (2024 base year) in Virginia cropland value determined by the USDA National Agricultural Statistics Service, or (ii) the difference between the most recent assessed use value per acre of forest or agricultural land, as applicable, and the full assessed value per acre of the land affected by the solar project prior to re-assessment as a solar use. The applicant shall provide [DEQ] evidence of the assessed values from the local assessor. In the event the jurisdiction where the project is proposed does not participate in use value assessment, the applicant may provide a calculation of the use value provided by the Virginia State Land Evaluation Advisory Council (SLEAC)." In other words, those solar permit applicants who choose to use protected land would have to incur additional costs either to obtain conservation easements themselves or to pay an in-lieu fee to a third party of at least $3,000 per acre. DEQ reports that the $3,000 threshold is derived from data on appraisals for land preservation tax credits data provided by the Virginia Department of Taxation; according to DEQ, a single value was used because there is no statistical difference between the appraised values for forest land and for farmland preservation tax credits. Additionally, over the 2019-2023 period the annual number of solar permits issued averaged 13.2 permits per year; likewise, the permits involved 794 MW of electric production capacity and 9,483 acres of land on average each year.[11] However, this acreage is the entire real estate parcel for the project, some of which may not be disturbed due to slopes, wetlands, buffers, etc. Thus, the reported acreage involved in the permitted projects likely overstates the area of disturbance. However, there are no available data to estimate how much of the disturbed land is prime agricultural soils, forests, C1, or C2 ecological cores. The cost of obtaining conservation easements directly, or indirectly via in-lieu fees, would effectively put a surcharge on the protected resources. This surcharge would incentivize solar developers to seek land that does not contain these protected resources up until the

point where the cost of this alternative land equals the cost of mitigation. Thus, it is expected that the proposed mitigation requirements would lead solar developers to select those sites that minimize the disturbance of forests and prime agricultural soils. (Over time, if these incentives increase the demand for un-protected land then the cost of unprotected land would increase.) However, if a project disturbs lands that would require a conservation easement or in-lieu fees, these costs would add to the overall project costs. To the degree that unprotected land is not available, or is more costly than protected land, the additional costs associated with using protected land may reduce the incentives to start a solar renewable energy project and, DEQ notes, could "slow the development of utility scale solar development in the Commonwealth."[12] To the extent that the proposed implementation of the legislatively mandated regulation discourages solar projects, the benefits of solar energy may be curtailed. Generally, small solar projects are beneficial to the environment because they generate electricity that might otherwise be generated by facilities that rely on the combustion of fossil fuels. Public health and welfare are thus protected to some extent because, as noted by DEQ, solar generation of electricity helps to "reduce dependence on foreign oil and helps increase jobs and economic development related to construction and operation of these projects." DEQ adds that the mitigation requirements could potentially result in increased consumer costs for electricity.[13] Thus, the consequences of this proposal may be a reduction in the benefits expected from solar energy. On the other hand, the additional solar project costs on applicants created by the in-lieu fees would generate new revenues that would be directed to conserve forests or prime agricultural lands in perpetuity, thereby offsetting the costs to the applicants and any negative societal or welfare impacts. In brief, DEQ estimates that the current value of conserving an acre of forest land in perpetuity is $273.73; the current value of conserving an acre of farmland in perpetuity is $1,558.99; and the values of conserving C1 and C2 ecological cores are indeterminate because there are no data on the monetary value of such lands. The detailed data and methodology used for these estimated values are provided in the appendix. As discussed in the appendix, no data exist with which to estimate the actual value of conserving these specific lands, and therefore certain statewide data were used by DEQ. However, the inherent value of these cores is indicated by the proposed conservation ratios: instead of the standard one to one ratio used for forests or prime agricultural lands, the proposed conservation ratios for C1 and C2 ecological cores are seven to one and two to one, respectively. These ratios indicate a higher value relative to farmland or forests by a factor of seven and two, respectively, indicating that such ecological cores are precious if not invaluable. Given the twofold and sevenfold increase in the one-to-one standard-proposed mitigation ratio and the associated costs, a solar developer would be highly incentivized to avoid impacting such precious lands. In addition, research referenced in the legislatively mandated study[14] suggests that approximately 25% of solar facilities in Virginia have disturbed farmland and almost 58% have disturbed forested land. The remaining 17% of disturbed land are composed of pasture (7.0%), harvested/disturbed (3.4 percent), NWI/other (2.4 percent), shrub/scrub (1.7%), tree (1.4%), turf/grass (1.0%), impervious (0.2%), open water (0.0%), and barren (0.0%) land. Although this research illustrates the types of land that may be disturbed, it does not identify disturbance to prime agricultural lands or forests. Additional offsetting benefits may be related to the reduction in uncertainty that this regulatory action will achieve by determining the appropriate mitigation techniques and criteria and other aspects of the regulatory approach that Chapter 688 required but did not stipulate. For example, the acreage of total land that would be conserved would be determined by the conservation ratios that would be established by this regulatory action. The proposed mitigation ratios would allow developers to determine the up-front costs associated with utility scale solar projects. This reduction in uncertainty is directly attributable to the proposed regulation and would be expected to benefit the solar developers given that DEQ is charged with establishing precise mitigation measures for the lands deemed to be adversely impacted by the legislation. However, by the same token, the proposed precise mitigation ratios that result from this regulation also directly impact how much farmland, or forests developers would be required to mitigate. As noted, the economic analysis of a regulatory change compares the situation that existed before the regulation was amended to the situation that exists after the regulation is amended. This comparison is summarized in the following table.

Additional Costs	Additional Benefits
Mitigation costs or the payment of the in-lieu fee by the developers (i.e., $3,000/acre plus the administrative costs).	Conservation value of protected lands (i.e., $273.73/acre forest land, $1,558.99/acre prime agricultural soils).
Lower prices to owners of protected land if demand for protected land decreases compared to pre-regulation levels.	Other unquantified environmental benefits of conserving protected lands (e.g., ecosystem services, food security, etc.).[15]
Possibly higher land acquisition costs for developers to obtain un-protected land if the price is higher compared to the pre-regulation price.	Benefits to owners of un-protected land from higher prices compared to pre-regulation levels.
$800/permit increase in application costs.	Greater certainty to developers about the up-front costs of solar projects.

Although most of the effects are unquantified and there are no data to estimate the total acreage of disturbed prime lands and

forests, the fact that the $3,000 easement cost per acre exceeds the conservation values ($273.73 per acre of forest lands and $1,558.99 of prime agricultural soils) suggests that regardless of the protected acreage that solar projects may disturb, the quantified compliance cost of this proposal would likely exceed the quantified benefits. (Note that this statement only addresses quantified costs and benefits, and that some of these impacts may not be quantified.) This condition would be less likely to the degree that C1 and C2 cores are involved, if their quantified conservation values exceed those of forest and farmland.

Threatened & Endangered Insects Mitigation: The current and proposed regulations both state that DEQ shall find that significant adverse impacts to wildlife are likely whenever state-listed threatened and endangered (T&E) wildlife are found to occur within the disturbance zone. However, the current regulation excludes T&E insects from the T&E wildlife definition. DEQ proposes to expand this definition by specifying that T&E insect species would also be considered T&E wildlife. Thus, the presence of T&E insects in the disturbance zone would trigger the determination that adverse impacts to wildlife are likely. Both the current and proposed regulations state that for state-listed T&E wildlife, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed actions are reasonable. These additional proposed actions may include best practices to avoid, minimize, or offset adverse impacts. An estimate of the cost of taking such actions for mitigation is not currently available.

Pollinator/Bird Habitat Scorecard: DEQ and the Department of Conservation and Recreation have developed a program to encourage pollinator-friendly solar energy developments throughout the Commonwealth. The program is referred to as the Virginia Pollinator-Smart Solar Industry (paraphrased hereafter as "Pollinator-Smart program"). A Pollinator-Smart solar facility is one that meets performance standards outlined in the most current release of the Virginia Pollinator Smart/Bird Habitat Scorecard (Scorecard).[16] Solar sites that meet the minimum requirement of 80 points on the Scorecard are considered "Certified Virginia Pollinator-Smart," and those that score 100 or more points are considered "Gold Certified Virginia Pollinator-Smart." The majority of points on the scorecard result from planting pollinator friendly native plants. DEQ proposes to require that the applicant submit a completed scorecard with the application. The agency believes it would take approximately 45 minutes for the applicant to complete the two-page scorecard. Certification would not be required, and a low score would not prompt mitigation. DEQ believes that many applicants would seek to have a high score because it would be good for public relations. Additionally, a paper[17] from Yale University Center for Business and the Environment finds that that pollinator-friendly solar may generate private benefits to solar developers. These benefits largely flow from higher energy output from panel efficiency gains attributed to the cooler microclimate created by perennial plantings. A small added benefit accrues from the lower operations and maintenance costs over the project lifetime thanks to the reduced frequency of mowing for native pollinator-friendly plants as compared to turfgrass. By requiring that the scorecard be completed, with greater possibility that developers learn about the potential benefits to their business as well as the environment, applicants may be more likely to pursue a pollinator-friendly project. The Yale study also points out that pollinator-friendly solar results in positive externalities such as more groundwater recharge and a greater reduction in soil erosion than conventional solar. Additionally, pollinator-friendly solar contributes other sizable social benefits in the form of increased crop yields when projects are sited near pollinator-dependent farmland, a reduction in the incidence of soil erosion, and an increase in the habitat needed by wildlife.

Timeframes: According to DEQ, the absence of certain timeframes within the regulation has been problematic. The agency proposes to establish several new timeframes, including adding that the authorization to construct and operate shall become invalid if (i) a program of continuous construction or modification is not begun within 60 months from the date the permit-by-rule or modification authorization is issued or (ii) a program of construction or modification is discontinued for a period of 24 months or more, except for a DEQ-approved period between phases of a phased construction project. With large gaps in time between analyses and construction, conditions on the ground may have significantly changed and the analysis may no longer be accurate. If the authorization is deemed invalid, new fees and application documents would have to be submitted if the developer decides to pursue the project. Under the current regulation, a report of any change of ownership must be done at least 30 days prior to the change. According to the agency, the industry has indicated that it is difficult to predict ownership transactions prior to the actual date and therefore requested that the notification occur after the transaction was complete. Since DEQ has no objection to receiving the information shortly afterwards, it proposes to change the requirement to within 30 days. This would reduce the reporting burden for the applicant. Solar developers are currently required to submit post-construction site maps, but no deadline is indicated. The lack of a deadline has hindered DEQ's ability to enforce their submission, which in turn hinders DEQ's ability to ensure the use of good practices. The agency proposes to require that the post-construction site maps be submitted within six months from the beginning of operation.

Projects with Reduced Requirements: DEQ proposes to increase the maximum rated capacity under which the applicant is not required to submit any notification or certification to the department from 500 KW to one MW. According to the agency, this proposed amendment was requested by the Department of Mines, Minerals and Energy to align with the nonresidential net metering requirements. This

would moderately reduce costs for projects with capacity greater than 500 KW and less than or equal to one MW.

Businesses and Other Entities Affected. The proposed regulation applies to applicants for solar projects with generation capacity up to 150 MW. Contractors and consultants for permit preparation and required analyses may be affected as well.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[18] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[19] As noted above, the most significant compliance costs are the cost of acquiring conservation easements, which Chapter 688 mandated that DEQ consider and implement. The economic impact that can be attributable to the regulation itself is mainly related to the proposals carried over from the unimplemented 2019 regulatory action that may introduce modest compliance costs in terms of mitigation actions for threatened and endangered insects, the cost of submitting the smart/bird habitat scorecard, and the cost of complying with proposed construction timeframes. With respect to those issues, an adverse impact on solar project developers is thus indicated on account of the associated discretionary requirements in this regulatory action.

Small Businesses[20] Affected.[21] According to DEQ, developers of utility scale solar projects could be classified as small businesses. For developers in this category, the increased cost of legislatively mandated mitigation could potentially limit solar development in Virginia. In addition, relatively modest costs on solar developers from the discretionary changes would add to those compliance costs.

Types and Estimated Number of Small Businesses Affected: Over the 2019-2023 period, on average 13.2 solar permits were issued per year. Exactly how many of these permittees would meet the definition of a small business is not known.

Costs and Other Effects: The costs and other effects discussed are the same on small businesses, which include increased permitting costs, conservation easement costs, and relatively modest costs from the additional discretionary mitigation and streamlining proposals.

Alternative Method that Minimizes Adverse Impact: There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities[22] Affected.[23] The proposed amendments would apply to solar developers, which can essentially be located in any locality. The proposal does not introduce direct costs on localities unless a locality itself chooses to develop a solar energy project, in which case the locality's costs would be similar to the costs of any other permit applicant. Additionally, there might be potential costs to a locality if a project is developed within its jurisdiction. These indirect costs could occur because of the existence of the project (with potential access or road construction issues, for example) but not because of the proposed regulation. The locality, pursuant to its land-use authority, has the power to determine whether or not a project can be located within its jurisdiction. A locality's decisions in this regard are separate from the operation of the regulations. The regulation only requires that the local government certify that the applicant has met all local land-use ordinances.

Projected Impact on Employment. The costs of mandated conservation easements plus modest costs of additional discretionary requirements may reduce the number of solar farms and by extension may also reduce the demand for labor in the construction and operation of solar farms to the extent that the proposal slows down the development of such projects. In contrast, the required mitigation actions may add to the demand for consultants for permit preparation and associated analyses, as well as the demand for labor that would be needed to facilitate private easement transactions and transactions that would be conducted by the third party that would manage and obtain easements through in-lieu fees collected.

Effects on the Use and Value of Private Property. The proposal would increase the cost of developing real estate for the purpose of creating and operating solar energy projects with rated capacity up to 150 MW. These costs would vary, depending on whether the project meets the criteria noted above, but some additional costs would be incurred for all projects such as the $800 application cost. This would likely reduce profitability and asset values of affected businesses and discourage such development. The cost of conservation easements would incentivize developers to pay more for land outside protected resources up to the cost of mitigation. Furthermore, the prime agricultural lands and forests protected by conservation easements would essentially be protected in perpetuity from other potential uses, therefore limiting the availability of protected land for any other non-solar uses.

Appendix. DEQ notes that there are no readily available estimates for the conservation values specific to protected lands and as a result uses proxies to approximate the financial contributions of agricultural and forestry sectors. DEQ also employs a methodology to use these proxies in order to calculate the conservation values. Similarly, the proposed easement cost per acre is also derived from proxy data. More specifically, DEQ has used the following specific data and methodology to estimate the conservation values for the three types of land and the per acre easement cost.

Value of conserved forest lands: The total annual financial contribution of forest products in Virginia has been estimated by the Weldon Cooper Center at $23,600,000,000.[24] In addition, the U.S. Forest Service estimates that there are 13,107,486 acres of privately owned forest land in Virginia.[25] Using these data, therefore, the annual per acre financial contribution of private forest land is approximately $1,800. The Forest Service also estimates that the total annual loss of forest land due to land use conversion is 59,782 acres. This means the probability of conversion of any acre of forest in any given year is 0.46 percent (59,782 / 13,107,486). The annual value of protecting an acre of forest land ($1,800 times 0.46 percent) equals $8.21. The present discounted value of protecting an acre of forest land in perpetuity (the annual value divided by a 3 percent discount rate) equals $273.73.

Value of conserved prime agricultural soils: The total annual financial contribution of agricultural products in Virginia has been estimated by the Weldon Cooper Center at

$82,329,000,000. The U.S. National Agricultural Statistics Service (NASS) estimates that there are 7,309,687 acres of farmland in Virginia.[26] Using these data, therefore, the annual per acre financial contribution of agricultural land is approximately $6,281. NASS also estimates that the total annual loss of farmland due to land use conversion is 97,600 acres. This means the probability of conversion of any acre of forest in any given year is 0.74 percent. The annual value of protecting an acre of farmland (per acre financial contribution times probability of loss) equals $46.77. The present discounted value of protecting an acre of farmland in perpetuity (the annual value divided by a 3 percent discount rate) equals $1,558.99. However, the conservation value of prime agricultural lands is likely higher.

Value of conserved ecological cores: Any effort to calculate the value of preserving C1 and C2 ecological cores requires determining the value of ecosystem services and non-use values (such as biodiversity preservation). A key aspect of C1 and C2 ecological cores is that they are connected by landscape corridors and nodes to create an interconnected, statewide network of natural lands.[27] Although these lands have value, there are no data with which to calculate their monetary value. However, the use of these lands would disrupt the network they create, thereby affecting the overall value of these lands as wildlife corridors. The Department of Conservation and Recreation estimates that there are approximately 2,926,000 acres of C1 ecological cores and 2,288,000 acres of C2 ecological cores. DEQ does not have direct data on the rate of loss of these cores, and used the U.S. Forest Service's estimates for forests (0.46%).

Easement cost: DEQ has used 2018 - 2022 land preservation tax credit appraisals data from the Department of Taxation to determine the median appraised value of land preservation easements in ten river basins in the Commonwealth. The appraisal data was calculated by river basin because the conservation easements will be required to be located in the same river basin as the solar development requiring mitigation. These median appraised values varied between $1,593 per acre to $11,025 per acre. DEQ then calculated the median value of these medians from ten river basins to be $2,973 and rounded this number to $3,000 to establish the proposed easement cost. This minimum easement cost is the same for both the prime agricultural lands and the forests, because DEQ states that there was no statistically significant difference in the estimated values.

---

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

[2] https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0688.

[3] The 2012 promulgation of this regulation was mandated by Chapters 808 and 854 of the 2009 Acts of Assembly that provided permitting authority to DEQ for solar-energy projects with rated capacity not exceeding 100 megawatts in addition to the State Corporation Commission (SCC). Currently, both DEQ and SCC have permitting authority for such projects.

[4] A permit-by-rule means that permit requirements are set forth up front in the regulation and if the applicant meets those requirements, a permit is automatically issued, rather than being issued on a case-by-case basis; thereby reducing uncertainty about the outcome and requirements of an application compared to a regular permit.

[5] According to DEQ and anecdotally, roughly one MW of electricity generation requires a solar farm size of about 10 acres.

[6] Chapter 688 defines "prime agricultural soils" as soils recognized as prime farmland by the U.S. Department of Agriculture and "forest land" as having the same meaning as set forth in § 10.1-1178, which is the land on which forest trees are found.

[7] "C1 forest core" means forest land with at least 100 acres of continuous interior natural habitat that has been mapped in the Outstanding category (C1) by the Department of Conservation and Recreation in the Virginia Natural Landscape Assessment. "C2 forest core" means forest land with at least 100 acres of continuous interior natural habitat that has been mapped in the Very High category (C2) by the Department of Conservation and Recreation in the Virginia Natural Landscape Assessment.

[8] "Conservation easement" means a perpetual easement complying with the proposed requirements of 9VAC15-60-60 G.

[9] https://townhall.virginia.gov/L/ViewAction.cfm?actionid=5216.

[10] A Study of Small Renewable Energy Projects: Impact on Natural Resources - HB 206 December 1, 2022 (virginia.gov)

[11] Source: DEQ

[12] See the Office of Regulatory Management Economic Review Form, page 3, at https://townhall.virginia.gov/l/GetFile.cfm?File=53\6246\10341\ORM_EconomicImpact_DEQ_10341_v1.pdf.

[13] Ibid, pp. 3-4.

[14] See page 350 of https://rga.lis.virginia.gov/Published/2022/RD773/PDF, and page 23 of https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=1043&context=murp_capstone.

[15] See page 7, https://www.cdfa.ca.gov/EnvironmentalStewardship/pdfs/Farmland-Conservation-in-California.pdf.

[16] See https://www.dcr.virginia.gov/natural-heritage/pollinator-smart for details.

[17] See https://cbey.yale.edu/research/maximizing-land-use-benefits-from-utility-scale-solar.

[18] 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.

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

[20] 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."

[21] 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.

[22] "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.

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

[24] https://www.vdacs.virginia.gov/pdf/weldoncooper.pdf.

[25] https://dof.virginia.gov/wp-content/uploads/USDA-FS-FS-395-Forests-of-VA-2020.pdf.

[26] https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_1 _State_Level/Virginia/.

[27] https://www.dcr.virginia.gov/natural-heritage/vaconvisvnla.

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

Summary:

Pursuant to Chapter 688 of the 2022 Acts of Assembly, the proposed amendments (i) add and clarify definitions; (ii) add prime agricultural soils and forest lands to the existing requirement for the analysis of the beneficial and adverse impacts to natural resources; (iii) add mitigation plan requirements for prime agricultural soils and forest lands; (iv) clarify the timeframe for submitting a notice of intent; (v) clarify that avoidance mitigation as it relates to cemeteries is required to ensure consistency with state law; (vi) clarify requirements for site plans and public participation requirements; (vii) specify the operation, recordkeeping, and reporting requirements; (viii) clarify which sizes of projects are exempt from permitting and the procedures for modification or transfer of ownership of a permitted facility; (ix) incorporate other provisions previously identified in the 2019 solar permit by rule amendments, excluding fees; and (x) improve overall regulatory structure, procedures, and use.

9VAC15-60-10. Definitions.

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

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

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

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

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

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

"C1 forest core" means forest land with at least 100 acres of continuous interior natural habitat that has been mapped in the Outstanding category (C1) by the Department of Conservation and Recreation in the Virginia Natural Landscape Assessment.

"C2 forest core" means forest land with at least 100 acres of continuous interior natural habitat that has been mapped in the Very High category (C2) by the Department of Conservation and Recreation in the Virginia Natural Landscape Assessment.

"Coastal Avian Protection Zones" or "CAPZ" means the areas designated on the map of "Coastal Avian Protection Zones" generated on the department's Coastal GEMS geospatial data system ~~(9VAC15-60-120 C 1)~~.

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

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

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

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

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

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

"DCR" means the Department of Conservation and Recreation.

~~"DGIF" means the Department of Game and Inland Fisheries.~~

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

"DHR" means the Department of Historic Resources.

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

"Disturbance zone" means the area within the site directly impacted by land-disturbing activity, including construction and operation of the small solar energy project and ~~within~~ 100 feet ~~of~~ from the boundary of the directly impacted area. For purposes of the DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard, the disturbance zone shall include the panel zones, open areas, and screening zones of the project.

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

"DOF" means the Department of Forestry.

"DWR" means the Department of Wildlife Resources.

"Establishment and maintenance of pollinator smart habitat/vegetation" means establishment and maintenance of pollinator smart vegetation in accordance with the DCR/DEQ POLLINATOR–SMART Comprehensive Manual. This shall meet short-term and long-term erosion and sediment control (ESC) standards and may require change of cover type or species mix following initial ESC stabilization. Pollinator habitat shall cover at least 30% of the disturbed area claimed for this credit.

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

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

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

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

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

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

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

"Mitigation district" means each river watershed as defined in § 33.2-247 of the Code of Virginia, including the Potomac River Basin, Shenandoah River Basin, James River Basin, Rappahannock River Basin, Roanoke and Yadkin Rivers Basin, Chowan River Basin (including the Dismal Swamp and Albemarle Sound), Tennessee River Basin, Big Sandy River Basin, Chesapeake Bay and its Small Coastal Basins, Atlantic Ocean, York River Basin, and New River Basin with the following exceptions: the Atlantic Ocean is combined with the Chesapeake Bay and its Small Coastal Basins east of the Chesapeake Bay and labeled "Eastern Shore," the Chesapeake Bay and its Small Coastal Basins west of the Chesapeake Bay is combined with adjacent major river basins, and the James River Basin has been divided into upper, middle, and lower basins.

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

"Mitigation zone" means the area within the site directly impacted by land-disturbing activity, including construction and operation of the small solar energy project.

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

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

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

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

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

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

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

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

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

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

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

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

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

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

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

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

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

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

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

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

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

"Riparian forest buffer" means a woodland riparian buffer preserved or installed and maintained around a waterbody with perennial flow. The riparian buffer shall be a minimum width of 35 feet as measured from the top of the channel bank to the edge of the mitigation zone, cropland, hayland, or pasture and in accordance with DCR Specifications for NO. FR-3 or DCR Specifications for NO. WQ-1 contained in the Virginia Agricultural BMP Cost-Share Manual.

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

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

"Small renewable energy project" means (i) an electrical generation facility with a rated capacity not exceeding 150 ~~megawatts~~ MW that generates electricity only from sunlight or wind; (ii) an electrical generation facility with a rated capacity not exceeding 100 ~~megawatts~~ MW that generates electricity only from falling water, wave motion, tides, or geothermal power; ~~or~~ (iii) an electrical generation facility with a rated capacity not exceeding 20 ~~megawatts~~ MW that generates electricity only from biomass, energy from waste, or municipal solid waste; (iv) an energy storage facility that uses

electrochemical cells to convert chemical energy with a rated capacity not exceeding 150 MW; or (v) a hybrid project composed of an electrical generation facility that meets the parameters established in clause (i), (ii), or (iii) of this definition and an energy storage facility that meets the parameters established in clause (iv) of this definition.

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

"Threatened and endangered," "T&E," "state threatened or endangered species," or "state-listed species" means (i) any wildlife species designated as a Virginia endangered or threatened species by ~~DGIF~~ DWR pursuant to ~~the~~ §§ 29.1-563 through 29.1-570 of the Code of Virginia and 4VAC15-20-130 or (ii) any species designated as a Virginia endangered or threatened species by VDACS pursuant to Chapter 11 (§ 3.2-1000 et seq.) of Title 3.2 of the Code of Virginia and 2VAC5-320-10.

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

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

"VLR" means the Virginia Landmarks Register ~~(9VAC15-60-120 B 1)~~.

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

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

"Wildlife" means wild animals; except, however, that T&E insect species shall ~~only be addressed as part of natural heritage resources and shall not~~ be considered T&E wildlife.

9VAC15-60-20. ~~Authority and applicability~~ Applicability.

~~A. This regulation is issued under authority of Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia. The regulation contains requirements for solar-powered electric generation projects consisting of PV systems and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at a rated capacity equal to or less than 150 megawatts.~~

~~B.~~ A. The department has determined that a permit by rule is required for small solar energy projects with a rated capacity greater than five ~~megawatts~~ MW and a disturbance zone greater than 10 acres, provided that the projects do not otherwise meet the criteria for Part III (9VAC15-60-130) of this chapter~~, and this regulation contains the~~. The permit by rule provisions for these projects are contained in Part II (9VAC15-60-30 et seq.) of this chapter.

~~C.~~ B. The department has determined that different provisions should apply to projects that meet the criteria as set forth in Part III ~~(9VAC15-60-130)~~ of this chapter~~, and this regulation contains the~~. The requirements, if any, for these projects are contained in Part III ~~(9VAC15-60-130 A and B)~~ of this chapter. Projects that meet the criteria for Part III of this chapter are deemed to be covered by the permit by rule.

~~D.~~ C. The department has determined that small renewable energy projects utilizing other solar technologies shall fulfill all of the requirements in 9VAC15-40 as prescribed for small wind energy projects, unless (i) the owner or operator of the proposed project presents to the department information indicating that the other solar technology presents no greater likelihood of significant adverse impacts to natural resources than does PV technology and (ii) the department determines that it is appropriate for the proposed project utilizing the other solar technology to meet the requirements of this chapter or of some modification to either 9VAC15-40 or this chapter, as prescribed by the department for that particular project.

9VAC15-60-30. Application for permit by rule for small solar energy projects with rated capacity greater than five ~~megawatts~~ MW and disturbance zone greater than 10 acres.

A. The ~~owner or operator of~~ application for a small solar energy project with a rated capacity greater than five ~~megawatts~~ MW and a disturbance zone greater than 10 acres, provided that the project does not otherwise meet the criteria for Part III (9VAC15-60-130 ~~A or B~~) of this chapter, shall ~~submit to the department a complete application in which he satisfactorily accomplishes~~ contain all of the following:

1. ~~In accordance with § 10.1-1197.6 B 1 of the Code of Virginia, and as early in the project development process as practicable, furnishes to the department a notice of intent, to be published in the Virginia Register, that he intends to submit the necessary documentation for a permit by rule for~~

~~a small renewable energy project;~~ An NOI to submit the necessary documentation for a PBR, to be published in the Virginia Register of Regulations.

a. The applicant shall submit the NOI in a format approved by the department.

(1) The initial NOI shall be submitted to the department as early in the project development process as practicable, but at least 90 days prior to the start of the public comment period required under 9VAC15-60-90.

(2) The NOI shall be submitted to the chief administrative officer and chief elected official of the locality in which the project is proposed to be located at the same time the NOI is submitted to the department.

b. Any NOI submitted after the effective date of this regulation shall expire if no application has been submitted within 48 months from the NOI submittal date, unless the department receives a written request for extension prior to the NOI expiration date. An NOI extension may be granted for an additional 36 months, at which time the NOI shall expire.

c. An applicant seeking changes for a project that results in an increase of MW or acreage shall submit a new NOI using a format approved by the department.

d. The applicant shall notify the department of any change of operator, ownership, or controlling interest for a project within 30 days of the transfer. No additional fee shall be assessed.

(1) The original applicant shall notify the department of the change by withdrawing the initial NOI in a format acceptable to the department.

(2) The new applicant shall submit an NOI in a format acceptable to the department.

(3) The department will not consider the change of operator, ownership, or controlling interest for a project effective until the department receives notification from both the original applicant and the new applicant.

2. ~~In accordance with § 10.1-1197.6 B 2 of the Code of Virginia, furnishes to the department a~~ A certification by the governing body of ~~the~~ any locality ~~or localities~~ wherein the ~~small renewable energy~~ project will be located that the project complies with all applicable land use ordinances~~;~~. The certification shall also include a statement of the area of the project enrolled in a forestry preservation program pursuant to subdivision 2 of § 58.1-3233 of the Code of Virginia (i.e., classified by the local assessor as forest for use-value assessment).

3. ~~In accordance with § 10.1-1197.6 B 3 of the Code of Virginia, furnishes to the department copies~~ Copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the ~~small renewable energy~~ project~~;~~.

4. ~~In accordance with § 10.1-1197.6 B 4 of the Code of Virginia, furnishes to the department a~~ A copy of the final interconnection agreement between the ~~small renewable energy~~ project and the regional transmission organization or transmission owner indicating that the connection of the ~~small renewable energy~~ project will not cause a reliability problem for the system. ~~If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section. When a final interconnection agreement is complete, it shall be provided to the department. The department shall forward a copy of the agreement or study to the State Corporation Commission;~~

a. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section.

b. The final agreement shall be provided to the department within 30 days of the date of execution.

c. The department shall forward a copy of the agreement or study to the State Corporation Commission.

5. ~~In accordance with § 10.1-1197.6 B 5 of the Code of Virginia, furnishes to the department a~~ A certification signed and stamped by a professional engineer licensed in Virginia that the maximum generation capacity of the ~~small solar energy~~ project, as designed, does not exceed 150 ~~megawatts;~~ MW.

6. ~~In accordance with § 10.1-1197.6 B 6 of the Code of Virginia, furnishes to the department an~~ An analysis of potential environmental impacts of the ~~small renewable energy~~ project's operations on attainment of national ambient air quality standards~~;~~ (42 USC § 7409 as implemented by 9VAC5-30).

7. ~~In accordance with § 10.1-1197.6 B 7 of the Code of Virginia, furnishes to the department, where relevant, an~~ An analysis of the beneficial and adverse impacts of the proposed project on natural and historic resources~~. The owner or operator shall perform the analyses prescribed in~~ pursuant to 9VAC15-60-40. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months~~;~~.

8. ~~In accordance with § 10.1-1197.6 B 8 of the Code of Virginia, furnishes to the department a~~ A mitigation plan pursuant to 9VAC15-60-60 ~~that details reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions; provided, however, that the provisions of this subdivision shall only be required if the department determines, pursuant to 9VAC15-60-50, that the information collected pursuant to § 10.1-1197.6 B 7 of the Code of Virginia and 9VAC15-60-40 indicates that significant adverse impacts to wildlife or historic resources are likely.~~

~~The mitigation plan shall be an addendum to the operating plan of the solar energy project, and the owner or operator shall implement the mitigation plan as deemed complete and adequate by the department. The mitigation plan shall be an enforceable part of the permit by rule;~~ if a determination of likely significant adverse impacts has been made according to 9VAC15-60-50. The plan shall detail actions necessary to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions.

9. ~~In accordance with § 10.1-1197.6 B 9 of the Code of Virginia, furnishes to the department a~~ A certification signed and stamped by a professional engineer licensed in Virginia that the project is designed in accordance with 9VAC15-60-80~~;~~.

10. ~~In accordance with § 10.1-1197.6 B 10 of the Code of Virginia, furnishes to the department an~~ An operating plan that includes a description of how the project will be operated ~~in compliance with its mitigation plan, if such a mitigation plan is required pursuant to 9VAC15-60-50;~~ and any mitigation plan required due to findings under 9VAC15-60-50.

11. ~~In accordance with § 10.1-1197.6 B 11 of the Code of Virginia, furnishes to the department a~~ A detailed site plan and context map meeting the requirements of 9VAC15-60-70~~;~~.

12. ~~In accordance with § 10.1-1197.6 B 12 of the Code of Virginia, furnishes to the department a~~ A certification signed by the applicant that the ~~small solar energy project~~ department has been notified that the applicant intends to apply for or has applied for or obtained all necessary environmental permits~~;~~ for the project.

13. ~~In accordance with § 10.1-1197.6 H and I of the Code of Virginia, furnishes to the department a~~ A certification signed by the applicant that the ~~small solar energy~~ project is being proposed, developed, constructed, or purchased by a person that is not a utility regulated pursuant to Title 56 of the Code of Virginia or provides certification that (i) the project's costs are not recovered from Virginia jurisdictional customers under base rates, a fuel factor charge, or a rate adjustment clause~~,~~ or (ii) the applicant is a utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56 of the Code of Virginia~~;~~.

14. ~~Prior to authorization of the project and in accordance with § 10.1-1197.6 B 13 and B 14 of the Code of Virginia, conducts a~~ A summary report of the 30-day public review and comment period ~~and holds a public meeting~~ conducted pursuant to 9VAC15-60-90~~. The public meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project. Following the public meeting and public comment period, the applicant shall prepare a report summarizing~~, including a summary of the issues raised by the public ~~and include~~, any written comments received, and the applicant's response to those comments. ~~The report shall be provided to the department as part of this application; and~~

15. ~~In accordance with 9VAC15-60-110, furnishes to the department the~~ The appropriate ~~fee~~ fees pursuant to 9VAC15-60-110, exclusive of in-lieu fees pursuant to 9VAC15-60-60.

B. ~~Within 90 days of receiving all of the required documents and fees listed in subsection A of this section, the department shall determine, after consultation with other agencies in the Secretariat of Natural and Historic Resources, whether the application is complete and whether it adequately meets the requirements of this chapter pursuant to § 10.1-1197.7 A of the Code of Virginia.~~ An applicant seeking a PBR under this part shall submit the following:

1. All items identified in subsection A of this section submitted in a format acceptable to the department and all applicable fees pursuant to 9VAC15-60-110, exclusive of in-lieu fees pursuant to 9VAC15-60-60.

2. A cover letter submitted with the application that contains the following:

a. Document certification signed by a responsible person that contains the following statement:

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

b. The name and contact information of the responsible person signing the document certification required under subdivision 2 a of this subsection; and

c. The name and contact information of the responsible person to receive the permit authorization.

C. Within 90 days of receiving all of the required documents and fees listed in subsection A of this section, the department will, after consultation with DCR, DHR, DOF, DWR, and VDACS, form a determination that an application is an administratively complete application or incomplete.

1. If the department determines that the application meets the requirements of this chapter, ~~then~~ the department ~~shall notify the applicant in writing that he is authorized to construct and operate a small solar energy project pursuant to this chapter~~ will form a determination that an application is an administratively complete application and notify the responsible person in writing that the person is authorized to construct and operate the facility pursuant to this chapter.

a. The authorization to construct and operate shall become invalid if (i) a program of continuous construction or

modification is not begun within 60 months from the date the PBR or modification authorization is issued or (ii) a program of construction or modification is discontinued for a period of 24 months or more, except for a department-approved period between phases of a phased construction project. Routine maintenance is not considered a modification of a project.

b. The department may grant an extension on a case-by-case basis.

c. The applicant for any project for which the PBR or modification authorization has been deemed invalid shall submit a new NOI, application documents, and appropriate fees to reactivate authorization.

2. If the department determines that the application does not meet the requirements of this chapter, ~~then~~ the department ~~shall notify the applicant in writing and specify the deficiencies~~ will form a determination that an application is incomplete, notify the applicant in writing, and specify the deficiencies.

3. If the applicant chooses to correct deficiencies in ~~a previously submitted~~ an incomplete application, ~~the department shall follow the procedures of this subsection and notify the applicant whether the revised application meets the requirements of this chapter within 60 days of receiving the revised application~~ (i) the applicant shall notify the department within 30 days of an incomplete notification, (ii) the department will follow the procedures of this subsection, and (iii) the department will notify the applicant within 60 days whether the supplemental information meets the requirements of this chapter.

4. If the application was not approved because a proposed mitigation plan was not provided by the applicant as part of the initial application and the department determines there are significant adverse impacts, the applicant shall provide a 45-day public comment period detailing reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts and to measure the efficacy of those actions. The public comment shall follow the procedures set forth in 9VAC15-60-90, except that the public comment period shall be 45 days.

5. The applicant may correct deficiencies in an application by submitting supplemental information, in which case the department will notify the applicant within 60 days whether the supplemental information meets the requirements of this chapter. If the applicant fails to submit necessary supplemental information within 90 days of the date the department provided notice of the deficiencies or within such additional time as the applicant requests and the department approves, the application shall be deemed withdrawn.

6. Any case decision by the department pursuant to this subsection shall be subject to the process and appeal provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

9VAC15-60-40. Analysis of the beneficial and adverse impacts on natural and historic resources.

A. ~~Analyses of wildlife. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the~~ The applicant shall conduct preconstruction wildlife analyses. The analyses of wildlife shall include the following:

1. ~~Desktop surveys and maps.~~ The applicant shall obtain a wildlife report and map generated from ~~DGIF's~~ DWR's Virginia Fish and Wildlife Information Service web-based application ~~(9VAC15-60-120 C 3)~~ or from a data and mapping system including the most recent data available from ~~DGIF's~~ DWR's subscriber-based Wildlife Environmental Review Map Service of the following: (i) known wildlife species and habitat features on the site or within two miles of the boundary of the site ~~and~~, (ii) known or potential sea turtle nesting beaches located within one-half mile of the disturbance zone, and (iii) desktop information for bald eagle nesting locations from the Center for Conservation Biology at the College of William and Mary.

2. ~~Desktop map for avian resources in Coastal Avian Protection Zones (CAPZ).~~ The applicant shall consult the "Coastal Avian Protection Zones" map generated on the department's Coastal GEMS geospatial data system ~~(9VAC15-60-120 C 1)~~ and determine whether the proposed ~~solar energy~~ project site will be located in part or in whole within one or more CAPZ.

B. ~~Analyses of historic resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the~~ The applicant shall ~~also conduct~~ perform a preconstruction historic resources analysis~~. The analysis shall be~~ conducted by a ~~qualified~~ professional meeting ~~the professional qualification standards~~ of the Secretary of the Interior's Standards for Archeology and Historic Preservation ~~(9VAC15-60-120 B 2)~~ in the appropriate discipline. The analysis shall include each of the following:

1. ~~Compilation of known historic resources. The applicant shall gather information~~ Information on known historic resources within the disturbance zone and within one-half mile of the disturbance zone boundary ~~and present this information~~ identified on the context map referenced in 9VAC15-60-70 B~~,~~ or as an overlay to this context map, as well as in tabular format.

2. ~~Architectural survey. The applicant shall conduct a field~~ A Phase I architectural survey of all architectural resources, including cultural landscapes, 50 years of age or older within the disturbance zone and within one-half mile of the disturbance zone boundary and ~~evaluate~~ an evaluation of the potential eligibility of any identified resource for listing in the VLR. The architectural survey area may be refined by the applicant based on an analysis of the project's existing

viewshed to exclude areas that have no direct visual association with the project. The applicant shall provide detailed justification for any changes to the survey area.

3. ~~Archaeological survey. The applicant shall conduct an~~ A Phase I archaeological ~~field~~ survey of the disturbance zone and ~~evaluate~~ an evaluation of the potential eligibility of any identified archaeological site for listing in the VLR. ~~As an alternative to performing this archaeological survey, the applicant may make a demonstration to the department that the project will utilize nonpenetrating footings technology and that any necessary grading of the site prior to construction does not have the potential to adversely impact any archaeological resource.~~ To streamline archaeological investigations, the survey may execute research design that utilizes probability-based sampling guided by predictive modelling. Such a research design shall be approved by DEQ and DHR for use in the project prior to conducting the fieldwork.

C. ~~Analyses of other natural resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the~~ The applicant shall ~~also~~ conduct a preconstruction desktop survey of natural heritage resources ~~within the disturbance zone. D. Summary report. The applicant shall provide to the department a report presenting the findings of the studies and analyses conducted pursuant to subsections A, B, and C of this section, along with all data and supporting documents. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on wildlife and historic resources identified by these studies and analyses.~~ and Virginia Natural Landscape Assessment Ecological Cores within the disturbance zone within six months prior to the date of the application submittal. The analyses shall include the following:

1. A report of natural heritage resources using either the DCR online information service order form or the DCR subscriber-based Natural Heritage Data Explorer web application and include the most recent data available of the following:

a. Documented occurrences of natural heritage resources within the disturbance zone;

b. Intersection of the site with predicted suitable habitat (PSH) models developed by DCR for rare, threatened, and endangered species;

c. Intersection of the site with the Virginia Natural Landscape Assessment Ecological Cores; and

d. Onsite surveys for natural heritage resources recommended by DCR based on the analysis required under this subsection; and

2. A completed DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard.

D. The applicant shall conduct preconstruction mapping of prime agricultural soils on the site. The mapping of prime agricultural soils shall include the following:

1. The applicant shall use the U.S Department of Agriculture Natural Resources Conservation Service Web Soil Survey (Web Soil Survey) to map prime agricultural soils on the site. If the farmland classification of the soil map unit is "All areas are prime farmland," it shall be considered prime agricultural soils.

2. The applicant may propose to the department an alternative map of the prime agricultural soils on the site based on a report prepared by a professional soil scientist licensed by the Commonwealth of Virginia. This report shall include records of soil samples and other documentation proving the boundaries of prime agricultural soils on the site that are inconsistent with the Web Soil Survey.

3. The applicant shall tabulate the total area in acres of prime agricultural soils to be disturbed by the project.

E. The applicant shall conduct preconstruction mapping of forest land on the site. The mapping of forest land shall include the following:

1. All forest land within the boundaries of the site;

2. Areas of the site enrolled in a forestry preservation program pursuant to subdivision 2 of § 58.1-3233 of the Code of Virginia (i.e., classified by the local assessor as forest for use-value assessment); and

3. Tabulation of the total area in acres of (i) contiguous forest land to be disturbed by the project and (ii) forest lands enrolled in a program for forestry preservation pursuant to subdivision 2 of § 58.1-3233 of the Code of Virginia to be disturbed by the project.

F. The applicant shall provide to the department a report presenting the findings of the studies and analyses conducted pursuant to subsections A, B, C, D, and E of this section, along with all data and supporting documents. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on wildlife, historic resources, natural heritage resources, prime agricultural soils, and forest lands identified by these studies and analyses.

9VAC15-60-50. Determination of likely significant adverse impacts.

A. The department shall find that significant adverse impacts to wildlife are likely whenever the wildlife analyses prescribed in 9VAC15-60-40 A document that any of the following conditions exists:

1. State-listed T&E wildlife are found to occur within the disturbance zone or the disturbance zone is located on or within one-half mile of a known or potential sea turtle nesting beach.

2. The disturbance zone is located in part or in whole within ~~zones~~ zone 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the ~~Coastal Avian Protection Zones (~~CAPZ~~)~~ map.

B. The department shall find that significant adverse impacts to historic resources are likely whenever the historic resources analyses prescribed by 9VAC15-60-40 B indicate that the proposed project is likely to diminish significantly any aspect of a historic resource's integrity.

C. The department will find that significant adverse impacts to natural heritage resources and ecological cores are likely whenever the analysis prescribed by 9VAC15-60-40 C indicates that impacts to natural heritage resources or Virginia Natural Landscape Assessment Ecological Cores with a Conservation Rank of C1 or C2 will occur within the disturbance zone as verified by a site visit. No mitigation will be required solely as a result of predicted suitable habitat (PSH) models.

D. A project shall be deemed to have a significant adverse impact if it would disturb more than 10 acres of prime agricultural soils.

E. A project shall be deemed to have a significant adverse impact if it would disturb more than 50 acres of contiguous forest lands or if it would disturb forest lands enrolled in a program for forestry preservation pursuant to subdivision 2 of § 58.1-3233 of the Code of Virginia.

9VAC15-60-60. Mitigation plan.

A. ~~If the department determines that significant adverse impacts to wildlife or historic resources or both are likely, then the applicant shall prepare a mitigation plan~~. The applicant shall prepare a mitigation plan for any resource for which a significant adverse impact determination has been made as a result of the analyses pursuant to 9VAC15-60-40. The plan shall detail actions by the applicant to avoid, minimize, or otherwise mitigate such impacts and shall be an enforceable part of the PBR. Mitigation included in a siting agreement and approved by a local governing body pursuant to subsection B of § 15.2-2316.7 of the Code of Virginia or zoning use conditions approved by the locality pursuant to § 15.2-2288.8 of the Code of Virginia may satisfy the mitigation obligations required for the PBR if (i) the local requirements conform to the regulations established by DEQ and (ii) the local requirement is incorporated as a specific condition of the PBR approval.

B. Mitigation measures for significant adverse impacts to wildlife shall include the following:

1. For state-listed T&E wildlife, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed actions are reasonable. These additional proposed actions may include best practices to avoid, minimize, or offset adverse impacts to resources analyzed pursuant to 9VAC15-60-40 A or C.

2. For proposed projects where the disturbance zone is located on or within one-half mile of a known or potential sea turtle nesting beach, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided~~,~~ and why additional proposed mitigation actions are reasonable. Mitigation measures shall include the following:

a. Avoiding construction within likely sea turtle crawl or nesting habitats during the turtle nesting and hatching season (May 20 through October 31). If avoiding construction during this period is not possible, then conducting daily crawl surveys of the disturbance zone (May 20 through August 31) and one mile beyond the northern and southern reaches of the disturbance zone (~~hereinafter "~~sea turtle nest survey zone~~"~~) between sunrise and 9 a.m. by qualified individuals who have the ability to distinguish accurately between nesting and nonnesting emergences.

b. If construction is scheduled during the nesting season, ~~then~~ including measures to protect nests and hatchlings found within the sea turtle nest survey zone.

c. Minimizing nighttime construction during the nesting season and designing project lighting during the construction and operational phases to minimize impacts on nesting sea turtles and hatchlings. Proposed project lighting shall be submitted to DWR and the U.S. Fish and Wildlife Service for approval prior to construction.

3. For projects located in part or in whole within ~~zones~~ zone 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the ~~Coastal Avian Protection Zones (~~CAPZ~~)~~ map, contribute ~~$1,000.00~~ $1,000 per ~~megawatt~~ MW of rated capacity, or partial ~~megawatt~~ MW thereof, to a fund designated by the department in support of scientific research investigating or minimizing the impacts of projects in CAPZ on avian resources. Payment of mitigation fee is due at the time of application submittal.

C. Mitigation measures for significant adverse impacts to historic resources shall include the following:

1. Significant adverse impacts to VLR-eligible or VLR-listed architectural resources shall be minimized, to the extent practicable, through design of the ~~solar energy~~ project or the installation of vegetative or other screening.

2. If significant adverse impacts to VLR-eligible or VLR-listed architectural resources cannot be avoided or minimized such that impacts are no longer significantly adverse, then the applicant shall develop a reasonable and proportionate mitigation plan that offsets the significantly adverse impacts and has a demonstrable public benefit and benefit for the affected or similar resource.

3. If any identified VLR-eligible or VLR-listed archaeological site cannot be avoided or minimized to such a degree as to avoid a significant adverse impact, significant adverse impacts of the project ~~will~~ shall be mitigated through archaeological data recovery approved by DHR and DEQ.

D. Mitigation measures for significant adverse impacts to natural heritage resources described in Virginia Natural Landscape Assessment Ecological Cores shall include all reasonable measures to avoid and minimize significant adverse impacts. The applicant shall demonstrate in its mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed actions are reasonable. Additional proposed actions shall include practices to minimize or offset significant adverse impact through activities to protect, restore, or enhance the affected or similar resource. If impacts to C1 or C2 forest cores cannot be avoided, mitigation shall be required in the form of a conservation easement. For disturbance of C1 forest cores, the applicant shall provide a conservation easement for land containing C1 forest cores within the same mitigation district at a mitigation ratio of seven to one. For disturbance of C2 forest cores, the applicant shall provide a conservation easement for land containing C2 forest cores within the same mitigation district at a mitigation ratio of two to one.

E. Mitigation measures for significant adverse impacts to prime agricultural soils shall include the following:

1. For prime agricultural soils disturbed by the project, the applicant shall provide mitigation by a conservation easement for land containing prime agricultural soils within the mitigation district at a mitigation ratio of one to one.

2. The mitigation ratio may be reduced by providing conserved land containing riparian forest buffers within the easement. For riparian forest buffers, the mitigation ratio shall be reduced to one to two. Riparian forest buffers shall be a minimum of 35 feet. The portion of a riparian forest buffer exceeding 300 feet in width shall not count for purposes of the enhanced mitigation ratio.

3. Actions to preserve prime agricultural soils on the project site shall be counted as partial mitigation per Table 1.

Table 1

Partial Mitigation Options to Preserve Prime Agricultural Soils

Mitigation Option	Mitigation Actions Required	Mitigation Ratio
Option 1: No Change in Grade	Areas with no change in grade or topsoil removal, no trenching, maintenance of > 75% living vegetative cover, and decompaction to > 6" after decommissioning.	1:10
Option 2: Preservation of Topsoil	Areas with changes in grade due to cut and fill with removal and return of topsoil, decompaction of topsoil and subsoil following installation, maintenance of > 75% living vegetative cover for project lifetime, and decompaction to > 24" and surface soil amendment after decommissioning.	1:4
Option 3: Decompaction of Surface Soil on Cut/Fill Areas	Areas with changes in grade due to cut and fill without topsoil salvage and return, decompaction of surface soil following installation, maintenance of > 75% living vegetative cover for project lifetime, and surface soil decompaction and soil amendment to > 6" after decommissioning.	1:2

Preserving soil on site shall reduce but not eliminate the requirement for an easement or in-lieu fee.

4. Implementation of a plan to maintain any of the following management alternatives in combination with onsite soil mitigation pursuant to subdivision 3 of this subsection shall decrease the required area of off-site conservation easement by 25%: managed grazing; active cropping, including hayland; or establishment and maintenance of pollinator smart habitat/vegetation, including certification and monitoring in accordance with the DCR/DEQ POLLINATOR–SMART Comprehensive Manual. The plan shall be submitted with the application and approved by the department.

5. If a project is deemed to have a significant adverse impact, that is, disturb more than 10 acres of prime agricultural soils, mitigation shall be required for the entire area of disturbance. For example, a disturbance of 11 acres of prime agricultural soils shall require mitigation for 11 acres, not one acre.

6. When significant adverse impacts affect prime agricultural soils overlain by forest land, the applicant shall provide a conservation easement for land containing forest land within the mitigation district at a mitigation ratio of one to one. For example, disturbance of 11 acres of prime

agricultural soils overlain by forest land shall require 11 acres of conserved forest land.

7. An applicant may propose innovative alternatives to the required mitigation. An example could include restoration of a degraded site to restore the characteristics of prime agricultural soils. The department may accept innovative proposals by the applicant as alternative mitigation and adjust required mitigation ratios to reflect added benefits.

F. Mitigation measures for significant adverse impacts to forest land shall include the following:

1. For contiguous forest land or forest lands enrolled in a program for forestry preservation pursuant to subdivision 2 of § 58.1-3233 of the Code of Virginia disturbed by the project, the applicant shall provide a conservation easement for land containing forest land within the mitigation district at a mitigation ratio of one to one.

2. The ratio of land required in the conservation easement may be reduced by providing land containing existing riparian forest buffers within the easement. For riparian forest buffers the mitigation ratio shall be reduced to one to two. Such buffers shall be a minimum of 35 feet. The portion of a riparian forest buffer exceeding 300 feet in width shall not count for purposes of the enhanced mitigation ratio.

3. If a project shall be deemed to have a significant adverse impact, that is, disturb more than 50 acres of contiguous forest land, mitigation shall be required for the entire area of disturbance. For example, a disturbance of 51 acres of contiguous forest land shall require mitigation for 51 acres, not one acre.

4. An applicant may propose innovative alternatives to the required mitigation. An example could include afforestation of degraded land. The department may accept innovative proposals by the applicant as alternative mitigation and adjust required mitigation ratios to reflect added benefits.

G. The requirements for any conservation easements required by this section shall include the following:

1. The applicant shall submit with the PBR application a plan to obtain any easements necessary to provide the required mitigation. The plan shall include:

a. Identification of the proposed conserved land, provided the area of conserved land may be increased or decreased subsequent to submission of the plan as needed to meet the mitigation ratios approved with the application;

b. The current use of the proposed conserved land;

c. The identity of the proposed grantor and holder of any easements;

d. A brief description of the agreements with the proposed grantor and holder; and

e. A title report confirming the ownership of the conserved land and the existence of any liens, encumbrances, or restrictions.

2. Closing on any required easements shall occur within one year of the date of issuance of the PBR, unless extended by the department for good cause. Any superior lien shall be subordinated to the easement at closing.

3. The holder of the easement shall be either (i) a holder in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) that is accredited by the Land Trust Accreditation Commission or its designated subsidiary entity or (ii) a public body in accordance with the Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia).

4. A conservation easement shall contain a third-party right of enforcement as defined in § 10.1-1009 of the Code of Virginia granted to the department.

5. A conservation easement shall encumber land in the same mitigation district as the area disturbed. In the event the applicant cannot locate land in the same mitigation district, the department may allow the land to be in an adjacent mitigation district.

6. No land shall count for purposes of mitigation that is already subject to an easement or deed restriction restricting development. However, land that is restricted by an easement acquired for the purpose of mitigating solar development as part of a banking arrangement or advance purchase and is not subject to another quid pro quo, such as a tax credit, may be counted for mitigation. Land that is not counted for mitigation may still be included in a conservation easement.

7. Every conservation easement for prime agricultural soils shall allow agricultural activities on the conserved land. Every conservation easement for forest land shall allow silvicultural activities on the conserved land. Every conservation easement for C1 or C2 forest cores shall restrict disturbance of the conserved land.

8. Easements for forest mitigation shall be consistent with the Easement Term Guidelines adopted by DOF. Easements for mitigation of prime agricultural soils shall be generally consistent with the Virginia Outdoors Foundation (VOF) easement template for Working Farm/Intensive Agriculture. Easements for mitigation of C1 or C2 forest cores shall be consistent with the VOF easement template for protection of natural areas.

9. Within 30 days of closing on any easement, the applicant shall submit to the department copies of the easement and related surveys and baseline reports required by the holder.

H. As an alternative to providing a conservation easement, an applicant may pay an in-lieu fee calculated as follows:

1. The in-lieu fee for mitigation will be determined by the department by adding the projected administrative costs, including agency staff time, legal fees, due diligence costs, stewardship fees paid to the holder, and other associated fees, to the predicted cost of a perpetual easement necessary to protect the required acreage of land. The predicted cost of a perpetual easement shall be equal to the greater of (i) $3,000 per acre adjusted annually by the percent change (2024 base year) in Virginia cropland value determined by the USDA National Agricultural Statistics Service or (ii) the difference between the most recent assessed use value per acre of forest or agricultural land, as applicable, and the full assessed value per acre of the land affected by the solar project prior to reassessment as a solar use. The applicant shall provide the department evidence of the assessed values from the local assessor. In the event the jurisdiction where the project is proposed does not participate in use-value assessment, the applicant may provide a calculation of the use value provided by the Virginia State Land Evaluation Advisory Council.

2. The department will select a trustee to administer the in-lieu fees in trust with the purpose of acquiring conservation easements consistent with the acreage and location of the mitigation requirements.

3. The in-lieu fee shall be paid to the trustee prior to beginning construction as directed by the department at the time of issuance of the PBR. The trustee shall pay the administrative costs of the department for the in-lieu fee program from the in-lieu fees received.

9VAC15-60-70. Site plan and context map requirements.

A. The applicant shall submit a site plan that includes maps showing the physical features, topography, and land cover of the area within the site, both before and after construction of the proposed project. The site plan shall be submitted at a scale sufficient ~~to show,~~ for project review, may include multiple pages, and shall include~~,~~ the following: ~~(i) the boundaries of the site; (ii) the location, height, and dimensions of all existing and proposed PV systems, other structures, fencing, and other infrastructure; (iii) the location, grades, and dimensions of all temporary and permanent on-site and access roads from the nearest county or state-maintained road; and (iv) water bodies, waterways, wetlands, and drainage channels.~~

1. Boundaries of the site, disturbance zone, including 100-foot buffer, mitigation zone, areas of solar panels, open areas, and screening areas;

2. Prime agricultural soils;

3. Contiguous forest lands and lands enrolled in a program for forestry preservation pursuant to subdivision 2 of § 58.1-3233 of the Code of Virginia;

4. A tabulation of all the areas enumerated in subdivisions 1, 2, and 3 of this subsection;

5. Location, height, and dimensions of all existing and proposed PV systems, other structures, fencing, and other infrastructure;

6. Location, grades, and dimensions of all temporary and permanent onsite and access roads from the nearest county or state-maintained road;

7. Waterbodies, waterways, wetlands, and drainage channels;

8. Expected types and approximate areas of permanent stormwater management facilities;

9. Location of any cemetery subject to protection from damage pursuant to § 18.2-127 of the Code of Virginia; and

10. Location of any mitigation measures and resources subject to mitigation.

B. The applicant shall submit a context map including the area encompassed by the site and within five miles of the site boundary. The context map shall show state and federal resource lands and other protected areas, Coastal Avian Protection Zones, Chesapeake Bay Resource Protection Areas pursuant to 9VAC25-830-80, historic resources, state roads, waterways, locality boundaries, forests, open spaces, farmland, brownfield sites, and transmission and substation infrastructure.

C. In the event an approved PBR includes mitigation requirements pursuant to 9VAC15-60-60 E, F, or G and the proposed mitigation zone changes from what is shown on the site plan approved with the PBR, the applicant shall submit a final development site plan including tabulation of areas required pursuant to subsection A of this section. The final development site plan shall be submitted to the department along with conservation easements or the in-lieu fees required pursuant to 9VAC15-60-60. Provided the changes were the result of optimizing technical, environmental, and cost considerations and do not materially alter the environmental effects caused by the facility or do not alter any other environmental permits that the Commonwealth requires the applicant to obtain, the final development site plan shall not be deemed a revision of the PBR.

D. The applicant shall submit as-built post-construction site plans to the department within six months after commencement of commercial operation that show the physical features, topography, and land cover of the area within the site. The plans shall contain the following:

1. The boundaries of the site, disturbance zone with 100-foot buffer identified, open areas, and screening areas;

2. Panel placement;

3. Mitigation required pursuant to 9VAC15-60-60, as applicable; and

4. Location of any avoided cultural resources as a result of project design.

E. All site plans submitted pursuant to this section shall be accompanied by digital files containing the information in a geographic information system (GIS) file format.

9VAC15-60-80. Small solar energy project design standards and operational plans.

A. The design and installation of the small solar energy project shall incorporate any requirements of the mitigation plan that pertain to design and installation if a mitigation plan is required pursuant to 9VAC15-60-50 or 9VAC15-60-60, as applicable.

B. The applicant shall prepare an operation plan detailing operational parameters for the project, including (i) remote monitoring or staffing requirements, (ii) emergency procedures and contacts, (iii) vegetation to be used within the disturbance zone, and (iv) application frequency of herbicides over the life of the project.

9VAC15-60-90. Public participation.

A. ~~Before the initiation of any construction at the small solar energy project, the applicant shall comply with this section. The owner or operator shall first publish a notice once a week for two consecutive weeks in a major local newspaper of general circulation informing the public that he intends to construct and operate a project eligible for a permit by rule. No later than the date of newspaper publication of the initial notice, the owner or operator shall submit to the department a copy of the notice along with electronic copies of all documents that the applicant plans to submit in support of the application. The notice shall include:~~ The applicant shall conduct a public comment period for public review of all application documents required by 9VAC15-60-30 and include a summary report of the public comment as part of the PBR application. The report shall include documentation of the public comment period and public meeting and include a summary of the issues raised by the public, any written comments received, and the applicant's response to those comments.

B. The applicant shall publish a notice announcing a 30-day comment period. The notice shall be published once a week for two consecutive weeks in a local newspaper of general circulation. The notice shall include the following:

1. A brief description of the proposed project and its location, including the approximate dimensions of the site, approximate number and configuration of PV systems, and approximate maximum height of PV systems;

2. A statement that the purpose of the public participation is to (i) acquaint the public with the technical aspects of the proposed project and how the standards and the requirements of this chapter ~~will~~ shall be met, (ii) identify issues of concern, (iii) facilitate communication, and (iv) establish a dialogue between the owner or operator and persons who may be affected by the project;

3. Announcement of a 30-day comment period in accordance with subsection ~~C~~ D of this section~~,~~ and the name, telephone number, address, and email address of the applicant who can be contacted by the interested persons to answer questions or to whom comments shall be sent;

4. Announcement of the date, time, and place for a public meeting held in accordance with subsection ~~D~~ E of this section; and

5. Location where copies of the documentation to be submitted to the department in support of the permit by rule application ~~will~~ shall be available for inspection.

~~B.~~ C. The owner or operator shall place a copy of the documentation in a location accessible to the public during business hours for the duration of the 30-day comment period in the vicinity of the proposed project.

~~C.~~ D. The public shall be provided at least 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period shall begin no sooner than 15 days after the applicant initially publishes the notice in the local newspaper.

~~D.~~ E. The applicant shall hold a public meeting not earlier than 15 days after the beginning of the 30-day public comment period and no later than seven days before the close of the 30-day comment period. The meeting shall be held in the locality, or~~,~~ if the project is located in more than one locality, in a place proximate to the location of the proposed project.

~~E.~~ F. For purposes of this chapter, the applicant and any interested party who submits written comments on the proposal to the applicant during the public comment period or who signs in and provides oral comments at the public meeting shall be deemed to have participated in the proceeding for a permit by rule under this chapter and pursuant to § 10.1-1197.7 B of the Code of Virginia.

9VAC15-60-100. ~~Change~~ PBR change of ownership, project modifications, ~~termination~~ and reporting.

A. ~~Change of ownership. A permit by rule~~ A PBR may be transferred to a new owner or operator ~~if~~ through an administrative amendment to the permit. The department will incorporate the administrative changes to the PBR after receipt of the following:

1. ~~The current owner or operator notifies the department at least 30 days in advance of the transfer date by submittal of a notice per subdivision 2 of this subsection~~ Notification of the change in a format acceptable to the department;

2. The notice shall include a written agreement between the existing and ~~new~~ the majority or plurality owner or operator containing a specific date for transfer of permit responsibility, coverage, and liability between them; ~~and~~

3. The transfer of the permit by rule to the new owner or operator shall be effective on the date specified in the agreement described in subdivision 2 of this subsection; and

4. Information required for a change of ownership shall be submitted to the department within 30 days of the transfer date.

The department will not consider the change of operator, ownership, or controlling interest for a project to be effective until the department receives notification from both the original applicant and the new applicant.

B. ~~Project modifications. Provided project modifications are in accordance with the requirements of this permit by rule and do not increase the rated capacity of the small solar energy project, the owner or operator of a project authorized under a permit by rule may modify its design or operation or both by furnishing to the department new certificates prepared by a professional engineer, new documentation required under 9VAC15-60-30, and the appropriate fee in accordance with 9VAC15-60-110. The department shall review the received modification submittal in accordance with the provisions of subsection B of 9VAC15-60-30.~~ A PBR name may be changed through an administrative amendment to the permit. Notification information shall be submitted in a format acceptable to the department.

C. ~~Permit by rule termination. The department may terminate the permit by rule whenever the department finds that: 1. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in any report or certification required under this chapter; or 2. After the department has taken enforcement actions pursuant to 9VAC15-60-140, the owner or operator persistently operates the project in significant violation of the project's mitigation plan. Prior to terminating a permit by rule pursuant to subdivision 1 or 2 of this subsection, the department shall hold an informal fact-finding proceeding pursuant to § 2.2-4019 of the Virginia Administrative Process Act in order to assess whether to continue with termination of the permit by rule or to issue any other appropriate order. If the department determines that it should continue with the termination of the permit by rule, the department shall hold a formal hearing pursuant to § 2.2-4020 of the Virginia Administrative Process Act. Notice of the formal hearing shall be delivered to the owner or operator. Any owner or operator whose permit by rule is terminated by the department shall cease operating his small solar energy project.~~ Modification to an existing PBR, with the exception of administrative changes, shall be in accordance with the provisions of 9VAC15-60-30 B.

1. The applicant shall submit all information, documents, and studies supporting the modification. Information that is unchanged in the existing PBR shall not be submitted.

2. In addition to the information required in subdivision 1 of this subsection, a modification to an existing PBR shall also require a certification from the local government pursuant to 9VAC15-60-30 A 2, a public comment period pursuant to 9VAC15-60-90, and the appropriate fee pursuant to 9VAC15-60-110.

3. Upon receipt of all required documents, the department will review the received modification submittal in accordance with the provisions of 9VAC15-60-30 C.

4. Routine maintenance, including activity necessary to maintain the permitted capacity of the project, is not considered a modification.

D. Recordkeeping and reporting shall be provided as follows:

1. The owner or operator shall furnish notification of the following milestones:

a. The date the project began construction within 30 days after such date;

b. Commencement of commercial operation within 30 days of such date;

c. The date of any onsite construction or significant onsite maintenance that could impact the project's mitigation and avoidance plan within 15 days after such date;

d. A map of the project post construction clearly showing panel configuration relative to any required mitigation and incorporating any onsite changes resulting from any onsite construction or significant onsite maintenance that could impact the project mitigation and avoidance plan within 90 days of completion of such work; and

e. For projects that contain mitigation for view shed protection or historic resources, a post-construction demonstration of completed mitigation requirements according to the approved mitigation or landscape plan within 90 days of completion of such work.

2. A copy of the site map clearly showing any resources to be avoided or mitigated shall be maintained on site during construction.

3. Upon request, the owner shall furnish to the department copies of records required to be kept by this permit by rule.

4. Within 30 days of notification, the owner shall provide any information requested by the department.

9VAC15-60-110. Fees for projects subject to Part II of this chapter.

A. ~~Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from any applicant seeking a new permit by rule~~ Fees shall be collected for a PBR or a modification to an existing ~~permit by rule~~ PBR for a ~~small solar energy~~ project subject to Part II (9VAC15-60-30 et seq.) of this chapter. No fee shall be required for administrative permit changes pursuant to 9VAC15-60-100 A or B.

B. ~~Permit fee payment and deposit.~~ Fees for ~~permit by rule~~ PBR applications or modifications shall be paid by the applicant as follows:

1. ~~Due date.~~ All permit application, ~~fees or~~ modification, or CAPZ mitigation fees, if applicable, are due ~~on submittal day of the~~ at the time of application or modification ~~package~~ submittal.

2. ~~Method of payment.~~ Fees shall be collected utilizing, where practicable, an online payment system. Until such system is operational, fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 1104, Richmond, VA 23218.

a. Fees shall be in United States currency, except that agencies and institutions of the Commonwealth of Virginia may submit interagency transfers for the amount of the fee.

b. The department may provide a means to pay fees electronically. When fees are collected electronically pursuant to this part through credit cards, business transaction costs to the department associated with processing such payments may be assessed.

3. ~~Incomplete payments.~~ All incomplete payments shall be deemed nonpayments.

4. ~~Late payment.~~ No PBR application or modification ~~submittal~~ will be deemed complete until the department receives proper payment.

a. Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of the Code of Virginia and calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account.

b. The department is entitled to all remedies available under the Code of Virginia in collecting any past due amount.

C. ~~Fee schedules.~~ Each application for a ~~permit by rule~~ PBR and each ~~application for a~~ modification of a ~~permit by rule~~ PBR is a separate action and shall be assessed a separate fee. ~~The amount of the permit application fee is based on the costs associated with the permitting program required by this chapter.~~ The fee schedules are shown in ~~the following table~~ Table 2.

~~TABLE 2.~~
~~Fee Schedules.~~

~~Type of Action~~	~~Fee~~
~~Permit by rule application - by rated capacity:~~	~~$8,000~~
~~>5 MW up to and including 25 MW~~	~~$10,000~~
~~>25 MW up to and including 50 MW~~	~~$12,000~~
~~>50 MW up to and including 75 MW~~	~~$14,000~~
~~>75 MW up to and including 150 MW~~	
~~Permit by rule modification - for any project subject to Part II of this chapter~~	~~$4,000~~

Table 2
Fee Schedules

Type of Action	Fee
PBR application > 5 MW up to and including 25 MW	$8,000
PBR application > 25 MW up to and including 50 MW	$10,000
PBR application > 50 MW up to and including 75 MW	$12,000
PBR application > 75 MW up to and including 150 MW	$14,000
PBR modification > 5 MW up to and including 150 MW	$4,000

All applicants, unless otherwise specified by the department, shall submit the following information along with the fee payment:

1. Applicant name, address, and daytime telephone number;

2. Responsible person name, address, and daytime telephone number, if different from the applicant;

3. Name of the project and project location;

4. Whether the fee is for a new PBR issuance or permit modification;

5. The amount of fee submitted; and

6. The existing permit number.

D. ~~Use of fees.~~ Fees are assessed for the purpose of defraying the department's costs of administering and enforcing the provisions of this chapter, including ~~permit by rule~~ PBR processing, ~~permit by rule~~ PBR modification processing, and inspection and monitoring of ~~small solar energy~~ projects to ensure compliance with this chapter. Fees collected pursuant to this section shall be used for the administrative and enforcement purposes specified in this chapter and in § 10.1-1197.6 E of the Code of Virginia.

E. ~~Fund.~~ The fees~~,~~ received by the department in accordance with this chapter~~,~~ shall be deposited in the Small Renewable Energy Project Fee Fund as specified in § 10.1-1197.6 F of the Code of Virginia.

F. ~~Periodic review of fees. Beginning July 1, 2013, and periodically thereafter, the~~ The department shall periodically review the schedule of fees established pursuant to this section to ensure that the total fees collected are sufficient to cover

100% of the department's direct costs associated with use of the fees.

9VAC15-60-120. Internet accessible resources.

A. This chapter refers to resources to be used by applicants in gathering information to be submitted to the department. These resources are available through the Internet; therefore, in order to assist applicants, the uniform resource locator or Internet address is provided for each of the references listed in this section.

B. Internet available resources.

1. The Virginia Landmarks Register, Virginia Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia. Available at the following Internet address: ~~http://www.dhr.virginia.gov/registers/register.htm.~~ https://www.dhr.virginia.gov/programs/historic-registers/.

2. Professional Qualifications Standards, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, as amended and annotated (48 FR 44716-740, September 29, 1983), National Parks Service, Washington, DC. Available at the following Internet address: ~~http://www.nps.gov/history/local-law/arch_stnds_9.htm.~~ https://www.doi.gov/pam/asset-management/historic-preservation/pqs.

3. The Natural Communities of Virginia, Classification of Ecological Community Groups, Virginia Department of Conservation and Recreation, Division of Natural Heritage, 600 East Main Street, 24th Floor, Richmond, Virginia. Available at the following Internet address: ~~http://www.dcr.virginia.gov/natural_heritage/ncintro.shtml.~~ https://www.dcr.virginia.gov/natural-heritage/natural-communities/.

4. Virginia's Comprehensive Wildlife Conservation Strategy, ~~2005~~ 2015 (referred to as the Virginia Wildlife Action Plan), ~~Virginia Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia.~~ Virginia Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, Virginia. Available at the following Internet address: ~~http://www.bewildvirginia.org/wildlifeplan/.~~ https://dwr.virginia.gov/wildlife/wildlife-action-plan/wildlife-action-plan-2015/

C. Internet applications.

1. Coastal GEMS application, ~~2010,~~ Virginia Department of Environmental Quality. Available at the following Internet address: ~~http://www.deq.virginia.gov/coastal/coastalgems.html.~~ https://www.deq.virginia.gov/our-programs/coastal-zone-management/coastal-mapping/coastal-gems. ~~NOTE:~~ This website is maintained by the department. Assistance and information may be obtained by contacting Virginia Coastal Zone Management Program, Virginia Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, Virginia 23219, (804) 698-4000.

2. Virginia Natural Landscape Assessment, Virginia Department of Conservation and Recreation. Available at the following Internet address: for detailed information on ecological cores go to ~~http://www.dcr.virginia.gov/natural_heritage/vclnavnla.shtm.~~ https://www.dcr.virginia.gov/natural-heritage/vaconvisvnla. ~~Land maps may be viewed at DCR's Land Conservation Data Explorer Geographic Information System website at http://www.vaconservedlands.org/gis.aspx. NOTE: The website is maintained by DCR. Actual shapefiles and metadata are available for free by contacting a DCR staff person at vaconslands@dcr.virginia.gov or DCR, Division of Natural Heritage, 217 Governor Street, Richmond, Virginia 23219, (804) 786-7951.~~ Links for data access are provided through this website.

3. Virginia Fish and Wildlife Information Service, ~~2010, Virginia Department of Game and Inland Fisheries.~~ Virginia Department of Wildlife Resources. Available at the following Internet address: ~~http://www.vafwis.org/fwis/. NOTE:~~ https://services.dwr.virginia.gov/fwis/. This website is maintained by ~~DGIF~~ DWR and is accessible to the public as "visitors," or to registered subscribers. Registration, however, is required for access to resource-specific or species-specific locational data and records. Assistance and information may be obtained by contacting ~~DGIF, Fish and Wildlife Information Service, 4010 West Broad Street, Richmond, Virginia 23230, (804) 367-6913.~~ DWR, Fish and Wildlife Information Service, email: vafwis_support@dwr.virginia.gov.

4. DWR Wildlife Environmental Review Map Service (WERMS). Available at the following Internet address: https://dwr.virginia.gov/gis/werms/.

Part III

Provisions for Projects Less Than or Equal to Five ~~Megawatts~~ MW or Less Than or Equal to 10 Acres or Meeting Certain Categorical Criteria

9VAC15-60-130. Small solar energy projects less than or equal to five ~~megawatts~~ MW or less than or equal to 10 acres or meeting certain categorical criteria.

~~A. The owner or operator of a small solar energy project is not required to submit any notification or certification to the department if he meets at least one of the following criteria:~~

~~1. The small solar energy project has either a rated capacity equal to or less than 500 kilowatts or a disturbance zone equal to or less than two acres; or~~

~~2. The small solar project falls within at least one of the following categories, without regard to the rated capacity or the disturbance zone of the project:~~

~~a. The small solar energy project is mounted on a single-family or duplex private residence.~~

~~b. The small solar energy project is mounted on one or more buildings less than 50 years old or, if 50 years of age~~

~~or older, have been evaluated and determined by DHR within the preceding seven years to be not VLR-eligible.~~

~~c. The small solar energy project is mounted over one or more existing parking lots, existing roads, or other previously disturbed areas and any impacts to undisturbed areas do not exceed an additional two acres.~~

~~d. The small solar energy project utilizes integrated PV only, provided that the building or structure on which the integrated PV materials are used is less than 50 years old or, if 50 years of age or older, has been evaluated and determined by DHR within the preceding seven years to be not VLR-eligible.~~

~~B. The owner or operator of a small solar energy project with either a rated capacity greater than 500 kilowatts and less than or equal to five megawatts or a disturbance zone greater than two acres and less than or equal to 10 acres shall notify the department and shall submit a certification by the governing body of the locality or localities wherein the project will be located that the project complies with all applicable land use ordinances.~~

A. The following projects shall be subject to this section.

1. Projects with a rated capacity greater than one MW and less than or equal to five MW;

2. Projects with a disturbance zone greater than two acres and less than or equal to 10 acres; and

3. Projects located on previously disturbed or repurposed areas without regard to the rated capacity up to and including 150 MW or where the size of the disturbance zone and any impact to undisturbed areas is greater than two acres or less than or equal to 10 acres. Projects located on a brownfield site should work with the DEQ Office of Remediation Programs (ORP) to verify the brownfield determination.

B. An applicant seeking a PBR under this part shall submit the following:

1. An NOI in a format approved by the department.

2. A certification by the governing body of any locality wherein the project will be located that the project complies with all applicable land use ordinances.

C. The applicant of a project is not required to submit any notification or certification to the department if the applicant meets at least one of the following criteria:

1. The project has either a rated capacity equal to or less than one MW or a disturbance zone equal to or less than two acres; or

2. The project falls within at least one of the following categories, without regard to the rated capacity or the disturbance zone of the project:

a. The project is mounted on a single-family or duplex private residence.

b. The project is mounted on one or more buildings less than 50 years old, or if 50 years of age or older, have been evaluated and determined by DHR within the preceding seven years to be not VLR-eligible.

c. The project is mounted over one or more existing parking lots, existing roads, or other previously disturbed areas and any impacts to undisturbed areas do not exceed an additional two acres.

d. The project utilizes integrated PV only, provided that the building or structure on which the integrated PV materials are used is less than 50 years old, or if 50 years of age or older, has been evaluated and determined by DHR within the preceding seven years to be not VLR-eligible.

9VAC15-60-140. Enforcement.

A. The department may enforce the provisions of this chapter and any permits by rule authorized under this chapter in accordance with §§ 10.1-1197.9, 10.1-1197.10, and 10.1-1197.11 of the Code of Virginia. In so doing, the department may:

1. Issue directives in accordance with the law;

2. Issue special orders in accordance with the law;

3. Issue emergency special orders in accordance with the law;

4. Seek injunction, mandamus, or other appropriate remedy as authorized by the law;

5. Seek civil penalties under the law; or

6. Seek remedies under the law, or under other laws including the common law.

B. Pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), the department may terminate the permit by rule whenever the department finds that the applicant has:

1. Knowingly or willfully misrepresented or failed to disclose a material fact in any report or certification required under this chapter;

2. Failed to comply with the conditions or commitments stated within the permit by rule application; or

3. Violated the project's mitigation plan.

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

FORMS (9VAC15-60)

Web Soil Survey (WSS), Natural Resources Conservation Service, United States Department of Agriculture, Version 3.4.0. Available at the following Internet address: https://websoilsurvey.nrcs.usda.gov/app/

DOCUMENTS INCORPORATED BY REFERENCE (9VAC15-60)

Guidelines for Conducting Historic Resources Survey in Virginia, Virginia Department of Historic Resources, originally published October 2011, revised September 2017, https://www.dhr.virginia.gov/

Virginia Pollinator-Smart/Bird Habitat Scorecard, Proposed or Retrofit Solar Sites, Virginia Department of Conservation and Recreation (DCR), and Virginia Department of Environmental Quality (DEQ), Version 2.0a, https://www.dcr.virginia.gov/ and https://www.deq.virginia.gov/

Virginia Pollinator-Smart/Bird Habitat Scorecard, Established Solar Sites, Virginia Department of Conservation and Recreation (DCR), and Virginia Department of Environmental Quality (DEQ), Version 2.0b, https://www.dcr.virginia.gov/ and https://www.deq.virginia.gov/

Pollinator-Smart Comprehensive Manual, Virginia Department of Conservation and Recreation (DCR), and Virginia Department of Environmental Quality (DEQ), Version 1.2 originally published October 2011, revised December 2019, https://www.dcr.virginia.gov/ and https://www.deq.virginia.gov/

Virginia Agricultural BMP Cost Share Manual, DCR specifications for No. FR-3 (Woodland Buffer Filter Area), Virginia Department of Conservation and Recreation, revised April 2023, https://www.dcr.virginia.gov

Virginia Agricultural BMP Cost Share Manual, DCR specifications for No. WQ-1 (Riparian Grass Filter Strips), Virginia Department of Conservation and Recreation, revised April 2023, https://www.dcr.virginia.gov

Virginia Department of Forestry (VDOF), Easement Term Guidelines, Virginia Department of Forestry, August 2017, https://dof.virginia.gov/

VOF Template February 7, 2018 Working Farm/Intensive Agriculture, Virginia Outdoors Foundation, February 7, 2018, https://www.vof.org/

VA.R. Doc. No. R24-7691; Filed September 17, 2024, 10:57 a.m.

STATE WATER CONTROL BOARD

Proposed Regulation

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-310, 9VAC25-260-490).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1251 et seq.; 40 CFR 131.

Public Hearing Information:

November 14, 2024 - 9:30 a.m. - Buchanan County Public Library, 1185 Poe Town Street, Grundy, VA 24614.

Public Comment Deadline: December 6, 2024.

Agency Contact: David Whitehurst, Water Quality Standards Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-9180, or email david.whitehurst@deq.virginia.gov.

Basis: Section 62.1-44.2 requires the protection and restoration of the quality of state waters, safeguarding clean waters from pollution, prevention and reduction of pollution, and promotion of water conservation. Section 62.1-44.15 also requires the board to establish standards of quality consistent with its purpose and to modify, amend, or cancel any such standards or policies. 40 CFR 131 authorizes requirements and procedures for developing, reviewing, revising, and approving water quality standards by the states as authorized by § 303(c) of the Clean Water Act and requires the states to adopt criteria to protect designated uses.

Purpose: The purpose of the proposed amendments is to establish site-specific selenium aquatic life criteria that protect designated and beneficial uses of state waters by amending the regulation to be technically correct and reasonable. The proposed criteria are for the protection of aquatic life and are only indirectly related to the health, safety, and welfare of citizens. Proper water quality standards protect water quality and living resources of Virginia's waters for the designated uses of aquatic life, wildlife, recreation, public water supply, shellfish consumption, and fish consumption.

Substance: The proposed amendments include a site-specific freshwater aquatic life selenium criterion in 9VAC25-260-310 for several tributaries to Knox Creek in Buchanan County. Those tributaries are Race Fork and tributaries, Pounding Mill Creek and tributaries, Right Fork of Lester Fork and tributaries, and Abners Fork and tributaries. The site-specific criteria reflect EPA's recommended selenium water quality criterion for protection of aquatic life for the streams noted above in the Knox Creek watershed. EPA's recommended criterion was first published on July 13, 2016. EPA's recommended freshwater criterion is a chronic criterion expressed in terms of both fish tissue concentration (egg/ovary, whole body, and muscle) and two different water concentrations. The criterion elements are hierarchical with fish tissue values taking precedence should

sufficient fish tissue data be available. This is EPA's first aquatic life criterion utilizing fish tissue as a direct expression of the recommended criterion. Accordingly, implementation of these criteria is substantially different from established Clean Water Act water quality programs, including the Virginia Pollutant Discharge Elimination System Permit (VPDES) program and the water quality assessment program. The proposed amendments to the regulation would amend the special standards section of the regulation (9VAC25-260-310) to include site site-specific selenium criterion. Additionally, a notation will be placed in Section 3 of the Big Sandy River basin table (9VAC25-260-490) to indicate the general geographic applicability of the special standard.

Issues: The primary advantage to the public is that the proposed selenium criteria are based on updated scientific information to protect aquatic life. The disadvantage is that criteria that become more stringent may result in increased costs to the regulated community. However, the goal is to set realistic, protective goals in water quality management and to maintain the most scientifically defensible criteria in the regulation. The advantage to the agency and the Commonwealth that will result from the adoption of these proposed amendments may be additional flexibility for developing accurate and scientifically defensible permit limits, assessments, and clean-up plans (total maximum daily load), which ensure protection of the water quality standards. The regulated community may find that the proposed amendments pertinent to its operations require additional capital or operating costs for control in discharge, particularly where the numerical criteria are more stringent. However, it is not known whether the proposed, site-specific criteria will be more or less stringent than the current selenium aquatic life criteria contained in the regulation. The proposed amendments produce indirect benefits through protection of water quality and living resources of Virginia's waters for the designated uses of aquatic life and wildlife while providing additional options for permittees in the subject watersheds to demonstrate compliance with water quality requirements contained in VPDES permits.

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 the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. In response to a petition for rulemaking,[2] the State Water Control Board (board) proposes to adopt site-specific selenium criteria for the protection of freshwater aquatic life in four streams that are tributaries to Knox Creek in Buchanan County, Virginia.

Background. This action results from a 2023 petition for rulemaking, which requested the board to amend this regulation to incorporate site-specific selenium criteria for the protection of freshwater aquatic life in four streams that are tributaries to Knox Creek in Buchanan County, Virginia. The specific streams that are the focus of this rulemaking are Race Fork and tributaries, Pounding Mill Creek and tributaries, Right Fork of Lester Fork and tributaries, and Abners Fork and tributaries. The site-specific selenium criteria for consideration under this rulemaking reflect the Environmental Protection Agency (EPA) recommended selenium water quality criterion for protection of aquatic life and would apply to the streams noted in the Knox Creek watershed. The EPA's recommended criterion was first published on July 13, 2016, and updated in 2021.[3] EPA's recommended freshwater criterion is a chronic criterion expressed in terms of both fish tissue concentration (egg/ovary, whole body, and muscle) and two different water concentrations. The criterion elements are hierarchical, with fish tissue values taking precedence over other values should sufficient fish tissue data be available.

According to the EPA,[4] selenium is a naturally occurring element present in sedimentary rocks, shales, coal, and phosphate deposits and soils. Selenium can be released into water by natural sources via weathering and by anthropogenic sources, such as surface mining, coal-fired power plants, and irrigated agriculture. Notably, in this case, the petitioner is a coal mining operator. Selenium is a nutritionally essential element for animals in small amounts, but toxic at higher concentrations. Selenium bioaccumulates in the aquatic food chain and chronic exposure in fish and aquatic invertebrates can cause reproductive impairments (e.g., larval deformity or mortality). Selenium can also adversely affect juvenile growth and mortality. Furthermore, selenium is toxic to waterfowl and other birds that consume aquatic organisms that contain excessive levels of selenium.

Estimated Benefits and Costs. Generally, water quality standards are used to determine if a water body is impaired and, if so, to develop a total maximum daily load (TMDL). If the TMDL is exceeded, then cleanup actions are enforced through the Virginia Pollutant Discharge Elimination System (VPDES) permit. It is possible that standards pertinent to operations of the permittee may require additional capital or operating costs to control their discharge, particularly where the numerical criteria are more stringent. Therefore, whether the proposed standard is more or less stringent than the existing standard is critical to assessing its economic impact. However, it is not known whether the proposed, site-specific criteria will be more or less stringent than the current selenium aquatic life criteria contained in the regulation.

According to DEQ, the criterion based on fish tissue concentration is not comparable to the current standard, which is based only on the water column. While DEQ states the new criteria being adopted that are based on water column appear more stringent compared to the current water column standard, this may not matter because the proposed standard is hierarchical. As a result, the fish tissue criteria would take precedence over the water column criterion so long as fish tissue is available. In other words, the proposed revision of the water column criteria may not apply so long as fish tissue is available. Hence, whether the proposed change would be more or less stringent is not known. Consequently, whether the petitioner would face any restrictions through its VPDES permit and any potential costs is also not known. It is, however, worth noting that this regulatory action is being taken as a direct response to the petitioner's request for these specific criteria.

Aside from the potential compliance costs depending on the stringency, facilities with VPDES permits in the Knox Creek watershed subject to this site-specific selenium criteria would incur a cost to collect fish tissue data to demonstrate compliance with the criteria. Fish tissue samples are expected to cost approximately $4,000 per watershed sample according to a firm representing the petitioner. Additionally, this is EPA's first aquatic life criterion that uses fish tissue as a direct expression of the recommended criterion, as well as DEQ's first adoption of such criteria. Accordingly, implementation of these criteria would be substantially different from established Clean Water Act water quality programs, including the VPDES program and the water quality assessment program. Thus, DEQ and Virginia Energy, which is the VPDES enforcement agency for the mining operators, would have an opportunity to experiment with this type of criteria and learn from it. Furthermore, DEQ asserts that the primary advantage to the public is that the proposed selenium criteria are based on updated scientific information to protect aquatic life, which should help in developing accurate and scientifically defensible permit limits, assessments, and clean-up plans to ensure protection of the designated uses.

Businesses and Other Entities Affected. Due to the limited geographic application of the proposed criteria, DEQ anticipates that this action will only affect one surface coal mining facility. That facility, which is owned by the petitioner, may be disproportionately affected.

Additionally, it is anticipated Virginia Energy will be particularly affected by these regulations as related to discharge permits. Virginia Energy is the agency charged with implementing the VPDES program for coal mining operations in Virginia. Accordingly, they would have primary responsibility for implementing the amended criteria. DEQ reports that Virginia Energy has been actively involved in this rulemaking and is aware of the proposed criteria and the need to establish implementation procedures for incorporating the proposed criteria into its VPDES program.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[6] As noted, the use of fish tissue criteria is expected to introduce $4,000 cost to the petitioner for collection of fish samples. However, given that the proposed standard may be less stringent and consequently may reduce compliance costs to offset the sample collection costs, and the fact that the petitioner asked for this standard, no adverse impact is indicated.

Small Businesses[7] Affected.[8] The proposed amendments do not appear to adversely affect small businesses.

Localities[9] Affected.[10] The proposed selenium criteria based on fish tissue samples apply specifically to Knox Creek, which is located in Buchanan County. However, the proposed amendments do not introduce costs for that county.

Projected Impact on Employment. There is not enough information available to determine whether the proposed amendments would affect total employment by a meaningful amount and in any certain direction.

Effects on the Use and Value of Private Property. Similarly, there is not enough information available to determine whether the proposed amendments would affect the use and value of private property by a meaningful amount and in any certain direction. No impact on real estate development costs is expected.

---

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

[2] https://townhall.virginia.gov/l/viewpetition.cfm?petitionid=385.

[3] Table 1 on page xv in https://www.epa.gov/system/files/documents/2021-08/selenium-freshwater2016-2021-revision.pdf.

[4] https://www.epa.gov/wqc/aquatic-life-criterion-selenium.

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

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

[7] 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."

[8] 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.

[9] "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.

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

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

Summary:

In response to a petition for rulemaking, the proposed amendments incorporate site-specific selenium criteria for the protection of freshwater aquatic life in four streams that are tributaries to Knox Creek in Buchanan County.

9VAC25-260-310. Special standards and requirements.

The special standards are shown in small letters to correspond to lettering in the basin tables. The special standards are as follows:

EDITOR'S NOTE: Subdivisions a through hh of 9VAC25-260-310 are not amended; therefore, the text of those subsections is not set out.

ii. In the wadeable portions of the mainstem sections of the Shenandoah River, North Fork Shenandoah River, and South Fork Shenandoah River listed in the table in this subdivision, a determination of persistent nuisance filamentous algae impeding the recreation use should be made when exceedances of either of the specified benthic chlorophyll-a concentration thresholds occur in more than one recreation season (May 1 to October 31) in three years. "Wadeable" constitutes a stream that can be crossed and sampled safely during a given sampling event occurring within the recreation season.

Segment	Two-Month Median (mg/m^2)	Seasonal Median (mg/m^2)
Shenandoah River from its confluence of the North Fork and South Fork Shenandoah Rivers downstream to the Virginia-West Virginia state line	150	100
North Fork Shenandoah River from its confluence with Fort Run downstream to its confluence with the South Fork Shenandoah River	150	100
South Fork Shenandoah River from its confluence with the North and South Rivers downstream to its confluence with the North Fork Shenandoah River	150	100

jj. The selenium chronic criteria for the protection of freshwater aquatic life apply in the following waters:

Knox Creek watershed in Buchanan County

(1) Race Fork and tributaries.

(2) Pounding Mill Creek and tributaries.

(3) Right Fork of Lester Fork and tributaries.

(4) Abners Fork and tributaries.

Media Type	Fish Tissue[1]		Water Column[4]	
Criterion Element	Egg-ovary[2]	Fish Whole-body or Muscle[3]	Monthly Average Exposure	Intermittent Exposure[5]
Magnitude	15.1 mg/kg dw	8.5 mg/kg dw whole-body or 11.3 mg/kg dw muscle (skinless, boneless filet)	1.5 µg/L in lentic aquatic systems 3.1 µg/L in lotic aquatic systems	$WQC_{int} = WQC_{30\text{-}day} - C_{bkgrnd}(1 - f_{int})$ f_{int}
Duration	Instantaneous measurement[6]	Instantaneous measurement[6]	30 days	Number of days/month with an elevated concentration

Frequency	Not to be exceeded	Not to be exceeded	Not more than once in three years on average	Not more than once in three years on average

mg/kg dw = milligrams per kilogram dry weight

1. Fish tissue elements are expressed as steady state.

2. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured.

3. Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured.

4. Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, selenium concentrations in fish from the nearest downstream waters may be used to assess compliance using methods provided in Aquatic Life Ambient Water Quality Criterion for Selenium – Freshwater, EPA-822-R-16-006, Appendix K: Translation of a Selenium Fish Tissue Criterion Element to a Site-Specific Water Column Value (June 2016).

5. Where $WQC_{30\text{-}day}$ is the water column monthly element for either lentic (still) or lotic (flowing) waters; C_{bkgrnd} is the average background selenium concentration; and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥ 0.033 (corresponding to one day).

6. Fish tissue data provide instantaneous point measurements that reflect integrative accumulation of selenium over time and space in fish populations at a given site.

9VAC25-260-490. Tennessee and Big Sandy River Basins (Big Sandy River Subbasin).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	IV		All tributaries of Tug Fork in Virginia.
2	IV		All tributaries of Jacobs Fork and Dry Fork in Virginia.
2a	IV	PWS	Crockett Cove, a tributary to Jacobs Fork, from Bishop's raw water intake to its headwaters.
3	IV	jj	Levisa Fork and its tributaries and Knox Creek and its tributaries, unless otherwise designated in this chapter, from the Virginia-Kentucky state line upstream to their headwaters.
	V		Stockable Trout Waters in Section 3
	vi		Dismal Creek from its mouth to its headwaters.
4	IV		Russell Fork and its tributaries, unless otherwise designated in this chapter, from the Virginia-Kentucky state line upstream to their headwaters.
	V		Stockable Trout Waters in Section 4
	***		Caney Creek from Long Branch Creek upstream 5.5 miles.
	vi		Frying Pan Creek from 1.3 miles above its confluence with Russell Fork 8.6 miles upstream (in vicinity of Bucu).
	vi		North Fork Pound River from the town limits of Pound upstream to the water supply dam.
	***		Russell Fork from the confluence of Pound River to the Virginia-Kentucky state line.
	VI		Natural Trout Waters in Section 4
	iii		Pound River from its confluence with Russell Fork upstream to the John W. Flannagan Dam.

4a	IV	PWS	Pound River and its tributaries from the John W. Flannagan Dam, including the Cranes Nest River and its tributaries to points ~~5~~ five miles above the John W. Flannagan Water Authority's raw water intake.
4b	IV	PWS	North Fork Pound River and its tributaries from North Fork Pound River Dam and the Town of Pound's raw water intake upstream to their headwaters, unless otherwise designated in this chapter.
4c			(Deleted)
4d	IV		Phillips Creek from its mouth to its headwaters and the North Fork Pound River from Wise County's swimming area around the mouth of Phillips Creek to a point 1/2 mile upstream.
4e	IV	PWS	Russell Fork River and its tributaries from the Kentucky state line 2.2 miles upstream (Elkhorn City, Kentucky raw water intake including Grassy Creek from its confluence with Russell Fork northeast to the Kentucky state line, Hunts Creek from its confluence with Grassy Creek to ~~1~~ one mile upstream, Laurel Branch to its headwaters, including Laurel Lake (Breaks Interstate Park raw water intake).
	V		Stockable Trout Waters in Section 4e
	***	PWS	Russell Fork from the Kentucky state line 2.2 miles upstream.

VA.R. Doc. No. R24-10; Filed September 10, 2024, 4:15 p.m.

Fast-Track Regulation

Title of Regulation: **9VAC25-875. Virginia Erosion and Stormwater Management Regulation (amending 9VAC25-875-70, 9VAC25-875-250, 9VAC25-875-280, 9VAC25-875-300, 9VAC25-875-370, 9VAC25-875-470, 9VAC25-875-490, 9VAC25-875-500, 9VAC25-875-550, 9VAC25-875-560, 9VAC25-875-850).**

Statutory Authority: §§ 62.1-44.15:28 and 62.1-44.52 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: November 6, 2024.

Effective Date: November 21, 2024.

Agency Contact: Rebeccah W. Rochet, P.E., Deputy Director, Division of Water Permitting, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2950, or email rebeccah.rochet@deq.virginia.gov.

Basis: Section 62.1-44.15 of the Code of Virginia requires the State Water Control Board to adopt such regulations as it deems necessary to enforce the general soil erosion control and stormwater management program and water quality management program of the board in all or part of the Commonwealth.

Purpose: The proposed amendments protect water quality in the Commonwealth of Virginia, which is essential to the health, safety, and welfare of Virginia's citizens and is needed in order to establish appropriate and necessary permitting requirements for discharges of stormwater. The amendments improve clarity and certainty by making the regulation internally consistent, removing outdated requirements, and accurately reflecting requirements in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia).

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the regulated community and other stakeholders who have been involved in the process to adopt the regulation and develop the new Virginia Stormwater Management Handbook (GM24-2001, available at https://townhall.virginia.gov/L/ViewGDoc.cfmgdid=7706) have requested changes that clarify requirements for localities that implement erosion and stormwater management programs or erosion and sediment control programs and correct other technical errors that have been identified since publication of the final regulation in December 2023. The limited scope of this rulemaking benefits the regulated community, localities, the Department of Environmental Quality, and other stakeholders by correcting technical errors and improving clarity in a timely manner.

Substance: Amendments include (i) correcting cross-references to Chesapeake Bay Preservation Area requirements (e.g., 9VAC25-875-70, 9VAC25-875-250, and 9VAC25-875-470); (ii) moving 9VAC25-875-300 G to 9VAC25-875-550 E so that the requirement for owners to maintain, inspect, and repair erosion and sediment control structures is in the part of the regulation that has other owner requirements, not the part of the regulation that is specific to localities; (iii) updating the department's provisions for reviewing and evaluating a locality's erosion and sediment control program (9VAC25-875-370 D) so that they are consistent with the requirements in the State Water Control Law; (iv) removing requirements related to grandfathering that are no longer applicable (9VAC25-875-490); and (v) clarifying that an erosion and

sediment control plan, which is included in a stormwater pollution prevention plan for land-disturbing activity, must be consistent with the erosion and sediment control criteria, techniques, and methods (Minimum standards, 9VAC25-875-560).

Issues: There are no direct impacts on public health as the amendments update existing regulatory requirements, so they reflect current requirements in the State Water Control Law, clarify requirements, and improve understanding of the regulation, which in turn contributes to the efficient and effective functioning of government. There are no disadvantages to the public. The amendments update existing regulatory requirements and will allow the Department of Environmental Quality and localities that implement erosion and stormwater management programs or erosion and sediment control programs to utilize a regulation that reflect current requirements in the State Water Control Law, and improve the understanding of the regulation, which in turn contributes to the efficient and effective functioning of government. This is an advantage. There are no disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. The State Water Control Board proposes to correct technical errors in the regulatory text for consistency with statutory law and to improve the clarity of existing requirements.

Background. This regulation establishes requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff. The intent of this regulatory action is to correct technical errors inadvertently omitted from a recent action that consolidated the regulations for the Stormwater Management Act and the Virginia Erosion and Sediment Control Law effective July 1, 2024.[2] The proposed changes are technical corrections to the regulation to be consistent with statutes and to clarify applicable requirements.

Estimated Benefits and Costs. The proposed changes are strictly clarifying in nature and, according to DEQ, this regulatory action does not change the substantive requirements for owners and operators that submit plans, obtain permits, and maintain compliance with requirements to control erosion and stormwater runoff from land-disturbing activities. In addition, it does not change the technical requirements, such as erosion and sediment control minimum standards and post-construction stormwater management criteria that protect public health and the environment. Thus, no economic impact is expected from the proposed changes other than improving the clarity and consistency of the text with the State Water Control Law.

Businesses and Other Entities Affected. This regulation applies to owners and operators who submit plans, obtain permits, and maintain compliance with requirements to control erosion and stormwater runoff from land-disturbing activities. No entity is disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[3] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[4] As noted, the proposal strictly clarifies existing text and requirements. Thus, no adverse impact is indicated.

Small Businesses[5] Affected.[6] The proposed changes do not to adversely affect small businesses.

Localities[7] Affected.[8] The proposed amendments do not introduce costs or other effects on localities other than improving the clarity of the regulation.

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

Effects on the Use and Value of Private Property. No effects on the use and value of private property nor on real estate development costs is expected.

---

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

[2] https://townhall.virginia.gov/L/ViewStage.cfm?stageid=9916.

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

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

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

[6] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the

proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

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

Agency's Response to Economic Impact Analysis: The State Water Control Board has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendments (i) correct cross-references; (ii) rearrange subsections for clarity; (iii) update the department's provisions for reviewing and evaluating a locality's erosion and sediment control program; (iv) remove requirements related to grandfathering that are no longer applicable; and (v) clarify that an erosion and sediment control plan, which is included in a stormwater pollution prevention plan for land-disturbing activity, must be consistent with the erosion and sediment control criteria, techniques, and methods.

9VAC25-875-70. Regulated land-disturbing activities.

A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as follows:

1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter.

2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article ~~3 (9VAC25-875-570~~ 5 (9VAC25-875-740 et seq.) of Part V of this chapter, unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490. For land-disturbing activities for single-family detached residential structures, Article 2 of Part V of this chapter and water quantity technical criteria, 9VAC25-875-600, shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, and the locality also may require compliance with the water quality technical criteria, 9VAC25-875-580 and 9VAC25-875-590.

3. Land-disturbing activity that disturbs less than one acre~~,~~ but is part of a larger common plan of development or sale that disturbs one acre or more~~,~~ is subject to criteria defined in Article 2 and Article 3 of Part V of this chapter, unless Article 4 of Part V of this chapter is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in Article 2 and Article 3 of Part V of this chapter, unless Article 4 of Part V of this chapter is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:33 or 62.1-44.15:65 of the Code of Virginia, adopt more stringent local requirements.

9VAC25-875-250. Regulated land-disturbing activities.

A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as follows:

1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, ~~is less than one acre,~~ and is not in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter.

2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, ~~is less than one acre,~~ and is in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 5 (9VAC25-875-740 et seq.) of Part V of this chapter.

B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:65 of the Code of Virginia, adopt more stringent local requirements.

9VAC25-875-280. Activities not required to comply with the ESCL.

Notwithstanding any other provisions of the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL), the following activities are not required to comply with the ESCL unless otherwise required by federal law:

1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia). However, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;

3. Installation, maintenance, or repair of any individual service connection;

4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

6. Permitted surface or deep mining operations and projects or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;

7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of the Code of Virginia;

8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the ESCL and ~~the regulations adopted pursuant thereto~~ this chapter;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESCP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter is required within 30 days of commencing the land-disturbing activity;

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and

12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

9VAC25-875-300. Plan review requirements.

A. The VESCP authority shall review erosion and sediment control plans prepared in accordance with 9VAC25-875-550 that detail the criteria, techniques, and methods as defined in ~~9VAC25-875-550 for land-disturbing activities described in~~ 9VAC25-875-560. Activities not required to comply with VESCL are defined in 9VAC25-875-280.

B. When determined that the plan meets the minimum criteria, techniques, and methods as defined in ~~9VAC25-875-550~~ 9VAC25-875-560, the VESCP authority shall review erosion and sediment control plans submitted and grant written approval within 60 days of the receipt of the plan.

C. When the VESCP authority determines a plan is inadequate, written notice stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that are necessary for approval of the plan. If no action is taken by the VESCP authority within 45 days, the plan shall be deemed approved and the proposed activity authorized. The VESCP authority shall act on any erosion and sediment control plan that has been previously deemed inadequate within 45 days after receipt of a revised plan if deemed adequate.

D. For sites requiring coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities, the VESCP authority shall obtain evidence of such coverage prior to approving the erosion and sediment control plan.

E. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate to the VESCP authority who will be in charge of and responsible for carrying out the land-disturbing activity. However, the VESCP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:55 of the Code of Virginia.

F. The VESCP authority may require approval of an erosion and sediment control plan for any land identified as an erosion impact area in accordance with § 62.1-44.15.55 of the Code of Virginia.

~~G. All erosion and sediment control structures and systems shall be maintained, inspected, and repaired as needed to ensure continued performance of their intended function. A statement describing the maintenance responsibilities of the~~

~~individual responsible for carrying out the land-disturbing activity shall be included in the approved erosion and sediment control plan.~~

9VAC25-875-370. Review and evaluation of VESCPs.

A. This section sets forth the criteria that will be used by the department to determine whether a locality operating a VESCP under authority of the ESCL, a "VESCP authority," satisfies minimum standards of effectiveness, as follows.

Each VESCP must contain an ordinance or other appropriate document adopted by the VESCP authority. Such document must be consistent with the ESCL and Part III (9VAC25-875-210 et seq.) of this chapter, including the following criteria:

1. The document shall include or reference the definition of land-disturbing activity, including exemptions as well as any other significant terms, as necessary to produce an effective VESCP;

2. The document shall identify the VESCP authority and any soil and water conservation district, adjacent locality, or other public or private entities that the VESCP authority entered into agreements or contracts with to assist with carrying out the provisions of the ESCL and Part III of this chapter and must include the requirements and design standards to be used in the program;

3. The document shall include procedures for submission and approval of plans, issuance of permits, monitoring, and inspections of land-disturbing activities. The position, agency, department, or other party responsible for conducting inspections shall be identified. The VESCP authority shall maintain, either onsite or in VESCP files, a copy of the approved plan and a record of inspections for each active land-disturbing activity;

4. Each VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs; and

5. The VESCP authority must take appropriate enforcement actions, where authorized to do so, to achieve compliance with the program and maintain a record of enforcement actions for all active land-disturbing activities.

B. The department shall periodically conduct a comprehensive review and evaluation of each VESCP authority pursuant to subdivision (19) of § 62.1-44.15 of the Code of Virginia. The department will coordinate the review with its other program reviews for the same entity to avoid redundancy. The review and evaluation of a VESCP authority shall consist of the following: (i) consultation with the local program administrator or designee; (ii) review of the local ordinance and other applicable documents; (iii) review of plans approved by the VESCP authority; (iv) inspection of regulated activities; and (v) review of enforcement actions where authorized to do so. The department is also authorized to conduct a partial VESCP compliance review.

C. Each VESCP authority shall be reviewed and evaluated by the department for effectiveness in carrying out the ESCL and Part III of this chapter using the criteria in this section.

D. If deficiencies noted in the review will cause the VESCP to be inconsistent with the ESCL or this chapter, the department shall provide the VESCP authority with a copy of the department's decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority ~~has not implemented the necessary compliance actions identified by the department within the corrective action schedule, or such additional period as is granted to complete the implementation of the corrective action, then the department shall have the authority~~ fails to bring its program into compliance in accordance with the compliance schedule, then the department is authorized to (i) issue a special order to any ~~VESCP authority~~ locality imposing a civil penalty ~~set out in § 62.1-44.15~~ not to exceed $5,000 per violation with the maximum amount not to exceed $50,000 per order for noncompliance with the state program, to be paid into the state treasury and deposited in the Stormwater Local Assistance Fund established in § 62.1-44.15:29.1 of the Code of Virginia or (ii) ~~revoke its approval of the VESCP~~ with the consent of the locality, provide in an order issued against the locality for the payment of civil charges for violations in lieu of civil penalties, in specific sums not to exceed the limit stated in this subsection. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and Article 5 (§ 62.1-44.20 et seq.) of Chapter 3.1 of Title 62.1 ~~if~~ of the Code of Virginia shall govern the review activities and proceedings of the department and the judicial review thereof. In lieu of issuing a special order or revoking the program, the department is authorized to take legal action against a VESCP authority to ensure compliance.

E. Review and evaluation of VESCPs shall be conducted according to a schedule adopted by the department in accordance with subdivision (19) of § 62.1-44.15 of the Code of Virginia.

9VAC25-875-470. Applicability.

A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as follows:

1. Land-disturbing activity that disturbs 10,000 square feet or more, although a locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of

development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of this part ~~of this chapter~~.

2. Land-disturbing activity that disturbs 2,500 square feet or more, although a locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article ~~3 (9VAC25-875-570~~ 5 (9VAC25-875-740 et seq.) of this part of this chapter, unless Article 4 (9VAC25-875-670 et seq.) of this part is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490. For land-disturbing activities for single-family detached residential structures, Article 2 of this part and water quantity technical criteria, 9VAC25-875-600, shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, and the locality also may require compliance with the water quality technical criteria, 9VAC25-875-580 and 9VAC25-875-590.

3. Land-disturbing activity that disturbs less than one acre~~,~~ but is part of a larger common plan of development or sale that disturbs one acre or more~~,~~ is subject to criteria defined in Article 2 and Article 3 of this part, unless Article 4 of this part is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in Article 2 and Article 3 of this part, unless Article 4 of this part is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:33 or 62.1-44.15:65 of the Code of Virginia, adopt more stringent local requirements.

9VAC25-875-490. Grandfathering.

~~A. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq.) of this part provided:~~

~~1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012; (ii) provided a layout as defined in 9VAC25-875-670; (iii) will comply with the technical criteria of Article 4 of this part; and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge and such that there is no increase in the volume or rate of runoff;~~

~~2. A permit has not been issued prior to July 1, 2014; and~~

~~3. Land disturbance did not commence prior to July 1, 2014.~~

~~B.~~ A. Locality, state, and federal projects shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq.) of this part, provided:

1. There has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;

2. A permit has not been issued prior to July 1, 2014; and

3. Land disturbance did not commence prior to July 1, 2014.

~~C. Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the technical criteria of Article 4 of this part for one additional permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.~~

~~D.~~ B. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Article 4 of this part.

~~E.~~ C. Nothing in this section shall preclude an operator from constructing to a more stringent standard at the operator's discretion.

9VAC25-875-500. Stormwater pollution prevention plan requirements.

A. A stormwater pollution prevention plan shall include an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E of this section.

B. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 and 9VAC25-875-560 must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VESCP authority, VESMP authority, or the department.

C. A stormwater management plan consistent with the requirements of 9VAC25-875-510 must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VESMP authority or the department.

D. A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.

E. In addition to the requirements of subsections A through D of this section, if a specific wasteload allocation for a pollutant

has been established in an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the wasteload allocation.

F. The stormwater pollution prevention plan (SWPPP) must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a permit:

1. Control stormwater volume and velocity within the site to minimize soil erosion;

2. Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

3. Minimize the amount of soil exposed during construction activity;

4. Minimize the disturbance of steep slopes;

5. Minimize sediment discharges from the site. The design, installation, and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity, and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

6. Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration, unless infeasible;

7. Minimize soil compaction and, unless infeasible, preserve topsoil;

8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the VESMP authority or the department as the VSMP authority. In arid, semi-arid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VESMP authority or department; and

9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.

G. The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

9VAC25-875-550. Erosion and sediment control plan requirements.

A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit of land will be so treated to achieve the conservation objectives and minimum standards in 9VAC25-875-560. The erosion and sediment control plan may include:

1. Appropriate maps;

2. An appropriate soil and water plan inventory and management information with needed interpretations; and

3. A record of decisions contributing to conservation treatment.

B. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the VESCP or VESMP authority. However, the VESCP or VESMP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:34 or 62.1-44.15:55 of the Code of Virginia.

C. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an agreement in lieu of a plan signed by the property owner.

D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA, ESCL, or this chapter if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

E. All erosion and sediment control structures and systems shall be maintained, inspected, and repaired as needed to ensure continued performance of intended function. A statement describing the maintenance responsibilities of the individual responsible for carrying out the land-disturbing activity shall be included in the approved erosion and sediment control plan.

9VAC25-875-560. Erosion and sediment control criteria, techniques, and methods: minimum standards.

A. An erosion and sediment control plan consistent with the following criteria, techniques, and methods shall be submitted to the VESMP authority or VESCP authority for review and approval:

1. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.

2. During construction of the project, soil stockpiles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.

3. A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, is mature enough to survive, and will inhibit erosion.

4. Sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.

5. Stabilization measures shall be applied to earthen structures such as dams, dikes, and diversions immediately after installation.

6. Sediment traps and sediment basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin.

a. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre of drainage area and the trap shall only control drainage areas less than three acres.

b. Surface runoff from disturbed areas that is comprised of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of drainage area. The outfall system shall, at a minimum, maintain the structural integrity of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in runoff calculations shall correspond to a bare earth condition or those conditions expected to exist while the sediment basin is utilized.

7. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.

8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume, or slope drain structure.

9. Whenever water seeps from a slope face, adequate drainage or other protection shall be provided.

10. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.

11. Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.

12. When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport, and stabilize the work area to the greatest extent possible during construction. Nonerodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonerodible cover materials.

13. When a live watercourse must be crossed by construction vehicles more than twice in any six-month period, a temporary vehicular stream crossing constructed of nonerodible material shall be provided.

14. All applicable federal, state, and local requirements pertaining to working in or crossing live watercourses shall be met.

15. The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed.

16. Underground utility lines shall be installed in accordance with the following standards in addition to other applicable criteria:

a. No more than 500 linear feet of trench may be opened at one time.

b. Excavated material shall be placed on the uphill side of trenches.

c. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both and discharged in a manner that does not adversely affect flowing streams or off-site property.

d. Material used for backfilling trenches shall be properly compacted in order to minimize erosion and promote stabilization.

e. Restabilization shall be accomplished in accordance with this chapter.

f. Applicable safety requirements shall be complied with.

17. Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the

transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities.

18. All temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed, unless otherwise authorized by the VESCP or VESMP authority. Trapped sediment and the disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation.

19. Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion, and damage due to increases in volume, velocity, and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria. Stream restoration and relocation projects that incorporate natural channel design concepts are not manmade channels and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels:

a. Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or manmade receiving channel, pipe, or storm sewer system. For those sites where runoff is discharged into a pipe or pipe system, downstream stability analyses at the outfall of the pipe or pipe system shall be performed.

b. Adequacy of all channels and pipes shall be verified in the following manner:

(1) The applicant shall demonstrate that the total drainage area to the point of analysis within the channel is 100 times greater than the contributing drainage area of the project in question; or

(2) (a) Natural channels shall be analyzed by the use of a two-year storm to verify that stormwater will not overtop channel banks nor cause erosion of channel bed or banks.

(b) All previously constructed manmade channels shall be analyzed by the use of a 10-year storm to verify that stormwater will not overtop the stormwater's banks and by the use of a two-year storm to demonstrate that stormwater will not cause erosion of channel bed or banks; and

(c) Pipes and storm sewer systems shall be analyzed by the use of a 10-year storm to verify that stormwater will be contained within the pipe or system.

c. If existing natural receiving channels or previously constructed manmade channels or pipes are not adequate, the applicant shall:

(1) Improve the channels to a condition where a 10-year storm will not overtop the banks and a two-year storm will not cause erosion to the channel, the bed, or the banks;

(2) Improve the pipe or pipe system to a condition where the 10-year storm is contained within the appurtenances;

(3) Develop a site design that will not cause the predevelopment peak runoff rate from a two-year storm to increase when runoff outfalls into a natural channel or will not cause the predevelopment peak runoff rate from a 10-year storm to increase when runoff outfalls into a manmade channel; or

(4) Provide a combination of channel improvement, stormwater detention, or other measures that is satisfactory to the VESCP or VESMP authority to prevent downstream erosion.

d. The applicant shall provide evidence of permission to make the improvements.

e. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project.

f. If the applicant chooses an option that includes stormwater detention, the applicant shall obtain approval from the VESCP or VESMP authority for a plan for maintenance of the detention facilities. The plan shall set forth the maintenance requirements of the facility and the person responsible for performing the maintenance.

g. Outfall from a detention facility shall be discharged to a receiving channel, and energy dissipators shall be placed at the outfall of all detention facilities as necessary to provide a stabilized transition from the facility to the receiving channel.

h. All ~~on-site~~ onsite channels must be verified to be adequate.

i. Increased volumes of sheet flows that may cause erosion or sedimentation on adjacent property shall be diverted to a stable outlet, adequate channel, pipe, or pipe system or to a detention facility.

j. In applying these stormwater management criteria, individual lots or parcels in a residential, commercial, or industrial development shall not be considered to be separate development projects. Instead, the development, as a whole, shall be considered to be a single development project. Hydrologic parameters that reflect the ultimate development condition shall be used in all engineering calculations.

k. All measures used to protect properties and waterways shall be employed in a manner that minimizes impacts on the physical, chemical, and biological integrity of rivers, streams, and other waters of the state.

l. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or

manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming the site was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when the site was in a good forested condition divided by the runoff volume from the site in the site's proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined in any regulations promulgated pursuant to § 62.1-44.15:28 of the Code of Virginia (VESMA) or § 62.1-44.15:54 or 62.1-44.15:65 of the Code of Virginia (ESCL).

m. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of § 62.1-44.15:52 A of the Code of Virginia (ESCL) and this subdivision 19 shall be satisfied by compliance with water quantity requirements in the VESMA and attendant regulations, unless such land-disturbing activities (i) are in accordance with provisions for time limits on applicability of approved design criteria in 9VAC25-875-480 or grandfathering in 9VAC25-875-490, in which case the flow rate capacity and velocity requirements of § 62.1-44.15:52 A of the Code of Virginia (ESCL) shall apply; or (ii) are exempt pursuant to § 62.1-44.15:34 G 2 of the Code of Virginia (VESMA).

n. Compliance with the water quantity minimum standards set out in 9VAC25-875-600 shall be deemed to satisfy the requirements of this subdivision 19.

B. All land-disturbing activities shall be conducted in a manner that is consistent with the applicable requirements of subsection A of this section.

9VAC25-875-850. Definitions.

For the purposes of this part only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an authorized representative.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and VESMA, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403, and 405 of the CWA.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

"Continuous discharge" means a discharge that occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Co-permittee" means a permittee to a VPDES permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Discharge" when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to state waters from any point source; or

2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an equivalent form developed by the operator and approved by the department, for the reporting of self-monitoring results by operators.

"Draft permit" means a document indicating the department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue an individual or general permit. A notice of intent to deny an individual or general permit is a type of draft permit. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants that are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

"Existing permit" means for the purposes of this chapter a permit issued by the department and currently held by a permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment, or machinery that form a permanent part of a new source and that will be used in its operation if these facilities or equipment are of such value as to represent a substantial commitment to construct. The term excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VPDES point source or treatment works treating domestic sewage or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the VPDES program.

"Hazardous substance" means any substance designated under the Code of Virginia or 40 CFR Part 116 pursuant to § 311 of the CWA.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or permit (other than the permit for discharges from the municipal separate storm sewer), discharges resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-875-970 D 2 c (3).

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities within the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works" or "(POTW)."

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);

2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal separate storm sewers that are located in the incorporated places, townships, or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the department may consider the following factors:

a. Physical interconnections between the municipal separate storm sewers;

b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

c. The quantity and nature of pollutants discharged to surface waters;

d. The nature of the receiving surface waters; and

e. Other relevant factors;

4. The department may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Major facility" means any facility or activity classified as such by the regional administrator in conjunction with the board.

"Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its

equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means, in the context of a municipal separate stormwater sewer system, the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, and BMPs to attain compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G);

2. Located in the counties listed in 40 CFR Part 122 Appendix I, except municipal separate storm sewers that are located in the incorporated places, townships, or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the department may consider the following factors:

a. Physical interconnections between the municipal separate storm sewers;

b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

c. The quantity and nature of pollutants discharged to surface waters;

d. The nature of the receiving surface waters; or

e. Other relevant factors;

4. The department may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2, and 3 of this definition.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes or an Indian tribe or an authorized Indian tribal organization or a designated and approved management agency under § 208 of the CWA.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. ~~Which~~ That is not a new source; and

4. ~~Which~~ That has never received a finally effective separate VPDES or permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant that begins discharging at a site for which it does not have a separate VPDES or permit, and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA that are applicable to such source; or

2. After proposal of standards of performance in accordance with § 306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"Oil and gas exploration, production, processing, or treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity. (33 USC § 1362(24))

"Outfall," when used in reference to municipal separate storm sewers, means a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels, or other conveyances that

connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Permit" means a VPDES permit issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity or MS4.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or

2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas or water derived in association with oil and gas production and disposed of in a well if the well is used either to facilitate production or for disposal purposes is approved by the department and if the department determines that the injection or disposal will not result in the degradation of groundwater or surface water resources.

"Privately owned treatment works" or "PVOTW" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Revoked" means an existing VPDES permit that is terminated by the department before its expiration.

"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the VESMA, the CWA, and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Significant materials" means but is not limited to raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity or an Indian tribe or an authorized Indian tribal organization or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 9VAC25-875-950 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and ~~highway~~ highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Stormwater discharge associated with construction activity" means a discharge of stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the

construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under § 301 or 316 of the CWA or under 40 CFR Part 125, or in the applicable federal effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on § 301(c), (g), (h), or (i), or 316(a) of the CWA.

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

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the VESMA (§ 62.1-44.15:24 et seq. of the Code of Virginia), and the CWA (33 USC § 1251 et seq.).

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

VA.R. Doc. No. R25-7961; Filed September 6, 2024, 1:10 p.m.

TITLE 12. HEALTH
STATE BOARD OF HEALTH

Final Regulation

Title of Regulation: **12VAC5-630. Private Well Regulations (amending 12VAC5-630-10, 12VAC5-630-20, 12VAC5 -630-30, 12VAC5-630-50 through 12VAC5-630- 120, 12VAC5-630-140 through 12VAC5-630-330, 12VAC5-630 -350 12VAC5-630-360, 12VAC5-630-380 through 12VAC5 -630-430, 12VAC5-630-450, 12VAC5-630 -460; adding 12VAC5-630-331, 12VAC5-630-431; repealing 12VAC5 -630-40, 12VAC5-630-370, 12VAC5-630-440, 12VAC5-630-470, 12VAC5-630-480).**

Statutory Authority: §§ 32.1-12 and 32.1-176 of the Code of Virginia.

Effective Date: November 6, 2024.

Agency Contact: Lance Gregory, Director, Division of Onsite Sewage and Water Services, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7491, FAX (804) 864-7475, or email lance.gregory@vdh.virginia.gov.

Summary:

The amendments include (i) revising and adding definitions for consistency with the Code of Virginia, other regulations related to private wells and groundwater resources, and current industry standards; (ii) revising administrative processes to reflect current law and to improve consistency with other department regulations, such as the Sewage Handling and Disposal Regulations (12VAC5-610), which establish minimum separation distance from private wells; (iii) clarifying grout materials; (iv) revising well abandonment protocols and the separation distance requirements between sources of contamination and abandoned wells; (v) making private well construction reporting requirements and well construction and reporting requirements in the Groundwater Withdrawal Regulations (9VAC25-610) consistent; (vi) removing references to obsolete or repealed regulations and statutes; (vii) revising construction standard exemptions for Class IIIC and Class IV wells; (viii) clarifying disinfection procedures and standards for yield and storage requirements; (ix) revising the Private Well Classification System so that Class IV well construction standards mirror Class III wells; (x) establishing a standard procedure for converting existing Class IV wells to Class III wells; (xi) creating reasonable exemptions to the regulations; (xii) clarifying regulatory authority over observation wells; (xiii) establishing minimum private well construction criteria based on geologic conditions, such as requiring a mechanical seal at the termination of well casing into bedrock; (xiv) requiring that all private well components meet national lead-free standards; (xv) establishing criteria to acknowledge nationally recognized standards

and certifications for approval of private well components, including standard methods, materials, products, analytical, and permeability standards; (xvi) establishing a minimum separation distance from utilities, property lines, permanently abandoned onsite sewage systems, reuse water lines, and possible other sources of contamination; and (xvii) establishing quality standards for water used during well construction. No substantive changes have been made to the proposed regulation.

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

12VAC5-630-10. Definitions.

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

"Abandoned well" means a private well ~~whose~~ from which the pump has been disconnected for reasons other than repair or replacement, or ~~whose~~ the use of which has been discontinued or which has been pronounced abandoned by the owner. A temporarily abandoned well is a well that is intended to be returned to service as a source of water at some future time. A permanently abandoned well is a well that is not intended to be used ~~as a source of water at any future time~~. [~~Abandoned~~] ~~wells must meet the~~ [~~well requirements~~] ~~of~~ [~~are found in 12VAC5-630-450.~~]

"Agent" means a legally authorized representative of the owner.

"Agricultural operation" means an operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery and floral products; and the production and harvest of products from silviculture activity.

"Annular space" means the space between the well bore ~~hole~~ wall and the outside of a water well casing pipe~~,~~ or between a casing pipe and a liner pipe.

"Aquifer" means a geologic formation, group of formations, or part of a formation~~,~~ that ~~transmits water~~ has the capability to store and transmit water in sufficient quantity to constitute a usable supply source.

"Bedrock" means ~~any solid rock underlying soil, sand, or clay~~ the solid, potentially fractured and fissured rock formations that occur beneath soils, underlying sediment deposits, or weathered material.

"Beneficial use" means use of water that includes domestic, agricultural, commercial, industrial, and investigative purposes.

"Bioretention pond" means a best management practice structure engineered for the purpose of reducing the pollutant load in storm water runoff to surface water and groundwater systems.

"Biosolids" means solid, semisolid, or liquid materials removed from municipal sewage and treated to be suitable for recycling as fertilizer [, as defined in 9VAC25-31-10 and 9VAC25-32-10. For the purpose of this chapter, biosolids do not include exceptional quality biosolids as that term is defined in 9VAC25-32-10].

"Board" means the State Board of Health.

"Bored well" means a well that is excavated by means of a soil auger (hand or power) as distinguished from a well [~~which~~ that] is drilled, driven, dug, or jetted.

"Casing" means a hollow cylindrical device (typically steel, plastic, or concrete) that is installed in a well to maintain the well opening and to provide a seal.

"Clean fill" means any combination of undisturbed soil and natural earth material, commercially available quarried sand or gravel product, and cuttings from the well being constructed, provided that the materials do not contain contaminated media. In this context, undisturbed soil and natural earth materials refers to unconsolidated mineral and organic material on the immediate surface of the Earth that developed naturally on the property on which it originates.

"Closed-loop ground-source heat pump well" means a well consisting of a sealed loop of plastic pipe buried vertically beneath the earth's surface to allow heat transfer between the fluid in the pipe and the earth. Horizontal closed-loop ground source heat pump pipe configurations installed in trenches, including those which may intercept shallow groundwater, are excluded.

"Coliform" means a broad group of naturally occurring bacteria species found in soils and rocks. Coliform bacteria are more prevalent in near surface soils, and their presence in well water may indicate the possible presence of more harmful pathogens.

"Collapsing material" means ~~any~~ soil or gravel material ~~which~~ that collapses upon itself forming a seal with the casing and leaves no voids around the casing.

"Commercially dependent well" means a well that is the sole source of water for a commercial facility that requires the water from the well for continued operation. Examples include wells serving an ice plant, a car wash facility, or as irrigation for commercial nurseries, or agricultural wells that provide water for livestock or irrigation.

"Commissioner" means the State Health Commissioner, who is the chief executive officer of the board, a deputy commissioner, or ~~his~~ a subordinate who has been delegated

powers in accordance with subdivision 2 of 12VAC5-630-90 ~~B~~ of this chapter.

~~"Confined aquifer" means an aquifer that is confined by an overlying impermeable formation.~~

"Consolidated rock" means a formation consisting entirely of a natural rock formation that contains no soil and does not collapse against the well casing.

"Construction dewatering" means the process of draining an excavated area that is flooded with rain water or groundwater before construction can start.

"Construction of wells" means acts necessary to locate and construct private wells~~, including the location of private wells, the boring, digging, drilling, or otherwise excavating of a well hole and the installation of casing with or without well screens, or well curbing~~.

"Contaminated media" means soil, sediment, dredged material, or debris that, as a result of a release or human use, has absorbed or adsorbed physical, chemical, or radiological substances at concentrations above those consistent with nearby or undisturbed soil or natural earth materials.

"Controlled low strength material" or "flowable fill" means a slurry comprised of cement, water, and fine aggregate or filler (including coal ash, foundry sand, quarry fines, and baghouse dust in any combination).

"Cuttings" means the solid material, saturated or unsaturated, removed from a borehole drilled by rotary, percussion, or auger methods.

"Deep well ejector pump system" means a well that utilizes a casing adapter and a deep well ejector. These wells must maintain a constant vacuum to operate.

~~"Dewatering well" means a driven well constructed for the sole purpose of lowering the water table and kept in operation for a period of 60 days or less. Dewatering wells are used to allow construction in areas where a high water table hinders or prohibits construction and are always temporary in nature.~~

"Department" means the Virginia Department of Health.

"Deputy commissioner" means a person who serves as a deputy commissioner in accordance with § 32.1-22 of the Code of Virginia.

"DEQ" means the Virginia Department of Environmental Quality.

"Disinfection" means ~~the destruction of all~~ a process that inactivates or destroys pathogenic organisms in water by use of a disinfectant.

"Division" means the Division of On-Site Sewage and Water Services, Environmental Engineering, and Marina Programs within the department.

"District health department" means a consolidation of local health departments as authorized in § 32.1-31 C of the Code of Virginia.

"DPOR" means the Virginia Department of Professional and Occupational Regulation.

"Drilled shallow well suction pump system" means a drilled well two inches or [~~less~~ smaller] in diameter that utilizes an offset pump to draw water from the well through the casing. These wells must maintain a constant vacuum in order to operate.

"Drilled well" means a well that is excavated wholly or in part by means of a drill (either percussion or rotary) ~~which~~ that operates by cutting or abrasion.

"Driven well" means a well that is constructed by driving a pipe, at the end of which there is a drive point and screen, without the use of ~~any~~ a drilling, boring, or jetting device.

"Dug well" means a well that is excavated by means of picks, shovels, or other hand tools~~,~~ or by means of a power shovel or other dredging or trenching machinery, as distinguished from a bored, drilled, driven, or jetted well.

"Emergency well replacement" means the replacement of an existing private drinking water well, heat pump well, or commercially dependent well that has failed to deliver the water needed for its intended use. ~~Such~~ The failure requires the drilling of a new well or extensive modifications to the existing well. The replacement of failed noncommercial irrigation wells~~,~~ and other types of private wells are not considered emergencies.

"Gravel pack" means sand or gravel placed outside a well screen in a well to assist the flow of water into the well screen and to inhibit clogging of the screen.

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

"Groundwater management area" means a geographically defined groundwater area in which the State Water Control Board has deemed the levels, supply, or quality of groundwater to be adverse to public welfare, health, and safety pursuant to 9VAC25-600.

"Grout" means ~~any~~ a stable, impervious bonding material, reasonably free of shrinkage, ~~which~~ that is capable of providing a watertight seal in the annular spaces of a water well throughout the depth required, to protect against the intrusion of objectionable matter.

"Human consumption" means drinking, food preparation, dishwashing, bathing, showering, hand washing, teeth brushing, and maintaining oral hygiene.

"Jetted well" means a well that is excavated using water pumped under pressure through a special washing point to create a water jet ~~which~~ that cuts, abrades, or erodes material to form the well.

"Lead free" means the following:

1. When used with respect to solders and flux, refers to solder and flux containing not more than 0.2% lead.

2. When used with respect to pipes, pipe fittings, plumbing fittings, and plumbing fixtures, refers to the weighted average of wetted surfaces of pipes, pipe fittings, plumbing fittings, and plumbing fixtures containing not more than 0.25% lead.

"Local health department" means the department established in each city and county in accordance with § 32.1-30 of the Code of Virginia.

"Noncollapsing material" means soil or gravel material ~~which~~ that can maintain an open well bore ~~hole~~ long enough to grout the annular space between a well and the well bore ~~hole~~. For the purpose of this chapter, soil or gravel material ~~which~~ that collapsed upon itself but created voids around the casing is considered noncollapsing material.

"Nonpublic water" means pure water that is not provided by a waterworks.

"Observation well" or "monitoring well" means a well constructed to measure hydrogeologic parameters~~, such as the fluctuation of water levels,~~ or for scientific monitoring of the quality of ~~ground water~~ groundwater, or for both purposes.

"Owner" means ~~any person, who owns, leases,~~ the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, an individual, a group of individuals acting individually or as a group, a public or private institution, corporation, company, partnership, firm, or association that owns or proposes to own or lease a private well.

"Person" means ~~any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the law of this Commonwealth or any other state or country~~ an individual, corporation, partnership, association, or any other legal entity.

"Pollutant" means substances, including solid waste, sewage, effluent, radioactive materials, petroleum products, manufactured chemical products, and industrial byproducts, that can detrimentally affect the quality of water.

"Private well" means ~~any~~ a water well constructed for a person on land ~~which~~ that is owned or leased by that person and is usually intended for household, ~~ground water~~ groundwater source heat pump, agricultural use, industrial use, or other nonpublic water well.

"Pure water" means water of a quality suitable for human consumption that is (i) sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts and (ii) adequate in quantity and quality for the minimum health requirements of the persons served.

"Reclaimed water" means treated wastewater that can be used for beneficial purposes, determined by the degree of treatment achieved.

"Remediation well" means an observation or monitoring well in use for recovery or treatment of one or more pollutants.

"Replacement well" means a well being constructed to take the place of an existing well that is being taken out of service and is being abandoned.

"Sanitary survey" means an investigation of ~~any condition that may affect public health~~ obvious sources of potentially toxic or dangerous substances within 200 feet of a proposed private well.

"Screen" means the intake section of a well casing that obtains water from an unconsolidated aquifer providing for the water to flow freely and adding structural support to the bore hole. Screens are used to increase well yield or prevent the entry of sediment, or both.

"Sewage" means water carried and nonwater carried human excrement, kitchen, laundry, shower, bath, or lavatory wastes separately or together with ~~such~~ underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments, or other places.

"Sewage disposal system" means a sewerage system or treatment works designed not to result in a point source discharge.

"Sewer" means ~~any sanitary or combined sewer~~ a pipe or conduit used to convey sewage or ~~municipal or~~ industrial ~~wastes~~ waste streams.

"Sewerage system" means pipelines or conduits, pumping stations and force mains, and all other construction, devices, and appliances appurtenant thereto~~,~~ used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Subsurface soil absorption" means a process ~~which~~ that utilizes the soil to treat and dispose of sewage effluent.

"Treatment works" means ~~any~~ a device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including ~~but~~

~~not limited to~~ pumping, power, and other equipment and appurtenances, septic tanks, and ~~any~~ works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or effluents resulting from ~~such~~ the treatment.

"Tremie pipe" means a tube through which grout, filter media, or other flowing material is placed by gravity feed or pumping. The pipe is placed at the lowermost part of the well feature being treated (inner casing or annular space), and the bottom of the pipe remains submerged in the material being placed as the pipe is raised in order to prevent uneven distribution or bridging.

"Variance" means a conditional waiver of a specific regulation ~~which~~ that is granted to a specific owner relating to a specific situation or facility and may be for a specified time period.

"Water quality" means the chemical, physical, bacteriological, and radiological characteristics of water with respect to its suitability for a particular purpose.

"Water table" means the uppermost surface of ~~ground water~~ groundwater saturation~~. The~~ in an unconfined aquifer and the level in the saturated zone at which the pressure is equal to atmospheric pressure.

"Water well" or "well" means ~~any~~ an artificial opening or artificially altered natural opening, however made, by which ~~ground water~~ groundwater is sought or through which ~~ground water~~ groundwater flows under natural pressure or is intended to be artificially drawn~~; provided this definition shall not include wells drilled for the following purposes: (i) exploration or production of oil or gas, (ii) building foundation investigation and construction, (iii) elevator shafts, (iv) grounding of electrical apparatus, or (v) the modification or development of springs~~.

"Water well systems" means the water well to reach groundwater and the well pump and tank, including pipe and wire, up to and including the [~~pint~~ point] of connection to plumbing and electrical systems.

"Water well systems provider" means the person certified by DPOR to provide the drilling, installation, maintenance, or repair of a water wells or water well systems.

"Waterworks" means a system that serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year. "Waterworks" includes all structures, equipment, and appurtenances used in the storage, treatment, and distribution of pure water except the piping and fixtures inside the building where the water is delivered.

"Well area" means an area designated on a construction permit as appropriate for the construction of a private well.

"Well bore" means a vertical hole advanced into the earth, however created, by a water well system provider, in which a well is constructed.

"Well site" means the location on the ground surface of a property designated on a construction permit for the construction of a private well.

"Work days" or "working days" means days on which the department, the district health department, or the local health department, as applicable in context, is open for business, excluding holidays and closures. ["]

"Yield" means the quantity of water, usually measured in volume of water per unit [of] time, which may flow or which may be pumped, from a well or well field.

12VAC5-630-20. Authority for regulations.

Title 32.1 of the Code of Virginia, and specifically §§ 32.1-12 and ~~32.1-176.4~~ 32.1-176.2 of the Code of Virginia, provide that the ~~State Board of Health~~ board has the duty to protect the public health and to ensure that ~~ground water~~ groundwater resources are not adversely affected by the construction and location of private wells. In order to discharge this duty, the board is empowered, pursuant to §§ 32.1-12 and 32.1-176.4 of the Code of Virginia, to ~~supervise and~~ regulate the construction and location of private wells within the Commonwealth.

12VAC5-630-30. Purpose and applicability of regulations.

~~These regulations have~~ A. Purpose. This chapter has been promulgated by the ~~State Board of Health~~ board to:

1. Ensure that all private wells are located, constructed, and maintained in a manner ~~which~~ that does not adversely affect ~~ground water~~ groundwater resources~~,~~ or the public welfare, safety, and health;

2. Guide the ~~State Health Commissioner~~ commissioner in ~~his determination of~~ determining whether a permit for construction of a private well should be issued or denied;

3. Guide the owner or ~~his~~ the owner's agent in the requirements necessary to secure a permit for construction of a private well; ~~and~~

4. Guide the owner or ~~his~~ the owner's agent in the requirements necessary to secure an inspection statement following construction; and

5. Guide the owner or the owner's agent in the requirements necessary to abandon a private well (temporarily or permanently) when the well is not in use.

B. Applicability. This chapter applies to owners of a private well. The following wells are excluded from the requirements of this chapter:

1. Wells constructed as a groundwater source for a waterworks as regulated by 12VAC5-590.

2. Wells constructed for the purpose of building, roadway, or other geotechnical foundation investigation, design, or construction, provided that the well, including an unimproved well bore, is abandoned in such a manner as to prevent it from being a channel of vertical movement of surface water or a source of contamination into the ground.

3. Wells constructed for the purpose of an elevator shaft.

4. Wells constructed for the purpose of constructing an extensometer or similar scientific instrument.

5. Wells constructed for the purpose of grounding of electrical apparatus.

6. Wells constructed for the purpose of the modification or development of springs.

7. Wells constructed for the purpose of underground injection as regulated by 40 CFR Part 144.

8. Wells constructed for the purpose of the observation or monitoring of groundwater elevation or quality, except as governed by 12VAC5-630-420 B and C.

9. Well bores, including direct push well bores and hand tool made well bores, advanced for the purpose of collecting soil or groundwater samples for analysis with or without temporary installation of casing or screen, provided that the well bore is abandoned after the sample is collected in such a manner as to prevent it from being a channel of vertical movement of surface water or a source of contamination into groundwater.

10. Wells constructed for the purpose of construction dewatering, provided that the well is abandoned within 60 days of construction by the removal of the well point, well casing, screening, and other appurtenances associated with the construction and operation of the well and completion of abandonment in such a manner as to prevent it from being a channel of vertical movement of surface water or a source of contamination into groundwater.

11. Wells constructed to provide cathodic protection, provided that the well is abandoned after use in such a manner as to prevent it from being a channel of vertical movement of surface water or a source of contamination into groundwater.

12VAC5-630-40. ~~Relationship to Virginia Sewage Handling and Disposal Regulations.~~ (Repealed.)

~~This chapter supersedes 12VAC5-610-1150 of the Virginia Sewage Handling and Disposal Regulations, and 12VAC5-610-1140 B and C of the Virginia Sewage Handling and Disposal Regulations which address private wells, and were adopted by the State Board of Health pursuant to Title 32.1 of the Code of Virginia.~~

12VAC5-630-50. Relationship to the State Water Control Board.

This chapter is independent of all regulations promulgated by the State Water Control Board. ~~Ground water~~ Groundwater users located in a ~~ground water~~ groundwater management area may be required to obtain a permit from the State Water Control Board in addition to obtaining a permit from the Department of Health. In addition to the reporting requirements contained in this chapter, § 62.1-258 of the Code of Virginia requires that private wells constructed in a groundwater management area be registered by the water well systems provider with the State Water Control Board within 30 days of the completion of construction. Private wells constructed in groundwater management areas are subject to 9VAC25-610.

12VAC5-630-60. Relationship to the Department of Environmental Quality~~, Waste Management Division~~.

This chapter establishes minimum standards for the protection of public health and ~~ground water~~ groundwater resources. Observation wells, monitoring wells, and remediation wells constructed under the supervision of ~~the Virginia Department of Environmental Quality, Waste Management Division,~~ DEQ are governed by 12VAC5-630-420.

12VAC5-630-70. Relationship to the Uniform Statewide Building Code.

This chapter is independent of and in addition to the requirements of the Uniform Statewide Building Code (13VAC5-63). ~~All persons~~ Persons required to obtain a well permit by this chapter shall furnish a copy of the permit to the local building official, upon request, when making application for a building permit. Prior to obtaining an occupancy permit, an applicant shall furnish the local building official with a copy of the inspection statement demonstrating the water supply has been inspected, sampled and tested (when applicable), and approved by the district or local health department.

12VAC5-630-80. Relationship to the Department of Professional and Occupational Regulation.

~~In~~ Persons engaged in the construction, repair, or alteration of a private well shall be licensed and certified in accordance with ~~§ 54.1-1100~~ §§ 54.1-1103 and 54.1-1129.1 of the Code of Virginia~~, any contractor constructing a water well to reach ground water shall possess, as a minimum, a valid Class B contractors license~~.

12VAC5-630-90. Administration of regulations.

This chapter is administered by the following:

~~A.~~ 1. The ~~State Board of Health, hereinafter referred to as the board,~~ board has the responsibility to promulgate, amend, and repeal regulations necessary to ensure the proper

location, construction ~~and location,~~ repair, and abandonment of private wells.

~~B.~~ 2. The ~~State Health Commissioner, hereinafter referred to as the~~ commissioner~~,~~ is the chief executive officer of the ~~State Department of Health~~ department. The commissioner has the authority to act, within the scope of regulations promulgated by the board~~,~~ and for the board when it is not in session. The commissioner may delegate ~~his~~ powers under this chapter in writing to ~~any~~ a subordinate~~, with the exception of (i) his~~; however, the power to (i) issue variances under § 32.1-12 of the Code of Virginia and 12VAC5-630-170, and (ii) ~~his power to~~ issue orders under § 32.1-26 of the Code of Virginia and 12VAC5-630-140 and 12VAC5-630-150 B ~~and (iii) the power to revoke permits or inspection statements under 12VAC5-630-290, which~~ may ~~only~~ not be delegated ~~pursuant to § 32.1-22 of the Code of Virginia~~.

The commissioner has final authority to adjudicate contested case decisions of subordinates delegated powers under this section prior to appeal of such case decisions to the circuit court.

~~C.~~ 3. The ~~State Department of Health hereinafter referred to as~~ department is designated as the primary agent of the commissioner for the purpose of administering this chapter.

~~D.~~ 4. The district or local health departments are responsible for implementing and enforcing the regulatory activities required by this chapter.

12VAC5-630-100. Right of entry and inspections.

In accordance with the provisions of ~~§§~~ § 32.1-25 ~~and 32.1-12 and 32.1-176.6~~ of the Code of Virginia, the commissioner or ~~his~~ the commissioner's designee shall have the right to enter any property to ensure compliance with this chapter. In accordance with the provisions of § 32.1-176.6 of the Code of Virginia, the department has the authority to conduct such inspections as it may find reasonably necessary to ensure that the construction work conforms to applicable construction standards.

12VAC5-630-110. Compliance with the Administrative Process Act.

The provisions of the Virginia Administrative Process Act (§ ~~9-6.14:1~~ 2.2-4000 et seq. of the Code of Virginia) shall govern the promulgation and administration of this chapter, including governing the procedures for rendering case decisions as defined in § 2.2-4001 of the Code of Virginia, and shall be applicable to the appeal of ~~any~~ a case decision based upon this chapter.

12VAC5-630-120. Powers and procedures of regulations not exclusive.

The commissioner may enforce this chapter through ~~any~~ means lawfully available.

12VAC5-630-140. Emergency order.

If an emergency exists, the commissioner may issue an emergency order as is necessary for preservation of public health, safety, and welfare or to protect ~~ground water~~ groundwater resources. The emergency order shall state the reasons and precise factual basis upon which the emergency order is issued. The emergency order shall state the time period for which it is effective. Emergency orders will be publicized in a manner deemed appropriate by the commissioner. The provisions of 12VAC5-630-150 C and D shall not apply to emergency orders issued pursuant to this section.

12VAC5-630-150. Enforcement of regulations.

A. Notice. Subject to the exceptions ~~below~~ in this section, whenever the commissioner or the district or local health department has reason to believe a violation of any of this chapter has occurred or is occurring, the alleged violator shall be notified. ~~Such~~ The notice shall be made in writing, shall be delivered personally or sent by certified mail, shall cite the regulation ~~or regulations that are~~ allegedly being violated, shall state the facts ~~which~~ that form the basis for believing the violation has occurred or is occurring, shall include a request for a specific action by the recipient by a specified time, and shall state the penalties associated with such violation. ~~When the~~ The commissioner ~~deems~~ may deem it necessary~~, he may~~ to initiate criminal prosecution or seek civil relief through mandamus ~~or~~, injunction, or other appropriate remedy prior to giving notice.

B. Orders. Pursuant to the authority granted in § 32.1-26 of the Code of Virginia, the commissioner may issue orders to require ~~any~~ an owner, or other person, to comply with the provisions of this chapter. The order shall be signed by the commissioner and may require:

1. The immediate cessation and correction of the violation;

2. Appropriate remedial action to ensure that the violation does not recur;

3. The submission to the commissioner for review and approval of a plan to prevent future violations to the commissioner for review and approval;

4. The submission of an application for a variance; or

5. ~~Any other~~ Other corrective action deemed necessary for proper compliance with the chapter.

C. Hearing before the issuance of an order. Before the issuance of an order described in ~~12VAC5-630-150~~ this section, a hearing must be held, with at least 30 days of notice by certified mail to the affected owner or other person of the time, place, and purpose thereof~~,~~ for the purpose of adjudicating the alleged violation ~~or violations~~ of this chapter. The procedures at the hearing shall be in accordance with 12VAC5-630-180 A or B ~~of this chapter~~ and ~~with §§ 9-6.14:11 through 9-6.14:14 of the Code of Virginia~~ the Virginia

Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

D. Order; when effective. ~~All orders~~ Orders issued pursuant to ~~12VAC5-630-150~~ this section shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of the owner or person violating this chapter. ~~Violation of an order is a Class 1 misdemeanor. See § 32.1-27 of the Code of Virginia.~~

E. Compliance with effective orders. The commissioner may enforce ~~all~~ orders. Should any owner or other person fail to comply with any order, the commissioner may:

1. Apply to an appropriate court for an injunction or other legal process to prevent or stop any practice in violation of the order;

2. Commence administrative proceedings to suspend or revoke the construction permit;

3. Request the Attorney General to bring an action for civil penalty, injunction, or other appropriate remedy; or

4. Request the Commonwealth's Attorney to bring a criminal action.

F. Not exclusive means of enforcement. Nothing contained in 12VAC5-630-140 or ~~12VAC5-630-150~~ this section shall be interpreted to require the commissioner to issue an order prior to commencing administrative proceedings or seeking enforcement of ~~any~~ regulations or statute through an injunction, mandamus, other appropriate remedy, or criminal prosecution.

12VAC5-630-160. Suspension of regulations during disasters.

If in the case of a man-made or natural disaster, the commissioner finds that certain regulations cannot be complied with and that the public health is better served by not fully complying with this chapter, ~~he~~ the commissioner may authorize the suspension of the application of the chapter for specifically affected localities and institute a provisional regulatory plan until the disaster is abated.

12VAC5-630-170. Variances.

~~Only the~~ A. The commissioner ~~or the deputy commissioners~~ may grant a variance to this chapter. ~~(See §§ 32.1-12 and 32.1-22 of the Code of Virginia and 12VAC5-630-90 B.)~~ The commissioner ~~or the deputy commissioners~~ shall follow the appropriate procedures set forth in this ~~subsection~~ section in granting a variance.

~~A.~~ B. Requirements for a variance. The commissioner may grant a variance if a thorough investigation reveals that the hardship imposed by this chapter (may be economic) outweighs the benefits that may be received by the public~~.~~ ~~Further~~, and that the granting of such a variance shall not subject the public to unreasonable health risks or jeopardize ~~ground water~~ groundwater resources.

~~Exception:~~ The commissioner shall not grant a variance for an improperly located Class IV well that was located pursuant to an express Class IV permit, as described under 12VAC5-630-260 and 12VAC5-630-270, if the improper location of the well is a result of the failure by the owner, ~~his~~ the owner's agent, or the ~~well driller~~ water well systems provider to provide complete or accurate information on the site plan submitted with the application or to install the well in accordance with the permit.

~~B.~~ C. Application for a variance. Any owner who seeks a variance shall apply in writing within the time period specified in 12VAC5-630-210 ~~B~~. The application shall be signed by the owner, addressed, and sent to the commissioner ~~at the State Department of Health in Richmond~~. The application shall include:

1. A citation to the section from which a variance is requested;

2. The nature and duration of the variance requested;

3. Any relevant analytical results, including results of relevant tests conducted pursuant to the requirements of this chapter;

4. The hardship imposed by the specific requirement of this chapter;

5. Statements or evidence why the public health and welfare as well as the ~~ground water~~ groundwater resources would not be degraded if the variance were granted;

~~5.~~ 6. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare or ~~ground water~~ groundwater resources;

~~6.~~ 7. Other information, if any, believed pertinent by the applicant; and

~~7. Such other~~ 8. Other information ~~as~~ that the district or local health department or commissioner may require.

~~C.~~ D. Evaluation of a variance application.

1. The commissioner shall act on ~~any~~ a variance request submitted pursuant to ~~12VAC5-630-170 B~~ subsection C of this section within 60 calendar days of receipt of the request.

2. In the evaluation of a variance application, the commissioner shall consider the following factors:

a. The effect that ~~such a~~ the variance would have on the construction, location, or operation of the private well;

b. The cost and other economic considerations imposed by this requirement;

c. The effect that ~~such a~~ the variance would have on protection of the public health;

d. The effect that ~~such a~~ the variance would have on protection of ~~ground water~~ groundwater resources;

e. Relevant analytical results, including results of tests conducted pursuant to the requirements of this chapter;

f. The hardship imposed by enforcing the specific requirements of this chapter;

g. Suggested conditions that might be imposed on the granting of a variance that would limit detrimental impact on the public health and welfare;

h. Other information, if any, believed pertinent by the applicant; and

~~e. Such other~~ i. Other factors as the commissioner may deem appropriate.

~~D.~~ E. Disposition of a variance request.

1. The commissioner may deny ~~any~~ an application for a variance by sending a denial notice to the applicant by certified mail. The notice shall be in writing and shall state the reasons for the denial.

2. If the commissioner proposes to grant a variance request submitted pursuant to ~~12VAC5-630-170 B~~ subsection C of this section, the applicant shall be notified in writing of this decision. ~~Such~~ The notice shall identify the variance, any conditions to the variance, and private well covered~~,~~ and shall specify the period of time for which the variance will be effective. The effective date of a variance shall be as stated in the variance.

3. No owner may challenge the terms or conditions set forth in the variance after 30 calendar days have elapsed from the effective date of the variance.

~~E.~~ F. Posting of variances. ~~All variances~~ Variances granted to ~~any~~ private wells are transferable from owner to owner unless otherwise stated, but not transferable to another private well. ~~Each~~ The variance shall be attached to the permit to which it is granted. ~~Each~~ The variance is revoked when the permit to which it is attached is revoked.

~~F.~~ G. Hearings on disposition of variances. Subject to the time limitations specified in 12VAC5-630-210, hearings on denials of an application for a variance or on challenges to the terms and conditions of a granted variance may be held pursuant to subdivision 1 or 2 of 12VAC5-630-180 ~~A or B~~, except that informal hearings under subdivision 1 of 12VAC5-630-180 ~~A~~ shall be held by the commissioner or ~~his~~ the commissioner's designee.

12VAC5-630-180. Hearing types.

Hearings before the commissioner or the commissioner's designees shall include any of the following forms depending on the nature of the controversy and the interests of the parties involved.

~~A.~~ 1. Informal hearings. An informal hearing is a meeting with a district or local health department with the district or local health director presiding and held in conformance with ~~§ 9-6.14:11~~ § 2.2-4019 of the Code of Virginia. The district or local health department director shall consider all evidence presented at the meeting ~~which~~ that is relevant to the issue in controversy. Presentation of evidence, however, is entirely voluntary. The district or local health department shall have no subpoena power. No verbatim record need be taken at the informal hearing. The local or district health director shall review the facts presented and based on those facts render a decision. A written copy of the decision and the basis for the decision shall be sent to the appellant within 15 work days of the hearing, unless the parties mutually agree to a later date in order to allow the department to evaluate additional evidence. If the decision is adverse to the interests of the appellant, an aggrieved appellant may request an adjudicatory hearing pursuant to ~~12VAC5-630-180 B below~~ subdivision 2 of this section.

~~B.~~ 2. Adjudicatory hearing. The adjudicatory hearing is a formal, public adjudicatory proceeding ~~before the commissioner, or a designated hearing officer, and held in conformance with § 9-6.14:12~~ conducted pursuant to § 2.2-4020 of the Code of Virginia. ~~An adjudicatory hearing includes the following features:~~

~~1. Notice. Notice which states the time and place and the issues involved in the prospective hearing shall be sent to the owner or other person who is the subject of the hearing. Notice shall be sent by certified mail at least 15 calendar days before the hearing is to take place.~~

~~2. Record. A record of the hearing shall be made by a court reporter. A copy of the transcript of the hearing, if transcribed, will be provided within a reasonable time to any person upon written request and payment of the cost.~~

~~3. Evidence. All interested parties may attend the hearing and submit oral and documentary evidence and rebuttal proofs, expert or otherwise, that are material and relevant to the issues in controversy. The admissibility of evidence shall be determined in accordance with § 9-6.14:12 of the Code of Virginia.~~

~~4. Counsel. All parties may be accompanied by and represented by counsel and are entitled to conduct such cross examination as may elicit a full and fair disclosure of the facts.~~

~~5. Subpoena. Pursuant to § 9-6.14:13 of the Code of Virginia, the commissioner or hearing officer may issue subpoenas on behalf of himself or any person or owner for the attendance of witnesses and the production of books, papers or maps. Failure to appear or to testify or to produce documents without adequate excuse may be reported by the commissioner to the appropriate circuit court for enforcement.~~

~~6. Judgment and final order.~~ The commissioner ~~may~~ shall designate a hearing officer ~~or subordinate~~ to conduct the

hearing as provided in ~~§ 9-6.14:12~~ § 2.2-4024 of the Code of Virginia~~,~~ and to make written recommended findings of fact and conclusions of law to be submitted for review and final decision by the commissioner. The final decision of the commissioner shall be reduced to writing and will contain the explicit findings of fact upon which ~~his~~ the decision is based. Certified copies of the decision shall be delivered to the owner affected by it. Notice of a decision will be served upon the parties and become a part of the record. Service may be by personal service or certified mail return receipt requested.

12VAC5-630-190. Request for hearing.

A request for an informal hearing shall be made by sending the request in writing to the district or local health department. A request for an adjudicatory hearing shall be made in writing and directed to the commissioner ~~at the State Department of Health in Richmond~~. Requests for hearings shall cite the ~~reason(s)~~ reason for the hearing request and shall cite ~~the section(s)~~ any section of this chapter involved.

12VAC5-630-200. Hearing as a matter of right.

~~Any~~ An owner or other person whose rights, duties, or privileges have been, or may be affected by ~~any~~ a decision of the board or its subordinates in the administration of this chapter shall have a right to both informal and adjudicatory hearings. The commissioner may require participation in an informal hearing before granting the request for a full adjudicatory hearing. ~~Exception:~~ No person other than an owner shall have the right to an adjudicatory hearing to challenge the issuance of either a construction permit or inspection statement unless the person can demonstrate at an informal hearing that the minimum standards contained in this chapter have not been applied and that ~~he~~ the person will be injured in some manner by the issuance of the permit or that ~~ground water~~ groundwater resources will be damaged by the issuance of the permit.

12VAC5-630-210. Appeals.

~~Any~~ An appeal from a denial, revocation, or voidance of a construction permit, inspection statement, or request for variance for a private well must be made in writing and received by the department within ~~60~~ 30 days of the date of the denial, revocation, or voidance.

~~A. Any request for hearing on the denial of an application for a variance pursuant to 12VAC5-630-170 D 1 must be made in writing and received within 60 days of receipt of the denial notice.~~

~~B. Any~~ A ~~request for a variance must be made in writing and received by the department prior to the denial of the private well permit, or within 60 days after such denial.~~

~~C. In the event a person applies for a variance within the 60-day period provided by subsection B above, the date for appealing the denial of the permit, pursuant to subsection A above, shall commence from the date on which the department acts on the request for a variance.~~

~~D.~~ Pursuant to the Administrative Process Act ~~(§ 9-6.14:1~~ (§ 2.2-4000 et seq. of the Code of Virginia) an aggrieved ~~owner~~ party may appeal a final decision of the commissioner to an appropriate circuit court.

12VAC5-630-220. Permits and inspection statement; general.

A. All private wells shall be constructed and located in compliance with the requirements as set forth in this chapter.

~~A. Except as provided in 12VAC5-630-220 B below, after~~ B. After [~~the effective date of this chapter~~ November 6, 2024], no person shall construct, alter, ~~rehabilitate,~~ abandon, or ~~extend~~ increase the depth of a private well~~,~~ or allow the construction, alteration, ~~rehabilitation,~~ abandonment, or ~~extension~~ activity to increase the depth of a private well~~,~~ without a written construction permit from the commissioner. Conditions may be imposed on the issuance of ~~any~~ a permit and no private well shall be constructed or modified in violation of those conditions. The replacement of a well pump, ~~or~~ the replacement of a well seal or cap with an equivalent well seal or cap, or the vertical extension of the well casing above the ground surface shall not be considered a well ~~modification~~ alteration.

~~B. No permit shall be required for the construction, operation, or abandonment of dewatering wells. Furthermore, dewatering wells are exempted from the construction requirements found in 12VAC5-630-410. All dewatering wells shall be abandoned within 60 days of construction. Abandonment in this case means the removal of the well point, well casing, screening, and other appurtenances associated with the construction and operation of the well.~~

C. Except as provided in 12VAC5-630-320, no person shall place a private well in operation~~,~~ or cause or allow a private well to be placed in operation~~,~~ without obtaining a written inspection statement pursuant to 12VAC5-630-310 and 12VAC5-630-330.

D. Except as provided in 12VAC5-630-270, 12VAC5-630-290, and 12VAC5-630-300, construction permits for a private well shall be deemed valid for a period of ~~54~~ 18 months from the date of issuance, with provision for one 18-month renewal.

12VAC5-630-230. Procedures for obtaining a construction permit for a private well.

A. Construction permits are issued by the authority of the commissioner. ~~All requests~~ Requests for a private well construction permit shall be by written application, signed by the owner or ~~his~~ the owner's agent, and shall be directed to the district or local health department. ~~All applications~~ Applications shall be made on an application form provided by the district or local health department and approved by the commissioner.

B. An application shall be deemed completed upon receipt by the district or local health department of a signed and dated application, together with the appropriate fee, containing the following information:

1. The property owner's name, address, and telephone number;

2. The applicant's name, address, and [~~phone~~ telephone] number (if different from subdivision 1 ~~above~~ of this subsection);

3. A statement signed by the property owner, or ~~his~~ the owner's agent, granting the ~~Health Department~~ department access to the site for the purposes of evaluating the suitability of the site for a well and allowing the department access to inspect the well after it is installed;

4. A statement indicating whether the adjacent property is used for an agricultural operation;

5. Information required per 12VAC5-630-380 E if necessary.

6. A site plan showing the proposed well site, property boundaries, accurate locations of actual or proposed sewage disposal systems, recorded easements, and other sources of contamination within 100 feet of the proposed well site, and at the option of the applicant a proposed well design; and

~~5.~~ 7. When deemed necessary because of geological or other natural conditions, plans and specifications detailing how the well will be constructed.

12VAC5-630-240. Issuance of the construction permit.

A. A construction permit shall be issued to the owner by the commissioner no later than 60 days after receipt of a complete ~~and approvable~~ application submitted under 12VAC5-630-230 that meets requirements for issuance of the permit. If applicable, the applicant shall comply with 12VAC5-630-340 prior to issuance of the permit.

B. The permit shall indicate a well site or a well area.

1. A well site shall be designated as a specific location that can be identified on the property by means of measurement from identified fixed points on the property.

2. A well area may be designated as a polygon or as a defined radius around a proposed well site. The well area shall be described in sufficient detail that it can be identified on the property by means of measurement from identified fixed points on the property.

12VAC5-630-250. Emergency procedures.

Applications for replacement wells that meet the definition of an emergency well replacement (12VAC5-630-10) shall have priority over normal applications for private well permits. Emergency procedures are as follows:

~~A.~~ 1. Drinking water wells. ~~In the event~~ When a private drinking water well has failed and must be replaced, ~~the local health department will~~ a licensed onsite soil evaluator, professional engineer, or licensed water well systems provider shall conduct a sanitary survey of the property and surrounding area to determine the most suitable location. If a site is found that meets the minimum site requirements of this chapter, including the minimum separation distances contained in Table [~~3.1~~ 1 of 12VAC5-630-380] and 12VAC5-630-380 ~~F~~ H, the local health department will issue a permit for that site. If a site cannot be located that meets the minimum separation distances listed in Table [~~3.1~~ 1 of 12VAC5-630-380] and 12VAC5-630-380 ~~F~~ H, the local health department shall identify a site that complies with the minimum separation distances to the greatest extent possible. However, the replacement well shall not be located closer to ~~any~~ a source of contamination than the existing well it is replacing. Replacement drinking water wells must meet the sampling requirements of ~~12VAC5-630-370 D and E~~ 12VAC5-630-431 E and F.

~~B.~~ 2. Heat pump wells or commercially dependent wells. If a heat pump well or commercially dependent well must be replaced, the applicant shall propose a replacement site based on the technical requirements of the heat pump system or commercial establishment. ~~The local health department will conduct a sanitary survey of the property and surrounding area to determine if the site meets the minimum site requirements of this chapter including the minimum separation distances contained in Table 3.1 and 12VAC5-630-380 F.~~ A licensed onsite soil evaluator, professional engineer, or water well systems provider shall conduct a sanitary survey of the property and surrounding area to determine the most suitable location. If the site meets the minimum requirements of this chapter, the local health department will issue a permit for that site. If a site cannot be located that meets the minimum separation distances listed in Table [~~3.1~~ 1 of 12VAC5-630-380] ~~and 12VAC5-630-380 F~~, the local health department shall identify a site that complies with the minimum separation distances to the greatest extent possible. However, the replacement well shall not be located closer to ~~any~~ a source of contamination than the existing well it is replacing. If the replacement heat pump well or commercially dependent well must be placed closer to a sewage disposal system (but no closer than the existing well it is replacing) the well shall be sampled for fecal coliforms. If fecal coliforms are present in the sample and further investigation reveals that the groundwater is contaminated, the well shall be abandoned.

12VAC5-630-260. Express Class IV construction permits.

~~If~~ A. When a Class IV well is proposed for property that does not have an onsite sewage disposal system, either active or inactive, an application may be made for an express Class IV construction permit. An application for an express Class IV construction permit shall be made on a form provided by the

district or local health department and approved by the commissioner.

B. An application shall be deemed completed upon receipt by the district or local health department of a signed and dated application, together with the appropriate fee, containing the following information:

1. The property owner's name, address, telephone number, and personal signature. The owner's signature will acknowledge that the permit will be issued without the benefit of a site visit by the local health department prior to the issuance of the construction permit; that the permit is being issued based upon the information provided on the accompanying site plan; that the property owner also acknowledges that if the well is found not to comply with the minimum separation distances or ~~any~~ other provision of this chapter, the well must be abandoned at the direction of the local or district health director; and that a variance will not be considered if the improper location of the well is a result of the failure by the owner, ~~his~~ the owner's agent, or the ~~well driller~~ water well systems provider to provide complete or accurate information on the site plan submitted with the application or to install the well in accordance with the permit~~.~~;

2. Address and directions to the property;

3. The proposed use of the well;

4. The name, address, telephone number, ~~Class B (minimum)~~ license number, and signature of the ~~well driller~~ water well systems provider who is to construct the well;

5. A statement signed by the property owner (and not ~~his~~ the owner's agent) granting the department access to the site for the purposes of inspecting the property and the well during and after its installation until the well is approved by the department or ~~any~~ a required abandonment is completed; and

6. A site plan showing the proposed well site, property boundaries, recorded easements, and accurate locations of actual or proposed sources of contamination (including~~, but not limited to~~ those listed in Table [~~3.1~~ 1] of 12VAC5-630-380) within 100 feet of the proposed well site, and at the option of the applicant a proposed well design. If the proposed well site is located on or at the base of sloping topography, the minimum separation distances shown on the site plan for ~~any~~ sources of contamination within a 60 degree arc slope of the proposed well site must be increased 25 feet for every 5.0% slope.

12VAC5-630-270. Issuance of express Class IV construction permits and final inspection.

A. Issuance of express Class IV construction permit. Upon receipt of a complete and approvable application, as defined in 12VAC5-630-260, by a local or district health department with multiple ~~sanitarians~~ environmental health specialists, the department shall exercise ~~all~~ due diligence to issue a permit either on the date of receipt or the following business day. If the local or district office has only one assigned ~~sanitarian~~ environmental health specialist, the local or district department will exercise ~~all~~ due diligence to issue the permit as soon as possible. Failure by the department to issue the permit within the specified time does not authorize the construction of the well without a permit. If applicable, the applicant shall comply with 12VAC5-630-340 prior to the issuance of the permit.

B. Validity of express Class IV construction permits. Express Class IV construction permits shall only be valid for a period of 30 days from the date of issuance.

C. Inspection. If, upon inspection of the well, it is found that the well location does not comply with the minimum separation distances or ~~any~~ other [~~provision~~ provisions] of this chapter, no inspection statement shall be issued and the well shall be immediately abandoned by the property owner in accordance with 12VAC5-630-450 upon notification and direction by the local or district health director. The commissioner shall not grant a variance if the improper location of the well is a result of the failure by the owner, ~~his~~ the owner's agent, or the ~~well driller~~ water well systems provider to provide complete or accurate information on the site plan submitted with the application or to install the well in accordance with the permit.

The construction of the well shall also comply with this chapter.

12VAC5-630-271. Express geothermal well permits.

A. The issuance of an express geothermal permit is contingent upon proper registration and payment of application fees and applies to the construction of wells used solely for a closed-loop geothermal heating system.

B. A single application and a single fee are required for any geothermal well system. The fee is the same as for a single private well. A registration statement for closed loop construction permitting shall be made on a form provided and approved by the division. The registration shall include the following information:

1. The property owner's name, address, and telephone number;

2. The address of and directions to the property;

3. The proposed use of the well;

4. The name, address, telephone number, and contractor license number of the ~~well driller~~ water well systems provider;

5. A statement signed by the property owner granting the department access to the site for the purpose of inspecting the property and the well during and after the well installation until the well is approved by the department or ~~any~~ required corrections are made;

6. A site plan, drawn to scale, showing the proposed well site ~~or sites~~, property boundaries, recorded easements, and accurate locations of actual or proposed sources of contamination (including ~~but not limited to~~ those listed in Table [~~3.1~~ 1] of 12VAC5-630-380) within 100 feet of the proposed well site ~~or sites~~; and

7. A statement signed by the licensed ~~well driller~~ water well systems provider that the location and construction of the well ~~or wells~~ will comply with the requirements of this chapter.

C. A single application fee is required for any geothermal well system, regardless of the number of wells included in the system. The fee is the same as for a single private well.

12VAC5-630-272. Issuance of express geothermal well construction permit, inspection, and final approval.

A. Issuance of the express geothermal well permit. Upon receipt of a complete registration statement and the appropriate fee, the department will acknowledge receipt of the registration statement and issue the permit with a copy given to the contractor. The construction of the geothermal heating system may begin immediately upon submission of a complete registration statement and counter-signature denoting receipt by the department.

B. Inspection. The department, at its sole discretion, may inspect the closed-loop geothermal well ~~any time~~ from after acceptance of the registration statement until after the installation is approved. If, upon inspection of the well, it is found that the well location does not comply with the minimum separation distances or ~~any~~ other [~~provision~~ provisions] of this chapter, no inspection statement shall be issued until the deficiencies have been corrected.

C. Final approval. Upon receipt of the Uniform Water Well Completion Report [~~, as required in 12VAC5-630-440,~~] and completion of ~~any~~ inspections deemed necessary to ensure compliance with this chapter, ~~or~~ unless the department has evidence to indicate that the well is not in compliance with the requirements of this chapter, the local health department will provide the owner with a statement that the wells are approved for use.

12VAC5-630-280. Denial of a construction permit.

If it is determined that (i) the proposed design is inadequate ~~or that~~; (ii) site, geological, hydrological, or other conditions exist that do not comply with this chapter or would preclude the safe and proper operation of a private well system~~, or that~~; (iii) the installation of the well would create an actual or potential health hazard or nuisance~~,~~; or (iv) the proposed design would adversely impact the ~~ground water~~ groundwater resource, the permit shall be denied and the owner shall be notified in writing, by certified mail, of the basis for the denial. The notification shall also state that the owner has the right to appeal the denial.

12VAC5-630-290. Revocation of construction permits or inspection statements.

~~The~~ In accordance with 12VAC5-630-331, the commissioner may revoke a construction permit or inspection statement for any of the following reasons:

1. Failure to comply with the conditions of the permit;

2. Violation of ~~any of~~ this chapter for which no variance has been issued;

3. Facts become known which reveal that a potential health hazard would be created or that the ~~ground water~~ groundwater resources may be adversely affected by allowing the proposed well to be installed or completed.

12VAC5-630-300. Voidance of construction permits.

~~Null and void. All~~ A. In accordance with 12VAC5-630-331, the commissioner has authority to declare well construction permits ~~are~~ or inspection statements null and void when (i) conditions such as house location, sewage system location, sewerage system location, topography, drainage ways, or other site conditions are changed from those shown on the application~~,~~ or (ii) conditions are changed from those shown on the construction permit~~, or (iii)~~.

B. Construction permits are null and void when more than ~~54~~ 18 months elapse from the date the permit was issued or renewed. Reapplication for the purposes of having an expired permit reissued shall be the responsibility of the owner, and ~~such~~ reapplication shall be handled as an initial application and comply ~~fully~~ with 12VAC5-630-230.

12VAC5-630-310. Statement required upon completion of construction.

~~Upon~~ Within 30 days of completion of the construction, alteration, ~~rehabilitation,~~ abandonment, or ~~extension~~ deepening of a private well, the owner ~~or~~, the owner's agent, or water well systems provider shall ~~submit to~~ furnish the district or local health department a ~~statement, signed by the contractor, upon the form set out in 12VAC5-630-490,~~ completed uniform water well completion report [~~(GW-2)~~]. The [~~GW-2~~ uniform water well completion report] shall be signed by the water well systems provider and state that the well was installed, constructed, or abandoned in accordance with the permit, and ~~further~~ that the well complies with ~~all~~ applicable state and local regulations, ordinances, and laws.

12VAC5-630-320. Inspection and correction.

No well shall be placed in operation, except for the purposes of testing the mechanical soundness of the system, until inspected by the district or local health department, corrections are made if necessary, and the owner has been issued an inspection statement by the district or local health department.

12VAC5-630-330. Issuance of the inspection statement.

Upon satisfactory completion of the requirements of 12VAC5-630-310, 12VAC5-630-320, 12VAC5-630-340, 12VAC5-630-370, [and] 12VAC5-630-430 [~~, and 12VAC5-630-440~~], the commissioner shall issue an inspection statement to the owner. The issuance of an inspection statement does not denote or imply ~~any~~ a warranty or guarantee of the water quality or quantity by the department or that the private well will function for ~~any~~ a specified ~~period of~~ time. It shall be the responsibility of the owner or ~~any~~ subsequent owner to maintain, repair, replace, or to comply with the requirements to abandon ~~any~~ a private well.

12VAC5-630-331. Enforcement, notices, informal conferences.

A. The commissioner may, after providing a notice of intent to revoke a construction permit or inspection statement, and after providing an opportunity for an informal conference in accordance with § 2.2-4019 of the Code of Virginia, revoke or declare null and void a construction permit or inspection statement for flagrant or continuing violation of this chapter. Any person to whom a notice of revocation or null and void is directed shall immediately comply with the notice. Upon revocation, the former construction permit or inspection statement holder shall be given an opportunity for appeal of the revocation in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The commissioner may summarily suspend an inspection statement to operate a private well if continued operation constitutes a substantial and imminent threat to public health. Upon receipt of such notice that an inspection statement is suspended, the well owner shall cease private well operations immediately. Whenever an inspection statement is suspended, the holder of the inspection statement shall be notified in writing by certified mail or by hand delivery. Upon service of notice that the inspection statement is immediately suspended, the former inspection statement holder shall be given an opportunity for an informal conference in accordance with § 2.2-4019 of the Code of Virginia. The request for an informal conference shall be in writing and shall be filed with the local health department by the former holder of the inspection statement. If written request for an informal conference is not filed within 10 working days after the service of notice, the suspension is sustained. Each holder of a suspended permit shall be afforded an opportunity for an informal conference within three working days of receipt of a request for the informal conference. The commissioner may end the suspension at any time if the reasons for the suspension no longer exist.

C. Any person affected by a determination issued in connection with the enforcement of this chapter may challenge such determination in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

D. All private wells shall be constructed, operated, and maintained in compliance with the requirements as set forth in this chapter. The commissioner may enforce this chapter through any means lawfully available pursuant to § 32.1-27 of the Code of Virginia, and nothing in this chapter shall be construed as preventing the commissioner from making efforts to obtain compliance through warning, conference, or any other appropriate enforcement means.

12VAC5-630-350. General.

This chapter does not apply to private wells constructed, altered, ~~rehabilitated or extended~~ or abandoned prior to ~~the effective date of these regulations~~ September 1, 1990, unless ~~the~~ such private well ~~construction~~ is ~~modified or expanded~~ subsequently altered or abandoned after ~~the effective date of these regulations~~ September 1, 1990, in which case such alteration or abandonment shall be performed in accordance with this chapter.

The class of well to be constructed shall be determined by the local or district health department or the division.

12VAC5-630-360. Classes of water wells.

~~The following classes~~ Classes of private wells ~~are~~ established for purposes of this chapter~~. These classes~~ are in addition to those established in the current ~~Commonwealth of Virginia~~ Waterworks Regulations ~~(12VAC5-590-10 et seq.)~~ (12VAC5-590) and are intended for use for private well systems:

1. Class III - Private wells constructed to be used as a source of drinking water. There are three subclasses:

a. Class IIIA - Drilled wells in which the annular space around the casing is grouted to a minimum depth of 20 feet.

(1) The well shall be drilled and cased to a depth of at least 100 feet.

(2) The cased drill hole shall pass through at least 50 feet of collapsing material such as caving sand, gravel, or other material that will collapse against the casing.

b. Class IIIB - Drilled wells in which the casing is installed to a minimum depth of 50 feet and the annular space around the casing is grouted to at least 50 feet.

c. Class IIIC - Drilled, bored, driven, or jetted wells other than Class IIIA and Class IIIB.

2. Class IV - Private wells constructed for ~~any~~ a purpose other than use as a source of drinking water. There are three subclasses:

a. Class IVA - Drilled wells in which the annular space around the casing is grouted to a minimum depth of 20 feet.

(1) The well shall be drilled and cased to a depth of at least 100 feet.

(2) The cased drill hole shall pass through at least 50 feet of collapsing material such as caving sand, gravel, or other material that will collapse against the casing.

b. Class IVB - Drilled wells in which the casing is installed to a minimum depth of 50 feet and the annular space around the casing is grouted to at least 50 feet.

c. Class IVC - Drilled, bored, driven, or jetted wells other than Class IVA and Class IVB.

3. Conversion of well class. A Class IV well may be converted to a corresponding Class III well provided the well meets (i) the location and construction standards set forth in this chapter and the water quality standards set forth in 12VAC5-630-431 and (ii) a construction permit application and a revised uniform water well completion report form are submitted to the department.

12VAC5-630-370. ~~Water quality and quantity.~~ (Repealed.)

~~A. Class IV wells exempt. The water quality requirements contained in this section apply only to Class III private wells. Class IV private wells (wells not constructed as a source of drinking water) are not subject to any quality requirements. These regulations contain no well yield requirements. See 12VAC5-630-460 for suggested minimum well yields for residential supplies.~~

~~B. Sample tap. A sample tap shall be provided at or near the water entry point into the system so that samples may be taken directly from the source; this requirement may be met by utilizing the first tap on a line near where the plumbing enters the house (may be a hose bib), provided the tap precedes any water treatment devices.~~

~~C. Disinfection. The entire water system including the well shall be disinfected prior to use (12VAC5-630-430 and 12VAC5-630-470).~~

~~D. Sampling. After operating the well to remove any remaining disinfectant, a sample of the water from the well shall be collected for bacteriological examination. The sample may be collected by the owner, well driller, or other person in accordance with procedures established by the department and provided the sample is submitted to a private laboratory certified by the Department of General Services, Division of Consolidated Laboratory Services, for analysis.~~

~~E. Test interpretation. A Class III private well shall be considered satisfactory if the water sample(s) test(s) negative for coliform organisms as described in subdivision 1 or 2 below. Sources with positive counts shall be tested as described in subdivision 3 below to determine if the water supply is amenable to continuous disinfection (chlorination). Samples that exhibit confluent growth shall be considered inconclusive and another sample shall be collected.~~

~~1. Where a private well has no unsatisfactory water sample within the previous 12 months, one water sample which tests negative for coliform bacteria shall be considered satisfactory for coliform organisms.~~

~~2. Where a private well has had one or more positive water samples within the past 12 months for coliform bacteria, at least two consecutive samples must be collected and found negative for coliform organisms before the supply may be considered satisfactory for coliform organisms. The samples must collected at least 24 hours apart and the well may not be disinfected between samples.~~

~~3. When a private well does not test satisfactory for coliform organisms continuous disinfection may be recommended to the homeowner if the water supply is found to be suitable for continuous disinfection. A minimum of 10 samples shall be collected and tested for total coliform using an MPN methodology. The geometric mean of the samples shall be calculated and if the result is less than 100 organisms per 100 ml, the supply shall be considered satisfactory for continuous disinfection.~~

~~F. Water treatment. If tests indicate that the water is unsatisfactory and no other approvable source is available, adequate methods of water treatment shall be applied and demonstrated to be effective pursuant to 12VAC5-630-370 E 3 prior to the issuance of an inspection statement. The district or local health department shall be consulted when treatment is necessary.~~

12VAC5-630-380. Well location.

A. The private well shall be sited for the protection of public health and the aquifer, with appropriate consideration given to distance from potential contamination sources; vulnerability to known or suspected natural risks (e.g., flooding); potential for interference with utilities; accessibility for drilling machinery and support equipment; and safety of the public and well construction personnel.

B. Sanitary survey. ~~Any obvious source~~ Obvious sources of potentially toxic or dangerous substances within 200 feet of the proposed private well shall be investigated as part of the sanitary survey ~~by the district or local health department~~. Sources of contamination may include~~, but are not limited to,~~ items listed in Table [~~3.1,~~ 1;] abandoned wells~~,~~; pesticide treated soils~~, underground~~; petroleum or chemical storage tanks, drums, totes, or other storage containers (aboveground and underground); and other sources of physical, chemical, or biological contamination. If the source of contamination could affect the well adversely, and preventive measures are not available to protect the ~~ground water~~ groundwater, the well shall be prohibited. The minimum separation distance between a private well and structures, topographic features, or sources of pollution shall comply with the minimum distances shown in Table [~~3.1~~ 1]. ~~Where the minimum separation distances for a Class IV well cannot be met, a permit may be issued under this chapter for a well meeting all of the criteria in 12VAC5-630-400 and 12VAC5-630-410 and the separation distance~~

~~requirements for either a Class IIIA or IIIB well, without deviation, and such Class IV well shall not be required to meet the water quality requirements of 12VAC5-630-370.~~

~~TABLE 3.1 DISTANCES (IN FEET) BETWEEN A WELL AND A STRUCTURE OR TOPOGRAPHIC FEATURE~~

~~Structure or Topographic Feature~~	~~Class IIIC or IV~~	~~Class IIIA or B~~
~~Building foundation~~	~~10~~	~~10~~
~~Building foundation (termite treated)~~	~~50[1]~~	~~50[1]~~
~~House sewer line~~	~~50[2]~~	~~50[2]~~
~~Sewer main, including force mains~~	~~50[3]~~	~~50[3]~~
~~Sewerage system~~	~~50~~	~~50~~
~~Pretreatment system (e.g. septic tank, aerobic unit, etc.)~~	~~50~~	~~50~~
~~Sewage disposal system or other contaminant source (e.g., drainfield, underground storage tank, barnyard, hog lot, etc.)~~	~~100~~	~~50~~
~~Cemetery~~	~~100~~	~~50~~
~~Sewage Dump Station~~	~~100~~	~~50[1]~~

~~[1]See 12VAC5-630-380~~

~~[2]Private wells shall not be constructed within 50 feet of a house sewer line except as provided below. Where special construction and pipe materials are used in a house sewer line to provide adequate protection, and the well is cased and grouted to the water bearing formation, all classes of private wells may be placed as close as 10 feet to the house sewer line. Special construction for house sewer lines constitutes cast iron pipe with water-tight caulked joints or mechanical joints using neoprene gaskets, or solvent welded Schedule 40 or better polyvinyl chloride (PVC) pipe. It is the responsibility of the applicant to provide documentation from the contractor that such construction and pipe materials have been installed. In no case shall a private well be placed within 10 feet of a house sewer line.~~

~~[3]Private wells shall not be constructed within 50 feet of a sewer main except as provided below. Where special construction and pipe materials are used in a sewer main to provide adequate protection, and the well is cased and grouted to the water bearing formation, Class III wells may be placed as close as 35 feet to a sewer main and Class IV wells as close as 10 feet. Special construction for sewer mains constitutes ductile iron pipe with water-tight joints, solvent welded Schedule 40 or better polyvinyl chloride (PVC) pipe (SDR-35 plastic PVC with neoprene gaskets). It is the responsibility of the applicant to provide documentation from the local building official or sanitary district that such construction and pipe materials have been installed. In no case shall a Class III well be place within 35 feet of a sewer main. Likewise, in no case shall a Class IV well be placed within 10 feet of a sewer main.~~

TABLE [~~3.1~~ 1] SEPARATION DISTANCES (IN FEET) [BETWEEN A WELL AND A STRUCTURE OR TOPOGRAPHIC FEATURE]

[~~Structure or Topographic~~] Feature	Minimum Separation Distance				Exceptions
	Class IIIA/B	Class IIIC	Class IVA/B	Class IVC	

1. Building foundation	15	15	15	15	10 feet if structure is treated with borate based termite treatment
2. House sewer line a. Constructed of cast iron pipe with water-tight caulked joints; mechanical joints using neoprene gaskets; or solvent welded Schedule 40 or better PVC pipe – provided the well is cased and grouted to water bearing formation	10	10	10	10	None
b. Other or unknown construction; or if well is not cased and grouted to water bearing formation	50	50	50	50	None
3. Sewer main, including force main a. Constructed of ductile iron pipe with water-tight joints; solvent welded Schedule 40 or better PVC (SDR-35 plastic PVC with neoprene gaskets) – provided the well is cased and grouted to water bearing formation	35	35	35	35	None
b. Other or unknown construction; or if well is not cased and grouted to water bearing formation	50	50	50	50	None
4. Sewerage system	50	50	50	50	None
5. Active or permitted pretreatment system (e.g., septic tank or aerobic unit)	50	50	50	50	None
6. Active or permitted drainfield (including reserve drainfield).	50	100	50	100	None
7. Other contamination source (e.g., petroleum storage tank, drum, tote or other container [aboveground or underground], barnyard, landfill, animal lot, fertilizer or pesticide storage)	50	100	50	100	Tanks containing propane or other liquified petroleum gases are not deemed sources of contamination. However, the National Fire Protection Association Liquified Petroleum Gas Code (NFPA-58) recommends a minimum of 10 feet from sources of ignition.

8. Permanently abandoned sewage disposal systems	25	25	25	25	None
9. Reclaimed water distribution pipeline	50	50	50	50	35 feet if RWDP is constructed of water pipe material in accordance with 9VAC25-740-110.
10. Biosolids application [~~sites~~ fields (as field is defined in 9VAC25-32-10)]	100	100	100	100	[No separation distance applies if biosolids have not been applied within the 12 months preceding well construction.]
11. Bioretention pond a. Unlined	50	50	50	50	
b. Lined	10	10	10	10	
12. Cemetery	50	100	50	100	None
13. Sewage dump station	50	100	50	100	None
14. Property line a. All properties except as described in subdivision 14 b of this table	5	5	5	5	None
b. With an adjacent property of three acres or larger used for an agricultural operation as defined in § 3.2-300 of the Code of Virginia.	50	50	50	50	Exemption for reduced distance applies if the adjacent property owner grants written permission for construction within 50 feet of the property line, or if it is certified that no other site on the property complies with the regulations for construction of a private well.

~~B.~~ C. Downslope siting of wells from potential sources of pollution. Special precaution shall be taken when locating a well within a 60 degree arc directly downslope ~~from any part of any~~ an existing or intended onsite sewage disposal system or other known source of pollution~~, including, but not limited to, buildings subject to termite or vermin treatment, or used to store polluting substances or storage tanks or storage areas for petroleum products or other deleterious substances~~ identified in subsection B of this section, including Table 1. The minimum separation distance shall be~~:~~ (i) increased by 25 feet for every 5.0% of slope~~;~~ or (ii) an increase shall be made to the minimum depth of grout and casing in the amount of five feet for every 5.0% of slope.

~~C.~~ D. Sites in ~~swampy areas, low areas, or~~ areas subject to flooding. No private well covered by this chapter shall be located in areas subject to the collection of pollutants such as swampy areas, low areas, or areas subject to flooding. Wells located in flood plains shall be adequately constructed so as to preclude the entrance of surface water during flood conditions. At a minimum, such construction will include extending the well terminus 18 inches above the annual flood level and grading to provide positive drainage in all directions. Other requirements may be made as determined on a ~~case-by-case~~ case-by-case basis by the division.

~~D.~~ E. Property lines. ~~There is no minimum separation distance between a private well and a property line established by this~~

~~chapter.~~ The owner is responsible for establishing a separation distance from property lines such that the construction and location of the well will be on the owner's property and comply with any local ordinances. No private well shall be constructed within five feet of a property line. If the proposed private well is on a property adjoining properties of three acres or larger used for an agricultural operation, no private well shall be constructed within 50 feet of the property line except as exempted by the following:

1. A notarized letter from the adjacent property owner [that] grants permission to construct a well within 50 feet of the property line. The statement shall be recorded and indexed in the land records of the circuit court having jurisdiction over the property where the well is to be located; or

2. A certification statement from a licensed onsite soil evaluator, professional engineer, or licensed water well systems provider confirms that no other well location on the property complies with this chapter. Reasons that a well location on a property may not comply with this chapter include:

a. The property is not large enough to allow a location of a well 50 feet or more from the property line. In this case, the well should be located at the greatest distance from the property line consistent with this chapter.

b. The location of a well 50 feet or more from the property line prevents separation distance requirements identified in 12VAC5-630-380 B being achieved on the property, provided that required separation distances can be achieved if the well is located fewer than 50 feet from the property line. In this case, the well should be located at the greatest distance from the property line consistent with this chapter. Well owners shall not be obligated to undertake otherwise optional actions, such as substitution of an alternative onsite sewage system in place of a conventional system where a conventional system is suitable, solely to comply with the requirement to maintain a [~~50 feet~~ 50-foot] separation distance from an adjoining property of three acres or larger used for an agricultural operation.

c. The location is inaccessible to well drilling equipment as a result of topography, surface water, structures, existing onsite sewage system components, overhead or buried utilities, or other obstacle.

d. Other reasons that a well located greater than 50 feet from the property line may not comply with this chapter may be considered by the division on a case-by-case basis.

~~E.~~ F. Utility lines. There is no minimum separation distance between a private well and subsurface utility lines (electric, gas, water, cable, etc.). The minimum separation distance may, however, be established by the individual utility company or local ordinance. Clearance distance from overhead electrical utilities relative to drilling equipment is subject to an Occupational Safety and Health Administration or related safety standard, and this factor shall be considered in determination of well location. No private well shall be constructed within a utility easement without documentation of permission from the utility.

~~F. Pesticide and termite treatment. No Class III private well shall be placed closer than 50 feet from a building foundation that has been chemically treated with any termiticide or other pesticide. No Class IV private well shall be placed closer than 50 feet to a building foundation that has been chemically treated with any termiticide or other pesticide except as provided below. Further, no termiticides or other pesticides shall be applied within five feet of an open water supply trench. A Class IV well may be placed as close as 10 feet to a chemically treated foundation if the following criteria are met:~~

~~1. The aquifer from which the water is withdrawn must be a confined aquifer (i.e., there must be an impermeable stratum overlying the water bearing formation).~~

~~2. The well must be cased and grouted a minimum of 20 feet or into the first confining layer between the ground surface and the water bearing formation from which water is withdrawn, whichever is greater. When the first confining layer is encountered at a depth greater than 20 feet, the well shall be cased and grouted to the first confining layer between the ground surface and the water bearing formation from which water is withdrawn.~~

~~3. The material overlaying the confined aquifer must be collapsing material.~~

G. Permanently abandoned sewage disposal systems.

1. No private well shall be constructed within 25 feet of a permanently abandoned sewage disposal system. The following criteria is to determine if a sewage disposal system is permanently abandoned.

a. The drainfield is no longer connected to a structure or other sewage source.

b. The drainfield has been inactive for at least 24 consecutive months.

c. The septic tank and distribution box have been pumped, limed, crushed, and either filled with an inert material or removed from the site.

2. Documentation of disconnection may include:

a. A statement from the owner of the drainfield.

b. A notification of onsite sewage system abandonment recorded and indexed in the grantor index of the land records of the circuit court having jurisdiction over the site where the sewage system is located.

c. A contractor invoice or other record documenting system disconnection, including disposition of septic tank and distribution box.

d. Record from a public sewer operator indicating date of connection.

3. Abandoned sewage disposal systems that do not meet the requirements of this subsection shall be treated as active systems with respect to determining the minimum separation distance to sources of contamination listed in Table 1.

H. Reclaimed water distribution pipeline. No private well shall be placed closer than 50 feet from a reclaimed water distribution pipeline. This separation distance can be reduced to 35 feet provided that the reclaimed water distribution pipeline is constructed from a water pipe material in accordance with American Water Works Association (AWWA) specifications and pressure tested in place without leakage prior to backfilling. The hydrostatic test shall be conducted in accordance with the AWWA standard (ANSI/AWWA C-600-05) for the pipe material, with a minimum test pressure of 30 psi. A Class IV well located closer than 35 feet from a reclaimed water distribution pipeline shall not be converted to a Class III well.

I. Biosolids application [~~site~~ field]. No private well shall be placed closer than 100 feet from [~~land~~ a field, as defined in 9VAC25-32-10,] on which biosolids are being applied [or have been applied within the previous 12 months].

J. Bioretention pond. No private well shall be placed closer than 50 feet from an unlined bioretention pond or 10 feet from a lined bioretention pond. A Class IV well shall not be converted to a Class III well if the Class III well separation distance is not met.

K. Exception for closed-loop ground-source heat pump wells. Closed-loop ground-source heat pump wells, depending upon construction, may not have to comply with the minimum separation distances for Class IV wells listed in Table [~~3.1~~ 1]. If the well is grouted 20 feet, the minimum separation distances must comply with those listed for Class IV wells. If the well is grouted a minimum of 50 feet, the separation distances shall be those listed for Class IIIA or IIIB wells. If the well is grouted the entire depth of the well, the well does not have to comply with the minimum separation distances contained in Table [~~3.1~~ 1].

12VAC5-630-390. Site protection.

A. No objects, articles, or materials ~~of any kind which~~ that are not essential to the operation of the well shall be placed or stored in a well, well house, on the well head or well pump or water treatment system, or within close proximity to them.

B. Fencing of an area around the well, or the placement of other barriers or restrictions, may be required as a condition of the permit under certain circumstances, such as to prohibit livestock access to the well head or to prohibit vehicles from damaging or polluting the area around the well head.

C. The area around the well shall be graded to divert surface water away from the well.

12VAC5-630-400. Materials.

A. General. ~~All materials~~ Materials used in private wells shall be lead free, labeled as approved by the National Sanitation Foundation (NSF) for water well use, have long-term resistance to corrosion and sufficient strength to withstand hydraulic, lateral, and bearing loads.

B. Drilling Fluids. Materials used for well bore stabilization and well development shall be labeled as meeting NSF/ANSI/CAN Standard 60-2020 environmental specifications.

C. Casing. Materials used for casing shall be watertight and shall consist of wrought iron, concrete tile, clay tile, steel, stainless steel, fiberglass, or plastic, all designed for water well use ~~or other suitable materials as determined by the division. The division shall maintain a list of approved casing materials~~. Materials used for casing shall be labeled as conforming to NSF/ANSI/CAN 61-2021 (Drinking Water System Components – Health Effects) and NSF/ANSI/CAN 372-2020 (Drinking Water System Components – Lead Content).

1. Driven casings shall consist of ductile iron, steel or stainless steel and shall be equipped with a suitable drive boot.

2. Casings used for ~~Class IIIA or IIIB~~ drilled wells shall be steel, stainless steel ~~or~~, plastic, or fiberglass.

3. Casings used for bored Class IIIC and IVC wells shall be concrete.

~~C.~~ D. Screens. Where utilized, screens shall be ~~constructed~~ factory manufactured of stainless steel, plastic or other suitable materials ~~as determined by the division~~. Screens shall be constructed of materials ~~which~~ that will not be damaged by ~~any~~ chemical or corrosive action of the ~~ground water~~ groundwater or future cleaning operations. Additionally, screens shall be constructed of materials ~~which~~ that will not degrade ~~ground water~~ groundwater quality. Allowable screen types include wire wrap, louvered, bridge slot, and factory slotted and shall be labeled as conforming to NSF/ANSI/CAN 61-2021 (Drinking Water System Components – Health Effects) and NSF/ANSI/CAN 372-2020 (Drinking Water System Components – Lead Content).

~~D. Joints. Joints shall be watertight and mechanically sound. Welded joints shall have smooth interior surfaces and shall be welded in accordance with acceptable welding practice.~~ E. Grout. The grouting material used shall meet the appropriate specification listed in this subsection.

1. Neat cement grout shall consist of cement and water with not more than six gallons of water per bag (94 pounds) of cement.

2. Bentonite clay may be used in conjunction with neat Portland cement to form a grouting mixture. The bentonite used must be specifically recommended by the manufacturer

as being suitable for use as a well grout material and cannot exceed 6.0% by weight of the mixture.

3. Bentonite clay used for grouting shall be sodium bentonite with a minimum of 20% clay solids by weight of water. The bentonite clay shall be specifically recommended by the manufacturer for use as a grouting material.

An exception exists (i) when exceptional conditions require the use of a less fluid grout, to bridge voids, a mixture of cement, sand and water in the proportion of not more than two parts by weight of sand to one part of cement with not more than six gallons of clean water per bag of cement may be used if approved by the district or local health department, or (ii) for bored wells only, a concrete (1-part sand, 1-part cement, 2-parts pea gravel mix with all aggregates passing a 1/2-inch sieve) grout with not more than six gallons of clean water per bag of cement may be used provided a minimum three-inch annular space is available.

4. Other grouting materials may be approved by the division on a case-by-case basis. Review and approval shall be based on whether the proposed material can consistently be expected to meet the intent of grouting expressed in 12VAC5-630-410 F 2. The proposed material must be an industry acceptable material used for the purpose of grouting water wells. Controlled low strength material (flowable fill) or other product incorporating fly ash, other coal combustion byproducts, or other wastes shall not be approved for use as grout.

~~E. Gravel.~~ F. Gravel and sand utilized for ~~gravel~~ filter packed wells shall be uniformly graded, cleaned, washed, disinfected ~~and of a suitable size~~, well rounded, acid resistant, and have a high silica content.

G. Water used during well construction shall be obtained from a suitable source or the well being constructed. A suitable source means a pure water source, or, when a pure water source is not locally available, water taken from another source then disinfected using compounds labeled as meeting NSF/ANSI/CAN Standard 60-2020 environmental specifications.

H. Compounds used in the disinfection of completed wells shall be labeled as meeting NSF/ANSI/CAN Standard 60-2020 environmental specifications.

12VAC5-630-410. Construction; general.

A. Private wells shall be constructed using the criteria described in this section. The water well system provider shall provide advance notification regarding the initiation of well construction to the district or local health department to allow department personnel the opportunity to observe well construction. The water well systems provider may construct the well as conditions warrant and shall be under no obligation to delay construction activities pending arrival of district or local health department personnel.

B. Well bore.

1. The method of advancement of the well bore in which the private well is constructed shall be determined by the water well systems provider relative to local geologic and aquifer conditions.

2. When the construction permit designates a well site, the well bore shall be placed at the well site. When the construction permit designates a well area, the well bore may be placed anywhere within the well area. If a well bore advanced within a well area must be discontinued for any reason, the well bore shall be abandoned in accordance with 12VAC5-630-450 and a new well bore may be undertaken within the well area.

3. Other land disturbance associated with well construction, such as grading and mud pit construction, is not limited to the well area.

4. With the exception of driven wells, the well bore shall be large enough to accommodate the well casing and screen with sufficient annular space on all sides of the casing in the interval to be grouted to freely accommodate a tremie pipe or sounding tube.

5. Drilling fluids used to stabilize the well bore shall be maintained within limits that will allow their complete removal from the water produced from the well, and shall not damage the capacity, efficiency, and quality of the well.

6. Representative samples of formation materials shall be collected during well bore advancement with sufficient frequency to allow for preparation of the driller's log (uniform water well completion report) of the type of rock, sediment, or soil encountered.

C. Casing.

1. The casing shall maintain the well bore by preventing its walls from collapsing, provide a channel for the conveyance of water, and protect the quality of the water withdrawn from the well. The thickness of the casing shall be sufficient to resist the force imposed during installation and which can be anticipated after installation.

~~1.~~ 2. Class IIIA and IVA wells shall be cased to a depth of at least 100 feet.

~~2.~~ 3. Class IIIB and IVB wells shall be cased to a depth of at least 50 feet.

~~3.~~ 4. Except as provided in subdivisions a through e below, ~~all~~ Class IIIC and ~~IV~~ IVC wells shall be cased to a minimum depth of 20 feet or terminated not less than one foot in bedrock when bedrock is encountered at a depth less than 20 feet.

a. When in collapsing material, the casing shall terminate in the aquifer but in no instance be less than 20 feet.

b. Where an aquifer is encountered at less than 20 feet, Class ~~IV~~ IVC wells may be cased to within one foot of the water bearing strata. In the instance of Class IV wells the intent of this chapter is to protect ~~ground water~~ groundwater quality, and not to ensure a potable water supply.

~~Exception: Class IV wells placed closer than 50 feet from a building foundation treated with a chemical termiticide or other pesticide shall comply with the minimum casing depth requirements of 12VAC5-630-380 F 2.~~

c. Alternate casing depths may be accepted for bored wells when the only aquifer lies between 11 and 20 feet provided the casing is placed within one foot of the aquifer and must not be less than 10 feet in depth from the ground surface.

d. Class ~~III C~~ IIIC driven wells shall be cased to the water bearing strata; however, in no case less than 10 feet. No minimum casing requirements apply to Class ~~IV~~ IVC driven wells except that in order to protect ~~ground water~~ groundwater they shall be capable of meeting the minimum grouting requirements as described in subdivision [~~C~~ F] 5 e of this section.

e. Closed-loop ground-source heat pump wells do not have to be cased.

~~4. All private~~ 5. When PVC casing is terminated in bedrock, the well casing shall be sealed using a mechanical seal or packer.

6. Extension of casing above ground surface. Private well casings shall be extended at least 12 inches above ground or at least 12 inches above a concrete floor in a well house with a gravity flow drain. The following wells are exempted from this requirement; however, their location shall be permanently marked for easy location in the future:

a. Drilled shallow well suction pump systems that will not operate unless a vacuum is maintained. The casings for these wells are also the suction lines through which water is drawn.

b. Deep well ejector pump systems that utilize a casing adaptor and must maintain a vacuum to operate.

c. Closed-loop ground-source heat pump wells.

d. Heat pump return wells that are completely sealed.

~~5. All steel casings shall meet or exceed the material specifications found in 12VAC5-630-480.~~

~~6. No plastic well casing shall be installed which will exceed 80% of its RHCP (resistance to hydraulic collapse pressure). When experience has shown, in the division's opinion, that the prevailing geologic conditions are subject to collapse or shifting, or where heavy clay or unstable backfill materials occur, plastic well casings may not exceed 50% of the RHCP rating. It shall be the responsibility of the well driller to submit calculations to the division demonstrating that individual well casings do not exceed these ratings.~~

7. The casing shall be centered in the well bore the entire depth of the well in order to provide for even distribution of filter pack and grout in the annular space.

8. Joints shall be compatible with the casing material, specific to the task, and be watertight under normal operating conditions, with watertight joints above the screened interval.

9. Casing straightness and alignment:

a. Casing in all private wells shall be sufficiently straight that it will not interfere with the installation and operation of a pump suitable for the intended purpose of the well.

b. For casing intended to accommodate a line shaft turbine pump, the maximum allowable horizontal deviation of the well from the vertical shall not exceed 2/3 times the smallest inside diameter per 100 feet of that part of the well being tested to the depth of the anticipated pump installation.

~~B.~~ D. Screens.

1. The screen shall allow passage of water from the aquifer and provide sufficient tensile, collapse, and compression strength to withstand the physical loading it will be exposed to during installation, completion, development, and operational conditions. When used for the prevention of entry of foreign materials, screens shall be free of rough edges, irregularities, or other defects. A positive watertight seal between the screen and the casing shall be provided when appropriate.

~~C.~~ 2. Screen length, diameter, and slot size shall be determined based on field examination of representative samples of formation material collected during advancement of the well bore, and may be supplemented by sieve analysis of materials in the water bearing zone or geophysical logging of the well bore.

3. Joints between (i) casing and screen and (ii) screen and screen shall meet the requirements of subdivision C 8 of this section.

4. The bottom of the screen, or of the deepest screen in the case of multiple screens, shall be configured to reduce the possibility of native formation or well construction material heaving up into the screened interval. A closed bottom may not be required for screens installed in some formation materials.

5. The screen shall be centered in the well bore.

E. Filter pack.

1. When a filter pack is required, the filter pack material used shall be determined based on field examination of representative samples of the water bearing formation in the withdrawal interval, and may be supplemented by sieve analysis. The filter pack shall be placed in the annular space

by a method that prevents bridging and creates uniform distribution.

2. The filter pack shall extend above the top of the screened interval to a thickness sufficient to compensate for settling that may occur during development and operation of the well.

3. Filter pack material may be used with a screen as a formation stabilizer when water is withdrawn from a poorly consolidated rock subject to disintegration and caving when the well is pumped. Formation stabilizer shall be at least as coarse as the formation native material.

F. Grouting.

1. General. ~~All private~~ Private wells shall be grouted. ~~It is preferred that no openings are made in the side of the well casing.~~

2. Purpose. The annular space between the casing and well bore is one of the principal avenues through which undesirable water and contaminants may gain access to a well. The goal of grouting a well is to preclude the entrance of undesirable water and contaminants. Therefore, the annular space shall be filled with a neat cement grout, a mixture of bentonite and neat cement or bentonite clay grout specifically approved by the manufacturer for use as a grouting material.

~~3. Specifications. The grouting material used shall meet the appropriate specification listed below:~~

~~a. Neat cement grout shall consist of cement and water with not more than six gallons of water per bag (94 pounds) of cement.~~

~~b. Bentonite clay may be used in conjunction with neat Portland cement to form a grouting mixture. The bentonite used must be specifically recommended by the manufacturer as being suitable for use as a well grout material and cannot exceed 6.0% by weight of the mixture.~~

~~c. Bentonite clay used for grouting shall be sodium bentonite with a minimum of 20% clay solids by weight of water. The bentonite clay shall be specifically recommended by the manufacturer for use as a grouting material.~~

~~Exception: (i) When exceptional conditions require the use of a less fluid grout, to bridge voids, a mixture of cement, sand and water in the proportion of not more than two parts by weight of sand to one part of cement with not more than six gallons of clean water per bag of cement may be used if approved by the district or local health department, or (ii) for bored wells only, a concrete (1-1-2 mix with all aggregates passing a 1/2-inch sieve) grout with not more than six gallons of clean water per bag of cement may be used provided a minimum three inch annular space is available and its use approved by the district or local health department.~~

~~In cases where an open borehole has been drilled below the depth to which the casing is to be grouted, the lower part of the hole must be backfilled, or a packer must be set in the hole, to retain the slurry at the desired depth. Backfilling the hole with gravel and capping with sand is an acceptable practice. Material ordinarily sold as plaster or mortar sand is usually satisfactory; more than half the sand should be of grain sizes between 0.012 inches and 0.024 inches.~~

3. Based on the well casing material and native geology, grout material shall be selected to minimize potential for spidering, cracking, or separation of grout from the well casing.

4. ~~Other materials. Other grouting materials may be approved by the division on a case by case basis. Review and approval shall be based on whether the proposed material can consistently be expected to meet the intent of grouting expressed in 12VAC5-630-410-C-2. The proposed material must be an industry acceptable material used for the purpose of grouting water wells.~~ When an open well bore has been drilled below the depth to which the casing is to be grouted, the lower part of the hole must be backfilled, or a packer must be set in the hole to retain the slurry at the desired depth. Backfilling the hole with gravel and capping with sand is an acceptable practice. Material ordinarily sold as plaster or mortar sand is satisfactory; more than half the sand should be of grain sizes between 0.012 inches and 0.024 inches.

5. Depth.

a. ~~All~~ Class IIIA and Class IVA wells shall be grouted to a minimum depth of 20 feet.

b. ~~All~~ Class IIIB and Class IVB wells shall be grouted to a minimum depth of 50 feet.

c. ~~All~~ Class IIIC and Class ~~IV~~ IVC wells shall be grouted to a minimum depth of 20 feet when the casing depth is equal to or greater than 20 feet. When the casing depth is less than 20 feet, the casing shall be grouted in accordance with this subsection, from the lower terminus of the casing to the surface.

~~Exception: Class IV wells placed closer than 50 feet from a building foundation treated with a chemical termiticide or other pesticide shall comply with the minimum grouting depth requirements of 12VAC5-630-380-F-2.~~

d. Alternate grouting depths may be accepted for bored wells when the only aquifer suitable for a private well lies between 11 and 20 feet provided the grouting shall terminate at least one foot above the aquifer but must not be less than 10 feet in depth from the ground surface.

e. Driven wells shall be grouted to a minimum depth of five feet by excavating an oversize hole at least four inches in diameter larger than the casing and ~~pouring~~ placing an approved grout mixture into the annular space.

6. Installation. Grout shall be installed by means of one of the following methods.

a. Placement using a grout pump or tremie pipe from the bottom of the annular space upward in one operation until the annular space is filled~~, whenever the grouting depth exceeds 20 feet. Pouring of grout is acceptable for drilled wells whenever grouting depth does not exceed 20 feet~~.

b. Pouring of grout is acceptable for bored wells ~~whenever~~ when the grouting depth does not exceed ~~30~~ 20 feet provided there is a minimum of a [~~3 inch~~ three-inch] annular space [and the annular space is free of standing water]. ~~Grouting shall be brought to the ground surface and flared to provide a one foot radius around the casing at least six inches thick. However, whenever pitless adapters are used, the grout shall terminate at the base of the pitless adapter. When an outer casing is necessary to construct a new well, where possible, the outer casing shall be pulled simultaneously with the grouting operation.~~

c. Bentonite chips or pellets are acceptable for bored wells when the grouting depth does not exceed 20 feet provided the annular space is at least four inches greater than the outside diameter of the casing or coupling and the casing [and the annular space is free of standing water]. Bentonite chips or pellets shall be placed via a tremie pipe having an interior diameter at least four times the size of the pellet or chip.

d. Placement of bentonite chips by free fall shall only occur within five feet of the ground surface.

7. ~~Annular space. The clear annular space around the outside of the casing and the well bore shall be at least 1.5 inches on all sides except for bored wells which shall have at least a 3-inch annular space~~ Surface completion of grout. Grout shall be brought to the ground surface and flared to provide a one-foot radius around the casing at least six inches thick. However, whenever pitless adapters are used, the grout shall terminate at the base of the pitless adapter. When an outer casing is necessary to construct a new well, where possible, the outer casing shall be pulled simultaneously with the grouting operation.

~~D.~~ G. Additional casing and grouting. When a well is to be constructed within 100 feet of a subsurface sewage disposal system, which has been or is proposed to be installed at a depth greater than five feet below the ground surface, the casing and grouting of the water well shall be increased to maintain at least a 15-foot vertical separation between the trench bottom and the lower terminus of the casing and grouting.

~~E.~~ H. Well head.

1. General. No open wells or well heads or unprotected openings into the interior of the well shall be permitted. Prior to the ~~driller~~ water well systems provider leaving the well construction site, the owner shall have the ~~driller~~ water well systems provider protect the well bore ~~hole~~ by installing a cover adequate to prevent accidental contamination.

2. Mechanical well seals. Mechanical well seals (either sanitary well seals or pitless adapters) shall be used on ~~all~~ Class III and Class IV wells and shall be [~~water~~ watertight] and [~~air tight~~ airtight,] except as provided in 12VAC5-630-410 ~~F~~ I 4.

3. Other. Wells greater than eight inches in diameter shall be provided with a watertight overlapping (shoebox) type cover, constructed of reinforced concrete or steel.

~~F.~~ I. Appurtenances passing through casing.

1. General. ~~All openings~~ Openings through well casings shall be provided with a positive water stop.

2. Pitless well adapters. ~~Pitless well adapters shall be subject to approval by the division. All pitless adapters shall be installed according to the manufacturers recommendations.~~ When used, pitless units and pitless adaptors shall be attached to the casing in a manner that will make the connection watertight. If an access port is installed, it shall be watertight.

3. Sanitary well seals. ~~Sanitary well seals shall be subject to approval by the division. All~~ When used, sanitary well seals shall be installed according to the ~~manufacturers~~ manufacturer's recommendations. A one-piece top plate shall be used on a well that terminates outdoors.

4. Venting. Venting~~, where necessary as determined by the district health department,~~ shall be provided in such a manner as to allow for the passage of air, but not water, insects, or foreign materials~~,~~ into the well.

J. Well development.

1. "Well development" means the act of repairing damage to the geologic formation from drilling procedures and increasing the porosity and permeability of the materials surrounding the intake portion of the well. It is accomplished by application of mechanical energy, chemicals, or both to (i) remove drilling fluids and formation damage caused by the well bore drilling and well completion processes; (ii) remove formation fines near the well bore to increase hydraulic conductivity and create a filter medium; (iii) establish optimal hydraulic contact between the well and the geologic formation (aquifer) supplying water; (iv) provide for an acceptable level of sand and turbidity; and (v) provide for an appropriate level of drawdown at the production pumping rate.

2. Private wells shall be developed. Disinfection required by 12VAC5-630-430 and water quality testing required by 12VAC5-630-431 shall not be conducted on a well prior to well development.

K. Well maintenance and repair.

1. Equipment and water or other materials used during hydraulic fracturing of bedrock wells shall comply with 12VAC5-630-400.

2. Private wells shall be disinfected per 12VAC5-630-430 following maintenance, redevelopment, or other activity requiring access to the interior of the casing of a completed well.

12VAC5-630-420. Observation, monitoring, and remediation wells.

A. Except as provided in subsections B and C of this section, observation ~~and,~~ monitoring, and remediation wells are exempted from this chapter. The exemption shall not apply to test and exploration wells constructed for the purpose of evaluating groundwater quality or available quantity related to a proposed beneficial use such as water supply for a subdivision, office park, or proposed commercial or industrial application.

B. Observation ~~or,~~ monitoring, and remediation wells shall be constructed in accordance with the requirements for private wells if they are to remain in service after the completion of the ~~ground water~~ groundwater study.

C. Observation ~~or,~~ monitoring, and remediation wells shall be ~~properly~~ permanently abandoned in accordance with 12VAC5-630-450 within 90 days of cessation of use. Unless specifically allowed under terms of a permit issued by DEQ, temporary abandonment of observation, monitoring, and remediation wells shall not occur.

12VAC5-630-430. Disinfection.

~~All Class III private~~ A. Private wells shall be disinfected before placing the ~~well(s)~~ well in service.

B. Methodology. Disinfection shall be accomplished by ~~maintaining~~ one of the following methods:

1. Maintaining a 100 mg/l solution of chlorine in the well for 24 hours utilizing the dosage rates set forth in 12VAC5-630-470.

2. Applying a quantity of water/chlorine solution to ensure a minimum of 100 mg/L of available chlorine throughout the well and immediate formation materials. Disinfection contact time shall be established on the basis of contact units, which are calculated as mg/L chlorine multiplied by hours of exposure. Contact time shall equate to a minimum of 1,000 contact units (50 mg/L chlorine x 20 hours = 1,000 contact units; 200 mg/L chlorine x 5 hours = 1,000 contact units; etc.).

12VAC5-630-431. Water quality.

A. Class IV wells exempt. The water quality requirements contained in this section apply to Class III private wells. Class IV private wells (wells not constructed as a source of water for human consumption) are not subject to water quality requirements.

B. Sample tap. A sample tap shall be provided at or near the water entry point into the system so that samples may be taken directly from the source; this requirement may be met by utilizing the first tap on a line near where the plumbing enters the house (may be a hose bib), provided the tap precedes any water treatment devices.

C. Disinfection. The entire water system, including the well, shall be disinfected prior to use pursuant to 12VAC5-630-430.

D. Sampling. After operating the well to remove any remaining disinfectant, a sample of the water from the well shall be collected for bacteriological examination. The sample may be collected by the owner, water well systems provider, or other person in accordance with procedures established by the department and provided the sample is submitted to a private laboratory accredited by the Department of General Services, Division of Consolidated Laboratory Services, for analysis.

E. Test interpretation. A Class III private well shall be considered satisfactory if the water sample tests negative for coliform organisms as described in subdivision 1 or 2 of this subsection. Sources with positive counts shall be tested as described in subdivision 3 of this subsection to determine if the water supply is amenable to continuous disinfection. Samples that exhibit confluent growth shall be considered inconclusive and another sample shall be collected.

1. When a private well has no unsatisfactory water sample within the previous 12 months, one water sample which tests negative for coliform bacteria shall be considered satisfactory for coliform organisms.

2. When a private well has had one or more positive water samples within the past 12 months for coliform bacteria, at least two consecutive samples must be collected and found negative for coliform organisms before the supply may be considered satisfactory for coliform organisms. The samples must be collected at least 24 hours apart and the well may not be disinfected between samples.

3. When a private well does not test satisfactory for coliform organisms, continuous disinfection may be recommended to the homeowner if the water supply is found to be suitable for continuous disinfection. A minimum of 10 independent samples shall be collected and tested for total coliform using an MPN methodology. To be independent, samples shall be collected no less frequently than one sample per day. The geometric mean of the samples shall be calculated and if the result is less than 100 organisms per 100 ml, the supply shall be considered satisfactory for continuous disinfection.

F. Water treatment. If tests indicate that the water samples test positive for coliform organisms and do not meet the standards described in this section and no other approved source is

available, adequate methods of water treatment shall be applied. The treatment device shall be demonstrated to be effective pursuant to subdivision E 3 of this section prior to the issuance of an inspection statement. The district or local health department shall be consulted when treatment is necessary.

G. Conversion of Class IV well to Class III potable well. In order to convert an existing Class IV to a Class III well, the owner shall provide the following information to the local health department.

1. A complete application indicating the intent to convert the well classification.

2. A copy of the existing uniform water well completion report documenting that the well meets Class IIIA, Class IIIB, or Class IIIC construction standards in accordance with this chapter.

3. Confirmation that the well meets separation distance criteria for Class III wells listed on Table 1 [of 12VAC5-630-380].

4. A negative bacteria water sample in accordance with subsections D, E, and F of this section.

[12VAC5-630-440. ~~Information to be reported. (Repealed.)~~

~~A copy of a Uniform Water Well Completion Report~~] ~~(see 12VAC5-630-490)~~ [~~shall be provided to the district or local health department within 30 days of the completion of the well or completion~~] ~~of alterations thereto, alteration, or abandonment of a private well.~~]

12VAC5-630-450. Well abandonment.

A. ~~Well abandonment is governed jointly by the Department of Environmental Quality and the Department of Health pursuant to § 62.1-44.92(6) of the Ground Water Act of 1973 (Repealed). In addition, the~~ The abandonment of [~~any~~] a private well governed by this chapter or [~~any~~] a private well abandoned as a condition of a permit issued under this chapter shall be administered by the Department of Health in conformance with this section. The owner or owner's agent shall provide advance notification regarding the initiation of well abandonment to the district or local health department to allow department personnel the opportunity to observe well abandonment. The owner or owner's agent shall be under no obligation to delay abandonment activities pending arrival of department personnel.

B. Prohibited materials. The following materials, even if classifiable as clean fill or beneficial use byproducts in other applications, shall not be used as clean fill or grout in any well abandonment procedure.

1. Contaminated media.

2. Non-manufactured gravel, brick, broken concrete, crushed glass, porcelain, or road pavement, except as these materials are present as incidental constituents of undisturbed soil or natural earth materials.

3. Controlled low strength material (flowable fill) or other product incorporating fly ash, other coal combustion byproduct, or other waste.

C. Temporary abandonment. A temporarily abandoned well shall be sealed with a water-tight cap or well head seal. Such a well shall be maintained so that it will not be a source or channel for contamination to ~~ground water~~ groundwater during temporary abandonment.

~~C.~~ D. Permanent abandonment. The object of proper permanent abandonment is to prevent contamination from reaching ~~ground water~~ groundwater resources via a component of the well, including casing, annular space, and well cap. Permanently abandoned wells, with the exception of bored wells abandoned per the methods identified in subdivisions 5 a and 5 b (3) of this subsection shall no longer be classified as wells. A permanently abandoned well shall be abandoned in the following manner:

1. ~~All casing~~ Casing material may be salvaged.

2. Before the well is ~~plugged~~ abandoned, it shall be checked from land surface to the entire depth of the well to ascertain freedom from obstructions that may interfere with ~~plugging (sealing)~~ abandonment operations.

3. The well shall be thoroughly chlorinated using the dosage rates in 12VAC5-630-430 prior to ~~plugging (sealing)~~ abandonment.

4. Grout used in well abandonment shall conform to 12VAC5-630-400 E.

5. Bored wells, rock or brick-lined, and uncased wells shall be abandoned using one of the following methods:

a. Clean fill method. Bored, rock or brick-lined, and uncased wells abandoned by this method shall remain designated as wells with respect to the siting of onsite sewage treatment system components per the requirements of 12VAC5-610 and 12VAC5-613. The well shall be backfilled with clean fill to the water level. A two-foot-thick bentonite plug shall be placed immediately above the water level. Clean fill shall be placed on top of the bentonite plug and brought up to at least five feet from the ground surface. The top five feet of the well casing, if present, shall be removed from the bore hole. If an open annular space is present around the well casing, the annular space shall be filled with grout to the maximum depth possible, but not less than or equal to 20 feet. A one-foot-thick cement or bentonite grout plug that completely fills the bore void space shall be placed a minimum of five feet from the ground surface. The remaining space shall be filled with clean fill which is mounded a minimum of one foot above the surrounding ground surface. ~~Bored wells or uncased wells abandoned in this manner shall be~~

~~treated as wells with respect to determining the minimum separation distance to sources of contamination listed in Table 3.1.~~ When the well is fewer than 25 feet deep, this procedure shall be followed to the greatest extent possible, including removing at a minimum the top five feet of casing below ground and grouting the open annular space as described in this subdivision. The location of these wells shall be permanently marked for future ~~location~~ reference.

~~5. Wells~~ b. Grout abandonment method. Bored, rock or brick-lined, and uncased wells abandoned by this method shall no longer be designated as wells, with the exception of subdivision 5 b (3) of this subsection. At a minimum, the top five feet of well casing below ground, if present, shall be removed from the well bore.

(1) When a continuous annular space is present around the well casing, the annular space shall be filled with grout, placed via a tremie pipe, to the maximum depth possible, but not less than 20 feet.

(2) When an annular space is present but not continuous, materials shall be completely removed from the annular space to the maximum depth possible, but not less than 20 feet, and the annular space shall be filled with grout placed via a tremie pipe.

(3) When an annular space is present but not continuous, and cannot be cleared sufficiently for the annular space to be filled with grout to a depth not less than 20 feet, then accessible annular space will be filled with grout placed via a tremie pipe. Wells in which the annular space cannot be filled with grout to depth of at least 20 feet shall be treated as a well with respect to the siting of onsite sewage treatment components per the requirements of 12VAC5-610 and 12VAC5-613.

(4) If existing well documentation (uniform water well completion report) indicates that the annular space is filled with grout to a minimum depth of 20 feet, the condition of the grout shall be confirmed by visual observation of the top of the grout following the removal of the top five feet of well casing below ground. If the grout appears intact, no further confirmation of grout condition shall be required and abandonment shall proceed. If the grout condition appears compromised based on visual examination, then the requirements of subdivision 5 b (2) or 5 b (3) of this subsection shall apply.

(5) Once the annular space is addressed, the well shall be pumped dry and completely filled with grout poured from the surface. If the well is not pumped dry, grout shall be placed by introduction through a tremie pipe. The placement of grout in the well bore shall completely fill the bore void space to within a minimum of five feet from the ground surface. The well shall be capped with clean fill which is mounded a minimum of one foot above the surrounding ground surface. When the well is fewer than 25 feet deep, this procedure shall be followed to the greatest extent possible, including removing at a minimum the top five feet of casing below ground and cleaning or grouting the open annular space as described in this subdivision.

6. Drilled wells, including observation, monitoring, and remediation wells constructed in collapsing material shall be completely filled with grout ~~or clay slurry by introduction through~~ placed via a tremie pipe ~~initially extending to the bottom of the well. Such pipe shall be raised, but remain submerged in grout, as the well is filled~~. ~~6. Wells~~ The well shall be capped with clean fill mounded to a minimum of one foot above the surrounding ground surface and graded to provide positive drainage away from the well.

7. Drilled wells, including observation, monitoring, and remediation wells, constructed in consolidated rock formations or which penetrate zones of consolidated rock shall be completely filled with grout placed via a tremie pipe. At the discretion of the water well service provider, the well may be filled with sand or gravel opposite the zones of consolidated rock. The top of the sand or gravel fill shall be at least five feet below the top of the consolidated rock and at least 20 feet below the land surface. The remainder of the well shall be filled with grout ~~or clay slurry~~ placed via a tremie pipe. The well shall be capped with clean fill mounded to a minimum of one foot above the surrounding ground surface and graded to provide positive drainage away from the well.

~~7.~~ 8. Other abandonment procedures may be approved by the division on a case by case basis.

~~8. Test and exploration wells shall be abandoned in such a manner to prevent the well from being a channel for the vertical movement of water or a source of contamination to ground water.~~

9. When bored wells are ~~bored~~ advanced and a water source is not found, and the casing has not been placed in the bore hole, the well bore ~~hole may~~ shall be abandoned by backfilling with the ~~bore spoils~~ cuttings or clean fill or both to at least five feet below the ground surface. A two-feet-thick ~~bentonite grout~~ plug of grout shall be placed at a minimum of five feet from the ground surface. The remainder of the bore hole shall be filled with the ~~bore spoils~~ cuttings or clean fill or both.

12VAC5-630-460. Water system yields for residential use wells.

A. ~~All drinking~~ Drinking water systems that utilize one or more Class III wells shall be capable of supplying water in adequate quantity for the intended usage. ~~All such systems, with~~ Systems with a capacity ~~less than~~ under three gallons per minute~~,~~ shall have ~~a capacity~~ ability to produce and store 150 gallons per bedroom per day and be capable of delivering a sustained flow of five gallons per minute per connection for 10 minutes for ordinary residential use. Systems with a capacity

of three gallons per minute or more do not require additional storage.

B. The certified water well systems provider shall certify the storage capacity and the yield of the well on the Uniform Water Well Completion Report.

[12VAC5-630-470. ~~Chlorination dosage rates.~~ (Repealed.)

~~Casing Diameter (Inches)~~	~~Volume per 100 Feet (Gallons)~~	~~70% Sodium Hypochlorite (Oz. Dry Wt.)~~	~~5% Sodium Hypochlorite (Liquid Meas.)~~
~~2~~	~~16~~	~~0.5~~	~~4 oz.~~
~~4~~	~~65~~	~~2~~	~~18 oz.~~
~~6~~	~~147~~	~~4~~	~~40 oz.~~
~~8~~	~~261~~	~~6~~	~~4.25 pts.~~
~~10~~	~~408~~	~~8~~	~~7 pts.~~
~~12~~	~~588~~	~~12~~	~~10 pts.~~
~~16~~	~~1045~~	~~20~~	~~2 gal.~~
~~20~~	~~1632~~	~~32~~	~~3.3 gal.~~
~~24~~	~~2350~~	~~48~~	~~4.67 gal.~~
~~30~~	~~3672~~	~~70~~	~~7.3 gal.~~
~~36~~	~~5288~~	~~101~~	~~10.5 gal.~~]

12VAC5-630-480. ~~Well casing specifications.~~ (Repealed.)

~~Steel Casings~~				
~~Nom. Size (inches)~~	~~Weight (lbs./ft.)~~	~~Thickness (inches)~~	~~External Diameter~~	~~Internal Diameter~~
~~4~~	~~10.79~~	~~.188~~	~~4.5~~	~~4.026~~
~~6~~	~~13.00~~	~~.188~~	~~6.625~~	~~6.25~~
~~8~~	~~24.70~~	~~.277~~	~~8.625~~	~~8.071~~
~~10~~	~~31.20~~	~~.279~~	~~10.75~~	~~10.192~~

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

FORMS (12VAC5-630)

Application for Sewage System - Water Supply, AOSE Form D (rev. 7/2007)~~.~~

Application for Express Class IV Well Construction Permit~~.~~

Record of Inspection - Private Water Supply System~~.~~

~~Uniform Water Well Completion Report.~~

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

Registration Statement for Express Geothermal Well Permit (eff. 6/2012)~~.~~

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-630)

NSF International, P.O. Box 130140, 789 N. Dixboro Road, Ann Arbor, MI 48105 (http://www.nsf.org/):

NSF/ANSI/CAN Standard 60-2020 Drinking Water Treatment Chemicals - Health Effects, 2020

NSF/ANSI/CAN Standard 61-2021 Drinking Water System Components - Health Effects, 2021

NSF/ANSI/CAN Standard 372-2020 Drinking Water System Components - Lead Content, 2020

NSF/ANSI/CAN Standard 600-2021 Health Effects Evaluation and Criteria for Chemicals in Drinking Water, 2021

NSF/ANSI/CAN Standard 600-2021 Addendum, Health Effects Evaluation and Criteria for Chemicals in Drinking Water, 2021

VA.R. Doc. No. R19-5654; Filed September 5, 2024, 3:48 p.m.

TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Proposed Regulation

Title of Regulation: **13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-10, 13VAC10-180-20, 13VAC10-180-40 through 13VAC10-180-70).**

Public Hearing Information:

October 10, 2024 - 10 a.m. - Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220.

Public Comment Deadline: October 10, 2024.

Agency Contact: Fred Bryant, Chief Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5837, or email fred.bryant@virginiahousing.com.

Summary:

The proposed amendments (i) delete unnecessary text to clarify existing requirements; (ii) eliminate expired developer experience point incentives; (iii) require developers intending to put more than five local governments on notice of an intent to submit a Low-Income Housing Tax Credit (LIHTC) application to first meet with Virginia Housing Development Authority staff; (iv) add a new option for revitalization area points to reduce the burden on developers and localities; (v) add a section to incentivize development on Tribal lands; (vi) revise existing incentives for subsidized funding by limiting the number of points awarded to applicants for obtaining project-based vouchers and by providing an alternative, less burdensome path to obtain the points; (vii) eliminate incentives for the provision of onsite childcare and other services; (viii) added new incentives for developments located within areas of the Commonwealth identified as possessing medium or high levels of economic development activity; (ix) eliminate incentives for submetering water; (x) add incentives for developments built in accordance with the design requirements established by the Virginia Department of Behavioral Health and Developmental Services; (xi) replace two separate requirements to provide Wi-Fi and broadband with a single requirement to provide free Internet to all units; (xii) eliminate incentives related to cooking surfaces and fire prevention features; (xiii) replace and simplify the renewable energy incentive; (xiv) eliminate the incentive to provide free on-call, telephonic, or virtual health care services to residents; (xv) expand the applicability of the transportation incentive by including transportation stations or stops to be built in accordance with existing proffers; (xvi) revise the Small, Women-Owned, and Minority-Owned (SWaM) and Service Disabled Veteran-owned certification incentive to disqualify contracts where spousal relationship exists between parties; (xvii) revise the socially disadvantaged ownership incentive to exclude spousal partners; (xviii) add a new incentive for nonprofits whose board or executive officer is filled by a socially disadvantaged individual; (xix) add an incentive to promote ownership by Veteran-owned businesses; (xx) substantially reduce the efficient use of resources point category; (xxi) substantially reduce the minimum number of application points required to qualify for an allocation of tax credit; (xxii) revise text to enable developers to include an additional fee in basis on 4.0% transactions, provided that at least 30% of the fee is deferred; (xxiii) disqualify from consideration any application seeking more credits than are available within the credit pool in which it competes; (xxiv) clarify the minimum eligibility requirements to compete within the accessible supportive housing pool; (xxv) create a new affordable housing preservation pool; and (xxvi) replace the developer penalty for requesting an extension with an incentive to place in service by deadline.

13VAC10-180-10. Definitions.

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

"Applicant" means an applicant for credits under this chapter and also means the owner of the development to whom the credits are allocated.

"Authority" means the Virginia Housing Development Authority.

"Credits" means the low-income housing tax credits as described in § 42 of the IRC.

"Elderly housing" means any development intended to provide housing for elderly persons as an exemption to the provisions regarding familial status under the United States Fair Housing Act (42 USC § 3601 et seq.).

"IRC" means the Internal Revenue Code of 1986, as amended, and the rules, regulations, notices, and other official pronouncements promulgated thereunder.

"IRS" means the Internal Revenue Service.

"Low-income housing units" means those units that are defined as "low income units" under § 42 of the IRC.

"Low-income jurisdiction" means any city or county in the Commonwealth with an area median income at or below the Virginia nonmetro area median income established by the U.S. Department of Housing and Urban Development (HUD).

"Plan" means the provisions of this chapter governing the distribution, reservation, and allocation by the authority of federal low-income housing tax credits available under § 42 of the IRC for housing developments located throughout the Commonwealth of Virginia for occupancy by low-income persons and families, all in accordance with the requirements of the IRC.

"Principal" means any person (including any individual, joint venture, partnership, limited liability company, corporation, nonprofit organization, trust, or any other public or private entity) that (i) with respect to the proposed development will own or participate in the ownership of the proposed development or (ii) with respect to an existing multifamily rental project has owned or participated in the ownership of such project, all as more fully described ~~hereinbelow~~ in this chapter. The person who is the owner of the proposed development or multifamily rental project is considered a principal. In determining whether any other person is a principal, the following guidelines shall govern: (i) in the case of a partnership that is a principal (whether as the owner or otherwise), all general partners are also considered principals, regardless of the percentage interest of the general partner; (ii)

in the case of a public or private corporation or organization or governmental entity that is a principal (whether as the owner or otherwise), principals also include the president, vice president, secretary, and treasurer and other officers who are directly responsible to the board of directors or any equivalent governing body, as well as all directors or other members of the governing body and any stockholder having a 25% or more interest; (iii) in the case of a limited liability company that is a principal (whether as the owner or otherwise), all members are also considered principals, regardless of the percentage interest of the member; (iv) in the case of a trust that is a principal (whether as the owner or otherwise), all persons having a 25% or more beneficial ownership interest in the assets of such trust; (v) in the case of any other person that is a principal (whether as the owner or otherwise), all persons having a 25% or more ownership interest in such other person are also considered principals; and (vi) any person that directly or indirectly controls, or has the power to control, a principal shall also be considered a principal.

"Qualified application" means a written request for tax credits that is submitted on a form ~~or forms~~ prescribed or approved by the executive director together with all documents required by the authority for submission and meets all minimum scoring requirements.

"Qualified low-income buildings" or "qualified low-income development" means the buildings or development that meets the applicable requirements ~~in~~ to qualify for an allocation of credits under § 42 of the IRC ~~to qualify for an allocation of credits thereunder~~.

13VAC10-180-20. Purpose and applicability.

The following rules and regulations will govern the allocation by the authority of credits pursuant to § 42 of the IRC.

Notwithstanding anything to the contrary ~~herein~~ in this chapter, the executive director is authorized to waive or modify any provision ~~herein~~ of this chapter where deemed appropriate by ~~him~~ the executive director for good cause to promote the goals and interests of the Commonwealth in the federal low-income housing tax credit program, to the extent not inconsistent with the IRC.

The rules and regulations set forth ~~herein~~ in this chapter are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of the credits. This chapter is subject to change at any time by the authority and may be supplemented by policies, rules, and regulations adopted by the authority from time to time.

Any determination made by the authority pursuant to this chapter as to the financial feasibility of any development or its viability as a qualified low-income development shall not be construed to be a representation or warranty by the authority as to such feasibility or viability.

Notwithstanding anything to the contrary ~~herein~~ in this chapter, all procedures and requirements in the IRC must be complied with and satisfied.

13VAC10-180-40. Adoption of allocation plan; solicitations of applications.

The IRC requires that the authority adopt a qualified allocation plan ~~which~~ that shall set forth the selection criteria to be used to determine housing priorities of the authority ~~which~~ that are appropriate to local conditions and ~~which~~ that shall give certain priority to and preference among developments in accordance with the IRC. The executive director from time to time may cause housing needs studies to be performed in order to develop the qualified allocation plan and, based upon any such housing needs study and any other available information and data, may direct and supervise the preparation of and approve the qualified allocation plan and any revisions and amendments ~~thereof~~ to the qualified allocation plan in accordance with the IRC. The IRC requires that the qualified allocation plan be subject to public approval in accordance with rules similar to those in § 147(f)(2) of the IRC. The executive director may include all or any portion of this chapter in the qualified allocation plan. However, the authority may amend the qualified allocation plan without public approval if required to do so by changes to the IRC.

The executive director may from time to time take such action ~~as he may deem~~ the executive director deems necessary or proper ~~in order~~ to solicit applications for credits. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement ~~which~~ that the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations, and conditions with respect to the submission and selection of applications ~~and the selection thereof~~ as ~~he~~ the executive director shall consider necessary or appropriate.

No application for credits will be accepted for any building that has previously claimed credits and is still subject to the compliance period for such credits after the year such building is placed in service~~. Notwithstanding the limitation set forth in the previous sentence,~~; however, an applicant may submit an application for credits for a building in which an extended low-income housing commitment has been terminated by foreclosure, provided the applicant has no relationship with ~~the~~ any owner ~~or owners~~ of such building during its initial compliance period. No application will be accepted, and no reservation or allocation will be made, for credits available under § 42(h)(3)(C) of the IRC in the case of any buildings or development for which tax-exempt bonds of the authority, or an issuer other than the authority, have been issued and ~~which~~ that may receive credits without an allocation of credits under § 42(h)(3)(C).

13VAC10-180-50. Application.

A. Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director~~,~~ the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments.

B. Application for a reservation of credits:

1. Shall be commenced by filing with the authority an application, on such forms as the executive director may from time to time prescribe or approve, together with such documents and additional information ~~(~~, including~~, without limitation,~~ a market study that is prepared by a housing market analyst who meets the authority's requirements for an approved analyst, as set forth on the application form, instructions, or other communication available to the public, that shows adequate demand for the housing units to be produced by the applicant's proposed development~~)~~, as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director. In addition to the market study contained in the application, the authority may conduct its own analysis of the demand for the housing units to be produced by each applicant's proposed development.

All sites in an application for a scattered site development may only serve one primary market area. If the executive director determines that the sites subject to a scattered site development are served by different primary market areas, separate applications for credits must be filed for each primary market area in which scattered sites are located within the deadlines established by the executive director.

2. Should include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised.

3. Shall include the following cost information, if applicable, to determine the feasible credit amount:

a. Site acquisition costs~~,~~;

b. Site preparation costs~~,~~;

c. Construction costs~~,~~;

d. Construction contingency~~,~~;

e. General contractor's overhead and profit~~,~~;

f. Architect and ~~engineer's~~ engineer fees~~,~~;

g. Permit and survey fees~~,~~;

h. Insurance premiums~~,~~;

i. Real estate taxes during construction~~,~~;

j. Title and recording fees~~,~~;

k. Construction period interest~~,~~;

l. Financing fees~~,~~;

m. Organizational costs~~,~~;

n. Rent-up and marketing costs~~,~~;

o. Accounting and auditing costs~~,~~;

p. Working capital and operating deficit reserves~~,~~;

q. Syndication and legal fees~~,~~;

r. Development fees~~,~~; and

s. Other costs and fees.

4. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least $10,000 per unit for developments financed with tax-exempt bonds and $15,000 per unit for all other developments.

C. Any application that exceeds the cost limits described in ~~this~~ subsection B of this section shall be rejected from further consideration and shall not be eligible for any reservation or allocation of credits. The higher of the following two cost limit calculations: per-unit cost or per-square-foot cost may be utilized by an applicant.

The authority will at least annually establish per-unit and per-square-foot cost limits based upon historical cost data of tax credit developments in the Commonwealth. Such limits will be indicated on the application form, instructions, or other communication available to the public. The cost limits will be established for new construction, rehabilitation, and adaptive reuse development types. The authority will establish geographic limits. For the purpose of determining compliance with the cost limits, the value of a development's land and acquisition costs and such other expenses as the executive director determines are appropriate for the good of the plan will not be included in total development cost. Compliance with applicable cost limits will be determined both at the time of application and also at the time the authority issues the IRS Form 8609, with the higher of the two limits being applicable at the time of IRS Form 8609 issuance.

D. Each application shall include:

1. Plans and specifications in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications.

2. In the case of rehabilitation, a physical needs assessment in such form and substance and prepared by such person satisfactory to the executive director pursuant to the authority's requirements as set forth on the application form, instructions, or other communication available to the public.

3. An environmental site assessment (Phase I) in such form and substance and prepared by such person satisfactory to the executive director pursuant to the authority's requirements as set forth on the application form, instructions, or other communication available to the public.

4. Evidence of ~~a. Sole~~ (i) sole fee simple ownership of the site of the proposed development by the applicant~~, b. Lease~~; (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families~~,~~; or ~~c. Right~~ (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site.

Any contract for the acquisition of a site with existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by the authority. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in clause (iii) of this subdivision 4 ~~c of this subsection~~.

No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases, or has the right to acquire or lease the site of the proposed development as described in this subsection.

In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture (Rural Development), any site control document subject to approval of the partners of the seller does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides ~~(i)~~ (a) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or ~~(ii)~~ (b) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

5. Written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable.

6. A certification, in a form required by the executive director, of previous participation listing all developments receiving an allocation of tax credits under § 42 of the IRC ~~in which~~ that shows:

a. The principals have or had an ownership or participation interest~~,~~;

b. The location of such developments~~,~~;

c. The number of residential units and low-income housing units in such developments~~,~~; and

d. Such other information as more fully specified by the executive director.

7. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting noncompliance with the requirements of the IRC and that such noncompliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any application from consideration for a reservation or allocation of credits unless the ~~above~~ information described in subdivision 6 of this subsection is submitted with the application. If, after reviewing the information provided in this ~~subdivision~~ subsection or any other information available to the authority, the executive director determines that the principals do not have the experience, financial capacity, and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance, and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation, and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant.

8. No application will be accepted from any applicant with a principal that has or had an ownership or participation interest in a development at the time the authority reported such development to the IRS as no longer in compliance and is no longer participating in the federal low-income housing tax credit program.

9. A certification, in a form required by the executive director, that the design of the proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

E. The application:

1. Should include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC.

2. Shall include a certification by the applicant as to the full extent of all federal, state, and local subsidies that apply ~~(~~or that the applicant expects to apply~~)~~ with respect to each building or development.

3. May be required by the executive director to include the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

F. Each applicant shall commit in the application to provide:

1. Relocation assistance to displaced households, if any, at such level required by the executive director. Each applicant shall commit in the application to use a property management company certified by the executive director to manage the proposed development.

2. Unless prohibited by an applicable federal subsidy program, a leasing preference to individuals:

a. In a target population identified in a memorandum of understanding between the authority and one or more participating agencies of the Commonwealth~~,~~;

b. Having a voucher or other binding commitment for rental assistance from the Commonwealth~~,~~; and

c. Referred to the development by a referring agent approved by the authority. The leasing preference shall not be applied to more than 10% of the units in the development at any given time. The applicant may not impose tenant selection criteria or leasing terms with respect to individuals receiving this preference that are more restrictive than the applicant's tenant selection criteria or leasing terms applicable to prospective tenants in the development that do not receive this preference, the eligibility criteria for the rental assistance from the Commonwealth, or any eligibility criteria contained in a memorandum of understanding between the authority and one or more participating agencies of the Commonwealth.

3. Free Wi-Fi access in the community room of the development and such access shall be restricted to resident only usage.

4. A disclosure, to be acknowledged by tenant, of the availability of renter education from the authority.

G. Each applicant shall commit in the application:

1. Not to require an annual minimum income requirement that exceeds the greater of $3,600 or 2.5 times the portion of rent to be paid by tenants receiving rental assistance.

2. To waive its right to request to terminate the extended low-income housing commitment through the qualified contract process, as described in the IRC.

Further, any application submitted by an applicant containing a principal that was a principal in an owner that has previously requested, on or after January 1, 2019, a qualified contract in the Commonwealth (regardless of whether the extended low-income housing commitment was terminated through such process) shall be rejected from further consideration and shall not be eligible for any reservation or allocation of credits.

H. The authority is committed to the long-term affordability of developments for the benefit of tenants and full compliance by applicants and principals with the provisions of the IRC, the extended use agreement, and other program requirements. The authority similarly has an interest in preserving the right of first refusal by a qualified nonprofit organization at the close of the compliance period, as authorized in § 42(i)(7) of the IRC.

The executive director is hereby authorized to require any or all of the following with respect to applications:

1. Provisions to be included in the applicant's organizational documents limiting transfers of partnership or member interests or other actions detrimental to the continued provision of affordable housing;

2. A designated form of right of first refusal document;

3. Terms in the extended use agreement requiring notice and approval by the executive director of transfers of partnership or member interests;

4. Debarment from the program of principals having demonstrated a history of conduct detrimental to long-term compliance with extended use agreements, whether in Virginia or another state, and the provision of affordable tax credit units; and

5. Provisions to implement any amendment to the IRC or implementation of any future federal or state legislation, regulations, or administrative guidance.

The decision whether to institute~~,~~ and the terms of~~,~~ any such requirements shall be made by the executive director as reasonably determined to be necessary or appropriate to achieve the goals stated in this subsection and in the best interest of the plan. Any such requirements will be indicated on the application form, instructions, or other communication available to the public.

I. Any application submitted by an applicant containing a principal that was a principal in an owner that has, in the authority's determination, previously participated, on or after January 1, 2019, in a foreclosure in Virginia (or instrument in lieu of foreclosure) that was part of an arrangement a purpose of which was to terminate an extended low-income housing commitment (regardless of whether the extended low-income housing commitment was terminated through such foreclosure or instrument) shall be rejected from further consideration for low-income housing tax credits and shall not be eligible for any reservation or allocation of credits.

J. If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

K. In any situation in which the executive director deems it appropriate, the executive director may:

1. Treat two or more applications as a single application. Only one application may be submitted for each location.

2. Establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions may be indicated on the application form, instructions, or other communication available to the public.

3. Prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as ~~he~~ the executive director shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, ~~he~~ the executive director may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a 10-point scoring penalty per item.

L. After receipt of the local notification information data, if necessary, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such officers a reasonable opportunity to comment on the developments.

M. The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

N. The authority may consider and approve, in accordance ~~herewith~~ with this section, both the reservation and the allocation of credits to buildings or developments that the authority may own or may intend to acquire, construct, or rehabilitate.

O. Any application seeking an additional reservation of credits for a development in excess of 10% of an existing reservation of credits for such development shall be rejected from further consideration ~~hereunder~~ and shall not be eligible for any reservation or allocation of credits pursuant to such application. However, such applicant may execute a consent to cancellation for such existing reservation and submit a new application for the aggregate amount of the existing reservation and any desired increase.

13VAC10-180-60. Review and selection of applications; reservation of credits.

A. The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors ~~deemed~~ the executive director deems appropriate ~~by him~~ to best meet the housing needs of the Commonwealth.

B. An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) that is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as ~~he~~ the executive director shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous, and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. a. The "qualified nonprofit organization" described in ~~the preceding~~ subdivision 1 of this subsection is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity ~~thereof~~;

b. The executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization;

c. The executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools ~~(~~as defined ~~below)~~ in subsection D of this section established by the executive director~~,~~; and

d. The executive director of the authority shall have determined that no staff member, officer, or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

3. In making the determinations required by subdivisions 1 and 2 b, 2 c, and 2 d of this subsection, the executive director may apply such factors as the executive director deems relevant, including:

a. The past experience and anticipated future activities of the qualified nonprofit organization~~,~~;

b. The sources and manner of funding of the qualified nonprofit organization~~,~~;

c. The date of formation and expected life of the qualified nonprofit organization~~,~~;

d. The number of paid staff members and volunteers of the qualified nonprofit organization~~,~~;

e. The nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development~~,~~;

f. The relationship of the staff, directors, or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis~~,~~; and

g. The proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis.

The executive director may include in the application of the factors described in this subdivision 3 any other nonprofit organizations that, in ~~his~~ the executive director's determination, are related (by shared directors, staff, or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the requirements of this subsection, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

C. The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the requirements of this section have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the requirements of subsection B of this section.

D. The executive director may establish such pools (nonprofit pools) of credits as the executive director may deem appropriate to satisfy the requirements of this subsection. If any such nonprofit pools are so established, the executive director may rank the applications in each pool and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible in each pool described in this subsection (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as ~~he~~ the executive director shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications for those nonprofit pools, and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round of application review and ranking, the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available in each nonprofit pool, the executive director may:

1. Leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent rounds;

2. Redistribute, to the extent permissible under the IRC, such unreserved credits to such other pools for which the executive director shall designate reservations in the full amount permissible under this section. Applications redistributed to other pools under this subdivision shall be referred to as "excess qualified applications"~~)~~; or

3. Carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

No reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than $950,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Applicants ~~relying on the experience of a local housing authority for developer experience points described in this subsection or~~ using Hope VI funds from U.S. Department of Housing and Urban Development (HUD) in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

E. The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness. ~~Effective January 1, 2023, written~~ Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (10 points)

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. Any principal intending to provide more than five such submissions for one or more total proposed developments must first schedule a meeting with authority staff, and authority staff may, for good cause to promote the goals and interests of the Commonwealth in the federal low-income housing tax credit program, request evidence of site control as a prerequisite to the authority sending the letter prescribed by this subdivision 2 for each respective proposed development. (minus 50 points for failure to make timely submission)

b. A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. Any such letter must also be accompanied by a legal opinion of the locality's attorney opining that the locality's opposition to the proposed development does not have a discriminatory intent or a discriminatory effect (as defined in 24 CFR 100.500(a)) that is not supported by a legally sufficient justification (as defined in 24 CFR 100.500(b)) in violation of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended) and the HUD implementing regulations. (minus 25 points)

c. Any proposed development that is to be located ~~in a revitalization area meeting the requirements of § 36-55.30:2 A of the Code of Virginia or within an opportunity zone designated by the Commonwealth pursuant to the Federal Tax Cuts and Jobs Act of 2017,~~ as follows:

(1) In a qualified census tract or federal targeted area, both as defined in the IRC, deemed under § 36-55.30:2 of the Code of Virginia to be designated as a revitalization area without adoption of a resolution (10 points);

(2) In any redevelopment area, conservation area, or rehabilitation area created or designated by the city or county pursuant to Chapter 1 (§ 36-1 et seq.) of Title 36 of the Code of Virginia and deemed under § 36-55.30:2 of the Code of Virginia to be designated as a revitalization area without adoption of a further resolution (10 points);

(3) In a revitalization area designated by resolution adopted pursuant to the terms of § 36-55.30:2 of the Code of Virginia (15 points);

(4) In a local housing rehabilitation zone created by an ordinance passed by the city, county, or town and deemed to meet the requirements of § 36-55.30:2 of the Code of Virginia pursuant to § 36-55.64 G of the Code of Virginia (15 points); ~~and~~

(5) In an opportunity zone designated by the Commonwealth pursuant to the Federal Tax Cuts and Jobs Act of 2017 (PL 115-97), and having a binding commitment of funding acceptable to the executive director pursuant to requirements as set forth on the application form, instructions, or other communication available to the public~~.~~ (15 points)~~.~~;

(6) In a locality that confirms, on a form prescribed by the authority, that the development as proposed to be constructed or rehabilitated will utilize new or existing housing as part of a community revitalization plan (15 points); or

(7) On land owned by federally recognized or Virginia-recognized Tribal Nations located within the present-day external boundaries of the Commonwealth (15 points). If the development is located in more than one such area, only the highest applicable points will be awarded, that is, points in this subdivision E 2 c are not cumulative.

d. Commitment by the applicant for any development without section 8 project-based assistance to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (5 points)

e. Any (i) funding source, as evidenced by a binding commitment or letter of intent, that is used to reduce the credit request; (ii) commitment to donate land or buildings or tap fee waivers from the local government; or (iii) commitment to donate land ~~(~~, including a below market-rate land lease~~)~~, from an entity that is not a principal in the applicant (the donor being the grantee of a right of first refusal or purchase option with no ownership interest in the applicant shall not make the donor a principal in the applicant). Loans must be below market-rate (the one-year London Interbank Offered Rate (LIBOR) rate at the time

of commitment) or cash-flow only to be eligible for points. Financing from the authority and market rate permanent financing sources are not eligible. (The amount of such funding, dollar value of local support, or value of donated land (including a below market rate land lease) will be determined by the executive director and divided by the total development cost. The applicant receives two points for each percentage point up to a maximum of ~~40~~ 60 points.) The authority will confirm receipt of such subsidized funding prior to the issuance of IRS Form 8609.

f. Any development ~~subject to (i) HUD's Section 8 or Section 236 program or (ii) Rural Development's 515 program, at the time of application. (20 points, unless the applicant is or has any common interests with the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to developer's fee on acquisition and any other fees associated with the acquisition of the development unless permitted by the executive director for good cause.)~~ receiving new project-based subsidy from HUD or Rural Development. For each project-based voucher up to a maximum of 40 points when competing in either the New Construction or Northern Virginia pool only (5 points); provided, however, that any points awarded under this subdivision 2 f will reduce, in equal measure, the maximum 60 points awarded within subdivision 2 e of this subsection.

g. Any development receiving a real estate tax abatement on the increase in the value of the development. (5 points)

h. Any development ~~receiving new project based subsidy from HUD or Rural Development for the greater of five units or 10% of the units of the proposed development. (10 points)~~ subject to (i) HUD's section 8 or section 236 program or (ii) Rural Development's 515 program at the time of application (20 points), unless the applicant is or has any common interests with the current owner, directly or indirectly. The application will only qualify for these points if the applicant waives all rights to developer's fee on acquisition and any other fees associated with the acquisition of the development, unless permitted by the executive director for good cause.

i. Any proposed elderly or family development located in a census tract that has less than a 3.0% poverty rate based upon Census Bureau data (30 points); less than a 10% poverty rate based upon Census Bureau data (25 points); or less than a 12% poverty rate based upon Census Bureau data. (20 points)

j. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority. (15 points)

k. Any proposed new construction development ~~(~~, including adaptive reuse and rehabilitation that creates additional rental space~~)~~, that is located in a pool identified by the authority as a pool with an increasing rent-burdened population~~. (Up to 20 points~~, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool. (up to 20 points)

l. ~~Effective January 1, 2023, any proposed development (i) for which the applicant has entered into a memorandum of understanding approved by the Virginia Department of Behavioral Health and Developmental Services (DBHDS) with a resident service provider for the provision of resident services. Such resident services provider must have experience delivering direct, community-based services to individuals, as evidenced by a triennial license, in good standing, with no outstanding corrective action plans from DBHDS, or an agency or program accreditation or certification such as Commission on Accreditation of Rehabilitation Facilities, Council on Accreditation, or Certified Organization for Resident Engagement & Services, Council on Quality and Leadership, or CSH Quality Supportive Housing accreditation or certification. Such resident service provider may, but is not required to, be the qualified nonprofit organization qualifying applicant to compete in the nonprofit pool or having the required ownership interest and holding an option or first right of refusal that qualified applicant for points under subsection 7 d of this subsection. Experience may also be evidenced by receipt of a grant or grants by the service provider for provision of direct services to the development's residents; or (ii) if the development provides licensed childcare on site with a preference and discount for residents or an equivalent subsidy for tenants, determined based on household income and household size, to utilize a licensed childcare facility of tenant's choice. (15 points)~~ Any proposed development located within an area identified by the executive director as possessing either medium or high levels of economic development activity. In determining such areas, the executive director will evaluate economic data, such as per capita job creation data from the Virginia Economic Development Partnership, and annually publish a guidance document available to the public establishing such areas. (5 points)

3. Development characteristics.

a. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If a community or meeting room with a minimum of 749 square feet is provided. (5 points) Community rooms receiving points under this subdivision 3 a (1) (a) may not be used for commercial purposes. Provided that the cost of the community room is not included in eligible basis, the owner may conduct, or contract with a nonprofit provider

to conduct, programs or classes for tenants and members of the community in the community room, so long as (i) tenants compose at least one-third of participants, with first preference given to tenants above the one-third minimum; (ii) no program or class may be offered more than five days per week; (iii) no individual program or class may last more than eight hours per day, and all programs and class sessions may not last more than 10 hours per day in the aggregate; (iv) cost of attendance of the program or class must be below market rate with no profit from the operation of the class or program being generated for the owner (owner may also collect an amount for reimbursement of supplies and clean-up costs); (v) the community room must be available for use by tenants when programs and classes are not offered, subject to reasonable "quiet hours" established by owner; and (vi) any owner offering programs or classes must provide an annual certification to the authority that it is in compliance with such requirements, with failure to comply with these requirements resulting in a 10-point penalty for three years from the date of such noncompliance for principals in the owner.

(b) If the exterior walls are constructed using brick or other similar low-maintenance material approved by the authority ~~(~~as indicated on the application form, instructions, or other communication available to the public~~)~~ covering up to 50% of the exterior walls of the development. (20 points times the percentage of exterior walls covered by brick)

If the exterior walls are constructed using fiber cement board covering up to 50% of the exterior walls. (20 points times the percentage of exterior walls covered by fiber cement board)

Points for brick and fiber cement board are independent and can both be awarded.

For purposes of making such coverage calculation, the triangular gable end area, doors, windows, knee walls, columns, retaining walls, and any features that are not a part of the façade are excluded from the denominator. Community buildings are included in the foregoing coverage calculations.

(c) If the ~~water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)~~ development is built in accordance with development design requirements established by the Virginia Department of Behavioral Health and Developmental Services. (10 points)

(d) If points are not awarded pursuant to subdivision 3 f of this section for optional certification, if each bathroom contains only WaterSense labeled toilets, faucets, and showerheads. (3 points)

(e) If each unit is provided with free individual high-speed Internet access. (~~10~~ 15 points~~, 12 points if such access is Wi Fi~~)

(f) If each full bathroom's bath fans are wired to the primary bathroom light with a delayed timer, or continuous exhaust by ERV/DOAS. (3 points) If each full bathroom's bath fans are equipped with a humidistat. (3 points)

(g) ~~If all cooking surfaces are equipped with fire prevention features that meet the authority's requirements as indicated on the application form, instructions, or other communication available to the public. (4 points)~~ If all cooking surfaces are equipped with fire suppression features that meet the authority's requirements ~~(~~as indicated on the application form, instructions, or other communication available to the public~~)~~. (2 points)

(h) For rehabilitations, ~~equipping all units~~ if each unit is equipped with dedicated space, drain, and electrical hook-ups for permanently installed dehumidification systems (2 points). For rehabilitations and new construction, providing permanently installed dehumidification systems in each unit. (5 points)

(i) If each interior door is solid core. (3 points)

(j) If each unit has at least one USB charging port in the kitchen, living room, and all bedrooms. (1 point)

(k) If each kitchen has LED lighting in all fixtures that meets the authority's minimum design and construction standards (2 points)

(l) For new construction only, if each unit has a balcony or patio with a minimum depth of five feet clear from face of building and a size of at least 30 square feet. (4 points)

(m) ~~Effective January 1, 2023, if~~ If construction or rehabilitation of the development ~~has~~ includes installation of a renewable energy electric system~~. (1 point for each 2% of the development's onsite electrical load that can be met by the renewable energy electric system for the benefit of the tenants, up to~~ in accordance with the manufacturer's specifications and all applicable provisions of the National Electrical Code. Qualifying installations must have either been performed by a licensed electrician or have passed a final inspection performed by a licensed electrician. (10 points)

~~(n) Effective January 1, 2023, if the development provides tenants with free on-call, telephonic, or virtual health care services with a licensed provider. (15 points)~~

~~(o)~~ (n) For rehabilitations, if each unit is provided with the necessary infrastructure for high-speed ~~Internet/broadband~~ Internet or broadband service. (~~1 point~~ 5 points)

(2) The following points are available to applications electing to serve elderly tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all bathrooms have an independent or supplemental heat source. (1 point)

(c) If all entrance doors to each unit have two eye viewers, one at 42 inches and the other at standard height. (1 point)

(d) If each unit has a shelf or ledge outside the primary entry door in interior hallway. (2 points)

(3) The following points are available to all qualified applications:

a. If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

~~b. Any development in which (i) the greater of five units or 10% of the units will be assisted by any form of documented and binding federal or state project-based rent subsidies in order to ensure occupancy by extremely low-income persons; and (ii) the greater of five units or 10% of the units will conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and be actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act, and all the units described in clause (ii) above must include roll-in showers and roll-under sinks and front control ranges, unless agreed to by the authority prior to the applicant's submission of its application). (50 points)~~

~~c.~~ b. Any development in which 10% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits. (20 points)

~~d.~~ c. Any development located within one-half mile of an existing commuter rail, light rail, or subway station or one-quarter mile of one or more ~~existing~~ public bus stops either existing or to be built in accordance with existing proffers. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for Northern Virginia or Tidewater Metropolitan Statistical Area (MSA), in which case, the development will receive 20 points if the development is ranked against other developments in such Northern Virginia or Tidewater MSA pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

~~e.~~ d. Each development must meet the following baseline energy performance standard applicable to the development's construction category. For new construction, the development must meet all requirements for EPA Energy Star certification. For rehabilitation, the proposed renovation of the development must result in at least a 30% post-rehabilitation decrease on the Home Energy Rating System Index (HERS Index) or score an 80 or lower on the HERS Index. For adaptive reuse, the proposed development must score a 95 or lower on the HERS Index. For mixed construction types, the applicable standard will apply to the development's various construction categories. The development's score on the HERS Index must be verified by a third-party, independent, nonaffiliated, certified Residential Energy Services Network (RESNET) home energy rater.

(1) Any development for which the applicant agrees to obtain (i) EarthCraft Gold or higher certification; (ii) U.S. Green Building Council LEED green-building certification; (iii) National Green Building Standard Certification of Silver or higher; or (iv) meet Enterprise Green Communities Criteria prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's RESNET rater is registered with a provider on the authority's approved RESNET provider list. (10 points, points in this ~~paragraph~~ subdivision d (1) are not cumulative)

(2) Additionally, points on future applications will be awarded to an applicant having a principal that is also a principal in a tax credit development in the Commonwealth meeting (i) the Zero Energy Ready Home Requirements as promulgated by the U.S. Department of Energy (DOE) and as evidenced by a DOE certificate~~;~~ or (ii) the Passive House Institute's Passive House standards as evidenced by a certificate from an accredited Passive House certifier. (10 points, points in this ~~paragraph~~ subdivision d (2) are cumulative)

The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving an additional 10 points under this subdivision d, provided, however, that any resulting increase in such development's eligible basis shall be limited to 10% of the development's eligible basis. Provided, however, the authority may remove such increase in the development's eligible basis if the authority determines that the development is financially feasible without such increase in basis.

~~f.~~ e. If units are constructed to include the authority's universal design features, provided that the proposed development's architect is on the authority's list of universal design certified architects. (15 points~~,~~ if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

~~g.~~ f. Any development in which the applicant proposes to produce less than 100 low-income housing units. (20 points for producing 50 low-income housing units or less, minus 0.4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

~~h.~~ g. Any applicant for a development that, pursuant to a common plan of development, is part of a larger development located on the same or contiguous sites, financed in part by tax-exempt bonds. Combination developments seeking both 9.0% and 4.0% credits must clearly be presented as two separately financed deals, including separate equity pricing that would support each respective deal in the event the other were no longer present. While deals are required to be on the same or a contiguous site they must be clearly identifiable as separate. The units financed by ~~tax-exempt~~ tax-exempt bonds may not be interspersed throughout the development. Additionally, if co-located within the same building footprint, the property must identify separate entrances. All applicants seeking points in this category must arrange a meeting with authority staff at the authority's offices prior to the deadline for submission of the application in order to review both the 9.0% and the tax-exempt bond financed portion of the project. Any applicant failing to meet with authority staff in advance of applying will not be allowed to compete in the current competitive round as a combination development. (10 points ~~for tax-exempt bond financing of at least 30% of~~ if the aggregate number of units~~, 20 points for~~ within the larger combined development totals more than 100 but fewer than 150 units and 30% or more of those units will be funded by tax-exempt ~~bond financing of at least 40% of~~ bonds; 15 points if the aggregate number of units~~, and 30 points for tax-exempt bond financing of~~ within the larger combined development totals at least ~~50%~~ 150 units and 30% of ~~aggregate~~ those units~~; such points being noncumulative; such points will be awarded in both the application and any application submitted for credits associated with the~~ will be funded by tax-exempt bonds)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics. ~~For application submitted in calendar year 2022 only, the sponsor may receive experienced sponsor points under either subdivision 5 a or 5 c of this subsection, but not both. Effective January 1, 2023, subdivision 5 a of this subsection shall no longer be applicable.~~

~~a. Evidence that the controlling general partner or managing member of the controlling general partner or managing member for the proposed development have developed:~~

~~(1) As controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments. (25 points); or~~

~~(2) At least three deals as a principal and have at least $500,000 in liquid assets. "Liquid assets" means cash, cash equivalents, and investments held in the name of the entity or person, including cash in bank accounts, money market funds, U.S. Treasury bills, and equities traded on the New York Stock Exchange or NASDAQ. Certain cash and investments will not be considered liquid assets, including (i) stock held in the applicant's own company or any closely held entity, (ii) investments in retirement accounts, (iii) cash or investments pledged as collateral for any liability, and (iv) cash in property accounts, including reserves. The authority will assess the financial capacity of the applicant based on its financial statements. The authority will accept financial statements audited, reviewed, or compiled by an independent certified public accountant. Only a balance sheet dated on or after December 31 of the year prior to the application deadline is required. The authority will accept a compilation report with or without full note disclosures. Supplementary schedules for all significant assets and liabilities may be required. Financial statements prepared in accordance with accounting principles generally accepted in the United States (U.S. GAAP) are preferred. Statements prepared in the income tax basis or cash basis must disclose that basis in the report. The authority reserves the right to verify information in the financial statements. (25 points); or~~

~~(3) As controlling general partner or managing member, at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)~~

a. Points shall be awarded on a sliding scale to applicants that enter into at least one contract for services provided by a business certified as women-owned, minority-owned, or service disabled veteran-owned through the Commonwealth of Virginia's Small, Women-owned, and Minority-owned Business (SWaM) Certification Program; provided, however, that no points will be awarded for entering into contracts where a spousal relationship exists between any principal of the applicant and any principal of the service provider. The following services and roles qualify for points under this subdivision 5 a: (i) consulting services to complete the LIHTC application, (ii) ongoing development services through the placed-in-service date, (iii) general contractor, (iv)

architect, (v) property manager, (vi) accounting services, or (vii) legal services. An applicant seeking points in this subdivision 5 a must provide in its application a certification, in a form to be developed by the executive director, certifying that a contract for services has been executed between the applicant and the service provider, describing the scope of the services provided or to be provided, and certifying that no spousal relationship exists between any principal of the applicant and any principal of the service provider. The application must also include a copy of the service provider's certification from the Commonwealth of Virginia's SWaM Certification Program. (5 points for entering into one such contract; 7 points for entering into two such contracts; 10 points for entering into three or more such contracts)

b. ~~A maximum of 25 cumulative points in subdivision 5 c of this subsection will be awarded to applicants with an experienced sponsor (experienced sponsor). Experienced sponsors are those principals who meet the requirements of subdivision 5 c of this subsection and who have~~ Applicants with at least one principal having an ownership interest of at least 25% in the controlling general partner or managing member for the proposed development~~, subject to the following conditions:~~

~~(1) Experienced sponsors may be (i) individuals; (ii) duly formed limited liability companies, limited partnerships, and corporations, whether for profit or nonprofit, and which are in good standing in their respective state of formation and registered to do business in Virginia; (iii) local housing authorities; (iv) business trusts; and (v) trusts;~~

~~(2) Individual persons seeking points as an experienced sponsor shall not receive credit for prior participation in developments where such participation was in their capacity as either trustee or beneficiary of a trust or business trust; and~~

~~(3) Individuals and entities seeking points as an experienced sponsor may not combine ownership or prior experience with any other individual or entity to meet the requirements of this subdivision 5.~~

~~c. Points for experienced sponsor involvement shall be awarded as follows:~~

~~(1) Tier 1: Five points shall be awarded to those experienced sponsors that have placed at least one federal low income housing tax credit (LIHTC) development in service in Virginia within the past five years, as evidenced by an IRS Form 8609 having been issued for such development. The LIHTC development must be active with no reported compliance issues remaining uncured, as determined by the executive director.~~

~~(2) Tier 2: 15 points shall be awarded to those experienced sponsors that have placed at least three LIHTC developments in service (in addition to any deal for which points are awarded in Tier 1) in any state within the past six years, as evidenced by corresponding IRS Form 8609s. Experienced sponsors must certify with the application that each of said three developments is active with no reported compliance issues remaining uncured. The executive director may confirm the applicant's certification with each state in which the three developments are located.~~

~~(3) Tier 3: Any applicant competing in the local housing authority pool may receive an additional five points for partnering with an experienced sponsor, other than a local housing authority. Applicants seeking said points must provide in their application evidence that the experienced sponsor is a principal in the Applicant (while ownership is required, no minimum ownership percentage of the experience sponsor partner is specified for points in Tier 3) and must provide a description of the assistance rendered and to be rendered by the experienced sponsor partner. d. Applicants may receive negative points toward their application as follows: (1)~~ who is a socially disadvantaged individual. An applicant seeking points in this subdivision 5 b must provide in its application a certification in a form to be developed by the executive director, certifying that no spousal relationship exists between the socially disadvantaged principal and any other principal having an ownership interest in the development who is not also a socially disadvantaged principal. (30 points)

c. Applicants with at least one nonprofit principal that (i) either demonstrates that 51% or more of its board membership is held by socially disadvantaged individuals or demonstrates that its most senior full-time executive officer is a socially disadvantaged individual; (ii) has an express business purpose of serving socially or economically disadvantaged populations or both; and (iii) certifies that no spousal relationship exists between any executive officer or board member identified for the purpose of satisfying the requirements of this subsection and any other principal of the applicant who is not also a socially disadvantaged individual. (30 points) Applicants receiving points under subdivision 5 b of this subsection are ineligible for points in this subdivision 5 c.

d. For the purposes of subdivisions 5 b and 5 c of this subsection, socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control. There is a rebuttable presumption that the following individuals are socially disadvantaged: Black Americans, Hispanic Americans, Native Americans, and Asian Americans and Pacific Islanders. This provision shall be interpreted in accordance with 13 CFR 124.103.

e. Points shall be awarded on a sliding scale to applicants that enter into at least one contract for services provided

by (i) a veteran-owned small business (VOSB) as certified by the U.S. Department of Veterans Affairs, Office of Small and Disadvantaged Business Utilization, or the U.S. Small Business Administration, or (ii) a business certified as service-disabled veteran-owned through the Commonwealth of Virginia's SWaM Certification Program; provided, however, that no points will be awarded for entering into contracts where a spousal relationship exists between any principal of the applicant and any principal of the service provider. The following services and roles qualify for points under this subdivision 5 e: (a) consulting services to complete the LIHTC application, (b) ongoing development services through the placed-in-service date, (c) general contractor, (d) architect, (e) property manager, (f) accounting services, or (g) legal services. An applicant seeking points in this subdivision 5 e must provide in its application a certification, in a form to be developed by the executive director, certifying that a contract for services has been executed between the applicant and the service provider, describing the scope of the services provided or to be provided, and certifying that no spousal relationship exists between any principal of the applicant and any principal of the service provider. The application must also include a copy of the service provider's certification issued by the applicable certifying entity listed within this subdivision 5 e. (5 points for entering into one such contract; 7 points for entering into two such contracts; 10 points for entering into three or more such contracts)

f. Applicants with at least one principal having an ownership interest of at least 25% in the controlling general partner or managing member for the proposed development that is an individual with a VOSB certification, as described in subdivision 5 e of this subsection. An applicant seeking points in this subdivision 5 f must provide in its application a certification, in a form to be developed by the executive director, certifying that no spousal relationship exists between the principal with a VOSB certification and any other principal having an ownership interest in the development who does not also possess a VOSB certification. (30 points)

g. Applicants may receive negative points toward their application as follows:

(1) Any applicant that includes a principal that was a principal in a development at the time the authority inspected such development and discovered a life-threatening hazard under HUD's Uniform Physical Condition Standards and such hazard was not corrected in the timeframe established by the authority. (minus 50 points for a period of three years after the violation has been corrected)

(2) Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance had not corrected such noncompliance by the time a Form 8823 was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period of three calendar years after the year the authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government, or governmental agency, in which case, no negative points will be assessed to the applicant, or 0 points, if the appropriate individual connected to the principal attend compliance training as recommended by the authority)

(3) Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the items not built or minus 50 points per requirement for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may elect to seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority. (minus 10 points a period of three years after the credits are returned to the authority)

(4) Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

(5) Any applicant that includes a principal that was a principal in a development for which the actual cost of construction (as certified in the Independent Auditor's Report with attached Certification of Sources and Uses that is submitted in connection with the Owner's Application for IRS Form 8609) exceeded the applicable cost limit by 5.0% or more (minus 50 points for a period of three calendar years after December 31 of the year the cost certification is complete; provided, however, if the ~~Board of Commissioners~~ board of commissioners determines that such overage was outside of the applicant's control based upon documented extenuating circumstances, no negative points will be assessed.)

(6) Any applicant that includes a controlling general partner or managing member of the controlling general partner or managing member in the applicant that acted as a principal in a development receiving an allocation of credits from the authority where (i) such principal met the requirements to be eligible for points under subdivision 5

a or 5 c of this subsection and (ii) such principal made more than two requests for final inspection. (minus 5 points for two years)

~~e. In addition to the points for experienced sponsor involvement available in subdivisions 5 a and 5 c of this subsection, points shall be awarded to applicants for contracting for services as follows:~~

~~Five points shall be awarded to applicants that enter into at least one contract for services provided by a business certified as Women Owned, Minority Owned or Service Disabled Veteran-owned through the Commonwealth of Virginia's Small, Women-owned, and Minority-owned Business (SWaM) certification program. The following services and roles qualify for points under this subdivision 5 e: (i) consulting services to complete the LIHTC application; (ii) ongoing development services through the placed in service date; (iii) general contractor; (iv) architect; (v) property manager; (vi) accounting services; or (vii) legal services. An applicant seeking points in this subdivision 5 e must provide in its application a certification, in a form to be developed by the executive director, certifying that a contract for services has been executed between the applicant and the service provider and describing the scope of the services provided or to be provided. The application must also include a copy of the service provider's certification from the Commonwealth of Virginia's Small, Women-owned, and Minority-owned Business certification program.~~

~~f. Applicants with at least one principal having an ownership interest of at least 25% in the controlling general partner or managing member for the proposed development that is a socially disadvantaged individual (5 points). Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control. There is a rebuttable presumption that the following individuals are socially disadvantaged: Black Americans, Hispanic Americans, Native Americans, and Asian Americans and Pacific Islanders. This provision shall be interpreted in accordance with 13 CFR 124.103.~~

6. Efficient use of resources. ~~a.~~ The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (~~200~~ 100 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.~~)~~

~~b. The percentage by which the cost per low-income housing unit (per unit cost), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (100 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director; negative points will be assessed using the percentage by which the total amount of the per unit cost amount of the proposed development exceeds the applicable standard per unit cost amount established by the executive director.)~~

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit ~~amount and the per unit cost~~ amount in this subdivision 6. For the purpose of calculating the points to be assigned pursuant to ~~such~~ this subdivision 6, all credit amounts shall include any credits previously allocated to the development.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision 7 a may not receive points under subdivision 7 b of this subsection. (Up to 50 points, the product of (i) 100 multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus one point for each percentage point of such housing units in the proposed development that are further restricted to rents at or below 30% ~~of~~ or 40% of the area median gross income up to an additional 10 points.~~)~~ If the applicant commits to providing housing units in the proposed development both rent-restricted to and occupied by households at or below 30% of the area median gross income and that are not subsidized by project-based rental assistance. (plus 1 point for each percentage point of such housing units in the proposed development, up to an additional 10 points)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision 7 b may not receive points under subdivision 7 a of this subsection. (Up to 25 points, the product of (i) 50 multiplied by (ii) the percentage of housing units in the proposed development rent restricted

to households at or below 50% of the area median gross income; plus one point for each percentage point of such housing units in the proposed development that are further restricted to rents at or below 30% ~~of~~ or 40% of the area median gross income up to an additional 10 points. Points for proposed developments in low-income jurisdictions shall be two times the points calculated in the preceding sentence, up to 50 points~~.~~)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision 7 c may not receive bonus points under subdivision 7 d of this subsection. (40 points for a 10-year commitment beyond the 30-year extended use period or ~~50~~ 70 points for a 20-year commitment beyond the 30-year extended use period~~.~~)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70. Applicants receiving points under this subdivision 7 d may not receive bonus points under subdivision 7 c of this subsection. (60 points; plus five points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants~~.~~)

e. Any development participating in the Rental Assistance Demonstration (RAD) program, or other conversion to project-based vouchers or project-based rental assistance approved by the authority, competing in the local housing authority pool will receive an additional 10 points. Applicants must show proof of a commitment to enter into housing assistance payment (CHAP) or a RAD conversion commitment (RCC).

f. Any applicant that commits in the application to submit any payments due the authority, including reservation fees and monitoring fees, by electronic payment. (5 points)

In calculating the points for subdivisions 7 a and 7 b of this subsection, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described in this subsection, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of ~~400~~ 300 points (~~300~~ 200 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits ~~hereunder~~ under this chapter) shall be rejected from further consideration ~~hereunder~~ under this chapter and shall not be eligible for any reservation or allocation of credits.

F. During its review of the submitted applications in all pools, the authority may conduct:

1. Its own analysis of the demand for the housing units to be produced by each applicant's proposed development. Notwithstanding any conclusion in the market study submitted with an application, if the authority determines that, based upon information from its own loan portfolio or its own market study, inadequate demand exists for the housing units to be produced by an applicant's proposed development, the authority may exclude and disregard the application for such proposed development.

2. A site visit to the applicant's proposed development. Notwithstanding any conclusion in any environmental site assessment submitted with an application, if the authority determines that the applicant's proposed development presents health or safety concerns for potential tenants of the development, the authority may exclude and disregard the application for such proposed development.

G. The executive director:

1. May exclude and disregard any application that the executive director determines is not submitted in good faith or that ~~he~~ the executive director determines would not be financially feasible.

2. May determine that an application is substantially incomplete and ineligible for further review.

3. May also choose to allow for the immediate correction of minor and immaterial defects affecting mandatory items (but not points items) in an application. Should the executive director choose to allow correction, applicants will be given 48 hours from the time of notification to cure defects with ~~their~~ the application. If the executive director allows an applicant to cure minor defects, that does not constitute approval or acceptance of the application and is not an assurance that the application, upon further review, will be deemed acceptable.

Examples of items that may be considered as "curable" include:

a. If the applicant has failed to include a required document, the applicant may supply the document~~,~~; provided, however, that the document existed on the application deadline date and, if the document is a legal agreement or instrument, the document was legally effective on the application deadline date;

b. If statements or items in the application are contradictory or mutually inconsistent, the applicant may present information resolving the contradiction or inconsistency~~,~~; provided, however, that the information accurately reflects the state of affairs on the application deadline date;

c. The applicant may provide any required signature that has been omitted, except for applications that the executive director deems to be substantially incomplete; and

d. The applicant may cure any scrivener's error, missing or defective notarization, defective signature block, or defective legal name of an individual or entity.

4. Shall notify the applicant of any curable defects it discovers by telephone, and, simultaneously, in writing electronically (email). The applicant's corrective submission shall not be considered unless it is received by the executive director no later than 48 hours (excluding weekends and legal holidays) from the notification. If an applicant fails to respond to the notification of curable defects within the 48-hour cure period, or if an applicant's response ~~is nonresponsive to~~ fails to address the question asked, a negative conclusion shall be drawn. Failure to respond to an item in a cure notification will result in the denial of points in that category or the application may be deemed to not meet threshold. After the application deadline, telephone calls or other oral or written communications on behalf of a tax credit applicant (~~for example~~ e.g., from a project's development team, elected representatives~~, etc.~~) other than information submitted pursuant to this subdivision shall not be accepted or considered before preliminary reservation awards have been announced.

5. Upon assignment of points to all of the applications, shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 50% of the next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

H. The authority shall, in the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described in that pool, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision E 7 of this section~~.~~. Each application so selected shall receive ~~(~~, in order based upon the number of such points, beginning with the application with the highest number of such points~~)~~, a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision E 7 of this section and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described in the tied for points applications, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive ~~(~~in order of such selection by lot~~)~~ a reservation of credits.

I. The executive director:

1. For each application that may receive a reservation of credits, shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider:

a. The sources and uses of the funds~~,~~;

b. The available federal, state, and local subsidies committed to the development~~,~~;

c. The total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development~~,~~; and

d. The percentage of the credit dollar amount used for development costs other than the costs of intermediaries.

2. Shall examine the development's costs, including developer's fees and other amounts in the application, for reasonableness, and if ~~he~~ the executive director determines that such costs or other amounts are unreasonably high, ~~he~~ the executive director shall reduce them to amounts that ~~he~~ the executive director determines to be reasonable.

3. Shall review the applicant's projected rental income, operating expenses, and debt service for the credit period.

4. May establish such criteria and assumptions as ~~he~~ the executive director shall deem reasonable for the purpose of making such determination, including:

a. Criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received ~~(~~based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development~~)~~;

b. Increases in the market value of the development~~,~~ and increases in operating expenses, rental income; and

c. In the case of applications without firm financing commitments at fixed interest rates, debt service on the proposed mortgage loan.

5. May, if ~~he~~ the executive director deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review, and establish any or all of the items described in this subsection as to the larger development in making such determination for the development.

J. Maximum ~~developer's~~ developer fee calculations will be indicated on the application form, instructions, or other communication available to the public. Notwithstanding such calculations of ~~developer's~~ developer fee, (i) no more than $3 million ~~developer's~~ developer fee may be included in the ~~development's~~ eligible basis~~, (ii)~~ of developments seeking 9.0% credits, (ii) no more than $3 million developer fee may be included in the eligible basis of developments seeking 4.0% credits, unless at least 30% of the developer fee is deferred, (iii) no ~~developer's~~ developer fee may exceed $5 million, and ~~(iii)~~ (iv) no ~~developer's~~ developer fee may exceed 15% of the development's total development cost, as determined by the authority.

K. The executive director:

1. Shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits ~~therein~~ in each pool and tier are reserved or all qualified applications ~~therein~~ in each pool and tier have received reservations at such time during each calendar year as the executive director shall designate. If there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.

2. May rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool.

3. May establish more than one round of review and ranking of applications and reservation of credits based on such rankings.

4. Shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

5. ~~May move the proposed~~ Shall deem any development ~~and the~~ seeking more credits than are available ~~to another pool if the amount~~ within a credit pool in which it competes as financially infeasible and ineligible for any reservation or allocation of credits ~~available in~~ from any pool ~~is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved~~.

6. If any credits remain in any pool after moving proposed developments and credits to another pool, may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development. ~~However, the~~ The reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if ~~he~~ the executive director determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated, or canceled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

7. In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, may:

a. Leave such unreserved credits in such pools for reservation and allocation in any subsequent rounds~~,~~;

b. Redistribute such unreserved credits to such other pools as the executive director may designate~~,~~;

c. Supplement such unreserved credits in such pools with additional credits from the Commonwealth's annual state housing credit ceiling for the following year for reservation and allocation if in the reasonable discretion of the executive director, it serves the best interest of the plan~~,~~;

d. Carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year~~,~~; or

e. Move a development from the nonprofit or new construction pool to its ~~or their~~ appropriate geographic pool to more fully or fully utilize the total amount of credits made available ~~therein~~ during such round.

L. 1. The total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (credit cap).

2. However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth in this section shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits.

3. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development ~~or developments~~. For purposes of this subsection, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments.

4. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits.

5. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date.

6. Substantial relationships shall include~~,~~ the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other):

a. The persons are in the same immediate family (including a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household;

b. The entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity;

c. The entities are under the common control (e.g., the same person and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities);

d. The person is a general partner, member, or employee in the entity or is an owner (~~by himself~~ solely or together with any other related persons and entities) of 5.0% or more ownership interest in the entity;

e. The entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or

f. The person or entity is otherwise controlled, in whole or in part, by the other person or entity.

7. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that:

a. Such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted~~,~~;

b. Such person or entity has no agreement or understanding relating to such application or the tax credits requested ~~therein~~ within the application~~,~~; and

c. Such person or entity will not receive a financial benefit from the tax credits requested in the application.

8. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits.

9. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as ~~he~~ the executive director shall determine to best serve the interests of the program.

10. Each applicant and each principal ~~therein~~ of the applicant shall make such certifications, shall disclose such facts, and shall submit such documents to the authority as the executive director may require to determine compliance with the credit cap. If an applicant or any principal ~~therein~~ of the applicant makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals ~~therein~~ of the applicant, and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described ~~above~~ in this subsection) with the applicant or any principal ~~therein~~ of the applicant from submitting applications for credits for such period of time as the executive director shall determine.

M. The executive director:

1. Shall notify each applicant for such reservations of credits within a reasonable time after credits are reserved to any ~~applicants'~~ applications either:

a. Of the amount of credits reserved to such applicant's application by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director ~~therein~~ in the application, by the IRC, and by this chapter; or

b. That the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance ~~herewith~~ with this section.

The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit ~~the developers'~~ developer fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director.

2. May reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years if credits are reserved to any applicants for developments that have also received an allocation of credits from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

3. Shall make a written explanation available to the general public for any allocation of housing credit dollar amount that is not made in accordance with established priorities and selection criteria of the authority.

a. The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to ~~assure~~ ensure compliance with the ~~aforementioned~~ binding commitment issued or to be issued to the applicant, the IRC, and this chapter.

b. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

4. May require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to ~~assure~~ ensure that the applicant will comply with all requirements under the IRC, this chapter, and the binding commitment (including any requirement to conform to all of the representations, commitments, and information contained in the application for which points were assigned pursuant to this section).

Upon satisfaction of all such requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

N. If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter, and the terms of any

binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in ~~the preceding paragraph~~ subsection M of this section, nor to relieve the applicant from any other requirements ~~hereunder~~ for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided ~~above~~ in subsection M of this section with respect to reservations.

O. The executive director may:

1. Require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as ~~he~~ the executive director shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment, and any contractual agreements between the applicant and the authority.

2. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development that were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment:

a. Terminate the reservation of such credits and draw on any good faith deposit~~,~~; or

b. Substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development.

If, in lieu of or in addition to ~~the foregoing~~ this determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, ~~he~~ the executive director may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

3. Establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as ~~he~~ the executive director shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant ~~thereto~~ to such applications.

P. Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits ~~therefor~~ as presented in the application shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment, and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect ~~thereto~~ to such credits. If such changes are made without the prior written approval of the executive director, ~~he~~ the executive director may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect ~~thereto~~ to such credits, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or perform any combination of ~~the foregoing~~ such remedies.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, ~~he~~ the executive director may reserve, allocate or carry over, as applicable, such credits in such manner as ~~he~~ the executive director shall determine consistent with the requirements of the IRC and this chapter.

Q. The executive director may make a reservation of credits:

1. In an accessible supportive housing pool (ASH pool) to any applicant that proposes a nonelderly development that (i) will be assisted by a documented and binding form of rental assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for at least 15% of the units in the development; (iv) has budgeted for the ongoing provision of services; (v) maintains dedicated services staff; and (vi) has a principal with a demonstrated capacity for supportive housing evidenced by prior services funding contracts, a certification from a certifying body acceptable to the executive director or other preapproved source~~;~~, and ~~(v) for which~~ the ~~applicant has completed~~ applicant's completion on behalf of the principal of the authority's supportive housing certification form. ~~Any such~~ ASH pool reservations made in any calendar year may be up to 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. If the ASH pool application deadline is simultaneous with the deadline for the other pools, the unsuccessful applicants in the ASH pool will also compete in the applicable geographic pool.

2. To developments having unique and innovative development concepts, such as innovative construction

methods or materials; unique or innovative tenant services, tenant selection criteria, or eviction policies; or otherwise innovatively contributing to the authority's identified mission and goals. The applications for such credits must meet all the requirements of the IRC and threshold score. The authority shall also establish a review committee comprised of external real estate professionals, academic leaders, and other individuals knowledgeable of real estate development, design, construction, accessibility, energy efficiency, or management to assist the authority in determining and ranking the innovative nature of the development. Such reservations will be for credits from the next year's per capita credits and may not exceed 12.5% of the credits expected to be available for that following calendar year. Such reservations shall not be considered in the executive director's determination that no more than 50% of the next calendar year's per capita credits have been pre-reserved.

3. In a preservation pool to low-income housing tax credit developments seeking credit resyndication that are currently operating within an extended compliance period. Prior to application, applicants must have completed more than 20 years of compliance under the existing extended use agreement issued in connection with the respective development's most recent credit allocation, and the credit investor or syndicator in place at the time of the allocation must have transferred all of its ownership interest in the development. Applicants awarded credits from this pool shall be subject to additional rent increase limits, as determined by the authority in the best interest of the plan, for a period of five years beginning on the first day of the new credit period. Preservation pool reservations made in any calendar year may be up to 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. Unsuccessful applicants in the preservation pool will also compete in the applicable geographic pool.

13VAC10-180-70. Allocation of credits.

A. At such time as one or more of an applicant's buildings or an applicant's development ~~which~~ that has received a reservation of credits is (i) placed in service or satisfies the requirements of § 42(h)(1)(E) of the IRC and (ii) meets all of the preallocation requirements of this chapter, the binding commitment, and any other applicable contractual agreements between the applicant and the authority, the applicant shall so advise the authority, shall request the allocation of all of the credits so reserved or such portion ~~thereof~~ of the credits reserved to which the applicant's buildings or development is then entitled under the IRC, this chapter, the binding commitment, and the ~~aforementioned~~ contractual agreements, if any, and shall submit such application, certifications (including an independent certified public accountant's certification of applicant's actual cost, and an independent certified public accountant's certification of the general contractor's actual costs), legal and accounting opinions, evidence as to costs, a breakdown of sources and uses of funds, pro forma financial statements setting forth anticipated cash flows, and other documentation as the executive director shall require in order to determine that the applicant's buildings or development is entitled to such credits as described ~~above~~ in this subsection. The applicant shall certify to the authority the full extent of all federal, state, and local subsidies ~~which~~ that apply (or ~~which~~ that the applicant expects to apply) with respect to the buildings or the development.

B. As of the date of allocation of credits to any building or development and as of the date such building or such development is placed in service, the executive director shall determine the amount of credits to be necessary for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period under the IRC. In making such determinations, the executive director shall consider the sources and uses of the funds, the available federal, state, and local subsidies committed to the development, and the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. ~~He~~ The executive director shall also examine the development's costs, including ~~developer's~~ developer fees and other amounts in the application, for reasonableness, and, if ~~he~~ the executive director determines that such costs or other amounts are unreasonably high, ~~he~~ the executive director shall reduce ~~them~~ the costs to amounts that ~~he~~ the executive director determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses, and debt service for the credit period. The executive director may establish such criteria and assumptions as ~~he~~ the executive director shall then deem reasonable (or ~~he~~ the executive director may apply the criteria and assumptions ~~he~~ the executive director established pursuant to 13VAC10-180-60) for the purpose of making such determinations, including criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income, and, in the case of applications without firm financing commitments (as defined in 13VAC10-180-60) at fixed interest rates, debt service on the proposed mortgage loan. The amount of credits allocated to the applicant shall in no event exceed such amount as ~~so~~ determined by the executive director by more than a de minimis amount of ~~not more than~~ $100.

C. Prior to allocating credits to an applicant, the executive director shall require the applicant to execute and deliver to the authority a valid IRS Form 8821, Tax Information Authorization, naming the authority as the appointee to receive tax information. The Forms 8821 of all applicants will be forwarded to the IRS, which will authorize the IRS to furnish the authority with all IRS information pertaining to the applicants' developments, including audit findings and assessments.

D. Prior to allocating the credits to an applicant, the executive director shall require the applicant to execute, deliver, and record among the land records of the appropriate jurisdiction ~~or jurisdictions~~ an extended low-income housing commitment in accordance with the requirements of the IRC. Such commitment shall require that the applicable fraction (as defined in the IRC) for the buildings for each taxable year in the extended use period (as defined in the IRC) will not be less than the applicable fraction specified in such commitment and ~~which~~ that prohibits both (i) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of a low-income unit and (ii) any increase in the gross rent with respect to such unit not otherwise permitted under the IRC. The amount of credits allocated to any building shall not exceed the amount necessary to support such applicable fraction, including any increase ~~thereto~~ in credits pursuant to § 42(f)(3) of the IRC reflected in an amendment to such commitment. The commitment shall provide that the extended use period will end on the day 15 years after the close of the compliance period (as defined in the IRC) or on the last day of any longer period of time specified in the application during which low-income housing units in the development will be occupied by tenants with incomes not in excess of the applicable income limitations; provided, however, that the extended use period for any building shall be subject to termination, in accordance with the IRC, on the date the building is acquired by foreclosure or instrument in lieu ~~thereof~~ of foreclosure unless a determination is made pursuant to the IRC that such acquisition is part of an agreement with the current owner ~~thereof~~, a purpose of which is to terminate such period. In addition, such termination shall not be construed to permit, prior to close of the three-year period following such termination, the eviction or termination of tenancy of any existing tenant of any low-income housing unit other than for good cause or any increase in the gross rents over the maximum rent levels then permitted by the IRC with respect to such low-income housing units. Such commitment shall contain a waiver of the applicant's right to pursue a qualified contract. Such commitment shall also contain such other terms and conditions as the executive director may deem necessary or appropriate to ~~assure~~ ensure that the applicant and the development conform to the representations, commitments, and information in the application and comply with the requirements of the IRC and this chapter. Such commitment shall be a restrictive covenant on the buildings binding on all successors to the applicant and shall be enforceable in any state court of competent jurisdiction by individuals (whether prospective, present, or former occupants) who meet the applicable income limitations under the IRC.

E. In accordance with the IRC, the executive director may, for any calendar year during the project period (as defined in the IRC), allocate credits to a development, as a whole, ~~which~~ that contains more than one building. Such an allocation shall apply only to buildings placed in service during or prior to the end of the second calendar year after the calendar year in which such allocation is made, and the portion of such allocation allocated to any building shall be specified not later than the close of the calendar year in which such building is placed in service. Any such allocation shall be subject to satisfaction of all requirements under the IRC.

F. If the executive director determines that the buildings or development is so entitled to the credits, ~~he~~ the executive director shall allocate the credits (or such portion ~~thereof~~ of credits to which ~~he~~ the executive director deems the buildings or the development to be entitled) to the applicant's qualified low-income buildings or to the applicant's development in accordance with the requirements of the IRC. If the executive director shall determine that the applicant's buildings or development is not so entitled to the credits, ~~he~~ the executive director shall not allocate the credits and shall ~~so~~ notify the applicant within a reasonable time after such determination is made. In the event that any such applicant shall not request an allocation of all of its reserved credits or whose buildings or development shall be deemed by the executive director not to be entitled to any or all of its reserved credits, the executive director may reserve or allocate, as applicable, such unallocated credits to the buildings or developments of other qualified applicants at such time ~~or times~~ and in such manner as ~~he~~ the executive director shall determine consistent with the requirements of the IRC and this chapter.

G. The executive director may prescribe (i) such deadlines for submissions of requests for allocations of credits for any calendar year as ~~he~~ the executive director deems necessary or desirable to allow sufficient processing time for the authority to make such allocations within such calendar year and (ii) such deadlines for satisfaction of all preallocation requirements of the IRC the binding commitment, any contractual agreements between the authority and the applicant and this chapter as ~~he~~ the executive director deems necessary or desirable to allow the authority sufficient time to allocate to other eligible applicants any credits for which the applicants fail to satisfy such requirements.

H. The executive director may make the allocation of credits subject to such terms as ~~he~~ the executive director may deem necessary or appropriate to ~~assure~~ ensure that the applicant and the development comply with the requirements of the IRC.

I. The executive director may also ~~(~~, to the extent not already required under 13VAC10-180-60~~)~~, require that all applicants make such good faith deposits or execute such contractual agreements with the authority as the executive director may require with respect to the credits~~,~~ (i) to ensure that the buildings or development are completed in accordance with the binding commitment, including all of the representations made in the application for which points were assigned pursuant to 13VAC10-180-60, and (ii) only in the case of any buildings or development ~~which~~ that are to receive an allocation of credits ~~hereunder~~ and ~~which~~ are to be placed in service in any future year, to ~~assure~~ ensure that the buildings or the development will be placed in service as a qualified low-income housing

project (as defined in the IRC) in accordance with the IRC and that the applicant will otherwise comply with all of the requirements under the IRC.

J. In the event that the executive director determines that a development for which an allocation of credits is made shall not become a qualified low-income housing project (as defined in the IRC) within the time period required by the IRC or the terms of the allocation or any contractual agreements between the applicant and the authority, the executive director may terminate the allocation and rescind the credits in accordance with the IRC and, in addition, may draw on any good faith deposit and enforce any of the authority's rights and remedies under any contractual agreement. An allocation of credits to an applicant may also be ~~cancelled~~ canceled with the mutual consent of such applicant and the executive director. Upon the termination or cancellation of any credits, the executive director may reserve, allocate, or carry over, as applicable, such credits in such manner as ~~he~~ the executive director shall determine consistent with the requirements of the IRC and this chapter.

K. An applicant that demonstrates a legitimate change in circumstances or delay beyond ~~their~~ the applicant's reasonable control, as determined by the authority, may return a valid reservation of prior years' tax credits between ~~October~~ September 1 and ~~December 31~~ September 30 and receive ~~a reservation~~ an allocation of the same amount of current or future year tax credits. The authority must determine that the applicant is capable of completing and placing the development in service within the time required by the IRC for such current or future year tax credits. ~~However, none of the principals in the development for which credits are returned and refreshed may be a principal in an application the following calendar year and the applicant must waive the right to a qualified contract, if applicable. The executive director may waive the one-year nonparticipation provision if the executive director determines that the delay in completing the development is materially due to the failure of a governmental entity or agency within a reasonable period of time to take an action necessary for the applicant to complete the development, despite the applicant's good faith best efforts to complete~~ An applicant with a principal that, within three years prior to the current application, received an IRS Form 8609 for placing a separate development in service without returning credits to or requesting additional credits from the issuing housing finance agency will be permitted to increase the amount of developer fee included in the ~~development~~ development's eligible basis by 10%.

VA.R. Doc. No. R25-8075; Filed September 13, 2024, 3:05 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Action Withdrawn

Title of Regulation: **18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-80).**

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

The Board of Dentistry has WITHDRAWN the regulatory action for **18VAC60-21, Regulations Governing the Practice of Dentistry**, which was published as a Notice of Intended Regulatory Action in 34:25 VA.R. 2488 August 6, 2018. The purpose of the action was to replace regulatory provisions specific to the advertising of dental specialties with reference to the statutory language regarding the use of trade names. The action was withdrawn by the board on September 13, 2024. The board will pursue similar amendments via a different regulatory action.

Agency Contact: Jamie Sacksteder, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4581, FAX (804) 698-4266, or email jamie.sacksteder@dhp.virginia.gov.

VA.R. Doc. No. R18-5206; Filed September 13, 2024, 10:03 a.m.

DEPARTMENT OF HEALTH PROFESSIONS

Final Regulation

REGISTRAR'S NOTICE: The Department of Health Professions is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 18 of the Code of Virginia, which exempts regulations for the implementation of the Health Practitioners' Intervention Program, Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 of the Code of Virginia.

Title of Regulation: **18VAC76-10. Regulations Governing the Health Practitioners' Monitoring Program for the Department of Health Professions (amending 18VAC76-10-20, 18VAC76-10-30, 18VAC76-10-40, 18VAC76-10-60, 18VAC76-10-65, 18VAC76-10-80, 18VAC76-10-100; repealing 18VAC76-10-70).**

Statutory Authority: § 54.1-2516 of the Code of Virginia.

Effective Date: November 6, 2024.

Agency Contact: Matthew Novak, Interim Program Manager, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 597-4217, FAX (804) 381-4310, or email matthew.novak@dhp.virginia.gov.

Summary:

As a result of a periodic review, the amendments (i) update language to reflect current procedures of the Health Practitioners' Monitoring Program and (ii) ensure

individuals on the Health Practitioners' Monitoring Program Committee are appropriately credentialed and conflicts of interest are disclosed and appropriately avoided.

18VAC76-10-20. Organization of committee.

A. Members shall be appointed by the director for a term of four years and shall be eligible for reappointment for one additional four-year term. A member who is appointed to fill a vacancy for the remainder of an unexpired term shall be eligible for two full four-year terms. Terms of appointment shall begin on ~~July 1 of each calendar year~~ the first of the month following the appointment. The director shall have authority to remove a member for cause.

B. Members of the committee shall not be current members of a health regulatory board within the department.

C. Members of the committee who are required to be a licensed, certified, or registered practitioner with the Department of Health Professions must be in good standing with the applicable licensing board to serve on the committee. The director shall have the authority to temporarily bar member participation for cause.

D. The committee shall schedule meetings as necessary to conduct its business. Five members shall constitute a quorum. The committee may adopt bylaws to govern its operations as it deems necessary to conduct its business and as consistent with law and regulations.

~~D. Each health regulatory board within the department shall designate, in accordance with subdivision 8 of § 54.1-2400 of the Code of Virginia, a liaison to the committee.~~

18VAC76-10-30. Eligibility.

A. In order to become eligible for the program and to maintain eligibility, an impaired practitioner shall hold a current, active license, certification, a registration issued by a health regulatory board in Virginia, or a multistate licensure privilege, with the exception that an applicant for initial licensure, certification, or registration or for reinstatement shall be eligible for participation for up to one year from the date of receipt of the application by a health regulatory board.

B. Individuals who are practicing exclusively outside of Virginia shall not participate in the program, except as may be required by specific board order or by permission between party states pursuant to ~~the~~:

1. The Audiology and Speech-Language Pathology Interstate Compact (Article 2 (§ 54.1-2606 et seq.) of Chapter 26 of Title 54.1 of the Code of Virginia);

2. The Counseling Compact (§ 54.1-3500.1 of the Code of Virginia);

3. The Nurse Licensure Compact (Article ~~6~~ 6.1 (§ ~~54.1-3030~~ 54.1-3040.1 et seq.) of Chapter 30 of Title 54.1 of the Code of Virginia);

4. The Occupational Therapy Interjurisdictional Licensure Compact (§ 54.1-2956.7:1 of the Code of Virginia);

5. The Physical Therapy Licensure Compact (Article 2 (§ 54.1-3485 et seq.) of Chapter 34.1 of Title 54.1 of the Code of Virginia); or

6. The Psychology Interjurisdictional Compact (§ 54.1-3606.2 of the Code of Virginia).

C. The practitioner shall sign a participation contract and a recovery monitoring contract with the committee. Failure to adhere to the terms of either contract may subject the practitioner to dismissal from the program.

D. A practitioner who has been previously ~~terminated~~ dismissed for noncompliance from this or any other state-sponsored monitoring program may be considered eligible at the discretion of the committee or its designee.

~~D. The practitioner shall sign a participation contract with the committee. Failure to adhere to the terms of the contract may subject the practitioner to termination from the program.~~

E. The committee or its designee may deem a practitioner who has been repeatedly dismissed for noncompliance from the program unable to be monitored and the practitioner as permanently ineligible for re-entry into the program.

18VAC76-10-40. Eligibility for stayed disciplinary action.

A. The committee or its designee shall consult with the relevant health regulatory board liaison for the purpose of determining ~~whether disciplinary action shall be stayed~~ eligibility for a stay of disciplinary action pursuant to § 54.1-2516 C of the Code of Virginia. Such consultation shall occur prior to determination regarding stayed disciplinary action and may include the following:

1. Review of an investigative report that alleges impairment;

2. Implications of the alleged impairment on practice in the profession;

3. Circumstances of the impairment related to a possible violation of laws or regulation; or

4. Any other issues related to disciplinary action or the eligibility, treatment, and recovery of a practitioner.

B. If found ineligible for stayed disciplinary action by the relevant health regulatory board or the committee, the practitioner may remain eligible for participation in the program. If an applicant for the program is not eligible for a stay and evidence of a violation has been reported to the committee, the committee shall make a report of the violation to the department.

~~B. Prior to making a decision on stayed disciplinary action, the committee or its designee shall review any applicable notices or orders and shall consult with the relevant board on~~

~~any pending investigations. The relevant board shall have final authority in the granting of a stay of disciplinary action.~~

C. Disciplinary action may be initiated by the ~~appropriate~~ relevant health regulatory board upon receipt of investigative information leading to a determination of probable cause that impairment constitutes a danger to patients or clients, or upon a determination that the decision for stayed disciplinary action is not consistent with provisions for a stay pursuant to § 54.1-2516 C of the Code of Virginia.

D. The committee or its designee shall advise the relevant health regulatory board that a participant is noncompliant and may no longer be eligible for a stay of disciplinary action.

E. The relevant health regulatory board shall have final authority to grant a stay of disciplinary action.

18VAC76-10-60. Recovery monitoring contract.

The recovery monitoring contract between the committee and the practitioner shall include:

1. Length of contract;

2. Type, frequency, and conditions of drug screens;

3. Type and frequency of self-help meetings;

4. Stipulations for self-reporting;

5. Quarterly reports from employers, peers, or peer assistance programs;

6. Conditions and terms for completion and release from the program; and

7. Any other terms or requirements as may be deemed necessary by the committee.

18VAC76-10-65. Authority of the chairperson of the committee.

A. The chairperson may act on behalf of the committee when a scheduled meeting is canceled due to failure to convene a quorum.

B. The chairperson may act on behalf of the committee to authorize ~~an urgent dismissal action~~ the following actions outside of a scheduled meeting:

1. Urgent dismissal;

2. Resignation - case closure; and

3. Ineligible - case closure.

18VAC76-10-70. ~~Procedures for consultation with health regulatory boards.~~ (Repealed.)

~~A. The committee or its designee shall consult with the relevant health regulatory board prior to making a determination on stayed disciplinary action; such consultation may include the following:~~

~~1. Eligibility of a practitioner for stayed disciplinary action;~~

~~2. The implications of the impairment on practice in the profession;~~

~~3. The circumstances of the impairment related to a possible violation of laws or regulation; or~~

~~4. Any other issues related to disciplinary action or the eligibility, treatment, and recovery of a practitioner.~~

~~B. The committee, following consultation with and briefing by the program manager, shall advise the relevant board that a participant is noncompliant and may no longer be eligible for a stay.~~

18VAC76-10-80. ~~Procedures for exchange~~ Disclosure of information.

~~A.~~ All disclosure of information shall be consistent with subsections B and C of § 54.1-2517 of the Code of Virginia and with the Substance Abuse Confidentiality Regulations contained in 42 CFR Part 2 when applicable.

~~B. Reporting requirement to health regulatory boards.~~

~~1. Upon receipt of an investigative report which alleges impairment, a health regulatory board shall request and the committee shall report if the practitioner has been found eligible for stayed disciplinary action.~~

~~2. Upon a determination by the committee that a practitioner has successfully completed the program, the committee shall report such completion to the respective health regulatory board if the committee has previously received an inquiry from that board regarding the practitioner's participation.~~

~~C. Reporting requirements to the director.~~

~~1. The contractor or contractors shall report at least annually to the director and the committee on statistics which indicate the general performance of the program to include information and format stipulated in the contract.~~

~~2. At no time shall the report disclose the names of practitioners enrolled in the program.~~

~~D. Records for the program shall be retained by the contractor or contractors pursuant to terms of the contract.~~

18VAC76-10-100. Conflicts of interests.

A. The committee, contractor, or employees and agents of the contractor who refer practitioners for treatment shall not refer a practitioner to a treatment facility where the contractor, employees, or agents possess an investment interest, as defined in Chapter 24.1 (§ 54.1-2410 et seq.) of Title 54.1 of the Code of Virginia, unless it is an investment interest defined in § 54.1-2411 D of the Code of Virginia.

B. Likewise, the committee, the contractor, or its employees and agents as noted in subsection A of this section shall not have an investment interest in any laboratory ~~which~~ that practitioners will be mandated to use for testing during the period of their contract.

C. The contractor shall offer multiple treatment options to any practitioner accepted into the program if treatment is a condition of participation unless the committee authorizes an exception.

D. A committee member who is providing treatment to a practitioner in the program shall disqualify himself from any decision related to such practitioner.

E. Any committee member who can or may be able to identify a practitioner in the program after the review of committee case reports shall recuse himself from any decision related to such practitioner. Committee members shall not attend committee meetings when such identified practitioner's case will be discussed.

VA.R. Doc. No. R24-7745; Filed September 4, 2024, 1:18 p.m.

BOARD OF MEDICINE

Final Regulation

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

Title of Regulation: **18VAC85-21. Regulations Governing Prescribing of Opioids and Buprenorphine (adding 18VAC85-21-22).**

Statutory Authority: §§ 54.1-2400 and 54.1-2928.2 of the Code of Virginia.

Effective Date: November 6, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 915-0382, or email erin.barrett@dhp.virginia.gov.

Summary:

Pursuant to Chapter 448 of the 2024 Acts of Assembly, the amendments require specific patient counseling prior to initiation of opioid treatment regardless of the length of treatment.

18VAC85-21-22. Patient counseling.

A. Prior to issuing a prescription for an opioid to treat acute or chronic pain, practitioners must provide patient counseling on the following:

1. The risks of addiction and overdose associated with opioid drugs and the dangers of taking opioid drugs with alcohol, benzodiazepines, and other central nervous system depressants;

2. The reasons why the prescription is necessary;

3. Alternative treatments that may be available; and

4. Risks associated with the use of the drugs being prescribed, specifically that opioids are highly addictive even when taken as prescribed, that there is a risk of developing a physical or psychological dependence on the controlled dangerous substance, and that the risks of taking more opioids than prescribed or mixing sedatives, benzodiazepines, or alcohol with opioids can result in fatal respiratory depression.

Such patient counseling shall be documented in the patient's medical record.

B. Patient counseling as described in subsection A of this section shall not be a requirement for patients who are (i) in active treatment for cancer, (ii) receiving hospice care from a licensed hospice or palliative care, (iii) residents of a long-term care facility, (iv) being prescribed an opioid in the course of treatment for substance abuse or opioid dependence, or (v) receiving treatment for sickle cell disease.

VA.R. Doc. No. R25-7888; Filed September 4, 2024, 1:00 p.m.

Final Regulation

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

Title of Regulation: **18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-101).**

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

Effective Date: November 6, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 915-0382, or email erin.barrett@dhp.virginia.gov.

Summary:

Pursuant to Chapter 116 of the 2024 Acts of Assembly, the amendments provide an exception to maintenance of a written practice agreement for physician assistants employed by (i) a hospital as defined by § 32.1-123 of the Code of Virginia, (ii) a state facility as defined by § 37.2-100 of the Code of Virginia, or (iii) a federally qualified health center designated by the Centers for Medicare and Medicaid Services.

18VAC85-50-101. Requirements for a practice agreement.

A. Prior to initiation of practice, a physician assistant and one or more patient care team physicians or podiatrists shall enter into a written or electronic practice agreement that spells out the roles and functions of the assistant and is consistent with provisions of § 54.1-2952 of the Code of Virginia.

1. Any such practice agreement shall take into account such factors as the physician assistant's level of competence, the number of patients, the types of illness treated by the physicians or podiatrists, the nature of the treatment, special procedures, and the nature of the physicians' or podiatrists' availability in ensuring direct physician or podiatrist involvement at an early stage and regularly thereafter.

2. The practice agreement shall also provide an evaluation process for the physician assistant's performance, including a requirement specifying the time period, proportionate to the acuity of care and practice setting, within which the physicians or podiatrists shall review the record of services rendered by the physician assistant.

3. The practice agreement may include requirements for periodic site visits by licensees who supervise and direct the patient care team physicians or podiatrists to collaborate and consult with physician assistants who provide services at a location other than where the physicians or podiatrists regularly practice.

B. The board may require information regarding the degree of collaboration and consultation by the patient care team physicians or podiatrists. The board may also require a patient care team physician or podiatrist to document the physician assistant's competence in performing such tasks.

C. If the role of the physician assistant includes prescribing drugs and devices, the written practice agreement shall include those schedules and categories of drugs and devices that are within the scope of practice and proficiency of the patient care team physicians or podiatrists.

D. If the initial practice agreement did not include prescriptive authority, there shall be an addendum to the practice agreement for prescriptive authority.

E. If there are any changes in consultation and collaboration, authorization, or scope of practice, a revised practice agreement shall be entered into at the time of the change.

F. Physician assistants appointed as medical examiners pursuant to § 32.1-282 of the Code of Virginia may practice without a written or electronic practice agreement.

G. Physician assistants employed by (i) a hospital as defined by § 32.1-123 of the Code of Virginia, (ii) a state facility as defined by § 37.2-100 of the Code of Virginia, or (iii) a federally qualified health center designated by the Centers for Medicare and Medicaid Services may practice without a written or electronic practice agreement consistent with the requirements contained in § 54.1-2951.1 E of the Code of Virginia.

VA.R. Doc. No. R25-7925; Filed September 4, 2024, 1:11 p.m.

BOARD OF NURSING

Final Regulation

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

Title of Regulation: **18VAC90-30. Regulations Governing the Licensure of Advanced Practice Registered Nurses (amending 18VAC90-30-86).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Effective Date: November 6, 2024.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

Pursuant to Chapter 404 of the 2024 Acts of Assembly, the amendments reduce required practice from five years to three prior to autonomous practice.

18VAC90-30-86. Autonomous practice for advanced practice registered nurses other than nurse midwives, certified registered nurse anesthetists, or clinical nurse specialists.

A. An advanced practice registered nurse with a current, unrestricted license, other than someone licensed in the category of certified nurse midwife, certified registered nurse anesthetist, or clinical nurse specialist, may qualify for autonomous practice by completion of the equivalent of ~~two years of full-time clinical experience as an advanced practice registered nurse until July 1, 2022. Thereafter, the requirement shall be the equivalent of five~~ three years of full-time clinical experience to qualify for autonomous practice.

1. Full-time clinical experience shall be defined as 1,800 hours per year.

2. Clinical experience shall be defined as the postgraduate delivery of health care directly to patients pursuant to a practice agreement with a patient care team physician.

B. Qualification for authorization for autonomous practice shall be determined upon submission of a fee as specified in 18VAC90-30-50 and an attestation acceptable to the boards.

The attestation shall be signed by the advanced practice registered nurse and the advanced practice registered nurse's patient care team physician stating that:

1. The patient care team physician served as a patient care team physician on a patient care team with the advanced practice registered nurse pursuant to a practice agreement meeting the requirements of this chapter and §§ 54.1-2957 and 54.1-2957.01 of the Code of Virginia;

2. While a party to such practice agreement, the patient care team physician routinely practiced with a patient population and in a practice area included within the category, as specified in 18VAC90-30-70, for which the advanced practice registered nurse was certified and licensed; and

3. The period of time and hours of practice during which the patient care team physician practiced with the advanced practice registered nurse under such a practice agreement.

C. The advanced practice registered nurse may submit attestations from more than one patient care team physician with whom the advanced practice registered nurse practiced during the equivalent of ~~five~~ three years of practice, but all attestations shall be submitted to the boards at the same time.

D. If an advanced practice registered nurse is licensed and certified in more than one category as specified in 18VAC90-30-70, a separate fee and attestation that meets the requirements of subsection B of this section shall be submitted for each category. If the hours of practice are applicable to the patient population and in practice areas included within each of the categories of licensure and certification, those hours may be counted toward a second attestation.

E. In the event a patient care team physician has died, become disabled, retired, or relocated to another state, or in the event of any other circumstance that inhibits the ability of the advanced practice registered nurse from obtaining an attestation as specified in subsection B of this section, the advanced practice registered nurse may submit other evidence of meeting the qualifications for autonomous practice along with an attestation signed by the advanced practice registered nurse. Other evidence may include employment records, military service, Medicare or Medicaid reimbursement records, or other similar records that verify full-time clinical practice in the role of an advanced practice registered nurse in the category for which the advanced practice registered nurse is licensed and certified. The burden shall be on the advanced practice registered nurse to provide sufficient evidence to support the advanced practice registered nurse's inability to obtain an attestation from a patient care team physician.

F. An advanced practice registered nurse to whom a license is issued by endorsement may engage in autonomous practice if such application includes an attestation acceptable to the boards that the advanced practice registered nurse has completed the equivalent of ~~five~~ three years of full-time clinical experience as specified in subsection A of this section and in accordance with the laws of the state in which the advanced practice registered nurse was previously licensed.

G. An advanced practice registered nurse authorized to practice autonomously shall:

1. Only practice within the scope of the advanced practice registered nurse's clinical and professional training and limits of the advanced practice registered nurse's knowledge and experience and consistent with the applicable standards of care;

2. Consult and collaborate with other health care providers based on the clinical conditions of the patient to whom health care is provided; and

3. Establish a plan for referral of complex medical cases and emergencies to physicians or other appropriate health care providers.

VA.R. Doc. No. R25-7924; Filed September 4, 2024, 1:03 p.m.

Final Regulation

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

Title of Regulation: **18VAC90-40. Regulations for Prescriptive Authority for Advanced Practice Registered Nurses (adding 18VAC90-40-21).**

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

Effective Date: November 6, 2024.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

Pursuant to Chapter 448 of the 2024 Acts of Assembly, the amendments require specific patient counseling prior to initiation of opioid treatment regardless of the length of treatment.

18VAC90-40-21. Patient counseling for opioids.

A. Prior to issuing a prescription for an opioid to treat acute or chronic pain, practitioners must provide patient counseling on the following:

1. The risks of addiction and overdose associated with opioid drugs and the dangers of taking opioid drugs with alcohol, benzodiazepines, and other central nervous system depressants;

2. The reasons why the prescription is necessary;

3. Alternative treatments that may be available; and

4. Risks associated with the use of the drugs being prescribed, specifically that opioids are highly addictive, even when taken as prescribed, that there is a risk of developing a physical or psychological dependence on the controlled dangerous substance, and that the risks of taking more opioids than prescribed or mixing sedatives, benzodiazepines, or alcohol with opioids can result in fatal respiratory depression.

Such patient counseling shall be documented in the patient's medical record.

B. Patient counseling as described in subsection A of this section shall not be a requirement for patients who are (i) in active treatment for cancer, (ii) receiving hospice care from a licensed hospice or palliative care, (iii) residents of a long-term care facility, (iv) being prescribed an opioid in the course of treatment for substance abuse or opioid dependence, or (v) receiving treatment for sickle cell disease.

VA.R. Doc. No. R25-7889; Filed September 4, 2024, 1:06 p.m.

BOARD OF OPTOMETRY

Final Regulation

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

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (adding 18VAC105-20-51).**

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

Effective Date: November 6, 2024.

Agency Contact: Kelli Moss, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4077, FAX (804) 793-9145, or email kelli.moss@dhp.virginia.gov.

Summary:

Pursuant to Chapter 448 of the 2024 Acts of Assembly, the amendments require specific patient counseling prior to initiation of opioid treatment regardless of the length of treatment.

18VAC105-20-51. Patient counseling for opioids.

A. Prior to issuing a prescription for an opioid to treat acute or chronic pain, practitioners must provide patient counseling on the following:

1. The risks of addiction and overdose associated with opioid drugs and the dangers of taking opioid drugs with alcohol, benzodiazepines, and other central nervous system depressants;

2. The reasons why the prescription is necessary;

3. Alternative treatments that may be available; and

4. Risks associated with the use of the drugs being prescribed, specifically that opioids are highly addictive, even when taken as prescribed, that there is a risk of developing a physical or psychological dependence on the controlled dangerous substance, and that the risks of taking more opioids than prescribed or mixing sedatives, benzodiazepines, or alcohol with opioids can result in fatal respiratory depression.

Such patient counseling shall be documented in the patient's medical record.

B. Patient counseling shall not be a requirement for patients who are (i) in active treatment for cancer, (ii) receiving hospice care from a licensed hospice or palliative care, (iii) residents of a long-term care facility, (iv) being prescribed an opioid in the course of treatment for substance abuse or opioid dependence, or (v) receiving treatment for sickle cell disease.

VA.R. Doc. No. R25-7887; Filed September 4, 2024, 1:13 p.m.

BOARD OF PHARMACY

Forms

Title of Regulation: **18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, Third-Party Logistics Providers, and Warehousers.**

Agency Contact: Erin Barrett, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (18VAC110-50)

~~Application for License as a Wholesale Distributor (rev. 11/2021)~~

Application for Permit as a Wholesale Distributor (rev. 9/2024)

Application for a Permit as a Restricted Manufacturer (rev. 10/2020)

Application for a Permit as a Non-Restricted Manufacturer (rev. 10/2020)

Application for Registration as a Nonresident Manufacturer (rev. 10/2020)

Application for a Permit as a Warehouser (rev. 10/2020)

Application for Registration as a Nonresident Warehouser (rev. 10/2020)

~~Application for License as a Wholesale Distributor (rev. 10/2020)~~

~~Application for Non-Resident Wholesale Distributor Registration (rev. 11/2021)~~

~~Application for a Non-Resident Third-Party Logistics Provider Registration (rev. 11/2021)~~

~~Application for a Permit as a Third-Party Logistics Provider (rev. 11/2021)~~

Application for Nonresident Wholesale Distributor Registration (rev. 8/2024)

Application for Third-Party Logistics Provider Permit (rev. 9/2024)

Application for a Nonresident Third-Party Logistics Provider Registration (rev. 8/2024)

Application for a ~~Re-Inspection~~ Reinspection of Facility (rev. 10/2020)

VA.R. Doc. No. R25-8069; Filed September 11, 2024, 9:18 a.m.

BOARD OF PHYSICAL THERAPY

Forms

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy.**

Agency Contact: Erin Barrett, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (18VAC112-20)

Application for Licensure by Examination to Practice Physical Therapy (rev. 8/2023)

Application for Licensure by Endorsement to Practice Physical Therapy (rev. 8/2023)

Application for Reinstatement to Practice Physical Therapy (rev. 8/2023)

~~Application for Reinstatement after Disciplinary Action to Practice Physical Therapy (rev. 8/2023)~~

Application for Reinstatement after Disciplinary Action (rev. 9/2024)

Application for Traineeship to Practice Physical Therapy Statement of Authorization (rev. 8/2023)

Application for Unlicensed Graduate Traineeship to Practice Physical Therapy Statement of Authorization (rev. 8/2023)

Completion Form for 320-hour Traineeship to Practice Physical Therapy (rev. 8/2023)

Verification of Physical Therapy Education for Graduates of Approved Programs Only (rev. 8/2023)

Continued Competency Activity and Assessment Form (rev. 8/2023)

Continuing Education (CE) Credit Form for Volunteer Practice (rev. 8/2023)

Application for Direct Access Certification (rev. 8/2023)

Direct Access Patient Attestation and Medical Release Form (rev. 7/2023)

Physical Therapy Name/Address Change Form (rev. 8/2023)

Request for Verification of a Virginia Physical Therapy License (rev. 8/2023)

Application for Reactivation (Inactive to Active) to Practice Physical Therapy (rev. 8/2023)

Out-of-State Practitioner Reporting Form (rev. 7/2023)

VA.R. Doc. No. R25-8076; Filed September 13, 2024, 11:45 a.m.

BOARD OF COUNSELING

Emergency Regulation

Title of Regulation: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-10, 18VAC115-20-20, 18VAC115-20-100, 18VAC115-20-130, 18VAC115-20-140, 18VAC115-20-150; adding 18VAC115-20-41).**

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

Effective Dates: September 9, 2024, through March 8, 2026.

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

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.

The amendments implement the provisions of Chapters 684 and 685 of the 2023 Acts of Assembly, which enacts Virginia's entry into the Counseling Compact. The amendments include (i) establishing related fees, practice privileges, and renewal of practice privileges and (ii) making technical changes to definitions consistent with the compact and to regulatory text to incorporate individuals practicing in Virginia under a compact privilege into disciplinary and practice provisions.

18VAC115-20-10. Definitions.

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

"Board"

"Counseling"

"Professional counselor"

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

"Ancillary counseling services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a professional counselor.

"CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.

"Candidate for licensure" means a person who has satisfactorily completed all educational and experience requirements for licensure and has been deemed eligible by the board to sit for its examinations.

"Clinical counseling services" means activities such as assessment, diagnosis, treatment planning, and treatment implementation.

"Compact" means the Counseling Compact.

"Compact privilege" means a legal authorization, which is equivalent to a license, permitting the practice of professional counseling in a remote state.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Conversion therapy" means any practice or treatment as defined in § 54.1-2409.5 A of the Code of Virginia.

"CORE" means Council on Rehabilitation Education.

"Counseling Compact Commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.

"Exempt setting" means an agency or institution in which licensure is not required to engage in the practice of counseling according to the conditions set forth in § 54.1-3501 of the Code of Virginia.

"Face-to-face" means the in-person delivery of clinical counseling services for a client.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"Home state" means the member state of the compact that is the licensee's primary state of residence.

"Internship" means a formal academic course from a regionally accredited college or university in which supervised, practical experience is obtained in a clinical setting in the application of counseling principles, methods, and techniques.

"Jurisdiction" means a state, territory, district, province, or country that has granted a professional certificate or license to practice a profession, use a professional title, or hold oneself out as a practitioner of that profession.

"Member state" means a state that has enacted the compact.

"Nonexempt setting" means a setting that does not meet the conditions of exemption from the requirements of licensure to engage in the practice of counseling as set forth in § 54.1-3501 of the Code of Virginia.

"Practitioner" means an individual who holds a license to practice professional counseling, license to practice as a resident in counseling, or a compact privilege to practice professional counseling in Virginia.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the U.S. Secretary of Education responsible for accrediting senior postsecondary institutions.

"Remote state" means a member state of the compact other than the home state where the licensee is exercising or seeking to exercise the privilege to practice.

"Residency" means a postgraduate, supervised, clinical experience.

"Resident" means an individual who has a supervisory contract and has been issued a temporary license by the board to provide clinical services in professional counseling under supervision.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual or

group consultation, guidance, and instruction that is specific to the clinical counseling services being performed with respect to the clinical skills and competencies of the person supervised.

"Supervisory contract" means an agreement that outlines the expectations and responsibilities of the supervisor and resident in accordance with regulations of the board.

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

A. The board has established the following fees applicable to licensure as a professional counselor or a resident in counseling:

Initial licensure by examination: Application processing and initial licensure as a professional counselor	$175
Initial licensure by endorsement: Application processing and initial licensure as a professional counselor	$175
Application for initial compact privilege	$50
Annual renewal of compact privilege	$50
Application and initial licensure as a resident in counseling	$65
Pre-review of education only	$75
Duplicate license	$10
Verification of licensure to another jurisdiction	$30
Active annual license renewal for a professional counselor	$130
Inactive annual license renewal for a professional counselor	$65
Annual renewal for a resident in counseling	$30
Late renewal for a professional counselor	$45
Late renewal for a resident in counseling	$10
Reinstatement of a lapsed license for a professional counselor	$200
Reinstatement following revocation or suspension	$600
Replacement of or additional wall certificate	$25
Returned check or dishonored credit or debit card	$50

B. All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

18VAC115-20-41. Compact privilege to practice professional counseling.

To obtain a compact privilege to practice professional counseling in Virginia, a licensed professional counselor in a member state shall comply with the rules adopted by the Counseling Compact Commission in effect at the time of application.

18VAC115-20-100. Annual renewal of licensure or compact privilege.

A. Every licensed professional counselor who intends to continue an active practice shall submit to the board on or before June 30 of each year:

1. A completed form for renewal of the license on which the licensee attests to compliance with the continuing competency requirements prescribed in this chapter; and

2. The renewal fee prescribed in 18VAC115-20-20.

B. A licensed professional counselor who wishes to place his license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC115-20-20. No person shall practice counseling in Virginia unless he holds a current active license. A licensee who has placed himself in inactive status may become active by fulfilling the reactivation requirements set forth in subsection C of 18VAC115-20-110.

C. For renewal of a resident license in counseling, the following shall apply:

1. A resident license shall expire annually in the month the resident license was initially issued and may be renewed up to five times by submission of the renewal form and payment of the fee prescribed in 18VAC115-20-20.

2. On the annual renewal, the resident shall attest that a supervisory contract is in effect with a board-approved supervisor for each of the locations at which the resident is currently providing clinical counseling services.

3. On the annual renewal, the resident in counseling shall attest to completion of three hours in continuing education courses that emphasize the ethics, standards of practice, or laws governing behavioral science professions in Virginia, offered by an approved provider as set forth in subsection B of 18VAC115-20-106.

D. ~~Licensees~~ In order to renew a compact privilege to practice in Virginia, the compact privilege holder shall comply with the rules adopted by the Counseling Compact Commission in effect at the time of the renewal.

E. Practitioners shall notify the board of a change in the address of record or the public address, if different from the address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the ~~license holder~~ practitioner from the renewal requirement.

~~E.~~ F. Practice with an expired license or compact privilege is prohibited and may constitute grounds for disciplinary action.

18VAC115-20-130. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone, or electronically, these standards shall apply to the practice of counseling.

B. ~~Persons licensed or registered by the board~~ Practitioners shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;

2. Practice only within the boundaries of their competence, based on their education, training, supervised experience, and appropriate professional experience and represent their education, training, and experience accurately to clients;

3. Stay abreast of new counseling information, concepts, applications, and practices that are necessary to providing appropriate, effective professional services;

4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;

5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;

6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;

7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients;

8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;

9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable, and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the U.S. Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature;

13. Advertise professional services fairly and accurately in a manner that is not false, misleading, or deceptive; and

14. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to patient records, ~~persons licensed by the board~~ practitioners shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

2. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release records to others only with the client's expressed written consent or that of the client's legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from the client or the client's legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations; and

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have been transferred to another mental health service provider or given to the client or his legally authorized representative.

D. In regard to dual relationships, ~~persons licensed by the board~~ practitioners shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of romantic relationships or sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a romantic relationship or sexual intimacy. Counselors shall not engage in romantic relationships or sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Counselors who engage in such relationship or intimacy after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of, or participation in sexual behavior or involvement with a counselor does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any romantic relationship or sexual intimacy or establish a counseling or psychotherapeutic relationship with a supervisee or student. Counselors shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. ~~Persons licensed by this board~~ Practitioners shall report to the board known or suspected violations of the laws and regulations governing the practice of professional counseling.

F. ~~Persons licensed by the board~~ Practitioners shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent, or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

18VAC115-20-140. Grounds for revocation, suspension, probation, reprimand, censure, or denial of renewal of license.

A. Action by the board to revoke, suspend, deny issuance or renewal of a license or compact privilege, or take disciplinary action may be taken in accordance with the following:

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

2. Procurement of a license or compact privilege, including submission of an application or supervisory forms, by fraud or misrepresentation;

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

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

5. Performance of functions outside the demonstrable areas of competency;

6. Failure to comply with the continued competency requirements set forth in this chapter;

7. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of counseling, or any part or portion of this chapter; or

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

B. Following the revocation or suspension of a license or compact privilege, the ~~licensee~~ practitioner may petition the board for reinstatement upon good cause shown or as a result of substantial new evidence having been obtained that would alter the determination reached.

18VAC115-20-150. Reinstatement following disciplinary action.

A. Any person whose license or compact privilege has been suspended or who has been denied reinstatement by board order, having met the terms of the order, may submit a new

application and fee for reinstatement of licensure or compact privilege.

B. The board in its discretion may, after an administrative proceeding, grant the reinstatement sought in subsection A of this section.

VA.R. Doc. No. R25-7562; Filed September 4, 2024, 1:35 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

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

Title of Regulation: **22VAC40-73. Standards for Licensed Assisted Living Facilities (amending 22VAC40-73-140).**

Statutory Authority: §§ 63.2-217 and 63.2-1721 of the Code of Virginia.

Effective Date: November 6, 2024.

Agency Contact: Sharon Lindsay, Associate Director, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 972-0676, FAX (804) 726-7132, or email sharon.lindsay@dss.virginia.gov.

Summary:

Pursuant to Chapter 390 of the 2024 Acts of Assembly, the amendments add assisted living facilities to the list of eligible health care employers for which a health care practitioner licensed, certified, or registered in another state or the District of Columbia may temporarily practice for one 90-day period, provided that the practitioner is contracted by or has received an offer of employment in the Commonwealth from the health care employer and when certain other conditions are met.

22VAC40-73-140. Administrator qualifications.

A. The administrator shall be at least 21 years of age.

B. The administrator shall be able to read and write~~,~~ and understand this chapter.

C. The administrator shall be able to perform the duties and carry out the responsibilities required by this chapter.

D. For a facility licensed only for residential living care that does not employ an administrator licensed by the Virginia Board of Long-Term Care Administrators, the administrator shall:

1. Be a high school graduate or shall have a General Education Development (GED) Certificate;

2. (i) Have successfully completed at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education and at least 15 of the 30 credit hours shall be in business or human services or a combination thereof; (ii) have successfully completed a course of study approved by the department that is specific to the administration of an assisted living facility; (iii) have a bachelor's degree from a college or university accredited by an association recognized by the U.S. Secretary of Education; or (iv) be a licensed nurse; and

3. Have at least one year of administrative or supervisory experience in caring for adults in a residential group care facility.

The requirements of this subsection shall not apply to an administrator of an assisted living facility employed prior to February 1, 2018, who met the requirements in effect when employed and who has been continuously employed as an assisted living facility administrator.

E. For a facility licensed for both residential and assisted living care, the administrator shall be ~~licensed~~:

1. Licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators pursuant to Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1 of the Code of Virginia; or

2. Authorized to temporarily practice pursuant to § 54.1-2408.4 of the Code of Virginia.

VA.R. Doc. No. R25-7918; Filed September 6, 2024, 10:06 a.m.

Final Regulation

Title of Regulation: **22VAC40-211. Foster and Adoptive Home Approval Standards for Local Departments of Social Services (adding 22VAC40-211-130).**

Statutory Authority: §§ 63.2-217 and 63.2-319 Code of Virginia.

Effective Date: November 6, 2024.

Agency Contact: C. Garrett Jones, Resource Family Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7527, or email garrett.jones@dss.virginia.gov.

Summary:

Pursuant to Chapter 336 of the 2019 Acts of Assembly, the amendments add new regulatory requirements that a local board of social services and a licensed child-placing agency

(LCPA) provide foster parents with (i) all reasonably ascertainable background, medical, and psychological records of the child prior to placement; (ii) all information relevant to the child's foster care services; and (iii) copies of all documents related to the foster parent, the foster parent's family, and services provided to the foster home on an ongoing basis. Local boards and LCPAs are also required to notify foster parents of court hearings; scheduled meetings; and decisions made by the court, local board, or LCPA concerning the child's foster care service, changes to the child's case plan, or termination of child's placement in a timely manner. The regulation also requires the timely response to requests for information regarding the child's progress after leaving foster care if it is in the child's best interest. The regulation sets forth a dispute resolution process through which a foster parent may contest an alleged violation by the local board or LCPA, including an appeal process for the foster parent.

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

22VAC40-211-130. Foster parent bill of rights and dispute resolution process.

A. In accordance with § 63.2-902 of the Code of Virginia relating to foster care agreements and the rights of foster parents regarding resolution of disputes, each local department of social services shall implement and ensure that all foster parents receive a copy of the Foster Parent Bill of Rights and that a signed copy of receipt is placed in the foster parent's file.

Foster parents shall abide by all responsibilities as set forth in state and federal law, including all responsibilities set forth in this chapter.

In addition to any claim for benefits pursuant to 42 USC § 671 et seq., and pursuant to § 63.2-905 of the Code of Virginia, all foster parents have the following rights regarding collaboration, communication, access, and transparency:

1. To be regarded as the primary caregiver of a child placed in foster care and to be treated with dignity, respect, trust, value, and consideration, including the local department giving due consideration to the foster parent's family values, traditions, and beliefs;

2. To receive copies of all documents related to the foster parent, the foster parent's family, and ongoing services provided to the foster home;

3. To be considered part of the foster care team and to be able to contribute input regarding the child's permanency plan and receive copies of the plan;

4. To be provided all reasonably ascertainable background, medical, and psychological records of the child prior to placement, at the initial placement, or at any time during the placement of a child in foster care;

5. To be provided all information relevant to the child's foster care services as allowed by federal and state law;

6. To be notified of court hearings and scheduled meetings;

7. To be informed of decisions made by the court, local board, or licensed child-placing agency concerning the child's foster care services;

8. To be able to communicate, to the extent permitted under federal and state law, with professionals who work directly with the child in foster care, including therapists, physicians, and teachers;

9. To be informed in a timely manner of changes to the child's case plan or the termination of the child's placement;

10. To be afforded the same rights as outlined in the Foster Care Placement Agreement and the Code of Ethics and Mutual Responsibilities;

11. To be provided with reimbursements for costs associated with foster care services in a timely manner;

12. To be provided with a method to contact the local board or licensed child-placing agency for assistance 24 hours a day and seven days a week; and

13. To receive a timely response from the local department of social services regarding whether or not information may be provided to requests for information regarding the child's progress after leaving foster care.

B. Foster parents have a right to file a complaint regarding alleged violations of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents. When filing such a complaint, foster parents must follow the following steps:

1. The foster parent shall contact the service worker assigned to the foster home within 10 business days and provide a detailed description of the conduct constituting the alleged violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child placing agencies, and the foster parents and attempt to resolve the dispute.

2. The service worker shall respond within five business days and explain any corrective action to be taken in response to the foster parent's complaint.

3. If the foster parent and service worker are unable to resolve the complaint informally, the foster parent may file a written complaint through the dispute resolution process with the local board's foster care supervisor or assigned designee.

a. The written complaint shall include a detailed description of the conduct constituting the alleged violation of the regulations governing collaboration, communication, access, and transparency between the

local boards, the licensed child-placing agencies, and the foster parents and a copy of the service worker's response.

b. The written complaint shall be sent to the supervisor and must be received by the supervisor within 10 business days of the foster parent receiving the service worker's response.

4. The foster care supervisor or assigned designee shall respond to the complaint in writing within five business days setting forth all findings regarding the alleged violation and any corrective action taken.

5. If the foster parent disagrees with the findings or corrective actions proposed by the foster care supervisor or assigned designee, the foster parent may appeal the decision to the local director by filing a written notice of appeal.

a. The notice of appeal shall include a detailed description of the conduct constituting the alleged violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents and a copy of the foster care supervisor or assigned designee's findings or recommendations.

b. The notice of appeal shall be sent to the local director and must be received by the local director within 10 business days of the foster parent receiving the supervisor's response.

6. The local director shall hold a meeting between all parties within seven business days to gather any information necessary to determine (i) the validity of the alleged violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents and (ii) the appropriateness of any recommendations for corrective action made by the family services specialist and foster care supervisor or assigned designee.

7. A summary of the meeting shall be documented in writing by the service worker after approval by the foster care supervisor or assigned designee.

8. Following such meeting and documentation, the local director shall issue to all parties written findings and, when applicable, recommendations for corrective actions.

C. The dispute resolution process set forth in subsection B of this section does not apply to a complaint related to the denial or failure of a local board to act upon an individual's claim for benefits. Complaints related to a claim for benefits shall be appealable pursuant to 42 USC § 671(a)(12) and 22VAC40-201-115.

VA.R. Doc. No. R21-6042; Filed September 6, 2024, 10:05 a.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (http://www.townhall.virginia.gov) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

BOARD OF PHARMACY

Title of Document: Pharmacy Interns as Pharmacy Technicians: Pharmacy Technician Ratio Documentation of Previous Practice.

Public Comment Deadline: November 6, 2024.

Effective Date: November 7, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Aqua Virginia Inc.

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Aqua Virginia Inc. for violations of State Water Control Law at the Lake Monticello wastewater treatment plant in Palmyra, Virginia. The proposed order is available from the DEQ contact listed or at https://www.deq.virginia.gov/permits/public-notices/enforcement-orders. The DEQ contact will accept comments by email or postal mail from October 7, 2024, through November 6, 2024.

Contact Information: John Brandt, Enforcement Manager, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, FAX (804) 698-4178, or email john.brandt@deq.virginia.gov.

Proposed Enforcement Action for Droit LLC and 6800 Scottland Way Self Storage LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Droit LLC and 6800 Scottland Way Self Storage LLC for violations of the State Water Control Law and regulations in Prince George County, Virginia. The proposed order is available from the DEQ contact listed or at https://www.deq.virginia.gov/permits/public-notices/enforcement-orders. The DEQ contact will accept comments by email or postal mail from October 7, 2024, through November 6, 2024.

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

Proposed Enforcement Action for R & R Enterprises LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for R & R Enterprises LLC for violations of the State Water Control Law and regulations in Carroll County, Virginia. The proposed order is available from the DEQ contact listed or at https://www.deq.virginia.gov/permits/public-notices/enforcement-orders. The DEQ contact will accept comments by email or postal mail from October 7, 2024, through November 6, 2024.

Contact Information: Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Public Meeting and Opportunity for Public Comment for a Cleanup Study of Wolf Creek in Washington County

Purpose of Notice: The Department of Environmental Quality (DEQ) seeks public comment on the development of a cleanup study, also known as a total maximum daily load (TDML) report, for Wolf Creek in Washington County, Virginia.

This stream is listed as impaired waters and requires a cleanup study since monitoring data indicates that the creek does not meet Virginia's water quality standards for aquatic life (benthic macroinvertebrates). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law requires DEQ to develop cleanup studies to address pollutants responsible for causing waters to be on Virginia's § 303(d) list of impaired waters. A component of a cleanup study is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Code of Virginia for any future adoption of the WLA into the Water Quality Management Planning Regulation (9VAC25-720) after completion of the study. The adoption of the WLA may require new or additional requirements for entities holding a Virginia Pollutant Discharge Elimination System (VPDES) permit in the Wolf Creek watershed.

At the meeting, DEQ will introduce the community to the process used in Virginia to improve stream water quality and invite the public to participate in the study by attending community engagement meetings or through a TMDL advisory group (TAG). The meeting will consist of a presentation followed by a question-and-answer session.

Cleanup Study Location: The cleanup study addresses the following impaired stream segments: lower mainstem from Town Creek confluence through the Great Knobs, downstream to upper Route 75 bridge (3.33 miles). From upper Route 75 bridge near Abingdon downstream to lower Route 75 bridge near Green Spring (2.93 miles). Lower end of Wolf Creek from lower Route 75 bridge near Green Spring downstream to South Holston Lake backwaters (0.41 miles). Wolf Creek drains most of the Town of Abingdon, Virginia, flows south, and empties into South Holston Lake.

TMDL Advisory Group (TAG): DEQ invites public comment on the establishment of a TAG to assist in development of this cleanup study. A TAG is a standing group of interested parties established by the department for the purpose of advising the department during development of the cleanup study. Any member of the public may attend and observe proceedings. However, only group members who have been invited by the department to serve on the TAG may actively participate in the group's discussions. Persons requesting the department use a TAG or interested in participating should notify the DEQ contact listed by the end of the comment period and provide their name, address, telephone number, email address, and organization represented (if any). If DEQ convenes a TAG, all individuals who wish to participate on the TAG will be

considered on a case-by-case basis. TAG members will be expected to attend all TAG meetings. Notification of the composition of the panel will be sent to all individuals who requested participation.

If DEQ receives no requests to establish a TAG, the department will not establish a standing group but will still solicit public feedback by conducting community engagement meetings during cleanup study development. At these community meetings, which are open to the public and at which any person may participate, DEQ will present its progress on the cleanup study and solicit feedback.

Public Meeting: The first public meeting on the development of the cleanup study will be held at the Virginia Department of Environmental Quality, Abingdon Regional Office, 355-A Deadmore Street, Abingdon, VA 24210 on October 16, 2024, at 6:00 p.m. Please use the front entrance to be checked in. In the event of inclement weather, the meeting will be held on October 23, 2024, at the same time and location.

Public Comment Period: October 16, 2024, to November 15, 2024.

How to Comment: DEQ accepts written comments by email or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization represented (if any), mailing address, and telephone number of the commenter or requester.

Contact Information: Landon Jenkins, TDML Coordinator, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 608-8643, or email landon.jenkins@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Opportunity for Review of Eligibility Manual Draft Transmittal

A draft of Transmittal #DMAS-33, the Virginia Medical Assistance Eligibility Manual, is available at https://dmas.virginia.gov/for-applicants/eligibility-guidance/transmittals/ for public review.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

VIRGINIA CODE COMMISSION
Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 201 North Ninth Street, Fourth Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 D 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.