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# CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2001 VAC Supplement includes final regulations published through *Virginia Register* Volume 17, Issue 11, dated February 12, 2001). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 1. Administration</b>			
1 VAC 17-20-10	Amended	17:24 VA.R. 3556	9/12/01
1 VAC 17-20-40	Amended	17:24 VA.R. 3557	9/12/01
1 VAC 17-20-70	Amended	17:24 VA.R. 3557	9/12/01
1 VAC 17-20-110	Amended	17:24 VA.R. 3557	9/12/01
1 VAC 17-20-180	Amended	17:24 VA.R. 3557	9/12/01
1 VAC 17-20-210	Amended	17:24 VA.R. 3557	9/12/01
1 VAC 17-20-250	Amended	17:24 VA.R. 3558	9/12/01
1 VAC 17-20-270	Amended	17:24 VA.R. 3558	9/12/01
1 VAC 17-20-280	Amended	17:24 VA.R. 3558	9/12/01
1 VAC 17-20-310	Amended	17:24 VA.R. 3558	9/12/01
1 VAC 30-60-10 et seq.	Repealed	17:19 VA.R. 2731	7/4/01
1 VAC 30-70-10 et seq.	Repealed	17:19 VA.R. 2731	7/4/01
<b>Title 2. Agriculture</b>			
2 VAC 15-20-81	Amended	17:14 VA.R. 2179	3/1/01
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 15-20-80	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-20-160	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-40-20	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-40-150	Repealed	17:19 VA.R. 2729	7/4/01
4 VAC 15-40-280	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-50-90	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-90-20	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-90-21	Added	17:19 VA.R. 2729	7/4/01
4 VAC 15-90-70	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-90-80	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-85	Added	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-100	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-110	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-141	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-160	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-170	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-190	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-195	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-200	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-210	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-220	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-240	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-110-75	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-190-60	Added	17:19 VA.R. 2729	7/4/01
4 VAC 15-240-20	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-240-31	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-240-90	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-270-20	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-290-140	Amended	17:19 VA.R. 2729	7/4/01

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-320-100	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 20-40-20	Amended	17:18 VA.R. 2576	5/1/01
4 VAC 20-252-70	Amended	17:12 VA.R. 2024	1/26/01
4 VAC 20-252-90	Amended	17:12 VA.R. 2024	1/26/01
4 VAC 20-252-100	Amended	17:12 VA.R. 2024	1/26/01
4 VAC 20-252-110	Amended	17:12 VA.R. 2025	1/26/01
4 VAC 20-252-140	Amended	17:12 VA.R. 2025	1/26/01
4 VAC 20-270-40	Amended	17:14 VA.R. 2179	3/1/01
4 VAC 20-270-40	Amended	17:18 VA.R. 2576	5/1/01
4 VAC 20-380-20	Amended	17:23 VA.R. 3455	7/1/01
4 VAC 20-380-50	Amended	17:23 VA.R. 3455	7/1/01
4 VAC 20-450-30	Amended	17:18 VA.R. 2576	5/1/01
4 VAC 20-561-10 through 4 VAC 20-561-50	Added	17:16 VA.R. 2332	8/16/01
4 VAC 20-610-30	Amended	17:23 VA.R. 3456	7/1/01
4 VAC 20-620-30	Amended	17:14 VA.R. 2180	3/1/01
4 VAC 20-620-50	Amended	17:14 VA.R. 2180	3/1/01
4 VAC 20-620-70	Amended	17:14 VA.R. 2180	3/1/01
4 VAC 20-620-70	Amended	17:20 VA.R. 2880	6/1/01
4 VAC 20-670-20	Amended	18:1 VA.R. 31	9/15/01
4 VAC 20-670-25	Added	17:18 VA.R. 2577	5/1/01
4 VAC 20-670-30	Amended	18:1 VA.R. 31	9/15/01
4 VAC 20-670-40	Amended	18:1 VA.R. 31	9/15/01
4 VAC 20-751-10	Amended	17:16 VA.R. 2333	4/1/01
4 VAC 20-751-20	Amended	17:16 VA.R. 2333	4/1/01
4 VAC 20-890-10 emer	Amended	17:20 VA.R. 2932	5/25/01-6/24/01
4 VAC 20-890-20 emer	Amended	17:20 VA.R. 2932	5/25/01-6/24/01
4 VAC 20-890-25 emer	Amended	17:20 VA.R. 2932	5/25/01-6/24/01
4 VAC 20-890-25	Amended	17:23 VA.R. 3457	7/1/01
4 VAC 20-890-30	Amended	17:16 VA.R. 2333	4/1/01
4 VAC 20-890-40 emer	Amended	17:20 VA.R. 2933	5/25/01-6/24/01
4 VAC 20-910-30	Amended	17:14 VA.R. 2181	3/1/01
4 VAC 20-910-45	Amended	17:18 VA.R. 2577	5/1/01
4 VAC 20-950-30	Amended	17:14 VA.R. 2181	3/1/01
4 VAC 20-950-45	Amended	17:14 VA.R. 2181	3/1/01
4 VAC 20-950-45	Amended	17:16 VA.R. 2334	4/1/01
4 VAC 20-950-45 emer	Amended	17:18 VA.R. 2673	4/24/01-5/23/01
4 VAC 20-950-45	Amended	17:20 VA.R. 2880	5/25/01
4 VAC 20-995-20	Amended	17:12 VA.R. 2025	1/26/01
4 VAC 20-995-20	Amended	17:14 VA.R. 2182	3/1/01
4 VAC 20-1040-20	Amended	17:20 VA.R. 2881	5/26/01
4 VAC 25-90-10 through 4 VAC 25-90-100	Amended	17:20 VA.R. 2882-2885	7/18/01
4 VAC 25-90-120	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-90-270	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-90-300	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-90-340	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-90-360	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-90 (Forms)	Added	17:21 VA.R. 3119	--
4 VAC 25-100-10 et seq.	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-101-10 through 4 VAC 25-101-220	Added	17:20 VA.R. 2886	7/18/01
4 VAC 25-101 (Forms)	Added	17:21 VA.R. 3119	--
4 VAC 25-130 (Forms)	Amended	17:23 VA.R. 3473	--
<b>Title 5. Corporations</b>			
5 VAC 5-10-10 et seq.	Repealed	17:18 VA.R. 2577	6/1/01
5 VAC 5-20-10 through 5 VAC 5-20-280	Amended	17:18 VA.R. 2581-2587	6/1/01
5 VAC 5-30-10 through 5 VAC 5-30-70	Added	17:22 VA.R. 3312-3315	7/1/01

# Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 20-200-10 through 6 VAC 20-200-180	Amended	17:19 VA.R. 2731-2735	7/4/01
<b>Title 8. Education</b>			
8 VAC 20-110-10	Amended	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-20	Repealed	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-40	Amended	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-50	Amended	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-60	Repealed	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-70	Repealed	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-140	Repealed	17:12 VA.R. 2026	3/28/01
8 VAC 20-540-10 et seq.	Repealed	17:16 VA.R. 2334	5/23/01
8 VAC 20-541-10 through 8 VAC 20-541-60	Added	17:16 VA.R. 2335-2342	5/23/01
8 VAC 20-650-10 through 8 VAC 20-650-20 emer	Added	17:14 VA.R. 2202	3/7/01-3/6/02
<b>Title 9. Environment</b>			
9 VAC 5-50-400	Amended	17:15 VA.R. 2248	6/1/01
9 VAC 5-60-60	Amended	17:15 VA.R. 2248	6/1/01
9 VAC 5-60-90	Amended	17:15 VA.R. 2248	6/1/01
9 VAC 5-60-100	Amended	17:15 VA.R. 2249	6/1/01
9 VAC 5-80-310 through 9 VAC 5-80-350	Amended	17:20 VA.R. 2887-2890	7/18/01
9 VAC 5-80-355	Repealed	17:20 VA.R. 2891	7/18/01
9 VAC 5-210-10 through 9 VAC 5-210-160	Added	17:16 VA.R. 2342-2344	7/1/01
9 VAC 15-30-20	Amended	17:21 VA.R. 3029	8/1/01
9 VAC 15-30-40 through 9 VAC 15-30-110	Amended	17:21 VA.R. 3030-3031	8/1/01
9 VAC 15-30-130	Amended	17:21 VA.R. 3031	8/1/01
9 VAC 15-30-150	Repealed	17:21 VA.R. 3031	8/1/01
9 VAC 15-30-160	Amended	17:21 VA.R. 3031	8/1/01
9 VAC 15-30-170	Amended	17:21 VA.R. 3031	8/1/01
9 VAC 20-15-10 through 9 VAC 20-15-160	Added	17:16 VA.R. 2344-2346	7/1/01
9 VAC 20-80-10	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-40	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-60	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-80	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-100	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-110	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-113	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-115	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-120	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-140 through 9 VAC 20-80-290	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-310 through 9 VAC 20-80-340	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-360 through 9 VAC 20-80-380	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-400	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-450	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-460	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-470	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-480	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-485	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-500 through 9 VAC 20-80-560	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-620 through 9 VAC 20-80-650	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-670	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-700	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-730	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-750 through 9 VAC 20-80-790	Amended	17:16 VA.R. 2349	5/23/01
Appendices 2.1 and 2.2	Added	17:16 VA.R. 2349	5/23/01
Appendix 4.1	Repealed	17:16 VA.R. 2349	5/23/01
Appendix 5.1	Amended	17:16 VA.R. 2349	5/23/01
Appendices 5.2 and 5.3	Repealed	17:16 VA.R. 2349	5/23/01

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Appendix 5.5	Amended	17:16 VA.R. 2349	5/23/01
Appendix 5.6	Added	17:16 VA.R. 2349	5/23/01
Appendices 7.4 and 9.1	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-130-10 through 9 VAC 20-130-70	Amended	17:21 VA.R. 3033-3037	8/1/01
9 VAC 20-130-80	Repealed	17:21 VA.R. 3037	8/1/01
9 VAC 20-130-90	Amended	17:21 VA.R. 3037	8/1/01
9 VAC 20-130-110 through 9 VAC 20-130-150	Amended	17:21 VA.R. 3037-3040	8/1/01
9 VAC 20-130-160	Repealed	17:21 VA.R. 3040	8/1/01
9 VAC 20-130-165	Added	17:21 VA.R. 3040	8/1/01
9 VAC 20-130-170	Repealed	17:21 VA.R. 3040	8/1/01
9 VAC 20-130-175	Added	17:21 VA.R. 3040	8/1/01
9 VAC 20-130-180	Amended	17:21 VA.R. 3041	8/1/01
9 VAC 20-130-190	Amended	17:21 VA.R. 3041	8/1/01
9 VAC 20-130-220	Amended	17:21 VA.R. 3041	8/1/01
9 VAC 20-130-230	Amended	17:21 VA.R. 3041	8/1/01
9 VAC 20-130-240	Repealed	17:21 VA.R. 3041	8/1/01
9 VAC 20-130 (Forms)	Added	17:26 VA.R. 3758-3759	--
9 VAC 25-15-10 through 9 VAC 25-15-160	Added	17:16 VA.R. 2347-2349	7/1/01
9 VAC 25-31-10	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-30	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-50	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-100	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-110	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-120	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-170	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-220	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-280	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-370	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-390	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-410	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-110-10	Amended	17:16 VA.R. 2350	8/1/01
9 VAC 25-110-20	Amended	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-40	Repealed	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-50	Repealed	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-60	Amended	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-70	Amended	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-70	Amended	17:21 VA.R. 3044	8/1/01
9 VAC 25-110-80	Amended	17:16 VA.R. 2353	8/1/01
9 VAC 25-115-10 through 9 VAC 25-115-50	Amended	17:16 VA.R. 2367-2380	7/24/01
9 VAC 25-192-50	Amended	17:21 VA.R. 3044	8/1/01
9 VAC 25-192-60	Amended	17:21 VA.R. 3045	8/1/01
9 VAC 25-210-10	Amended	17:21 VA.R. 3049	8/1/01
9 VAC 25-210-20	Repealed	17:21 VA.R. 3052	8/1/01
9 VAC 25-210-30	Repealed	17:21 VA.R. 3052	8/1/01
9 VAC 25-210-40	Repealed	17:21 VA.R. 3052	8/1/01
9 VAC 25-210-45	Added	17:21 VA.R. 3052	8/1/01
9 VAC 25-210-50 through 9 VAC 25-210-110	Amended	17:21 VA.R. 3052-3063	8/1/01
9 VAC 25-210-80	Erratum	17:24 VA.R. 3604	--
9 VAC 25-210-115	Added	17:21 VA.R. 3063	8/1/01
9 VAC 25-210-120 through 9 VAC 25-210-180	Amended	17:21 VA.R. 3064-3067	8/1/01
9 VAC 25-210-185	Added	17:21 VA.R. 3067	8/1/01
9 VAC 25-210-190 through 9 VAC 25-210-260	Amended	17:21 VA.R. 3067-3069	8/1/01
9 VAC 25-260-50	Amended	17:16 VA.R. 2381	*

\* 30 days after notice in *Virginia Register* of EPA approval



# Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-260-55	Added	17:16 VA.R. 2381	*
9 VAC 25-430-20	Amended	17:25 VA.R. 3657	9/26/01
9 VAC 25-430-30	Amended	17:25 VA.R. 3657	9/26/01
9 VAC 25-430-60	Amended	17:25 VA.R. 3657	9/26/01
9 VAC 25-660-10 through 9 VAC 25-660-100	Added	17:22 VA.R. 3316-3327	10/1/01
9 VAC 25-670-10 through 9 VAC 25-670-100	Added	17:22 VA.R. 3328-3344	10/1/01
9 VAC 25-680-10 through 9 VAC 25-680-100	Added	17:21 VA.R. 3070-3087	8/1/01
9 VAC 25-680-30	Erratum	17:24 VA.R. 3604	--
9 VAC 25-680-50	Erratum	17:24 VA.R. 3604	--
9 VAC 25-680-100	Erratum	17:24 VA.R. 3604	--
9 VAC 25-690-10 through 9 VAC 25-690-100	Added	17:21 VA.R. 3088-3107	8/1/01
9 VAC 25-690-30	Erratum	17:24 VA.R. 3604	--
9 VAC 25-690-40	Erratum	17:24 VA.R. 3604	--
<b>Title 10. Finance and Financial Institutions</b>			
10 VAC 5-10-10	Amended	17:22 VA.R. 3345	7/1/01
10 VAC 5-20-30	Amended	17:22 VA.R. 3346	6/27/01
<b>Title 11. Gaming</b>			
11 VAC 10-60 (Forms)	Amended	17:15 VA.R. 2259	--
11 VAC 10-130-10	Amended	17:19 VA.R. 2736	5/7/01
11 VAC 10-130-60	Amended	17:19 VA.R. 2736	5/7/01
11 VAC 10-130-70	Amended	17:19 VA.R. 2737	5/7/01
<b>Title 12. Health</b>			
12 VAC 30-10-20	Amended	17:19 VA.R. 2737	8/1/01
12 VAC 30-10-160	Amended	17:13 VA.R. 2077	4/11/01
12 VAC 30-10-1000	Added	17:19 VA.R. 2741	7/4/01
12 VAC 30-20-80	Amended	17:13 VA.R. 2077	4/11/01
12 VAC 30-20-290 through 12 VAC 30-20-490	Added	17:19 VA.R. 2741	7/4/01
12 VAC 30-20-500 through 12 VAC 30-20-560	Added	17:19 VA.R. 2741	7/4/01
12 VAC 30-30-10	Amended	17:13 VA.R. 2077	4/11/01
12 VAC 30-30-10	Amended	17:19 VA.R. 2737	8/1/01
12 VAC 30-30-20	Amended	17:13 VA.R. 2081	4/11/01
12 VAC 30-30-20	Amended	17:18 VA.R. 2588	7/1/01
12 VAC 30-30-20	Amended	17:18 VA.R. 2589	7/1/01
12 VAC 30-30-40	Amended	17:13 VA.R. 2082	4/11/01
12 VAC 30-30-50	Amended	17:13 VA.R. 2082	4/11/01
12 VAC 30-40-80	Amended	17:13 VA.R. 2087	4/11/01
12 VAC 30-40-100	Amended	17:13 VA.R. 2083	4/11/01
12 VAC 30-40-220	Amended	17:18 VA.R. 2590	7/1/01
12 VAC 30-40-220	Amended	17:18 VA.R. 2593	7/1/01
12 VAC 30-40-220	Erratum	17:21 VA.R. 3124	--
12 VAC 30-40-240	Amended	17:13 VA.R. 2083	4/11/01
12 VAC 30-40-250	Amended	17:13 VA.R. 2085	4/11/01
12 VAC 30-40-280	Amended	17:13 VA.R. 2085	4/11/01
12 VAC 30-40-290	Amended	17:13 VA.R. 2085	4/11/01
12 VAC 30-40-350	Amended	17:13 VA.R. 2087	4/11/01
12 VAC 30-50-300	Amended	17:12 VA.R. 2026	6/1/01**
12 VAC 30-50-490	Added	17:18 VA.R. 2595	7/1/01
12 VAC 30-50-530	Amended	17:12 VA.R. 2026	6/1/01**
12 VAC 30-70-140	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-141	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-142	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-143	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-144	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-145	Repealed	17:19 VA.R. 2741	7/4/01

\*\* Effective date changed in 17:17 VA.R. 2443.

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## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-80-110	Amended	17:18 VA.R. 2597	7/1/01
12 VAC 30-90-19	Added	17:18 VA.R. 2623	7/1/01
12 VAC 30-90-20	Amended	17:18 VA.R. 2624	7/1/01
12 VAC 30-90-29	Added	17:18 VA.R. 2624	7/1/01
12 VAC 30-90-30	Amended	17:18 VA.R. 2625	7/1/01
12 VAC 30-90-31	Amended	17:18 VA.R. 2626	7/1/01
12 VAC 30-90-33	Amended	17:18 VA.R. 2626	7/1/01
12 VAC 30-90-34	Amended	17:18 VA.R. 2628	7/1/01
12 VAC 30-90-35	Amended	17:18 VA.R. 2630	7/1/01
12 VAC 30-90-36	Amended	17:18 VA.R. 2630	7/1/01
12 VAC 30-90-37	Amended	17:18 VA.R. 2632	7/1/01
12 VAC 30-90-38	Amended	17:18 VA.R. 2632	7/1/01
12 VAC 30-90-39	Amended	17:18 VA.R. 2633	7/1/01
12 VAC 30-90-40	Amended	17:18 VA.R. 2633	7/1/01
12 VAC 30-90-41	Amended	17:18 VA.R. 2633	7/1/01
12 VAC 30-90-42	Repealed	17:18 VA.R. 2635	7/1/01
12 VAC 30-90-43	Repealed	17:18 VA.R. 2636	7/1/01
12 VAC 30-90-50	Amended	17:18 VA.R. 2636	7/1/01
12 VAC 30-90-51	Amended	17:18 VA.R. 2636	7/1/01
12 VAC 30-90-55	Amended	17:18 VA.R. 2637	7/1/01
12 VAC 30-90-60	Amended	17:18 VA.R. 2638	7/1/01
12 VAC 30-90-65	Amended	17:18 VA.R. 2638	7/1/01
12 VAC 30-90-70	Amended	17:18 VA.R. 2638	7/1/01
12 VAC 30-90-80	Amended	17:18 VA.R. 2639	7/1/01
12 VAC 30-90-110	Amended	17:18 VA.R. 2639	7/1/01
12 VAC 30-90-120	Amended	17:18 VA.R. 2639	7/1/01
12 VAC 30-90-123	Amended	17:18 VA.R. 2640	7/1/01
12 VAC 30-90-130	Repealed	17:18 VA.R. 2640	7/1/01
12 VAC 30-90-130	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-131	Repealed	17:18 VA.R. 2640	7/1/01
12 VAC 30-90-131	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-132	Repealed	17:18 VA.R. 2640	7/1/01
12 VAC 30-90-132	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-133	Repealed	17:18 VA.R. 2641	7/1/01
12 VAC 30-90-133	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-135	Repealed	17:18 VA.R. 2641	7/1/01
12 VAC 30-90-135	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-136	Added	17:18 VA.R. 2641	7/1/01
12 VAC 30-90-160	Amended	17:18 VA.R. 2641	7/1/01
12 VAC 30-90-165	Added	17:18 VA.R. 2641	7/1/01
12 VAC 30-90-170	Amended	17:18 VA.R. 2642	7/1/01
12 VAC 30-90-221	Amended	17:18 VA.R. 2642	7/1/01
12 VAC 30-90-240	Amended	17:18 VA.R. 2642	7/1/01
12 VAC 30-90-250	Amended	17:18 VA.R. 2643	7/1/01
12 VAC 30-90-253	Amended	17:18 VA.R. 2643	7/1/01
12 VAC 30-90-260	Repealed	17:18 VA.R. 2643	7/1/01
12 VAC 30-90-264	Amended	17:18 VA.R. 2643	7/1/01
12 VAC 30-90-266	Amended	17:18 VA.R. 2646	7/1/01
12 VAC 30-90-270	Amended	17:18 VA.R. 2646	7/1/01
12 VAC 30-90-272	Amended	17:18 VA.R. 2646	7/1/01
12 VAC 30-90-280	Amended	17:18 VA.R. 2648	7/1/01
12 VAC 30-110-630	Amended	17:13 VA.R. 2096	4/11/01
12 VAC 30-110-650	Amended	17:13 VA.R. 2096	4/11/01
12 VAC 30-110-660	Amended	17:13 VA.R. 2096	4/11/01
12 VAC 30-110-670	Amended	17:13 VA.R. 2096	4/11/01
12 VAC 30-110-700	Amended	17:13 VA.R. 2097	4/11/01

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-110-710	Amended	17:13 VA.R. 2097	4/11/01
12 VAC 30-110-720	Amended	17:13 VA.R. 2088	4/11/01
12 VAC 30-110-730	Amended	17:13 VA.R. 2090	4/11/01
12 VAC 30-110-740	Repealed	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-741	Added	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-744	Added	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-747	Added	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-751	Added	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-760	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-780	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-790	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-800	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-810	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-813	Added	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-815	Added	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-820	Repealed	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-830	Amended	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-840	Amended	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-850	Amended	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-853	Added	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-856	Added	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-860	Amended	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-870	Amended	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-880	Amended	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-890	Repealed	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-900	Amended	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-910	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-920	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-921	Added	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-930	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-940	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-950	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-960	Amended	17:13 VA.R. 2095	4/11/01
12 VAC 30-110-970	Amended	17:13 VA.R. 2095	4/11/01
12 VAC 30-110-980	Amended	17:13 VA.R. 2095	4/11/01
12 VAC 30-110-990	Amended	17:13 VA.R. 2095	4/11/01
12 VAC 30-110-1010	Amended	17:13 VA.R. 2095	4/11/01
12 VAC 30-110-1011	Added	17:13 VA.R. 2095	4/11/01
12 VAC 30-120-700 through 12 VAC 30-120-790	Added	17:18 VA.R. 2597-2622	7/1/01
12 VAC 30-120-770	Erratum	17:21 VA.R. 3124	--
12 VAC 35-110-10 et seq.	Repealed	17:20 VA.R. 2891	***
12 VAC 35-115-10 through 12 VAC 35-115-250	Added	17:20 VA.R. 2892-2920	***
12 VAC 35-115-50	Erratum	17:22 VA.R. 3371	--
12 VAC 35-115-70	Erratum	17:22 VA.R. 3371	--
12 VAC 35-120-10 et seq.	Repealed	17:20 VA.R. 2920	***
12 VAC 35-130-10 et seq.	Repealed	17:20 VA.R. 2920	***
12 VAC 30-141-10 et seq. emer	Added	17:25 VA.R. 3660-3670	8/1/01-7/31/02
12 VAC 30-141-100 emer	Amended	17:26 VA.R. 3757	8/22/01-7/31/02
<b>Title 13. Housing</b>			
13 VAC 10-40-30	Amended	17:22 VA.R. 3347	6/20/01
13 VAC 10-40-110	Amended	17:22 VA.R. 3347	6/20/01
13 VAC 10-40-130	Amended	17:22 VA.R. 3347	6/20/01
13 VAC 10-40-190	Amended	17:22 VA.R. 3347	6/20/01

\*\*\* Effective date suspended in 17:23 VA.R. 3457.

# Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 10-40-230	Amended	17:22 VA.R. 3347	6/20/01
13 VAC 10-180-10	Amended	17:17 VA.R. 2444	4/9/01
13 VAC 10-180-40	Amended	17:17 VA.R. 2444	4/9/01
13 VAC 10-180-60	Amended	17:17 VA.R. 2444	4/9/01
13 VAC 10-180-70	Amended	17:17 VA.R. 2452	4/9/01
13 VAC 10-180-90	Amended	17:17 VA.R. 2452	4/9/01
13 VAC 10-180-100	Amended	17:17 VA.R. 2452	4/9/01
<b>Title 14. Insurance</b>			
14 VAC 5-170-20	Amended	17:24 VA.R. 3559	9/1/01
14 VAC 5-170-30	Amended	17:24 VA.R. 3559	9/1/01
14 VAC 5-170-70	Amended	17:24 VA.R. 3559	9/1/01
14 VAC 5-170-90	Amended	17:24 VA.R. 3559	9/1/01
14 VAC 5-170-105	Amended	17:24 VA.R. 3562	9/1/01
14 VAC 5-170-120	Amended	17:24 VA.R. 3563	9/1/01
14 VAC 5-170-130	Amended	17:24 VA.R. 3565	9/1/01
14 VAC 5-170-150	Amended	17:24 VA.R. 3566	9/1/01
14 VAC 5-170-180	Amended	17:24 VA.R. 3566	9/1/01
Appendix D	Added	17:24 VA.R. 3566	9/1/01
14 VAC 5-215 (Forms)	Amended	17:19 VA.R. 2753-2758	7/4/01
14 VAC 5-300-90	Amended	17:22 VA.R. 3347	8/1/01
14 VAC 5-300-130	Amended	17:16 VA.R. 2382	5/1/01
<b>Title 16. Labor and Employment</b>			
16 VAC 25-90-1910.1043	Amended	17:23 VA.R. 3458	9/15/01
16 VAC 25-90-1910.1030	Amended	17:23 VA.R. 3459	9/15/01
<b>Title 17. Libraries and Cultural Resources</b>			
17 VAC 15-20-20 through 17 VAC 15-20-50	Amended	17:14 VA.R. 2183	5/1/01
17 VAC 15-20-70 through 17 VAC 15-20-120	Amended	17:14 VA.R. 2183	5/1/01
17 VAC 15-20-150 through 17 VAC 15-20-170	Amended	17:14 VA.R. 2183	5/1/01
17 VAC 15-30-10 et seq.	Repealed	17:14 VA.R. 2183	5/1/01
17 VAC 15-40-10 et seq.	Repealed	17:14 VA.R. 2183	5/1/01
17 VAC 15-50-20 through 17 VAC 15-50-50	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-70	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-90 through 17 VAC 15-50-110	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-130	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-140	Repealed	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-150	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-160	Amended	17:14 VA.R. 2184	5/1/01
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 5-20-10 et seq.	Repealed	17:14 VA.R. 2184	4/25/01
18 VAC 5-21-10 through 18 VAC 5-21-170	Amended	17:14 VA.R. 2184-2198	4/25/01
18 VAC 30-10-10	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-20	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-30	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-40	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-60	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-70	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-80	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-100	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-20-10	Amended	17:16 VA.R. 2383	5/23/01
18 VAC 30-20-80	Amended	17:16 VA.R. 2383	5/23/01
18 VAC 30-20-160	Amended	17:16 VA.R. 2383	5/23/01
18 VAC 30-20-300	Added	17:16 VA.R. 2384	5/23/01
18 VAC 30-20-310	Added	17:16 VA.R. 2384	5/23/01
18 VAC 30-20-320	Added	17:16 VA.R. 2384	5/23/01
18 VAC 50-22-10 through 18 VAC 50-22-60	Amended	17:21 VA.R. 3108-3113	9/1/01
18 VAC 50-22-80	Amended	17:21 VA.R. 3113	9/1/01

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 50-22-100 through 18 VAC 50-22-270	Amended	17:21 VA.R. 3113-3115	9/1/01
18 VAC 50-30-10	Amended	17:26 VA.R. 3756	11/1/01
18 VAC 50-30-20	Amended	17:26 VA.R. 3756	11/1/01
18 VAC 50-30-40	Amended	17:26 VA.R. 3756	11/1/01
18 VAC 50-30-50	Amended	17:26 VA.R. 3756	11/1/01
18 VAC 50-30-90	Amended	17:26 VA.R. 3756	11/1/01
18 VAC 50-30-200	Amended	17:26 VA.R. 3756	11/1/01
18 VAC 60-10-10 through 18 VAC 60-10-40	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 60-10-60	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 60-10-70	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 60-10-80	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 60-10-100	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 65-10-10	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 65-10-20	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 65-10-30	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 65-10-40	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 65-10-60	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 65-10-70	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 65-10-80	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 65-10-100	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 75-10-10	Amended	17:26 VA.R. 3756	10/10/01
18 VAC 75-10-20	Amended	17:26 VA.R. 3756	10/10/01
18 VAC 75-10-30	Amended	17:26 VA.R. 3756	10/10/01
18 VAC 75-10-40	Amended	17:26 VA.R. 3756	10/10/01
18 VAC 75-10-60	Amended	17:26 VA.R. 3756	10/10/01
18 VAC 75-10-70	Amended	17:26 VA.R. 3756	10/10/01
18 VAC 75-10-80	Amended	17:26 VA.R. 3756	10/10/01
18 VAC 75-10-100	Amended	17:26 VA.R. 3756	10/10/01
18 VAC 85-10-10	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-20	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-30	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-40	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-60	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-70	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-80	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-100	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-40-61	Added	17:13 VA.R. 2097	4/11/01
18 VAC 85-50-10	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-50-58	Added	17:13 VA.R. 2098	4/11/01
18 VAC 85-50-101	Amended	17:21 VA.R. 3117	8/1/01
18 VAC 85-50-130	Amended	17:21 VA.R. 3117	8/1/01
18 VAC 85-50-140	Amended	17:21 VA.R. 3117	8/1/01
18 VAC 85-50-150	Amended	17:21 VA.R. 3117	8/1/01
18 VAC 85-80-10	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-80-70	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-80-71	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-80-72	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-80-80	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-101-150	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-101-151	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-101-152	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-110-150	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-110-155	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-110-160	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-120-10 et seq.	Added	17:17 VA.R. 2453	6/6/01
18 VAC 90-10-10	Amended	17:20 VA.R. 2921	7/18/01

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 90-10-20	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-30	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-40	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-60	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-70	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-80	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-100	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-20-210	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-30-50	Amended	17:13 VA.R. 2098	4/11/01
18 VAC 90-30-110	Amended	17:13 VA.R. 2098	4/11/01
18 VAC 90-40-60	Amended	17:13 VA.R. 2098	4/11/01
18 VAC 90-40-70	Amended	17:13 VA.R. 2098	4/11/01
18 VAC 95-10-10 through 18 VAC 95-10-40	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 95-10-60	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 95-10-70	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 95-10-80	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 95-10-100	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 105-10-10 through 18 VAC 105-10-40	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 105-10-60	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 105-10-70	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 105-10-80	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 105-10-100	Amended	17:24 VA.R. 3566	9/12/01
18 VAC 105-20-60	Amended	17:17 VA.R. 2453	6/6/01
18 VAC 110-10-10	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 110-10-20	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 110-10-30	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 110-10-40	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 110-10-60	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 110-10-70	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 110-10-80	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 110-10-100	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 112-20-10	Amended	17:25 VA.R. 3657	9/12/01
18 VAC 112-20-90	Amended	17:25 VA.R. 3658	9/12/01
18 VAC 115-10-10	Amended	18:1 VA.R. 32	10/24/01
18 VAC 115-10-20	Amended	18:1 VA.R. 32	10/24/01
18 VAC 115-10-30	Amended	18:1 VA.R. 32	10/24/01
18 VAC 115-10-40	Amended	18:1 VA.R. 32	10/24/01
18 VAC 115-10-60	Amended	18:1 VA.R. 32	10/24/01
18 VAC 115-10-70	Amended	18:1 VA.R. 32	10/24/01
18 VAC 115-10-80	Amended	18:1 VA.R. 32	10/24/01
18 VAC 115-10-100	Amended	18:1 VA.R. 32	10/24/01
18 VAC 115-60-20	Amended	17:18 VA.R. 2651	6/20/01
18 VAC 115-60-40	Amended	17:18 VA.R. 2651	6/20/01
18 VAC 115-60-50	Amended	17:18 VA.R. 2651	6/20/01
18 VAC 115-60-120	Amended	17:18 VA.R. 2651	6/20/01
18 VAC 115-60-150	Amended	17:18 VA.R. 2651	6/20/01
18 VAC 125-20-10	Amended	17:12 VA.R. 2026	3/28/01
18 VAC 125-20-30	Amended	17:12 VA.R. 2027	3/28/01
18 VAC 125-20-30	Amended	17:18 VA.R. 2652	6/20/01
18 VAC 125-20-43	Added	17:12 VA.R. 2027	3/28/01
18 VAC 125-20-120	Amended	17:18 VA.R. 2652	6/20/01
18 VAC 125-20-121	Added	17:18 VA.R. 2653	6/20/01
18 VAC 125-20-122	Added	17:18 VA.R. 2653	6/20/01
18 VAC 125-20-123	Added	17:18 VA.R. 2653	6/20/01
18 VAC 125-20-130	Amended	17:18 VA.R. 2654	6/20/01
18 VAC 125-20-160	Amended	17:18 VA.R. 2654	6/20/01

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 140-10-10	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-10-20	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-10-30	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-10-40	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-10-60	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-10-70	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-10-80	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-10-100	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-20-100	Amended	17:14 VA.R. 2198	4/25/01
18 VAC 140-20-105	Added	17:14 VA.R. 2198	4/25/01
18 VAC 140-20-106	Added	17:14 VA.R. 2199	4/25/01
18 VAC 140-20-110	Amended	17:14 VA.R. 2199	4/25/01
18 VAC 140-20-160	Amended	17:14 VA.R. 2199	4/25/01
18 VAC 150-10-10 through 18 VAC 150-10-40	Amended	17:24 VA.R. 3567	9/12/01
18 VAC 150-10-60	Amended	17:24 VA.R. 3567	9/12/01
18 VAC 150-10-70	Amended	17:24 VA.R. 3567	9/12/01
18 VAC 150-10-80	Amended	17:24 VA.R. 3567	9/12/01
18 VAC 150-10-100	Amended	17:24 VA.R. 3567	9/12/01
<b>Title 19. Public Safety</b>			
19 VAC 30-40-30	Amended	17:15 VA.R. 2252	5/9/01
19 VAC 30-70-160	Amended	17:15 VA.R. 2252	5/9/01
19 VAC 30-70-530	Amended	17:15 VA.R. 2255	5/9/01
19 VAC 30-150-5	Added	17:15 VA.R. 2257	5/9/01
19 VAC 30-150-10	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-150-20	Repealed	17:15 VA.R. 2257	5/9/01
19 VAC 30-150-30	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-150-50	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-5	Added	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-20	Repealed	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-30	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-40	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-45	Added	17:15 VA.R. 2257	5/9/01
19 VAC 30-165-10 et seq.	Amended	17:15 VA.R. 2258	5/9/01
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-309-10	Amended	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-15	Added	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-20	Amended	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-30	Amended	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-40	Amended	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-50	Amended	17:18 VA.R. 2658	7/1/01
20 VAC 5-309-70	Amended	17:18 VA.R. 2658	7/1/01
20 VAC 5-309-90 through 20 VAC 5-309-180	Added	17:18 VA.R. 2658-2660	7/1/01
20 VAC 5-312-10 through 20 VAC 5-312-110	Added	17:22 VA.R. 3351-3364	8/1/01
20 VAC 5-325-10 through 20 VAC 5-325-110	Added	17:23 VA.R. 3464-3466	7/1/01
<b>Title 21. Securities and Retail Franchising</b>			
21 VAC 5-10 (Forms)	Amended	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-10	Amended	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-30	Amended	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-40	Amended	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-60 through 21 VAC 5-20-80	Amended	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-85	Added	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-90	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-120	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-130	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-155	Added	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-220	Amended	17:20 VA.R. 2926	7/1/01

# Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
21 VAC 5-20-240	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-280	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-290	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-30-30	Repealed	17:20 VA.R. 2931	7/1/01
21 VAC 5-30-60	Repealed	17:20 VA.R. 2931	7/1/01
21 VAC 5-30-80	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-30-90	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-10	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-30 through 21 VAC 5-80-70	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-90 through 21 VAC 5-80-110	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-160	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-200	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-210	Amended	17:20 VA.R. 2931	7/1/01
<b>Title 22. Social Services</b>			
22 VAC 20-30-10 through 22 VAC 20-30-60	Amended	17:23 VA.R. 3466-3468	****
22 VAC 20-30-70	Repealed	17:23 VA.R. 3468	****
22 VAC 20-30-80 through 22 VAC 20-30-140	Amended	17:23 VA.R. 3468-3469	****
22 VAC 20-30-150	Added	17:23 VA.R. 3469	****
22 VAC 40-71-10 emer	Amended	17:24 VA.R. 3568	10/9/01-10/8/02
22 VAC 40-71-20 emer	Amended	17:24 VA.R. 3571	10/9/01-10/8/02
22 VAC 40-71-30 emer	Amended	17:24 VA.R. 3572	10/9/01-10/8/02
22 VAC 40-71-50 emer	Amended	17:24 VA.R. 3572	10/9/01-10/8/02
22 VAC 40-71-60 emer	Amended	17:24 VA.R. 3572	10/9/01-10/8/02
22 VAC 40-71-80 emer	Amended	17:24 VA.R. 3573	10/9/01-10/8/02
22 VAC 40-71-90 emer	Amended	17:24 VA.R. 3573	10/9/01-10/8/02
22 VAC 40-71-110 emer	Amended	17:24 VA.R. 3573	10/9/01-10/8/02
22 VAC 40-71-130 emer	Amended	17:24 VA.R. 3574	10/9/01-10/8/02
22 VAC 40-71-150 through 22 VAC 40-71-180 emer	Amended	17:24 VA.R. 3574-3579	10/9/01-10/8/02
22 VAC 40-71-210 emer	Amended	17:24 VA.R. 3579	10/9/01-10/8/02
22 VAC 40-71-270 emer	Amended	17:24 VA.R. 3579	10/9/01-10/8/02
22 VAC 40-71-275 emer	Added	17:24 VA.R. 3580	10/9/01-10/8/02
22 VAC 40-71-280 emer	Amended	17:24 VA.R. 3580	10/9/01-10/8/02
22 VAC 40-71-290 emer	Amended	17:24 VA.R. 3580	10/9/01-10/8/02
22 VAC 40-71-310 emer	Amended	17:24 VA.R. 3580	10/9/01-10/8/02
22 VAC 40-71-330 emer	Amended	17:24 VA.R. 3580	10/9/01-10/8/02
22 VAC 40-71-360 emer	Amended	17:24 VA.R. 3580	10/9/01-10/8/02
22 VAC 40-71-410 emer	Amended	17:24 VA.R. 3580	10/9/01-10/8/02
22 VAC 40-71-440 emer	Amended	17:24 VA.R. 3580	10/9/01-10/8/02
22 VAC 40-71-450 emer	Amended	17:24 VA.R. 3580	10/9/01-10/8/02
22 VAC 40-71-460 emer	Amended	17:24 VA.R. 3581	10/9/01-10/8/02
22 VAC 40-71-480 emer	Amended	17:24 VA.R. 3581	10/9/01-10/8/02
22 VAC 40-71-490 emer	Amended	17:24 VA.R. 3581	10/9/01-10/8/02
22 VAC 40-71-530 through 22 VAC 40-71-600 emer	Amended	17:24 VA.R. 3582-3584	10/9/01-10/8/02
22 VAC 40-71-630 through 22 VAC 40-71-700 emer	Amended	17:24 VA.R. 3584-3589	10/9/01-10/8/02
22 VAC 40-130-10 et seq.	Withdrawn	17:17 VA.R. 2456	--
22 VAC 40-230-10 et seq.	Repealed	17:18 VA.R. 2660	6/20/01
22 VAC 40-480-10 et seq.	Repealed	17:18 VA.R. 2661	6/20/01
22 VAC 40-690-10	Amended	17:18 VA.R. 2661	9/1/01
22 VAC 40-690-15	Added	17:18 VA.R. 2662	9/1/01
22 VAC 40-690-20	Amended	17:18 VA.R. 2662	9/1/01
22 VAC 40-690-30	Amended	17:18 VA.R. 2662	9/1/01
22 VAC 40-690-35	Added	17:18 VA.R. 2663	9/1/01
22 VAC 40-690-40	Amended	17:18 VA.R. 2663	9/1/01

\*\*\*\* Effective date suspended in 18:1 VA.R. 32.



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## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-690-50	Repealed	17:18 VA.R. 2664	9/1/01
22 VAC 40-690-55	Added	17:18 VA.R. 2664	9/1/01
22 VAC 40-690-55	Erratum	17:21 VA.R. 3124	--
22 VAC 40-690-60	Amended	17:18 VA.R. 2664	9/1/01
22 VAC 40-690-65	Added	17:18 VA.R. 2664	9/1/01
22 VAC 40-690-70	Repealed	17:18 VA.R. 2664	9/1/01
22 VAC 40-730-10 emer	Amended	17:13 VA.R. 2103	4/1/01-3/31/02
22 VAC 40-730-10	Erratum	17:25 VA.R. 3679	--
22 VAC 40-730-40 through 22 VAC 40-730-100 emer	Amended	17:13 VA.R. 2103-2104	4/1/01-3/31/02
22 VAC 40-900-10 et seq.	Repealed	17:18 VA.R. 2671	6/20/01
22 VAC 40-901-10 through 22 VAC 40-901-30	Added	17:18 VA.R. 2671	6/20/01
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 30-61-20	Amended	17:17 VA.R. 2456	6/6/01
24 VAC 30-61-40	Amended	17:17 VA.R. 2456	6/6/01
24 VAC 30-240-10	Amended	17:18 VA.R. 2671	5/1/01
24 VAC 30-260-10 et seq.	Repealed	17:25 VA.R. 3658	7/26/01
24 VAC 30-280-10	Amended	17:13 VA.R. 2099	2/15/01
24 VAC 30-280-20 through 24 VAC 30-280-70	Added	17:13 VA.R. 2099-2102	2/15/01
24 VAC 30-370-10 et seq.	Repealed	17:24 VA.R. 3567	9/12/01
24 VAC 30-440-10 et seq.	Repealed	17:14 VA.R. 2200	3/6/01
24 VAC 30-450-10 et seq.	Amended	17:14 VA.R. 2200	3/6/01
24 VAC 30-460-10	Repealed	17:14 VA.R. 2201	3/6/01
24 VAC 30-520-10	Amended	17:25 VA.R. 3658	7/26/01
24 VAC 30-520-20	Amended	17:25 VA.R. 3658	7/26/01
24 VAC 30-540-10	Added	17:23 VA.R. 3472	6/29/01
24 VAC 30-540-20	Added	17:23 VA.R. 3472	6/29/01
24 VAC 30-540-30	Added	17:23 VA.R. 3472	6/29/01
24 VAC 30-540-40	Added	17:23 VA.R. 3472	6/29/01
24 VAC 30-561-10	Amended	17:18 VA.R. 2672	5/2/01

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# NOTICES OF INTENDED REGULATORY ACTION

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## Symbol Key

† Indicates entries since last publication of the *Virginia Register*

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### CRIMINAL JUSTICE SERVICES BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending regulations entitled: **6 VAC 20-20. Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement Officers.** The purpose of the proposed action is to amend the regulation to include physical training standards (Category 9) as part of entry-level training for law-enforcement officers.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public comments may be submitted until October 26, 2001.

**Contact:** Judith Kirkendall, Job Task Analysis Administrator, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8003 or FAX (804) 786-0410.

VA.R. Doc. No. R02-1; Filed August 27, 2001, 12:05 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending regulations entitled: **6 VAC 20-30. Rules Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers.** This regulation sets forth minimum training standards for continuing education and training of personnel in the positions noted in the title. In 1998, the Joint Legislative Audit and Review Committee (JLARC) conducted a study that resulted in several recommendations for improvement of in-service training standards. The areas affected are legal training, job-related training, and career development training. Current standards are being amended to reflect these recommendations.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public comments may be submitted until October 26, 2001.

**Contact:** Judith Kirkendall, Job Task Analysis Administrator, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8003 or FAX (804) 786-0410.

VA.R. Doc. No. R02-2; Filed August 27, 2001, 12:05 p.m.

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider regulations entitled: **9 VAC 25-760. James River (Richmond Regional West) Surface Water Management Area.** The purpose of the proposed action is to designate the James River near Richmond as a surface water management area. The area would encompass the James River upstream from the southeastern toe of the I-95 Bridge in the City of Richmond to the southwest toe of the U.S. Route 522 Bridge in Goochland and Powhatan Counties. After designation the requirements of the Surface Water Management Area Regulation (9 VAC 25-220) would apply.

Purpose: The purpose of a surface water management area is to provide for the protection of beneficial uses of designated waters of the Commonwealth during periods of drought by managing the supply of surface water. The proposed regulatory action is to designate the James River near Richmond as the James River (Richmond Regional West) Surface Water Management Area (SWMA). The area encompasses the James River upstream from the southeastern toe of the I-95 Bridge in the City of Richmond to the southwestern toe of the U.S. Route 522 Bridge in Goochland and Powhatan Counties.

The James River has been designated a Scenic River for its aesthetic, cultural, and recreational opportunities. It serves as the sole source of water supply for residents and several industrial facilities in the City of Richmond and major portions of Chesterfield, Henrico, Goochland, and Hanover Counties. The River also boasts an exceptional habitat for anadromous fish and aquatic life, including the American Shad.

After the area has been declared a SWMA by regulation, there can be no withdrawal of more than 300,000 gallons of surface water in any single month (except for exempted withdrawals or withdrawals made pursuant to an approved voluntary agreement) without a surface withdrawal permit or certificate issued by the State Water Control Board (Board). Persons withdrawing such water must also prepare and abide by a water conservation and management plan. Conditions for withdrawal (in effect only during periods of low flow) may include water withdrawal limitations, monitoring requirements, and instream flow requirements.

Need: Surface water management areas are needed where low flow conditions threaten, or could threaten, beneficial stream uses.

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## Notices of Intended Regulatory Action

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The James River near Richmond supports a number of important existing instream and offstream uses. Among these uses are domestic water supply, municipal and industrial water supply, recreation, and support for various aquatic life. The James River near Richmond also has aesthetic and cultural importance. During periods of low flow, there is increasing competition among users and as development increases in the area this competition will also increase. Designation of the area as a Surface Water Management Area will provide a coordinated approach in managing the limited water resources during periods of low flow.

Among the issues that will be addressed during the designation process are boundaries of the SWMA, voluntary agreements among the withdrawers, flow levels that will trigger permit conditions, and classification of water uses.

**Substance:** The proposed regulation will define the boundaries of the James River (Richmond Regional West) Surface Water Management Area and establish the flow level at which permit conditions will be in effect. Once designated, any surface water withdrawal within the area of more than 300,000 gallons in any one month must have a permit or certificate to withdraw, unless they are exempted by law, or they are parties to an approved voluntary agreement. All withdrawers will also be required to develop and implement a water conservation and management plan.

Conditions that may be imposed on the withdrawals are limitation on the volume and flow rate at which water may be withdrawn at certain times and monitoring and reporting requirements.

### Alternatives:

**Alternative 1:** Designate the James River near Richmond as SWMA. The SWMA regulation states that SWMA proceedings may be initiated by the board upon its own motion or upon the request of a municipality within the proposed area or another state agency. The Henrico Board of Supervisors petitioned the board to initiate the SWMA proceedings for the James River near Richmond. Because of the competing instream and offstream uses of water in the James River, the Department of Environmental Quality (DEQ) agrees that proceedings should be initiated to determine whether or not the criteria for designation are present. If the area meets the criteria for designation, the preferred alternative for managing the water resource is to designate the area as a surface water management area.

**Alternative 2:** Promote a non-regulatory voluntary agreement between water users. The County of Henrico and the City of Richmond have prepared a draft River Management Plan (RMP) that outlines a river water withdrawal schedule. The schedule is tiered and becomes more stringent as river flow levels decrease in order to reduce water withdrawals during low flow conditions. The limitations include reduced and/or modulated withdrawals for the City of Richmond canals and voluntary along with mandatory water conservation measures for drinking water supply users. This plan only involves water withdrawals by the City of Richmond and Henrico County. Under this alternative, DEQ will have no regulatory authority to enforce the RMP and to review and provide input on any voluntary agreements that may be formed. The SWMA

designation will provide the regulatory authority needed to enforce the RMP and will require water conservation of other users.

**Alternative 3:** Promote voluntary water conservation and reduced withdrawals.

Under this alternative, the DEQ could promote voluntary water conservation and reduced withdrawals during periods of moderate to severe low flow. During extreme drought conditions, the Governor can declare an emergency at the request of local governments and institute mandatory water use restrictions. Although this alternative would minimize mandated water withdrawal reductions, it would be reactive and voluntary conservation measures may not be sufficient to protect aquatic habitat in the river. This alternative does not promote long-term, proactive water conservation programs.

**Public Participation:** The board is seeking comments on the intended regulatory action, including (i) ideas to assist in the development of a proposal, (ii) the costs and benefits of the alternatives stated in this notice or other alternatives and (iii) impacts of the regulation on farm or forest lands. Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail, or by e-mail to Erlinda Patron, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, telephone (804) 698-4047, FAX (804) 698-4032 or e-mail [elpatron@deq.state.va.us](mailto:elpatron@deq.state.va.us). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Participatory Approach:** The board is using the participatory approach to develop the SWMA proposal. In 1993, the board published a Notice of Intended Regulatory Action (NOIRA) to designate the James River near Richmond as a SWMA. A public meeting was held and a Technical Advisory Committee (TAC) of interested parties and stakeholders was convened. The TAC has subsequently met on eight occasions, with the most recent meeting conducted in June 1999.

In June 1998, Governor James Gilmore signed Executive order No. 25, "Development and Review of Regulations Proposed by State Agencies." The scheduling requirements of Executive Order No. 25 necessitated the reissuance of the NOIRA on the proposed SWMA regulatory proceedings for the James River near Richmond.

The board is seeking comments on whether or not to use the same TAC for the remainder of the regulatory process or to form a new TAC.

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

**Statutory Authority:** § 62.1-246 of the Code of Virginia

Public comments may be submitted until 5 p.m., November 30, 2001, to Erlinda Patron, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

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# Notices of Intended Regulatory Action

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**Contact:** Erlinda Patron, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4047, FAX (804) 698-4032 or e-mail elpatron@deq.state.va.us.

VA.R. Doc. No. R02-14; Filed September 26, 2001, 7:59 a.m.

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to consider amending regulations entitled:

- 12 VAC 5-230. State Medical Facilities Plan.
- 12 VAC 5-240. General Acute Care Services.
- 12 VAC 5-250. Perinatal Services.
- 12 VAC 5-260. Cardiac Services.
- 12 VAC 5-270. General Surgical Services.
- 12 VAC 5-280. Organ Transplantation Services.
- 12 VAC 5-290. Psychiatric and Substance Abuse Treatment Services.
- 12 VAC 5-300. Mental Retardation Services.
- 12 VAC 5-310. Medical Rehabilitation Services.
- 12 VAC 5-320. Diagnostic Imaging Services.
- 12 VAC 5-340. Radiation Therapy Services.
- 12 VAC 5-360. Nursing Home Services.

The purpose of the proposed action is to amend the Certificate of Public Need (COPN) Rules and Regulations (12 VAC 5-220.) and the State Medical Facilities Plan (12 VAC 5-230 through 12 VAC 5-320, 12 VAC 5-340 and 12 VAC 5-360) in order to make the regulations comport with the Code of Virginia with respect to the timing of COPN requests and review and consideration of projects in rural areas or with institutional-specific effect. Due to a clerical oversight, a Notice of Intended Regulatory Action published in 17:1 VA.R. September 25, 2000 of the Virginia Register announced the intent to amend the COPN regulations but failed to denote affirmatively the intent to amend the State Medical Facilities Plan (SMFP), despite the necessity of amending the SMFP in order to accomplish the stated purpose. Both aspects of the intended action are necessary to accomplish the task of satisfying the law.

The agency does not intend to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 32.1-102.2 of the Code of Virginia.

Public comments may be submitted until October 24, 2001.

**Contact:** Douglas R. Harris, Adjudication Officer, Department of Health, 1500 E. Main St., Richmond, VA 23219, telephone (804) 786-3554 or FAX (804) 786-6776.

VA.R. Doc. No. R01-1; Filed August 31, 2001, 2:59 p.m.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 that the State Board of Health intends to consider repealing regulations entitled: **12 VAC 5-390. Rules and Regulations for the Licensure of Hospices** and promulgating regulations entitled: **12 VAC 5-391. Regulations for the Licensure of Hospices**. The purpose of the proposed action is to replace the current hospice organization regulation (12 VAC 5-390) with a new regulation (12 VAC 5-391). The intent of the revised regulation is to clarify issues of practice and reflect the changes that have occurred in the industry in the last several years while providing the necessary consistency in the provision of hospice services in order to assure safe, adequate and efficient hospice program operation.

The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 32.1-12 and 32.1-162.5 of the Code of Virginia.

Public comments may be submitted until November 26, 2001.

**Contact:** Carrie Eddy, Senior Policy Analyst, Department of Health, Center for Quality Health Care Services, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2102 or FAX (804) 367-2149.

VA.R. Doc. No. R02-40; Filed October 2, 2001, 10:22 a.m.

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## TITLE 16. LABOR AND EMPLOYMENT

### DEPARTMENT OF LABOR AND INDUSTRY

#### † Notice of Intended Regulatory Acton

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Labor and Industry intends to consider amending regulations entitled: **16 VAC 15-10. Public Participation Guidelines**. The purpose of the proposed action is to conform language to current Administrative Process Act requirements, include references to agency website and Town Hall, and remove redundant language.

The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 2.2-4007 and 40.1-6 (3) of the Code of Virginia.

Public comments may be submitted until November 21, 2001.

**Contact:** Bonnie R. Hopkins, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-2631 or FAX (804) 371-6524.

VA.R. Doc. No. R02-15; Filed September 19, 2001, 1:59 p.m.

## Apprenticeship Council

### † Notice of Intended Regulatory Acton

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Apprenticeship Council intends to consider amending regulations entitled: **16 VAC 20-10. Public Participation Guidelines**. The purpose of the proposed action is to conform language to current Administrative Process Act requirements, include references to agency website and Town Hall, and remove redundant language.

The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 2.2-4007 and 40.1-117 of the Code of Virginia.

Public comments may be submitted until November 21, 2001.

**Contact:** Bonnie R. Hopkins, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-2631 or FAX (804) 371-6524.

VA.R. Doc. No. R02-15; Filed September 19, 2001, 1:59 p.m.

## Safety and Health Codes Board

### † Notice of Intended Regulatory Acton

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Safety and Health Codes Board intends to consider amending regulations entitled: **16 VAC 25-10. Public Participation Guidelines**. The purpose of the proposed action is to conform language to current Administrative Process Act requirements, include references to agency website and Town Hall, and remove redundant language.

The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 2.2-4007 and 40.1-22 of the Code of Virginia.

Public comments may be submitted until November 21, 2001.

**Contact:** Bonnie R. Hopkins, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-2631 or FAX (804) 371-6524.

VA.R. Doc. No. R02-17; Filed September 19, 2001, 1:59 p.m.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Safety and Health Codes Board intends to consider amending regulations entitled: **16 VAC 25-50. Boiler and Pressure Vessel Rules and Regulations**. The purpose of the proposed action is to decrease the frequency of inspections for certain pressure vessels, update references to national standards, and make housekeeping changes to facilitate electronic reporting.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 40.1-51.6 of the Code of Virginia.

**Contact:** Fred P. Barton, Director, Boiler Safety Compliance, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-3169 or FAX (804) 371-2324.

VA.R. Doc. No. R02-16; Filed September 19, 2001, 1:59 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects intends to consider amending regulations entitled: **18 VAC 10-10. Public Participation Guidelines**. The purpose of the proposed action is to amend the regulations to allow the board to accept requests to be placed on a notification list, and to notify list members via electronic means. Amendments will make necessary grammatical changes. Other changes that may be necessary will be considered.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 2.2-4007 and 54.1-404 of the Code of Virginia.

Public comments may be submitted until November 8, 2001.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R02-6; Filed September 19, 2001, 9:23 a.m.

## BOARD OF DENTISTRY

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to consider amending regulations entitled: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to increase fees to cover expenses for essential functions of the licensing of dentists and dental hygienists, investigation of

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# Notices of Intended Regulatory Action

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complaints against licensees, and adjudication of disciplinary cases.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: Chapter 27 (§ 54.1-2700 et seq.) of the Code of Virginia.

Public comments may be submitted until November 21, 2001.

**Contact:** Sandra Reen, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or FAX (804) 662-9943.

VA.R. Doc. No. R02-24; Filed September 21, 2001, 11:39 a.m.

## BOARD OF MEDICINE

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-40. Regulations Governing the Practice of Respiratory Care Practitioners.** The purpose of the proposed action is to amend the regulation to address the need for regulations to assure the continued competency of practitioners who are renewing their active licenses. Other amendments are recommended for greater clarity for the regulated entities or for adaptability to computerized testing.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2400 and Chapter 29 (§ 54.1-2900) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until November 7, 2001, to Elaine J. Yeatts, Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or FAX (804) 662-9943.

VA.R. Doc. No. R02-30; Filed September 18, 2001, 8:39 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-101. Regulations Governing the Practice of Radiologic Technology.** The purpose of the proposed action is to amend the regulation to accept another credential or professional certification specifically for a radiologic technologist-limited license for bone densitometry.

The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until November 7, 2001, to Elaine J. Yeatts, Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or FAX (804) 662-9943.

VA.R. Doc. No. R02-10; Filed September 18, 2001, 8:39 a.m.

## BOARD OF NURSING

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing intends to consider amending regulations entitled: **18 VAC 90-20. Regulations Governing the Practice of Nursing.** The purpose of the proposed action is to promulgate regulations to establish a career advancement certification for certified nurse aides.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2400 and Chapter 30 (§ 54.1-300 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until November 21, 2001.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or FAX (804) 662-9512.

VA.R. Doc. No. R02-21; Filed September 21, 2001, 11:39 a.m.

## BOARD OF NURSING HOME ADMINISTRATORS

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing Home Administrators intends to consider amending regulations entitled: **18 VAC 95-20. Regulations Governing the Practice of Nursing Home Administrators.** The purpose of the proposed action is to amend the regulation to increase fees to cover expenses for essential functions of approving preceptorships, licensing administrators, investigation of complaints, and disciplinary actions.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2400 and Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until November 21, 2001.

**Contact:** Sandra Reen, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7457 or FAX (804) 662-9943.

VA.R. Doc. No. R02-20; Filed September 21, 2001, 11:39 a.m.

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# Notices of Intended Regulatory Action

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## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing Home Administrators intends to consider amending regulations entitled: **18 VAC 95-20. Regulations Governing the Practice of Nursing Home Administrators.** The purpose of the proposed action is to amend the regulation for clarification and for adaptability to computerized testing. The board will consider amendments to enable a trainee to work in a practicum or administrator-in-training program outside of Virginia in a licensed nursing care facility under the supervision of a nursing home administrator licensed in that jurisdiction.

The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until November 7, 2001.

**Contact:** Sandra Reen, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7457 or FAX (804) 662-9943.

VA.R. Doc. No. R02-8; Filed September 18, 2001, 8:39 a.m.

## BOARD OF PHARMACY

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to consider amending regulations entitled: **18 VAC 110-20. Regulations Governing the Practice of Pharmacy.** The purpose of the proposed action is to increase fees to cover expenses for essential functions of licensing, investigation of complaints against pharmacists, adjudication of disciplinary cases, and pharmacy inspections.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until November 21, 2001.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911 or FAX (804) 662-9913.

VA.R. Doc. No. R02-22; Filed September 21, 2001, 11:39 a.m.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to consider amending regulations entitled: **18 VAC 110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.** The purpose of the proposed action is to increase fees to cover expenses for essential functions

of licensing, investigation of complaints against pharmacists, adjudication of disciplinary cases, and pharmacy inspections.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3304 of the Code of Virginia.

Public comments may be submitted until November 21, 2001.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911 or FAX (804) 662-9913.

VA.R. Doc. No. R02-22; Filed October 4, 2001, 4:02 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to consider amending regulations entitled: **18 VAC 110-20. Regulations Governing the Practice of Pharmacy.** The purpose of the proposed action is to establish the criteria of training and examination necessary for registration and the requirements for evidence of continued competency as a condition of renewal as required by § 54.1-3321 of the Code of Virginia. Pursuant to § 54.1-2400 of the Code of Virginia, the board will establish fees to support the regulatory and disciplinary activities related to registration of pharmacy technicians and any other qualifications necessary to ensure competency and integrity.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3321 of the Code of Virginia.

Public comments may be submitted until November 7, 2001.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9938 or FAX (804) 662-9943.

VA.R. Doc. No. R02-7; Filed September 18, 2001, 8:39 a.m.

## BOARD OF PHYSICAL THERAPY

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Physical Therapy intends to consider amending regulations entitled: **18 VAC 112-20. Regulations Governing the Practice of Physical Therapy.** The purpose of the proposed action is to establish continuing competency requirements for renewal of licensure.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400, 54.1-3474 and 54.1-3480 of the Code of Virginia.

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# Notices of Intended Regulatory Action

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Public comments may be submitted until November 21, 2001, to Elaine J. Yeatts, Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

**Contact:** Elizabeth Young Tisdale, Executive Director, Board of Physical Therapy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9924 or (804) 662-9943.

VA.R. Doc. No. R02-29; Filed September 26, 2001, 1:53 p.m.

## BOARD OF COUNSELING

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled: **18 VAC 115-30. Regulations Governing the Certification of Substance Abuse Counselors.** The purpose of the proposed action is to promulgate regulations for certification of substance abuse counselors with a bachelor's degree and substance abuse assistants with a high school or GED degree.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public comments may be submitted until November 21, 2001.

**Contact:** Evelyn B. Brown, Executive Director, Board of Counseling, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9133 or FAX (804) 662-9943.

VA.R. Doc. No. R01-23; Filed September 21, 2001, 11:39 a.m.

### Extension of Public Comment Period

Notice is hereby given that the Board of Counseling is extending the public comment period for regulations entitled: **18 VAC 115-60. Regulations Governing the Licensure of Substance Abuse Treatment Professionals,** which were published in 17:4 VA.R. November 6, 2000. The purpose of the proposed action is to comply with a legislative mandate to develop a provision for licensure of individuals who meet requirements that are "substantially equivalent" to those in regulation. The board is considering three time-limited options for individuals with various combinations of substance abuse education and experience.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2400 and Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until October 24, 2001, to Ben Foster, Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

**Contact:** Evelyn B. Brown, Executive Director, Board of Counseling, 6606 W. Broad St., 4th Floor, Richmond, VA

23230-1717, telephone (804) 662-9912 or FAX (804) 662-9943.

VA.R. Doc. No. R01-34; Filed August 27, 2001, 12:07 p.m.

## BOARD OF PSYCHOLOGY

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Psychology intends to consider amending regulations entitled: **18 VAC 125-20. Regulations Governing the Practice of Psychology.** The purpose of the proposed action is to increase fees to cover expenses for essential functions of the approving, licensing, investigation of complaints against licensees, and adjudication of disciplinary cases.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2400 and Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until November 21, 2001.

**Contact:** Evelyn B. Brown, Executive Director, Board of Counseling, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912 or FAX (804) 662-9943.

VA.R. Doc. No. R02-25; Filed September 21, 2001, 11:39 a.m.

## BOARD OF VETERINARY MEDICINE

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Veterinary Medicine intends to consider amending regulations entitled: **18 VAC 150-20. Regulations Governing the Practice of Veterinary Medicine.** The purpose of the proposed action is to increase fees in compliance with the statutory mandate to levy fees sufficient to cover expenditures of the board.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2400 and Chapter 38 (§ 54.1-3800 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until November 21, 2001.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, 6606 W. Broad St, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9915 or FAX (804) 662-7098.

VA.R. Doc. No. R02-19; Filed September 21, 2001, 11:39 a.m.



## REAL ESTATE BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Real Estate Board intends to consider promulgating regulations entitled: **18 VAC 135-60. Common Interest Community Management Information Fund**. The purpose of the proposed action is to promulgate regulations for the administration of Chapter 29 (§ 55-528 et seq.) of Title 55 of the Code of Virginia, which creates the Common Interest Community Management Information Fund and provides for the collection of moneys from common interest communities to supply the fund.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 55-530 of the Code of Virginia,

Public comments may be submitted until November 7, 2001.

**Contact:** Eric Olson, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8548, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R02-9; Filed September 14, 2001, 1:25 p.m.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled: **22 VAC 40-680. Virginia Energy Assistance Program**. The purpose of this action is to (i) provide the program with flexibility to respond to federal funding fluctuations by adjusting the maximum income limit, not to exceed the maximum allowed by federal law; and (ii) assist households with summer energy needs by establishing an optional cooling assistance component in the Virginia Energy Assistance Program. A cooling component will serve the needs of those households with high-energy bills and those in need of cooling equipment to alleviate extreme temperatures inside homes of young children and the elderly.

The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Public comments may be submitted until November 7, 2001.

**Contact:** Charlene H. Chapman, Human Services Program Manager, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1751 or FAX (804) 225-2196.

VA.R. Doc. No. R02-3; Filed September 6, 2001, 7:38 a.m.

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### COMMONWEALTH TRANSPORTATION BOARD

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Commonwealth Transportation Board intends to consider amending regulations entitled: **24 VAC 30-71. Minimum Standards of Entrances to State Highways**. The purpose of the proposed action is to amend the text for clarity and update text for documents incorporated by reference, illustrations or tables.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 33.1-12 (3), 33.1-197 and 33.1-198 of the Code of Virginia.

Public comments may be submitted until November 21, 2001.

**Contact:** Steve D. Edwards, Transportation Engineer Senior, Department of Transportation, Traffic Engineering Division, 1401 E. Broad St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-0121 or FAX (804) 225-4978.

VA.R. Doc. No. R02-36; Filed October 2, 2001, 9:59 a.m.

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# PROPOSED REGULATIONS

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For information concerning Proposed Regulations, see Information Page.

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## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates proposed new text.  
Language which has been stricken indicates proposed text for deletion.

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## TITLE 2. AGRICULTURE

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

**Title of Regulation:** 2 VAC 5-400. Rules and Regulations for the Enforcement of the Virginia Fertilizer Law (amending 2 VAC 5-400-10, 2 VAC 5-400-20, 2 VAC 5-400-30, 2 VAC 5-400-50, and 2 VAC 5-400-80; adding 2 VAC 5-400-90).

**Statutory Authority:** § 3.1-106.4 of the Code of Virginia.

**Public Hearing Date:** March 14, 2002 - 10 a.m.

Public comments may be submitted until 10 a.m. on February 8, 2002.

(See Calendar of Events section for additional information)

**Agency Contact:** J. Alan Rogers, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2476, FAX (804) 786-1571 or 1-800-828-1120/TTY.

**Basis:** The regulation is authorized by § 3.1-106.4 of the Code of Virginia. While the wording of this section appears to be discretionary, the section does authorize the board to promulgate such regulations as may be necessary to give the full intent and meaning of this chapter. Hence, § 3.1-106.7 C of the Code of Virginia mandates with use of the word "shall" the use of methods of sampling and analysis adopted by the commissioner or the board, and § 3.1-106.13 A of the Code of Virginia mandates the use of investigational allowances and assessments for deficiencies as established by regulation. In order for the agency to properly carry out these mandates, regulations to adopt definitions, records, manufacturing practices, and the distribution and storage of regulated products prior to final sale are deemed necessary in order to give the full intent and meaning of the Virginia Fertilizer Act.

**Purpose:** The purposes of this regulation are to ensure that: (i) regulated products are properly formulated and labeled; (ii) the manufacturer's recommendations for use of these regulated products are in accordance with methods and procedures that enhance the safety, quality and quantity of the food supply for both humans and animals; (iii) guidelines are established for the methods used to provide verification of labeling claims for regulated products; and (iv) assessments against the manufacturer of a product that is deficient when compared to its guarantee, or that is not properly labeled and thus has caused a negative economic impact on a consumer, are paid to the consumer when he may be identified.

The goal of the regulation is to protect the health and welfare of citizens by properly labeling the contents of regulated products such as fertilizer-pesticide mixtures. The regulation requires the product label to show the proper use and application rates for the product so that improper applications,

which might be harmful to persons, pets, livestock or the environment, are diminished.

The proposed amendments serve to make the regulation uniform with the Uniform Rules and Regulations of the Association of American Plant Food Control Officials (AAPFCO). All states and Canada are encouraged by AAPFCO and the National Association of State Departments of Agriculture to promote uniformity and decrease barriers to trade by adopting the AAPFCO uniform regulations. The amendments will assist Virginia based manufacturers of regulated products in competing outside of the Commonwealth of Virginia since the Virginia regulations will mirror regulations in other states.

The regulation serves to clarify provisions within the Code of Virginia and provides guidance to individuals affected. The regulation provides a uniform system of labeling regulated products so consumers can utilize the products without causing harm to themselves, animals or the environment. The regulation also serves to prevent unscrupulous manufacturers from intentionally marketing products that will cause economic harm to Virginia agriculture and consumers by providing less nutrient value than what is guaranteed on the label.

**Substance:** Substantive changes to existing sections include:

1. Reducing the amount of primary and secondary nutrients required in fertilizer to allow for the use of organic and new types of fertilizer. The existing regulation prevents these fertilizers from being distributed in Virginia.
2. Reducing the assessments for deficiencies in secondary elements more closely follows the modern agricultural practice of applying fewer nutrients in split applications to more closely meet the nutritional needs of the crop.
3. Amended labeling requirements will allow regulated product manufacturers to use and guarantee new forms of nutrients such as slowly available and organic forms of nitrogen. This will allow more forms of regulated products to be distributed in Virginia, which will increase competition in the industry while providing more label information for consumers to make an informed choice between products.
4. Adopting sampling and analysis procedures that are scientifically based and that are consistent with other states guarantees that Virginia regulatory officials will treat the regulated industry in a fair and equitable manner.

**Issues:** The advantages of the amendments include: (i) the public will have greater access to regulated products that are more precisely labeled to protect their health; (ii) the industry will be able to market products without being burdened by unnecessary regulation; (iii) the regulations will be easier to read and understand for the industry and the regulators; and (iv) the regulation will be more uniform with other states allowing for increased interstate competition in the industry.

There are no disadvantages to the public 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 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Virginia Department of Agriculture and Consumer Services (VDACS) proposes several amendments in order to make the regulations comply with the Uniform Rules and Regulations of the Association of American Plant Food Control Officials (AAPFCO). According to VDACS, all 50 states traditionally set their regulations to comply with the AAPFCO regulations. The proposed changes include: (i) reduction in the minimum amount of plant food allowed in a product from 18% to 3.0% for chemical fertilizers and 1.5% for organic fertilizers, (ii) reducing the assessment (penalty) for deficiencies in secondary and minor elements, (iii) allowing fertilizers to be sold by either net volume or net weight, and (iv) permitting manufacturers to use and claim on their labels new forms of fertilizer ingredients such as slowly available plant nutrients.

Estimated economic impact. The proposed amendments will reduce the minimum amount of plant food allowed in a product from 18% to 3.0% for chemical fertilizers and 1.5% for organic fertilizers. According to VDACS, less-concentrated fertilizers are easier and safer for consumers to use. Also, more frequent applications of less-concentrated fertilizers enable the soil to absorb more of the applied fertilizer and reduce environmentally harmful runoff of unabsorbed nutrients. VDACS has not enforced the 18% minimum concentration for several years; less-concentrated fertilizers have been widely available in the Commonwealth. Thus, this proposed change would not likely have a large effect. If there are any potential producers and sellers of less-concentrated fertilizers who have not and would not have sold their products in Virginia due to the current regulations, then this proposed change may increase the variety and quantity of less-concentrated fertilizers on the market. In this case, the public may benefit by having additional choices and possibly lower prices due to increased competition.

In order to match the AAPFCO regulations, VDACS proposes to reduce the assessment (penalty) for deficiencies in secondary and minor elements. Under the current regulations, for a deficiency in a secondary micronutrient element, an assessment of \$1.00 per ton, plus three times the commercial value of the shortage is paid by the manufacturer, dealer, or agent to the ultimate user of the fertilizer. The agency proposes to reduce the assessment to \$1.00 per ton, plus two

times the commercial value of the shortage. Thus, the cost to the manufacturer, dealer, or agent for selling fertilizer with deficiencies in secondary and minor elements, whether accidental or intentional, is lessened. The lower cost of selling deficient fertilizer may reduce the producer's incentive to maintain investment in quality control, and may encourage a less scrupulous manufacturer or dealer to intentionally sell fertilizer with lower nutrient levels than guaranteed. On the other hand, many or most producers may find the potential loss of product reputation due to the potential finding of deficiencies to be high enough cost to maintain high quality control standards and to avoid intentionally including lower nutrient levels than guaranteed. Data is not available to determine whether the lower assessment for deficient fertilizer will significantly affect the behavior of manufacturers, dealers, and agents.

Under the current regulations, fertilizer labels must include a statement of net weight. The proposed amendments change the label requirement for "net weight" to "quantity statement." Thus, fertilizers could be sold by net volume, which may be more useful information than weight for liquid fertilizer, for example. By increasing the flexibility on how to label quantity on the label, while maintaining the requirement that quantity is accurately labeled, this proposed change appears to be beneficial without introducing new cost.

The proposed regulations will allow manufacturers to use and claim on their labels new forms of fertilizer ingredients, such as slowly available and organic forms of nitrogen, that are deemed to be legitimate plant nutrients by AAPFCO. In practice, VDACS has permitted fertilizer labels that include these new forms of fertilizer ingredients for several years. Thus, similar to the less-concentrated fertilizers, this proposed change would not likely have a large effect. If there are any potential producers and sellers of fertilizers who have not and would not have produced and sold their products due to the current regulations, then this proposed change may increase the variety and quantity of less-concentrated fertilizers on the market. In this case, the public may benefit by having additional choices and possibly lower prices due to increased competition.

Businesses and entities affected. The proposed amendments potentially affect the approximately 35 members of the fertilizer industry that do business in Virginia, plus potential entrants, and consumers of fertilizer.

Localities particularly affected. The proposed changes potentially affect all localities in the Commonwealth.

Projected impact on employment. The proposed amendments will not likely significantly affect employment.

Effects on the use and value of private property. The proposal to reduce the assessment for deficient secondary and minor elements may have a small negative effect on the value of a small number of farmers' property, and may have a small positive effect on the value of a small number of producers of fertilizer. If there are any current or potential producers of fertilizer that have not sold products in Virginia due to the current regulations stated prohibition on fertilizers with plant food concentration below 18 percent or the prohibition on the use and claim of new forms of fertilizer ingredients, despite

# Proposed Regulations

the agency's lack of enforcement, then the value of these firms may increase and some current producers may have lower profits due to increased competition.

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

Summary:

*The proposed amendments update the following areas of the regulation: (i) definitions; (ii) plant nutrients; (iii) labels; (iv) investigational allowances and penalties; (v) minimum plant food allowed; and (vi) sampling and analysis procedures. The amendments include changes needed to make the regulation compatible with the 1994 changes to the Virginia Fertilizer Act (§ 3.1-106.1 et seq. of the Code of Virginia).*

**2 VAC 5-400-10. Definitions.**

A. Except as the board designates otherwise in specific cases, the names and definitions for commercial fertilizer shall be those adopted as official by the Association of American Plant Food Control Officials.

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

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

"Fertilizer Law" means Chapter ~~40~~ 10.1 (§ ~~3.1-74~~ 3.1-106.1 et seq.) of Title 3.1 of the Code of Virginia, known as the Virginia Fertilizer Law Act.

"Pesticide Law" means Chapter ~~44~~ 14.1 (§ ~~3.1-189~~ 3.1-249.27 et seq.) of Title 3.1 of the Code of Virginia, known as the Virginia Pesticide Law Control Act.

**2 VAC 5-400-20. Plant nutrients in addition to nitrogen, phosphorus and potassium.**

Other plant nutrients, when claimed in any written, printed, or graphic matter, shall be registered and guaranteed on the package; or if in bulk, on the accompanying invoice or delivery slip. Guarantees shall be made on the elemental basis. Sources of the guaranteed elements and proof of their availability shall be provided to the commissioner upon request. *Except guarantees for those water soluble nutrients labeled for ready to use foliar fertilizers, ready to use specialty liquid fertilizers, hydroponic or continuous liquid feed programs and guarantees for horticultural growing media, the minimum percentages which that will be accepted as guarantees or for registration are as follows:*

Element	%
A. 1. Calcium (Ca)	1.00
B. 2. Magnesium (Mg)	0.50
C. 3. Sulfur (S)	1.00
D. 4. Boron (B)	0.02
E. 5. Chlorine (Cl)	0.10

F. 6. Cobalt (Co)	0.0005
G. 7. Copper (Cu)	0.05
H. 8. Iron (Fe)	0.10
I. 9. Manganese (Mn)	0.05
J. 10. Molybdenum (Mo)	0.0005
K. 11. Sodium (Na)	0.10
L. 12. Zinc (Zn)	0.05

Proposed labels and directions for use of the fertilizer shall be furnished upon request with the application for registration. Warning or caution statements are required on the label for any product which contains 0.001% or more of molybdenum. Any of the above listed elements which are guaranteed shall appear in the order listed, immediately following guarantees for the primary nutrients nitrogen, phosphorous, and potassium.

**2 VAC 5-400-30. Specialty Specialty fertilizer labels.**

A. The following information, if not appearing on the face or display side in a readable and conspicuous form, shall occupy at least the upper third of a side of the container, and shall be considered the label. (With the exception of "~~net weight~~ quantity statement," which must always appear on the display panel of the package or container.)

~~Net Weight~~ 1. Quantity statement

~~2.~~ 2. Brand name.

~~3.~~ 3. Grade.

4. Guaranteed Analysis:

Total Nitrogen (N)	%
% Ammoniacal Nitrogen**	***
% Nitrate Nitrogen**	***
% Water Insoluble Nitrogen±	**
% Urea Nitrogen***	
% (Other recognized and determinable forms of N)***	

Available Phosphoric Acid (P<sub>2</sub>O<sub>5</sub>) %

Soluble Potash (K<sub>2</sub>O) %

Additional Plant Nutrients as prescribed by regulation.

\*\* Potential Acidity or Basicity % or ..... lbs.

Calcium Carbonate Equivalent per ton.

5. Sources of nutrients, when shown on the label, shall be listed below the completed guaranteed analysis statement.

6. Name and address of registrant.

NOTES:

\*Zero (0) guarantees should not be made and may not appear in statement except in nutrient guarantee breakdowns.

± \*\* If claimed or the statement "organic" or "slow acting nitrogen" is used on the label.



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# Proposed Regulations

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data submitted. When a *soil amending* or soil conditioning ingredient is permitted to be listed and guaranteed, it must be verifiable by laboratory methods and is subject to inspection and analysis. The commissioner may prescribe methods and procedures of inspection and analysis of the *soil amending* or soil conditioning ingredient.

5. With the application for registration for each product the applicant shall submit a copy of the label, a copy of all advertisements and any other materials to be used in promoting the sale of the *soil amendment* or soil conditioner.

## 2 VAC 5-400-50. Investigational allowances ~~or tolerances~~ and ~~penalties~~ assessments.

A. \* A commercial fertilizer shall be deemed deficient if the analysis of any primary nutrient is below the guaranteed analysis or grade by more than 0.30% plus 3.0% of the guarantee, or if the overall index value of the fertilizer is below 97.0%. Except when the found relative value of a sample is equal to or exceeds the guaranteed relative value, an overage in primary nutrients may compensate for a deficiency in another primary nutrient up to 10.0% of the guarantee of the deficient nutrient, not to exceed two units. No compensation will be allowed toward a deficiency unless the total percent of primary plant nutrients is equal to or greater than the percent guaranteed or if the deficiency exceeds 10.0% of the guarantee or the deficiency exceeds two units. If more than one primary nutrient is in ~~penalty~~ deficiency status, no compensation will be allowed.

B. Assessment for deficiency of nitrate nitrogen or water insoluble nitrogen.

1. Fertilizers guaranteed to contain 1.0% or less: If the nitrogen content of any commercial fertilizer is found to be 1/3 or more, less than the guaranteed minimum, the commissioner shall ~~assess a penalty~~ *make an assessment* against the manufacturer, dealer, or agent. This ~~penalty~~ *assessment* shall amount to twice the value of the deficiency.

2. Fertilizers guaranteed to contain more than 1.0%: If the nitrogen content of any commercial fertilizer is found to be 1/4 or more, less than the guaranteed minimum, the commissioner shall ~~assess a penalty~~ *make an assessment* against the manufacturer, dealer, or agent. This ~~penalty~~ *assessment* shall amount to twice the value of the deficiency.

C. Secondary and minor elements shall be deemed deficient if any element is below the guarantee by an amount exceeding the values in the following schedule:

ELEMENT	
Calcium	0.2 unit + 5.0% of guarantee
Magnesium	0.2 unit + 5.0% of guarantee
Sulfur	0.2 unit + 5.0% of guarantee
Boron	0.003 unit + 25.0% of guarantee
Cobalt	0.0001 unit + 30.0% of guarantee
Molybdenum	0.0001 unit + 30.0% of guarantee

Chlorine (except for tobacco) 0.005 unit + 10.0% of guarantee

Copper 0.005 unit + 10.0% of guarantee

Iron 0.005 unit + 10.0% of guarantee

Manganese 0.005 unit + 10.0% of guarantee

Sodium 0.005 unit + 10.0% of guarantee

Zinc 0.005 unit + 10.0% of guarantee

The maximum allowance when calculated as above shall be one unit (1.0%).

D. ~~Penalties~~ Assessments for secondary and minor elements. For each deficiency in a secondary or micronutrient element, ~~a penalty the commissioner shall make an assessment against the manufacturer, dealer or agent~~ of \$1.00 per ton, plus ~~three~~ two times the commercial value of the shortage, which shall be paid to the ultimate user of the fertilizer. If the purchaser is not known, then the ~~penalty~~ *assessment* shall be paid to the State Treasury and reported to the State Comptroller, who shall credit the amount to a special fund.

E. If the guaranteed minimum chlorine content of fertilizer labeled for tobacco is exceeded by more than 0.5%, ~~a penalty the commissioner shall be assessed~~ *make an assessment against the manufacturer, dealer or agent* equal to 10.0% of the value of the fertilizer for each 0.5% or fraction thereof of excess.

\* In applying these investigational allowances, the recommended ~~Association of Official Analytical Chemists~~ AOAC *International* procedures for obtaining samples, sample preparation, and analyses must be used. These are described in the ~~current~~ 17th edition of the "Official Methods of Analysis of the ~~Association of Official Analytical Chemists~~ AOAC *International*" and in subsequent issues of the "Journal of Official Analytical Chemists." ~~Averaging at least two values must be adhered to.~~ Values carried to two decimals are to be used in this averaging, but values may be rounded to one place where preferred in reporting.

## 2 VAC 5-400-80. Minimum plant food allowed.

A. No person shall be allowed to distribute, register, or offer for sale any mixed fertilizer, colloidal phosphate or similar materials in this Commonwealth which contains less than ~~18.0~~ 3.0% of plant food, (total nitrogen, available ~~phosphoric acid~~ phosphate and soluble or available potash, either singly or in combination) except as provided in subsections B and C of this section.

B. ~~There may be one grade of tobacco plant bed fertilizer in which the sum of guarantees for~~ The commissioner may allow mixed fertilizer with a minimum of 1.5% of plant food (total nitrogen, available ~~phosphoric acid~~, phosphate and soluble or available potash ~~shall not total less than 16.0%~~, either singly or in combination) to be distributed, registered, or offered for sale if the plant food is derived primarily from organic materials.

C. The minimum plant food requirement shall not apply to ground rock phosphate.

Procedures used in sample preparation and analysis for enforcement of this chapter are available from:

Association of Official Analytical Chemists  
1111 North 29th Street  
Suite 210  
Arlington, Virginia 22209

## **2 VAC 5-400-90. Sampling and analysis procedures.**

*Unless otherwise adopted by the commissioner pursuant to § 3.1-106.4 B of the Virginia Fertilizer Law, procedures for obtaining samples, sample preparation, and sample analysis shall be those described in the 17th edition (2000) of the "Official Methods of Analysis of AOAC International."*

Procedures used in sample preparation and analysis for enforcement of this chapter are available from:

AOAC International  
481 North Frederick Avenue  
Suite 500  
Gaithersburg, Maryland 20877-2417

### DOCUMENTS INCORPORATED BY REFERENCE

Official Methods of the Association Analysis of Official Analytical Chemists AOAC International, 17th Edition, 2000, Volumes 1 and 2.

**NOTICE:** The forms used in administering 2 VAC 5-400, Rules and Regulations for the Enforcement of the Virginia Fertilizer Law are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

### FORMS

Application For ~~New~~ Fertilizer Product Registration (rev. 10/01).

**VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**  
 Division of Product and Industry Regulation  
 PO Box 526  
 Richmond, Virginia 23218-0526

Registration No. \_\_\_\_\_

**APPLICATION FOR FERTILIZER PRODUCT REGISTRATION**

<input type="checkbox"/> Specialty Fertilizer	( \$50.00)	885-02104
<input type="checkbox"/> Soil Amendment	(\$100.00)	885-02209
<input type="checkbox"/> Soil Conditioner	(\$100.00)	885-02210
<input type="checkbox"/> Horticultural Growing Medium	(\$100.00)	885-02211

In accordance with the requirements of Chapter 10.1, Title 3.1, Code of Virginia

Registrant Name \_\_\_\_\_ Name on Label (Guarantor) \_\_\_\_\_  
 Mailing Address \_\_\_\_\_ Address on Label \_\_\_\_\_  
 \_\_\_\_\_ FIN/SSN \_\_\_\_\_  
 Print Name of Agent \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_  
 Signature and Title of Registrant Agent \_\_\_\_\_

Date of Application \_\_\_\_\_ No. Products @ \$50 each \_\_\_\_\_ No Products @ \$100 each \_\_\_\_\_ Total Fee Paid \_\_\_\_\_

Product Name	Net Weight	Total Nitrogen N	Nitrogen In form of Nitrate	Water Insoluble Nitrogen WIN	Available Phosphorus P <sub>2</sub> O <sub>5</sub>	Available Potash K <sub>2</sub> O	Ca	Mg	S	B	Cu	Fe	Mn	Mo	Na	Zn
1.																
2.																
3.																
4.																
5.																
6.																

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**Title of Regulation:** 2 VAC 5-610. Rules Governing the Solicitation of Contributions (amending 2 VAC 5-610-10 through 2 VAC 5-610-80; adding 2 VAC 5-610-42, 2 VAC 5-610-44, and 2 VAC 5-610-46).

**Statutory Authority:** § 57-66 of the Code of Virginia.

**Public Hearing Date:** March 14, 2002 - 10 a.m.

Public comments may be submitted until 10 a.m. on February 8, 2002.

(See Calendar of Events section for additional information)

**Agency Contact:** Andres "Andy" Alvarez, Program Manager, Office of Consumer Affairs, Department of Agriculture and Consumer Services, 1100 Bank Street, Suite 1101, Richmond, VA 23219, telephone (804) 786-1381, FAX (804) 786-5112, toll-free 1-800-552-9963 or 1-800-828-1120/TTY.

**Basis:** Section 57-66 of the Code of Virginia gives the Board of Agriculture and Consumer Services the discretionary authority to make and publish rules and regulations for the enforcement of the Virginia Solicitation of Contributions (VSOC) Law (§ 57-48 et seq. of the Code of Virginia) and for the achievement of uniform regulation of charitable solicitations in Virginia.

**Purpose:** Prior to enactment of the VSOC Law in 1974 and adoption of the regulation in 1978, there were no means in Virginia, except through 14 local ordinances, to register charitable organizations, professional solicitors and professional fund-raising counsel. In the absence of regulations, entities involved in raising funds for charitable causes were able to operate without having to disclose how contributions were used.

Based on statistical figures provided by the American Association of Fund Raising Counsel, an association that represents professionals who, under contract, provide logistical fund-raising advice to charitable organizations, and on other data obtained from statistical abstracts of the United States and the Commonwealth of Virginia, it is estimated that \$2.5 billion is donated to charitable or civic organizations annually in the Commonwealth of Virginia. This estimate excludes religious contributions, which account for nearly one-half of all charitable contributions.

This regulation protects the welfare of citizens who give donations to charitable causes by requiring that certain specific public disclosures appear in the materials provided to those citizens throughout the solicitation process. The regulation facilitates the review and maintenance of records submitted to the agency by regulated entities, and it increases public access to records that include the organizations' income and expense statements.

Amendments made to the VSOC Law over the years have resulted in an increase in both the number of entities that qualify for exemption from annual registration and in the number of forms required to accommodate every new type of exempt organization. The agency seeks to consolidate the existing number of forms into a streamlined document that will

(i) provide citizens with meaningful basic information about the organizations to which they are considering donating, (ii) reduce both the number of inquiries from staff of regulated entities who contact the agency seeking additional form completion guidance, and (iii) when necessary, reduce time spent by investigators researching basic operational information about regulated entities.

**Substance:** The new substantive provisions and changes to the regulation are:

1. To include instructions regarding the submission of a national standardized Unified Registration Statement, which is a form created by the National Association of Attorneys General and the National Association of State Charity Officials to consolidate the information and data requirements of all states requiring registration.
2. To add categories for groups granted exemption from annual registration due to amendments to the VSOC Law and to simplify the application process for organizations wishing to qualify for said exemption.
3. To reduce paperwork burden on regulated entities, to provide for the assessment of late filing fees against noncompliant entities, to establish procedures for regulated entities to obtain extensions for the submission of certain required documents, and to clarify the information disclosures that regulated entities must make to prospective donors.
4. To establish certain disclosure requirements specifically applicable to for-profit organizations and to regulated entities that use private mailboxes. A private mailbox is a mailbox rented by a business or an individual from a private contractor who receives and forwards mail to their clients for a fee. A typical private mailbox operation consists of multiple private boxes at a single, unique physical address. All clients have the same street address, but the box numbers are different.

**Issues:**

Regulated entities. The total number of categories of organizations exempted from annual registration has increased from eight in 1991 to 12 in 1996, a fact that has resulted in a commensurate increase in the number of exemption application forms. The agency intends to simplify the exemption application process by consolidating basic organizational information on one single form, the Virginia Exemption Application for a Charitable or Civic Organization, and including an additional page to address technical questions frequently asked by staff of the regulated entities related to specific exemptions. Such form consolidation should reduce the paperwork burden on regulated entities. Those entities will also benefit from the formulation of specific steps required to obtain official extension to the filing of Final Accounting Reports.

There are no disadvantages to compliant regulated entities associated with the proposed regulatory action.

General public. Documents filed by regulated entities as a result of the filing requirements of the VSOC Law provide the general public with information about the organizations to which they are considering donating, thus enabling them to

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make more informed financial decisions. The agency's attempt to streamline the registration process and associated forms should result in more meaningful information available to the public. The promulgation of specific information disclosure requirements should allow the public to more readily identify the nature and purpose of solicitation appeals conducted by professional solicitors or any of their subcontractors. The amendment would also require solicitors to make certain disclosures on the front of the invoice or thank you letter typically sent to the consumers in response to a pledge. Additionally, the agency intends to add specific questions to the Solicitation Notice and all registration forms that will disclose any use of private mailboxes and the ultimate destination of mail received at those boxes. Many solicitors and other direct mail fundraisers use private mailboxes for the collection and forwarding of mail from consumers. These mailboxes are usually selected based on their geographical proximity to the consumers being solicited, thus leading them to believe that their donations are going to a local or regional charity when, in fact, their donations may be forwarded to another state. This will help consumers determine that companies other than the charities themselves are handling their donations.

There are no disadvantages to the general public associated with the proposed regulatory action.

Agency. By simplifying filing instructions and providing a list of answers to questions that are frequently asked by staff of the regulated entities, the agency should save time and resources through a reduction in the number of requests for assistance from the regulated entities themselves on matters such as interpretation of the regulation or completion of required forms.

The agency's ability to investigate noncompliant or fraudulent entities in an effective and efficient manner should also improve through the reduction in the number of documents that agency staff must review. Finally, the specific listing of late filing fines for late Final Accounting Reports, as provided by the VSOC Law, should encourage timely submissions of said reports by all regulated entities, particularly by those that have been traditionally noncompliant.

There are no disadvantages to the agency associated with the proposed regulatory action.

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 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Board of Agricultural and Consumer Services (board) proposes to make several amendments to the regulations governing the solicitation of contributions. Changes include: (i) acceptance of the Unified Registration Statement in lieu of the Virginia Registration Statement, (ii) additional types of organizations exempted from annual registration, (iii) consolidation of 12 registration exemption forms to one form, (iv) requirement that charitable or civic organizations shall include in all solicitations their primary name, (v) new format requirements for preprinted return addresses, (vi) requirement that subcontracting professional solicitors file consent to solicit form, (vii) requirement that subcontractors of subcontractors register, (viii) requirement that the professional solicitor state that he is a "paid solicitor" in oral solicitations, and (ix) requirement that in written solicitations the professional solicitor state that they file financial reports with the Virginia Office of Consumer Affairs (VOCA), and include VOCA's address.

Estimated economic impact. When members of the public are asked to contribute donations to charitable and civic organizations either via telephone or mail, there often exists some uncertainty as toward the identity of the donation solicitor, whether the solicitor himself or herself works for a charitable or civic organization, how much of the donation will reach the charitable or civic organization versus payments to the solicitor, how much of the charitable or civic organization's receipts go toward the actual charitable purpose described versus other expenses and purposes, etc. This uncertainty may lead potential donors to donate less often and to give fewer dollars per donation than they would if they had more confidence that the donation would be largely used as they are led to believe. Also, the lack of information may lead donors to make donations that they would not make if they had more detailed and accurate information concerning the recipients of their donation and how the donation would likely be used.

Financial information for registered charitable organizations, professional solicitors, and professional fund-raising counsel<sup>1</sup> is available to the public by calling VOCA's toll free phone number. Available information includes, but is not limited to, the percentage of receipts kept by the professional solicitor in their contract with a charitable or civic organization on specific campaigns, and how much of the charitable or civic organization's receipts are expended on program services versus other categories. Public citizens may use this information in their decision on whether to contribute to a charitable organization via a professional solicitor. Increased access to clear detailed information about the recipients of potential donations could potentially increase donations to recipients that donors find most deserving while reducing donations to recipients considered less deserving.

The board proposes several changes to these regulations that affect potential donors, charitable and civic organizations, professional solicitors, and professional fund-raising counsel.

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<sup>1</sup> Professional fund-raising counsel are firms or individuals who, under contract, provide logistical fund-raising advice to charitable organizations primarily concerning direct mail solicitations.

First, the board proposes to allow charitable and civic organizations to register using the Unified Registration Statement in lieu of the Virginia Registration Statement. The Unified Registration Statement contains all the information required in the Virginia registration. Some organizations that do business in other states may find it easier to send the Unified Registration Statement rather than to fill out a Virginia registration form. Since the Unified Registration Statement contains all the information required in the Virginia registration, VOCA gets all the information it requires and the organization saves on some time and administrative costs. Thus this proposed change creates a net benefit.

Unless statutorily exempt, charitable and civic organizations must register with VOCA annually. Pursuant to § 57-60 of the Code of Virginia, nonprofit debt counseling agencies, area agencies on aging, trade associations, and labor unions have been added to the list of organizations exempt from registering. In addition, the definition of "health care institution," an exempt category, has been expanded. Medical facilities that are (i) designated by the U.S. Health Care Financing Administration (HCFA) as a federally qualified health center, (ii) certified by HCFA as a rural health clinic, or (iii) wholly organized for the delivery of health care services without charge (free clinic) are newly exempt by virtue of being added to the "health care institution" definition. The newly exempt organizations will save on registration and administrative costs. Annual registration fees vary between \$30 and \$325, depending on gross contributions received in the previous year. Organizations with no prior financial history filing an initial registration pay a \$100 registration fee. When applying for an exemption to registration, the organizations provide financial information. But in subsequent years that information becomes out-of-date. VOCA is not able to provide up-to-date financial information to the inquiring public concerning exempt organizations. Whether the costs to the public of reduced information concerning the newly exempt organizations that could be used in decisions about donations exceeds the benefits to the newly exempt organizations of reduced registration and administrative costs depends on how valuable the information is to the public. Since little or no data is available that estimates the dollar value of this information to the public, it is not possible to draw any reliable conclusions about the net economic impact of the proposed additions to the list of exempt organizations.

Currently there are 12 separate registration exemption forms. The applicant for registration exemption must determine which of the 12 forms is most appropriate for their circumstance. According to VOCA, there has often been confusion on the part of the applicant as to which form is appropriate. The board proposes to consolidate the 12 registration exemption forms to one form. No additional information would be required. This will eliminate the occurrences where applicants submit the wrong form. Also, the change potentially saves time for the applicant and VOCA staff in discussions on the correct form to use. Since no additional information is required, this proposed change appears to produce a net benefit.

The board also proposes to require that a charitable or civic organization include in all solicitations the primary name under which it is registered. According to VOCA, occasionally

a registered charitable or civic organization will solicit donations by using a name other than their primary name in order to mislead the public as toward their organization's purpose. The organization could register under multiple names in order to circumvent the intent of this proposed restriction, but that would be costly for the organization. This proposed change may provide some clarifying information for the public that may be useful for donation decisions without introducing significant new costs for charitable and civic organizations that do not intend to mislead the public. Thus, this change will likely produce a net benefit.

Pursuant to § 57-57 C of the Code of Virginia, the board proposes to require new format requirements for preprinted return addresses for charitable and civic organizations, professional solicitors, and professional fund-raising counsel. Specifically, the preprinted address on any return envelope that is not addressed to the charitable or civic organization's own primary address shall include the name of the business located at the address on the return envelope in the following format:

ABC Charity  
c/o XYZ Company  
111 Main Street (#)  
City, ST Zip Code

According to VOCA, it has been common for out-of-state organizations to use an address that implies that the direct recipient of the donation is physically located in the Commonwealth. The proposed addressing requirement is intended to make clear to potential donors that the organization that they are sending their donation to is not located at the mailing address. Again, this proposed change may provide some clarifying information for the public that may be useful for donation decisions without introducing significant new costs for charitable and civic organizations, professional solicitors, and professional fund-raising counsel. Thus, this change will likely produce a net benefit.

Under the current regulations, professional solicitors are required to file a consent to solicit form signed by two officers of the charitable or civic organization with which they have a contract. Professional solicitors commonly subcontract their work; subcontractors are not required to file a consent to solicit form under the current regulations. According to VOCA, charitable and civic organizations are often not aware of who is using their name for solicitations beyond the professional solicitor with whom they have a contract, particularly when multiple levels of subcontractors are used. The board proposes to require that subcontracting professional solicitors file a consent to solicit form. This requirement will help insure that the charitable and civic organizations know who is soliciting using their name, and if there are complaints, the charitable and civic organizations and VOCA will be able to better determine whether the organization using their name is doing so properly. The form is two pages long and has no associated fee. The costs appear to be limited to the time involved in filing out the form and obtaining the signatures of the two officers of the charitable or civic organization, plus perhaps postage. The benefit of the information garnered by requiring the consent to solicit appears to be significant, while the cost of filing is not negligible, it does appear to be small.

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Thus, this proposed change most likely produces a net benefit.

One might expect the problem described above concerning subcontracting could be solved through the initial contracting process between the charitable or civic organization and the professional solicitor; the charitable or civic organization could require in their contract with their professional solicitor that they be notified in writing of subcontractors hired, require prior approval of any subcontractors, or perhaps prohibit subcontracting all together. But, according to VOCA, many charitable and civic organizations are run by part-time volunteers, and have new officers each year without substantial experience or knowledge of the potential problem with subcontractors.

Under the current and proposed regulations, subcontracting professional solicitors operating under a contract with a registered professional solicitor are treated as an agent of that professional solicitor and are not required to register. However, according to an opinion from the Office of the Attorney General, firms or individuals who become subcontractors to those initial subcontractors are not agents of the professional solicitor directly hired by the charitable or civic organization.<sup>2</sup> Thus, the board proposes to require that subcontractors of the subcontractors register. An organization that registers as a professional solicitor must pay a \$500 annual fee and purchase a \$20,000 surety bond. Thus, an organization that is not already registered as a professional solicitor for direct work with a charitable or civic organization, but does work as a subcontractor to a subcontractor of a professional solicitor would have to newly pay the \$500 annual fee and purchase a \$20,000 surety bond. According to VOCA, the purpose of this proposed requirement is to ensure that if the subcontractor of the subcontractor commits fraud, say fails to pass on donation receipts, the charitable or civic organization and VOCA would have financial recourse through the surety bond. For a small subcontractor of a subcontractor, say, a self-employed individual working part-time, the introduced cost of this proposed change may be prohibitively expensive; in other words he or she may decide to no longer work as a subcontractor of a subcontractor due to the introduced cost. The relative size and number of subcontractors of subcontractors are not known. Both the benefit for charitable and civic organizations of financial assurance through the surety bond and the cost to subcontractors of subcontractors of the annual fee and surety bond are significant. It is not clear, though, whether or not the benefits of financial assurance for the charitable and civic organizations exceed the costs of registering for subcontractors of subcontractors.

Similar to the situation concerning consent to solicit for subcontractors, one might expect that the potential problem described above could be solved through the initial contracting process between the charitable or civic organization and the professional solicitor; the charitable or civic organization could specify in their contract with their professional solicitor that the professional solicitor would accept subcontractors of their subcontractors also as their

agents. But again, according to VOCA, many charitable and civic organizations are run by part-time volunteers, and have new officers each year without substantial experience or knowledge of the potential problem with subcontractors.

The board proposes to require that the professional solicitor state that he is a "paid solicitor" in oral solicitations. This requirement, if obeyed in practice, will help provide accurate information for the public with which to make their donation decisions. The requirement may add to the length of the solicitation by a small amount, particularly if it prompts questions by the potential donor, but that cost seems relatively small compared to the benefit of the clarifying information for the potential donor. Thus, this change will also likely produce a net benefit.

Pursuant to § 57-55.2 of the Code of Virginia, the proposed regulations state that "each professional solicitor shall, in the course of a written solicitation, include the following statement 'The professional solicitor conducting this campaign (primary name of professional solicitor), files a financial report for each campaign it conducts. Copies of these financial reports are available from the Virginia Office of Consumer Affairs, P.O. Box 1163, Richmond, VA 23218.' This statement shall be in bold face typeface no smaller than 10-point with grammatically correct capitalization and lower case letters. The statement shall appear on the front side of the document on a portion that is retained by the potential donor." The required inclusion of this language on written solicitations will be beneficial in that potential donors will be alerted to the existence of financial information concerning the professional solicitor that may affect the potential donor's decision on whether to contribute, and where to obtain said information. It is likely that many potential donors would not be otherwise aware that this information is available. The requirement to include this language will produce some cost for professional solicitors in that it will occupy space on written solicitations that could have been used for other purposes. Whether the benefit to the public of being alerted to the availability of this information exceeds the cost to the professional solicitors depends on how valuable the information is to the public and how likely it is to be used. Since little or no data exist that estimate this value, it is not possible to draw any reliable conclusions about the net economic impact of the proposed requirement to include the proposed language on written solicitations. The proposed requirement could potentially be improved, though, by replacing or supplementing VOCA's address with their toll free phone number. The public would be more likely to avail themselves of the information if they could quickly obtain it via phone rather than mail. Also, a phone number would take up less space on the written solicitation, which would be less costly to the professional solicitor.

Businesses and entities affected. Approximately 3,000 charitable organizations, professional solicitors, and professional fundraising councils that register annually, and the approximately 8,000 charitable organizations that are exempt from annual registration are affected by the proposed changes.

Localities particularly affected. The proposed changes affect localities throughout the Commonwealth.

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<sup>2</sup> Source: VOCA

Projected impact on employment. The proposed requirement for subcontractors of subcontractors to register may reduce the frequency that subcontracts of subcontracts are created. Thus, there will likely be fewer jobs through subcontracts of subcontracts of professional solicitors. However, it is not known whether this will have any net impact on employment in this industry.

Effects on the use and value of private property. The proposal to add new categories of organizations to the list of charitable and civic groups that are exempt from registering will increase the value of those organizations by a small amount. The value of being a subcontractor of a subcontractor will decrease due to the additional costs associated with registration.

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

Summary:

*The proposed amendments conform the regulation with statutory amendments to the Virginia Solicitation of Contributions law (§ 57-48 et seq. of the Code of Virginia) relating to (i) the annual registration process and exemption to such registration; (ii) rules governing a professional solicitor; and (iii) general provisions relating to disclosure requirements by for-profit organizations and the use of private mailboxes by the regulated entities.*

PART I.  
DEFINITIONS.

**2 VAC 5-610-10. Definitions.**

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

"Agents" means one or more persons who transact some business or manage some affair for another, by the authority and on account of the latter, and who render an account of such business or affair to that other. The term "agents" shall include the term "subcontractors."

~~"Code" means Code of Virginia (1950), as amended.~~

"Bona fide salaried officer or employee" means a person who is in an employer-employee relationship with a charitable organization, and who is compensated exclusively by a fixed annual salary or hourly wage.

"Budget" means a financial plan of action, ~~which~~ that itemizes expected sources and amounts of income and expenses, and ~~which~~ that is ratified by the organization's Board of Directors.

"Certified audited financial statements" means financial statements prepared by an independent certified public accountant with an opinion rendered in accordance with generally accepted accounting principles (GAAP). (See § 57-53 of the Code of Virginia, Records to be kept by charitable organizations, and 2 VAC 5-610-80 B, Financial standards.)

~~"Certified treasurer's report" means an income and expense statement, and a balance sheet, for the past fiscal year, which~~

~~has been prepared by the organization's treasurer and certified by him as being accurate and true.~~

"Code" means Code of Virginia (1950), as amended.

"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services or a member of his staff to whom he may delegate his duties, including, but not limited to, staff of the ~~Division Office~~ of Consumer Affairs and ~~the division's employees.~~

~~"Community" means a group of people living in the same locality, under the same city, town, or county government.~~

"File with the commissioner" and "receipt by the commissioner" means depositing the original of the document required to be filed, along with payment of the appropriate fee and all supporting documentation, with the ~~State Division Office~~ of Consumer Affairs, Washington Building, 1100 Bank Street, Richmond, Virginia 23219. Such documents shall be effective on the date deposited by hand at the stated address during regular business hours, or on the date postmarked, if sent by mail, provided such is actually received by the ~~Division Office~~ of Consumer Affairs subsequent to the mailing.

"Foundation," as referenced in subdivision A 1 of § 57-60 of the Code of Virginia (Exemptions), means a secondary organization established to provide financial or program support for a primary organization with which it has an established identity.

"Gross contributions" means the total contributions received by the organization from all sources, regardless of geographic location, excluding government grants.

"Having an established identity with" means a relationship between two organizations such that if the primary organization ceased to exist, the secondary organization would also cease to exist.

"Health care institution" means any medical facility that is tax exempt under the Internal Revenue Code § 501(c)(3) and at least one of the following:

1. Licensed by the State Department of Health or by the State Department of Mental Health, Mental Retardation and Substance Abuse Services;
2. Designated by the Health Care Financing Administration (HCFA) as a federally qualified health center;
3. Certified by HCFA as a rural health clinic; or
4. Wholly organized for the delivery of health care services without charge, including the delivery of dental, medical or other health services where a reasonable minimum fee is charged to cover administrative costs.

"IRS" means the Department of the Treasury Internal Revenue Service.

"Local civic league or association" means a not-for-profit organization operated to further the common good of the ~~community which~~ city, town, or county that it is organized to serve.

"Local service club" means a not-for-profit organization which that is organized for the purpose of providing educational

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services, recreational services, charitable services, or social welfare services to the ~~community~~ city, town, or county in which such organization operates.

"Past fiscal year" means the most recently completed fiscal year.

"Primary address" means the bona fide physical street address of the organization or sole proprietor.

"Primary name" means the name under which an organization is incorporated, if incorporated, or, if not incorporated, has been issued a certificate, by the State Corporation Commission, to transact business in Virginia, if so certified, or, if neither incorporated nor certified to transact business in Virginia, the name by which the organization is commonly known or referred to, except that such name shall not be an assumed name, or a deceptive name, as described in subsection A of 2 VAC 5-610-80.

"Report," "register," and "submit" mean "file with the commissioner" as that phrase is defined in this section.

"Subcontractor" means any agent (but not an employee) of a professional solicitor who solicits under a contract or agreement on behalf of the professional solicitor for the benefit of any charitable or civic organization with which the professional solicitor has a contract or agreement.

~~"Trade association" means any nonprofit organization which is determined by the IRS as being tax exempt under § 501(c)(6) of the Internal Revenue Code~~ an association of business organizations having similar issues and engaged in similar fields formed for mutual protection, exchange of ideas and statistics, and for maintenance of standards within their industry.

"Treasurer's report" means an income and expense statement and a balance sheet for the past fiscal year, which has been prepared by the organization's treasurer and verified by him as being accurate and true.

"Unified Registration Statement" means the form created by a committee organized by the National Association of Attorneys General and the National Association of State Charity Officials to consolidate the information and data requirements of all states requiring registration.

## PART II. RULES GOVERNING CHARITABLE AND CIVIC ORGANIZATIONS.

### 2 VAC 5-610-20. Initial registration.

A. Documentation required. Except as provided in subsection B of this section, every charitable organization subject to registration, pursuant to § 57-49 of the Code of Virginia (Registration of charitable organizations), shall file an initial registration statement with the commissioner. Such registration shall not be considered complete unless accompanied by all supporting documentation, as follows:

1. **FEES:** The appropriate fee specified on Form 102, "Virginia Registration Statement for a Charitable Organization," made payable to "Treasurer, Commonwealth of Virginia";

2. **FORM:** The completed Form 102, "Virginia Registration Statement for a Charitable Organization," or the completed Unified Registration Statement, with all questions answered, and with two notarized signatures on the form, as specified on the form, and with all required attachments;

3. **FINANCIAL REPORT:** A copy of one of the following:

a. For all organizations with prior financial history:

(1) The signed and completed IRS Form 990, 990-PF, or 990-EZ, for the past fiscal year, with Schedule A (Form 990), as required, and all attachments, as filed with the IRS; or

a (2) Certified ~~annual~~ ~~audit~~ audited financial statements for the past fiscal year; or

(3) If the annual income of the organization is less than \$25,000, a ~~certified~~ treasurer's report for the past fiscal year; ~~except that when.~~

b. For a newly organized charitable organization that has no financial history, a budget for the current fiscal year shall be filed;

4. **KEY PERSONNEL:** A ~~current~~ listing for the current fiscal year of the officers, directors, trustees, and principal salaried executive staff officer, including their names and addresses;

5. **CONTRACTS:** A signed copy of any and all current contracts with any professional fund-raising counsel and any professional solicitor, as required in § 57-54 of the Code of Virginia (Contracts between charitable or civic organizations and professional fund-raising counsel or professional solicitors);

6. **GOVERNING DOCUMENTS:** If the organization is incorporated, a copy of the certificate of incorporation, articles of incorporation and any subsequent amendments to those documents, or, if unincorporated, any other governing documents;

7. **BYLAWS:** A copy of the organization's bylaws and any subsequent amendments to that document; and

8. **TAX EXEMPTION:** If the charitable organization is listed with the IRS as tax exempt, a copy of the IRS determination letter and any subsequent notifications of modification, or, if exempt status is pending, a copy of the completed IRS application form as filed with the IRS.

B. Consolidated or "joint" registration. A statewide or national charitable or civic organization may file a consolidated, or "joint," registration with the commissioner, as described in § 57-49 B of the Code of Virginia (Registration of charitable organizations), on behalf of its local chapters, which shall not be considered complete unless accompanied by all supporting documentation specified in subsection A of this section, if:

1. The parent organization shares a group IRS exemption status with its chapters and all financial reporting is consolidated in the parent organization's IRS Form 990, Form 990-PF, or Form 990-EZ, or in its certified ~~annual~~ ~~audit~~ audited financial statements, or, if the organization's

annual income is under \$25,000, in its ~~certified~~ treasurer's report; or

2. Each chapter has its own separate IRS exemption status, but the organization's articles of incorporation or bylaws state that all financial matters are managed by the parent organization and all financial reporting is consolidated in the parent organization's IRS Form 990, Form 990-PF, or Form 990-EZ, or in its certified ~~annual audit~~ *audited financial statements*, or, if its annual income is under \$25,000, in its ~~certified~~ treasurer's report.

C. Standard of reporting contributions. Any person required to report contributions, pursuant to § 57-49 of the Code of Virginia (Registration of charitable organizations):

1. Shall report the gross contributions when the solicitation does not include goods or services;
2. Shall report as gross contributions the valuation of any goods or services solicited for resale. Such valuation shall be determined as prescribed in the American Institute of Certified Public Accountants (AICPA) standards for reporting donated goods and services;
3. Shall report the gross contributions when the solicitation includes the sale or donation of tickets for use by third parties, or when the goods or services sold are of nominal value; and
4. Shall report contributions, which may be for net contributions only, when received from special events including, but not limited to, dinners, dances, carnivals, raffles and bingo games, when the goods or services offered are of more than nominal value in return for a payment higher than the direct cost of the goods or services provided.

**2 VAC 5-610-30. Renewal of Annual registration.**

A. Documentation required. Except as provided in subsection B of this section, every charitable organization subject to registration, pursuant to § 57-49 of the Code of Virginia (Registration of charitable organizations), shall file an annual registration renewal with the commissioner on or before the 15th day of the fifth calendar month following the end of the organization's fiscal year. Such registration shall not be considered complete unless accompanied by all supporting documentation, as follows:

1. *FEE*: The appropriate annual fee, specified on Form 102, "Virginia Registration Statement for a Charitable Organization," made payable to "Treasurer, Commonwealth of Virginia";
2. *FORM*: The completed ~~annual registration form~~, Form 102, "Virginia Registration Statement for a Charitable Organization," or the completed *Unified Registration Statement*, with all questions answered, and with two notarized signatures on the form, as specified on the form, and with all required attachments;
3. *FINANCIAL REPORT*: A copy of one of the following:
  - a. The signed and completed IRS Form 990, Form 990-PF, or Form 990-EZ, for the past fiscal year, with

Schedule A (Form 990), as required, and all attachments, as filed with the IRS, ~~or a~~;

b. Certified ~~annual audit~~ *audited financial statements* for the past fiscal year; or;

c. If the annual income of the organization is less than \$25,000, a ~~certified~~ treasurer's report for the past fiscal year;

4. *KEY PERSONNEL*: A ~~current~~ listing for the current fiscal year of the officers, directors, trustees, and principal salaried executive staff officer, including their names and addresses;

5. *CONTRACTS*: A signed copy of any and all current contracts with any professional fund-raising counsel and any professional solicitor, as required by § 57-54 of the Code of Virginia (Contracts between charitable or civic organizations and professional fund-raising counsel or professional solicitors);

6. *GOVERNING DOCUMENTS*: If the organization is incorporated, a copy of any certificate of incorporation, any articles of incorporation, or amendments to these documents, not previously filed with the commissioner, or, if unincorporated, any amendments to the governing documents not previously filed with the commissioner;

7. *BYLAWS*: A copy of any bylaws, or amendments to that document, not previously filed with the commissioner; and

8. *TAX EXEMPTION*: If the organization is listed with the IRS as tax exempt, a copy of any IRS determination letter or subsequent notifications of modification, not previously filed with the commissioner.

B. Consolidated, or "joint," registration. A statewide or national charitable or civic organization may file a consolidated, or "joint," registration with the commissioner, as described in § 57-49 B of the Code of Virginia (Registration of charitable organizations), on behalf of its local chapters, which shall not be considered complete unless accompanied by all supporting documentation specified in subsection A of this section, if:

1. The parent organization shares a group IRS exemption status with its chapters and all financial reporting is consolidated in the parent organization's IRS Form 990, Form 990-PF, or Form 990-EZ, or in its certified ~~annual audit~~ *audited financial statements*, or, if the organization's annual income is under \$25,000, in its certified treasurer's report; or
2. Each chapter has its own separate IRS exemption status, but the organization's articles of incorporation or bylaws state that all financial matters are managed by the parent organization and all financial reporting is consolidated in the parent organization's IRS Form 990, Form 990-PF, or Form 990-EZ, or in its certified ~~annual audit~~ *audited financial statements*, or, if its annual income is under \$25,000, in its certified treasurer's report.

C. Standard of reporting contributions. Any person required to report contributions, pursuant to § 57-49 of the Code of Virginia (Registration of charitable organizations):

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1. Shall report the gross contributions when the solicitation does not include goods or services;
  2. Shall report as gross contributions the valuation of any goods or services solicited for resale. Such valuation shall be determined as prescribed in the American Institute of Certified Public Accountants (AICPA) standards for reporting donated goods and services;
  3. Shall report the gross contributions when the solicitation includes the sale or donation of tickets for use by third parties, or when the goods or services sold are of nominal value; and
  4. Shall report contributions, which may be reported as the net contributions only, when received from special events including, but not limited to, dinners, dances, carnivals, raffles and bingo games, when the goods or services offered are of more than nominal value in return for a payment higher than the direct cost of the goods or services provided.
- D. Extension of time to file. Any charitable organization that cannot complete its registration renewal on or before the 15th day of the fifth calendar month following the end of the organization's fiscal year, may request in writing, as provided in subsection E of § 57-49 of the Code of Virginia (Registration of charitable organizations), an extension of time to file. *Payment of fees is not required with such a request. Fees are due when the registration is filed.* A charitable organization may request an extension of time to file, and an extension may be granted under the following conditions:
1. The charitable organization shall send a letter to the commissioner, stating that the organization is requesting an extension of time to file its registration renewal. If the organization has requested, from the IRS, an extension of time to file its IRS Form 990, Form 990-PF, or Form 990-EZ, the organization may send to the commissioner a copy of the IRS extension request, in lieu of the letter.
  2. If no time period is specified in the written request for extension of time to file, the commissioner shall grant an extension of time to file of ~~30~~ 90 days.
  3. If the charitable organization is unable to complete its registration renewal within the time period granted by the commissioner in the extension of time to file, the charitable organization may request an additional extension of time to file.
  4. In any case, the extension or total of all extensions requested from and granted by the commissioner shall be for no longer than six months after the 15th day of the fifth calendar month following the end of the organization's fiscal year.
  5. The organization's registration shall lapse if the annual renewal is not filed by the 15th day of the fifth calendar month following the end of the organization's fiscal year and no extension of time to file is requested from and granted by the commissioner, or if the annual renewal is not filed by the end of the extension period granted. If the organization's registration lapses, the organization shall file an initial registration (and pay the initial registration fee in

addition to the annual registration fee), as prescribed by 2 VAC 5-610-20.

## **2 VAC 5-610-40. Exemption from annual registration.**

A. Documentation required. Any charitable or civic organization claiming exemption from annual registration, pursuant to § 57-60 of the Code of Virginia (Exemptions), shall file with the commissioner an application for exemption from annual registration ~~of the form in the 100 series (Forms 100A—100H) corresponding to~~ on Form 100, "Virginia Exemption Application for a Charitable or Civic Organization," indicating the category of the exemption claimed. Such filing shall not be considered complete unless accompanied by all supporting documentation, as follows:

1. *FEE*: A check for \$10, made payable to "Treasurer, Commonwealth of Virginia";
2. *FORM*: The completed ~~applicable~~ Form 100, "Virginia Exemption Application for a Charitable or Civic Organization" and *applicable attachments*, with all questions answered, and with *an officer's* notarized ~~signatures~~ signature on the form;
3. *FINANCIAL REPORT*: A copy of one of the following:
  - a. For all organizations with prior financial history:
    - (1) The signed and completed IRS Form 990, 990-PF, or 990-EZ, for the past fiscal year, with Schedule A (Form 990), as required, and all attachments, as filed with the IRS, ~~or a~~;
    - (2) Certified ~~annual audit~~ audited financial statements for the past fiscal year; ~~or~~;
    - (3) If the organization's annual income is less than \$25,000, a ~~certified~~ treasurer's report for the past fiscal year; ~~except that when~~
  - b. For a newly organized charitable or civic organization that has no financial history, a budget for the current fiscal year shall be filed;
4. *KEY PERSONNEL*: A ~~current~~ listing for the current fiscal year of the officers, directors, trustees, and principal salaried executive staff officer, including their names and addresses;
5. *CONTRACTS*: A signed copy of all current contracts with any professional fund-raising counsel and any professional solicitor, as required in § 57-54 of the Code of Virginia (Contracts between charitable or civic organizations and professional fund-raising counsel or professional solicitors);
6. *GOVERNING DOCUMENTS*: Except as provided in subdivision B 2 of this section, if the organization is incorporated, a copy of the certificate of incorporation, articles of incorporation and any subsequent amendments to those documents, or, if unincorporated, any other governing documents;
7. *BYLAWS*: Except as provided in subdivision B 2 of this section, a copy of the organization's bylaws and any subsequent amendments to that document; and



8. **TAX EXEMPTION:** If the organization is listed with the IRS as tax exempt, a copy of the IRS determination letter and any subsequent notifications of modification, or, if tax exempt status is pending, a copy of the completed IRS application form, as filed with the IRS.

B. Additional documentation required *for specific categories of exemption*. In addition to the documentation required in subsection A of this section, the organization shall submit the following documentation for the specific exemption application ~~forms~~ category named below:

1. ~~Form 100-A~~ **Category A, Educational Institution Institutions:**

a. Educational institutions that do not confine solicitations to their student body, alumni, faculty, trustees, and their families, shall provide a copy of their accreditation certificate, as proof of qualification for this exemption; ~~and~~.

b. Any foundation having an established identity with any accredited educational institution shall provide a copy of the institution's accreditation certificate, and a letter, written by the principal, dean, or the head of the institution by whatever name known, which states that the institution recognizes and corroborates the established identity.

2. ~~Form 100-B~~ **Category B, Solicitation for a Named Individual:** In the absence of articles of incorporation and bylaws, the charitable organization shall file a copy of the trust agreement or similar document ~~which~~ that includes the following information:

a. The names of the persons who control the funds and the fund account;

b. The number of signatures required to extract funds from the fund account;

c. A statement that all contributions collected, without any deductions whatsoever, shall be turned over to the named beneficiary for his use; and

d. A statement *in the event the named beneficiary dies* naming those persons to whom any funds remaining will be distributed upon dissolution of the fund account.

3. ~~Form 100-C~~ **Category C, Solicitations not to Exceed \$5,000:** A copy of the organization's budget for the current calendar year, and copies of the ~~certified~~ treasurer's reports for the three previous calendar years, or for the calendar years of the organization's existence, if less than three years.

4. ~~Form 100-D~~ **Category D, Membership Solicitation Only:**

a. The charitable organization shall submit documentation of the dues structure for each class of members; and

b. The charitable organization shall submit copies of any membership recruitment correspondence, for the past two mailings.

5. ~~Form 100-E~~ **Category E, Solicitations by a Nonresident Charitable Organization:** A complete description of all solicitations to be conducted in Virginia by the organization.

6. ~~Form 100-F~~ **Category F, Solicitations Confined to Five or Fewer Contiguous Cities and Counties:**

a. The organization applying for this exemption (applicant organization) shall submit a copy of each local solicitation permit with the application for exemption;

b. If the organization applying for this exemption (applicant organization) grants money to another charitable organization (grantee) that lies within the area covered by this exemption, but pays the grantee's money to the grantee's parent organization that lies outside the area covered by the exemption, then the applicant organization shall keep on file for three years a statement, prepared by the parent organization, that the funds are disbursed to the grantee.

7. ~~Form 100-G~~ **Category G, Civic Organization:** No additional documentation is required.

8. ~~Form 100-H~~ **Category H, Health Care Institutions:** The charitable organization shall submit a copy of *one of the following in support of the category of application:*

a. The license issued by the State Department of Health or by the State Department of Mental Health, Mental Retardation and Substance Abuse Services;

b. *Documentation to show that the health institution has been designated by the Health Care Financing Administration (HCFA) as a federally qualified health center;*

c. *A copy of the HCFA-issued rural health clinic certificate;*

d. *A copy of the free clinic's purpose as stated in its governing documents; or*

e. *If applying as a supporting organization, a copy of the health care institution's documentation (as specified in subdivision 8 a, b, c, or d of this subsection) and a letter from the health care institution's president, or head by whatever name known, acknowledging that the supporting organization exists solely to support the health care institution. If more than one health care institution is supported, supply this documentation for each health care institution.*

*For any year in which a federally qualified health center fails to qualify for such designation, that health center shall register on Form 102, "Virginia Registration Statement for a Charitable Organization," in accordance with § 57-49 of the Code of Virginia (Registration of charitable organization) and 2 VAC 5-610-20, or submit any other applicable exemption application, in accordance with § 57-60 of the Code of Virginia (Exemptions) and 2 VAC 5-610-40.*

9. **Category I, Nonprofit Debt Counseling Agencies:** A copy of the nonprofit debt counseling license issued by the State Corporation Commission, pursuant to § 6.1-363.1 of the Code of Virginia.

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## Proposed Regulations

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10. *Category J, Area Agencies on Aging: A copy of the agreement between the charitable organization and the Virginia Department for the Aging, pursuant to § 2.2-703 A 6 of the Code of Virginia, which designates the organization as an area agency on aging.*

11. *Category K, Trade Associations: No additional documentation required.*

12. *Category L, Labor Unions, Labor Associations, and Labor Organizations: No additional documentation required.*

C. Consolidated, or "joint," exemptions. A consolidated, or "joint," exemption from annual registration, as described in § 57-60 (e) C of the Code of Virginia (Exemptions), will apply to those local chapters, branches, or affiliates which belong to a network membership. In this instance, the parent membership organization shall submit the consolidated application on behalf of its local chapters, branches, or affiliates, and, if exempted, shall submit a membership roster annually to the commissioner. If the exemption category is of a local nature, such as for civic organizations, the exemption shall apply to the local chapters, but not to the parent organization, if the parent organization, in this instance, is soliciting contributions statewide. In this instance, the parent organization shall file its own application for exemption under § 57-60 of the Code of Virginia (Exemptions), if applicable, or its own annual registration under § 57-49 of the Code of Virginia (Registration of charitable organizations).

D. *Primary name. The charitable or civic organization shall include in all solicitations the primary name under which it is registered with the commissioner.*

E. *Use of another charitable or civic organization's name in an appeal by a charitable or civic organization. Pursuant to § 57-57 C of the Code of Virginia (Prohibited acts), if the charitable or civic organization uses the name of another charitable or civic organization in its own solicitation, it shall submit Form 121, "Consent to Solicit," for each charitable or civic organization named in its own solicitation.*

F. *Preprinted return addresses. Pursuant to § 57-57 L of the Code of Virginia (Prohibited acts), the preprinted address on any return envelope, prepared under the direction of the charitable or civic organization and provided to a potential donor, that is not addressed to the charitable or civic organization's own primary address shall include the name of the business located at the address on the return envelope in the following format:*

ABC Charity  
c/o XYZ Company  
111 Main Street (#)  
City, ST Zip Code

*The name on line two may be the name of the professional fund-raising counsel or solicitor, a third party caging company or bank, a commercial mail receiving agency, or other receiver, but in any case must be the name of the company that actually resides at the preprinted address on the return envelope. This requirement does not apply to mail addressed to a United States Post Office box, rented from the U.S. Postal Service.*

### **2 VAC 5-610-50. Discontinuance of solicitations in Virginia.**

A. Ceasing solicitations. If a charitable or civic organization ceases to solicit contributions in Virginia, the charitable or civic organization shall notify the commissioner on or before the 15th day of the fifth month following the end of the organization's fiscal year, and shall submit a copy of the signed and completed IRS Form 990, 990-PF, or 990-EZ, for the past fiscal year, with Schedule A (Form 990), as required, and all attachments, as filed with the IRS, or a certified annual audit audited financial statements for the past fiscal year, or, if the organization's annual income is less than \$25,000, a certified treasurer's report for the past fiscal year.

B. Dissolution of a charitable or civic organization. Upon a charitable or civic organization's dissolution, the organization shall submit a copy of its certificate of dissolution and a statement showing the distribution of its funds. Such statement shall be a copy of the IRS Form 990, Form 990-PF, or Form 990-EZ, with Schedule A (Form 990), as required, and all attachments, as filed with the IRS upon dissolution, or a certified annual audit audited financial statements, or, if annual income is less than \$25,000, a certified treasurer's report, showing the distribution of its funds.

#### *PART III.*

#### *RULES GOVERNING A PROFESSIONAL FUND-RAISING COUNSEL.*

### **2 VAC 5-610-60. Registration of a professional fund-raising counsel.**

A. *Documentation required for registration.* Any professional fund-raising counsel subject to registration, pursuant to § 57-61 of the Code of Virginia (Registration of professional fund-raising counsels and solicitors), shall file a registration statement with the commissioner. Such registration shall not be considered complete, unless accompanied by all supporting documentation, as follows:

1. *FEE:* Annual fee of \$100, made payable to "Treasurer, Commonwealth of Virginia";

2. *FORM:* The completed Form 103, "Virginia Registration Statement for a Professional Fund-raising Counsel," with all questions answered, and with an officer's notarized signatures signature on the form; and

3. *CONTRACTS:* A signed copy of any and all current contracts with charitable or civic organizations soliciting in Virginia, as required by § 57-54 of the Code of Virginia (Contracts between charitable or civic organizations and professional fund-raising counsel or professional solicitors).

B. *Preprinted return addresses. Pursuant to § 57-57 L of the Code of Virginia (Prohibited acts), the preprinted address on any return envelope, prepared under the direction of the professional fund-raising counsel and provided to a potential donor, that is not addressed to the charitable or civic organization's own primary address shall include the name of the business located at the address on the return envelope in the following format:*

ABC Charity  
c/o XYZ Company

111 Main Street (#)  
City, ST Zip Code

The name on line two may be the name of the professional fund-raising counsel, a third party caging company or bank, a commercial mail-receiving agency, or other receiver, but in any case must be the name of the company that actually resides at the preprinted address on the return envelope. This requirement does not apply to mail addressed to a United States Post Office box, rented from the U.S. Postal Service.

PART IV.

RULES GOVERNING A PROFESSIONAL SOLICITOR.

**2 VAC 5-610-70. Rules governing a professional solicitor.**

A. ~~Documents~~ Documentation required for registration. Any professional solicitor subject to registration, pursuant to § 57-61 of the Code of Virginia (Registration of professional fund-raising counsel and solicitors), shall file a registration statement with the commissioner. *In accordance with § 57-61 A of the Code of Virginia (Registration of professional fund-raising counsels and solicitors), a professional solicitor may register for and pay a single fee on behalf of all its members, officers, agents (including any subcontractors) and employees. For any specific campaign, any agent or subcontractor not directly under contract or agreement to the registered professional solicitor must file its own registration.* Such registration shall not be considered complete unless accompanied by all supporting documentation, as follows:

1. *FEE:* Annual fee of \$500, and late filing fee of \$250, if applicable, made payable to "Treasurer, Commonwealth of Virginia";
2. *FORM:* The completed Form 104, "Virginia Registration Statement for a Professional Solicitor," with all questions answered, and with an officer's notarized signature on the form;
3. ~~An enforceable bond, in the form as herein prescribed,~~ *BOND:* The completed Form 105, "Bond," in the sum of \$20,000 with corporate surety authorized by the State Corporation Commission to act as a surety within the Commonwealth;
4. *GOVERNING DOCUMENTS:* A copy of the certificate and articles of incorporation, if the solicitor is incorporated, and, if a nonresident (foreign) partnership or corporation, the certificate to do business in Virginia, as required by the State Corporation Commission; and
5. *CONTRACTS:* A signed copy of any and all current contracts with charitable or civic organizations soliciting in Virginia, as required by § 57-54 of the Code of Virginia (Contracts between charitable or civic organizations and professional fund-raising counsel or professional solicitors) and all current contracts with any agents or subcontractors hired to fulfill the terms of the contracts with those charitable or civic organizations.

B. Written authorization from charitable organization organizations. No professional solicitor or subcontractor shall solicit in the name of, or on behalf of, any charitable or civic organization unless such solicitor has filed with the commissioner one copy of a written authorization from two

officers of such organization, as required in subsection F of § 57-57 of the Code of Virginia (Prohibited acts). ~~A copy of the annual contract, signed by two officers of the charitable or civic organization, will serve the purpose of written authorization. When the term of a contract is longer than one year, Such written authorization shall be submitted on the Form 121, "Consent to Solicit," for all years subsequent to the initial year of the contract or Form 120, "Solicitation Notice."~~ *Form 121, "Consent to Solicit," shall be submitted by the professional solicitor for each agent or subcontractor authorized by the charitable or civic organization to conduct the fund-raising campaign. Form 121, "Consent to Solicit," shall be submitted by the professional solicitor for each charitable or civic organization named in a fund-raising campaign, in addition to the charitable or civic organization with which the professional solicitor has a contract or agreement.*

C. Disclosures.

1. Pursuant to § 57-55.2 of the Code of Virginia (Charitable solicitation disclosure), each professional solicitor shall, in the course of a solicitation:

4-a. Identify himself by:

- a. (1) Disclosing his own real first name and surname;
- ~~b. (2) Disclosing~~ *Stating affirmatively that he is a "paid solicitor"; and*
- e. (3) Disclosing the primary name under which the professional solicitor is registered with the commissioner or if he is employed by a subcontractor, *disclosing the primary name of the subcontractor as identified on Form 121, "Consent to Solicit"; and*

2-b. Identify his employing charitable or civic organization by disclosing the primary name, as registered with the commissioner, of the charitable or civic organization for which the solicitation is being made.

*An example of the disclosure for a professional solicitor would be: "This is John Doe, a paid solicitor of XYZ Company. I'm calling on behalf of DEF Charity."*

*An example of the disclosure for a subcontractor would be: "This is John Doe, a paid solicitor of XYZ Company. I'm calling on behalf of DEF Charity."*

*An example of the disclosure for an employee of a subcontractor would be: "This is John Doe, a paid solicitor of ABC subcontractor. I'm calling on behalf of DEF Charity."*

2. Pursuant to clause (iii) of § 57-55.2 of the Code of Virginia (Charitable solicitation disclosure), each professional solicitor shall, in the course of a written solicitation, include the following statement: *"The professional solicitor conducting this campaign, (primary name of professional solicitor), files a financial report for each campaign it conducts. Copies of these financial reports are available from the Virginia Office of Consumer Affairs, P.O. Box 1163, Richmond, VA 23218." This statement shall be in bold typeface no smaller than 10-point with grammatically correct capitalization and lower case*

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letters. The statement shall appear on the front side of the document on a portion that is retained by the potential donor.

3. Pursuant to § 57-57 L of the Code of Virginia (Prohibited acts), the preprinted address on any return envelope, prepared under the direction of the professional solicitor and provided to a potential donor, that is not addressed to the charitable or civic organization's own primary address shall include the name of the business located at the address on the return envelope in the following format:

ABC Charity  
c/o XYZ Company  
111 Main Street (#)  
City, ST Zip Code

The name on line two may be the name of the professional solicitor, a third party caging company or bank, a commercial mail-receiving agency, or other receiver, but in any case must be the name of the company that actually resides at the preprinted address on the return envelope. This requirement does not apply to mail addressed to a United States Post Office box, rented from the U.S. Postal Service.

## D. Contribution collection devices.

1. Pursuant to subsections A and D and ~~subdivision E~~ clause (i) of subsection F of § 57-61 of the Code of Virginia (Registration of professional fund-raising counsel and solicitors), for a solicitation campaign employing collection devices including, but not limited to, vending machines or canisters, the professional solicitor shall maintain a record listing each establishment in which a collection device is placed including:

- a. The name of the establishment;
- b. The *primary* address of the establishment;
- c. The name of the person in the establishment who granted permission to place the collection device there;
- d. The date the collection device was placed in the establishment; and
- e. The date on which the collection device was removed.

2. The professional solicitor employing contribution collection devices shall comply with the disclosure provisions of subsection C of this section, and with the campaign documents provisions of subsection E of this section.

## E. Fund-raising campaign forms.

1. The professional solicitor shall submit ~~the Form 120, "Solicitation Notice," and the Form 130, "Final Accounting Report,"~~ fund-raising campaign forms, as required in subsections A and D of § 57-61 of the Code of Virginia (Registration of professional fund-raising counsel and solicitors), and such forms shall not be considered as filed unless all questions are answered and contain original signatures of all required parties.

2. The professional solicitor shall submit the completed Form 120, "Solicitation Notice":

- a. Prior to any fund-raising campaign; and
- b. Annually, on or before the anniversary of the contract date, for any continuous fund-raising campaign.

3. The professional solicitor shall submit an amended Form 120, "Solicitation Notice," within seven days of any changes to information previously submitted.

~~3.~~ 4. The professional solicitor shall submit, upon cancellation of a fund-raising campaign *prior to any solicitations*, a copy of the completed Form 120, "Solicitation Notice-~~form~~," previously filed, with a statement indicating that the campaign has been ~~cancelled~~ canceled. *If a campaign is canceled after solicitations have begun, the professional solicitor shall notify the commissioner of the cancellation within seven days of the cancellation and submit Form 130, "Final Accounting Report," in accordance with § 57-61 E of the Code of Virginia (Registration of professional fund-raising counsels and solicitors) and this section.*

~~4.~~ 5. The professional solicitor shall submit ~~the~~ Form 130, "Final Accounting Report":

- a. Not later than 90 days after the *completion* date of the ~~specific event~~ solicitation campaign, or in accordance with extensions granted pursuant to § 57-61 E of the Code of Virginia (Registration of professional fund-raising counsels and solicitors), and any subsequent changes in the information submitted shall be reported every 90 days thereafter, for a fund-raising campaign of finite duration, ~~which includes a specific event~~; and
- b. On an annual basis, not later than 90 days after the anniversary of the contract date, *or in accordance with extensions granted pursuant to § 57-61 E of the Code of Virginia (Registration of professional fund-raising counsels and solicitors)*, for a continuous fund-raising campaign.

*Form 130, "Final Accounting Report," shall not be considered as filed if the completed form does not contain original signatures or if any blanks are not filled in or attachments are missing. Any applicable late filing fees, pursuant to § 57-61 E of the Code of Virginia (Registration of professional fund-raising counsels and solicitors), will continue to accrue until a completed Form 130, "Final Accounting Report," is filed.*

~~5.~~ 6. The professional solicitor shall maintain during the solicitation, and for a period of three years thereafter, written commitments, on ~~the~~ Form 132, "Commitment for Receipt of Donated Tickets," of each person or charitable or civic organization to accept tickets and specifying the number of persons on whose behalf tickets were to be accepted. Such completed forms shall be submitted after notice from the commissioner to produce such, pursuant to subsection M of § 57-57 of the Code of Virginia (Prohibited acts).

## F. Subcontractors.

1. Filing requirements.

a. Any subcontractor operating under a contract or agreement with a registered professional solicitor shall be treated as an agent of that professional solicitor and is not required to register.

b. Any agent (but not an employee) of a subcontractor operating under a contract or agreement with that subcontractor to solicit shall register separately.

2. Authorizations to solicit.

a. Subcontractors shall operate under a written contract and such contract shall be filed with the Commissioner, pursuant to subdivision A 5 of this section.

b. Subcontractors shall have written authorization from two officers of the charitable or civic organization to solicit on their behalf. Such authorization may be filed on Form 121, "Consent to Solicit."

3. Subcontractors shall keep records in accordance with § 57-61 F of the Code of Virginia (Registration of professional fundraising counsels and solicitors) and shall furnish either the originals or copies to the registered professional solicitor.

PART V.  
GENERAL PROVISIONS.

2 VAC 5-610-80. General provisions.

A. Deceptive names. No charitable or civic organization, professional solicitor or other person shall solicit contributions using a word, name, symbol or device or any combination thereof, or identifying itself or its client with a word, name, symbol or device or any combination thereof, which that is likely to cause confusion, or to cause mistake, or to deceive the public by:

1. Using a name which that may cause an entity to be confused with or mistaken for another previously registered or exempt entity; or

2. Using a name which that may cause a professional solicitor to be confused with or mistaken for a charitable or civic organization, or mistaken for having the status of a charitable or civic organization.

~~B. Primary name. The charitable or civic organization shall include in all solicitations the primary name under which it is registered with the commissioner.~~

~~G B. Financial standards. Fiscal records shall be kept in accordance with the standards and practices as specified in § 57-53 of the Code of Virginia (Records to be kept by charitable organizations), or generally accepted accounting principles and reporting practices of the organization's particular field as recognized by the American Institute of Certified Public Accountants.~~

C. Disclosure by for-profit organizations. Every professional solicitor that solicits contributions for a for-profit organization and every for-profit organization required to issue a written statement for contributions received shall include in the disclosure required by § 57-55.2:1 of the Code of Virginia (Solicitations by for-profit organizations) a statement that the

contributors' donations are not tax-deductible on the contributors' income tax returns.

D. Filing on a holiday. When the date for the annual renewal of registration of a charitable organization, professional fund-raising counsel, or professional solicitor falls on a Saturday, Sunday, or a state or federal holiday, filing shall be due on the next day which that is not a Saturday, Sunday, or a state or federal holiday.

E. Change in information filed. Except as otherwise provided by the Code of Virginia or by this chapter, every registered charitable organization, every professional fund-raising counsel and every professional solicitor shall report to the commissioner, in writing, any change in information previously filed with the commissioner, within seven days after the change occurs.

~~F. Incorporation by reference. All IRS forms referred to in this chapter are hereby incorporated by reference. Forms incorporated by reference may be obtained from any office of the Department of the Treasury Internal Revenue Services.~~

**NOTICE:** The forms used in administering 2 VAC 5-610, Rules Governing the Solicitation of Contributions, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Agriculture and Consumer Services, 1100 Bank Street, Suite 1101, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

~~Request for Exemption from Annual Registration, OCA-100 (eff. 3/01).~~

~~Virginia Registration Statement for a Charitable Organization, OCA-102 (rev. 3/01).~~

~~Applications For Exemption Under § 57-60 Of The Code, Form 102, eff. 3/14/91.~~

~~Virginia Exemption Application: Educational Institutions, Form 400-A eff. 3/14/91.~~

~~Virginia Exemption Application: Solicitations for a Named Individual, Form 100-B eff. 3/14/91.~~

~~Virginia Exemption Application: Solicitations not to Exceed \$5,000, Form 100-C, eff. 3/14/91.~~

~~Virginia Exemption Application: Membership Solicitations Only, Form 100-D, eff. 3/14/91.~~

~~Virginia Exemption Application: Solicitations by a Non-resident Charitable Organization, Form 100-E, eff. 3/14/91.~~

~~Virginia Exemption Application: Solicitations Confined to Five or Fewer Contiguous Cities and Counties, Form 100-F, eff. 3/14/91.~~

~~Virginia Exemption Application: Civic Organization, Form 100-G, eff. 3/14/91.~~

~~Virginia Exemption Application: Health Care Institutions, Form 400-H, eff. 3/14/91.~~

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~~Virginia Exemption Application: Virginia Registration Statement for a Professional Fund-raising Counsel, Form 403, eff. 3/14/94 OCA-103 (rev. 3/01).~~

~~Virginia Exemption Application: Virginia Registration Statement for a Professional Solicitor, Form 104, eff. 3/14/94 OCA-104, (rev. 3/01).~~

~~Professional Solicitor's Bond, OCA-105 (rev. 3/01).~~

~~Solicitation Notice, OCA-120 (rev. 3/01).~~

~~Consent to Solicit, eff. 3/14/94 OCA-121 (rev. 3/01).~~

~~Solicitation Notice, eff. 3/14/94.~~

~~Final Accounting Report, eff. 3/14/94 OCA-130 (rev. 3/01).~~

~~Schedule A, Accounting for All Ticketing Sales, Including Solicitation for Donated Tickets, OCA-131 Schedule A (eff. 3/01).~~

~~Commitment for Receipt of Donated Tickets, eff. 3/14/94 OCA-132 (rev. 3/01).~~

VA.R. Doc. No. R00-273; Filed October 1, 2001, 4:11 p.m.

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## TITLE 8. EDUCATION

### BOARD OF EDUCATION

#### Extension of Public Comment Period

**Title of Regulation:** 8 VAC 20-630. Standards for State-Funded Remedial Programs.

**Statutory Authority:** § 22.1-199.2 of the Code of Virginia.

The Board of Education hereby announces that the official public comment period for the regulation entitled 8 VAC 20-630, Standards for State-Funded Remedial Programs has been extended. Written comments will be received until November 26, 2001. The proposed regulation was published in 17:18 VA.R. 2497-2500 May 21, 2001 (website address: <http://legis.state.va.us/codecomm/register/vol17/v17i18.pdf>).

Written comments on the proposed regulations may be submitted to Ms. Kathleen Smith, Specialist for Early Childhood Education/Remediation, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120; telephone (804) 786-5819 or FAX (804) 225-2524.

For additional information or to request a copy of the proposed regulation, please contact Ms. Smith at the above address or via the Department of Education website at <http://www.pen.k12.va.us>.

VA.R. Doc. No. R00-151; Filed October 3, 2001, 10:42 a.m.

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

**Title of Regulations:** Regulations for the Control and Abatement of Air Pollution (Rev. G00).

**9 VAC 5-40. Existing Stationary Sources (repealing 9 VAC 5-40-160 through 9 VAC 5-40-230).**

**9 VAC 5-50. New and Modified Stationary Sources (repealing 9 VAC 5-50-160 through 9 VAC 5-50-230).**

**9 VAC 5-60. Hazardous Air Pollutants (adding 9 VAC 5-60-200 through 9 VAC 5-60-270 and 9 VAC 5-60-300 through 9 VAC 5-60-370).**

**Statutory Authority:** § 10.1-1308 of the Code of Virginia.

**Public Hearing Date:** December 7, 2001 - 9 a.m.

Public comments may be submitted until 4:30 p.m. on December 24, 2001.

(See Calendar of Events section for additional information)

**Agency Contact:** Dr. Kathleen Sands, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, or e-mail [krsands@deq.state.va.us](mailto:krsands@deq.state.va.us).

**Basis:** Section 10.1-1308 of the Code of Virginia authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

**Purpose:** The purpose of the regulations is to require source owners to limit emissions of toxic pollutants to a level that will not produce ambient air concentrations that may cause or contribute to the endangerment of human health. The proposed amendments are being made (i) to reduce the regulatory burden of the state's toxic pollutant program on industry in order to ensure that the state's enforcement resources are used in the manner best suited to protecting public health and welfare; and (ii) to render the state toxic pollutant program consistent with the federal Clean Air Act, according to a determination made pursuant to the review of existing regulations mandated by Executive Order 15(94).

**Substance:**

1. The list of toxic air pollutants covered by the regulations is limited to the 188 substances regulated under § 112 of the federal Clean Air Act. This has been Virginia's policy and practice at least since 1991, but that practice has not been clearly articulated in the regulation.

2. Those source categories that are subject to an emission standard under § 112 of the federal Clean Air Act or that have been determined by the EPA to require no regulation are exempted from applicability. Under the current rules, sources must comply with both federal and state regulations. If, therefore, the state rules were to require a more stringent control of emissions than that required by the federal maximum achievable control technology standard (MACT), the source would have to comply with the MACT and perform whatever additional actions were necessary to bring the

source into compliance with the state standard. Under the new rules, sources need only comply with one set of regulations, either federal or state, not both.

### Issues:

**Public:** The proposed regulatory action will have three primary advantages for the public. First, although the cost of compliance with the amended regulations will initially be the same as the cost of compliance with the current regulations, as more federal MACT standards are promulgated, sources will be eliminated from applicability, thus reducing sources' compliance costs as well as the indirect costs to the taxpayer. Second, because the relationship between the state and federal programs will be clarified and the two programs will no longer overlap, the compliance burden on sources will be reduced. Third, the environmental community will be assured that the state program will provide adequate protection for public health until the federal program is fully implemented. The proposed regulatory action will have no disadvantages for the public.

**Department:** The primary advantage to the department and the Commonwealth will be the reduction of enforcement costs. Because the amended regulations will be clearer and easier to comply with than the current regulations, and because the relationship between the state and federal programs will be clarified, sources will comply more readily. Thus, enforcement costs will be reduced, allowing the department to divert scarce resources to other areas. The proposed regulatory action will have no disadvantages for the department or the Commonwealth.

**Localities Particularly Affected:** There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

**Public Participation:** The department is seeking comment on the proposed regulation and the costs and benefits of the proposal. The department is also seeking comment on the impacts of the proposed regulation on farm and forest lands.

**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 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The toxic pollutant emissions sources that are subject to or exempted from federal regulations will no longer be required to comply with the state regulations. In addition, the proposed changes will clarify that the toxic pollutants subject to these regulations are those listed in the federal Clean Air Act.

Estimated economic impact. Hazardous air pollutants, also known as toxic air pollutants from new, modified, or existing stationary sources are regulated under the current regulations. These pollutants may exist as particulate matter or as gases, and include metals, other particles, gases absorbed onto particles, and vapors from fuels and other sources. Examples of toxic air pollutants include benzene, which is found in gasoline; perchlorethylene, which is emitted from some dry cleaning facilities; and methylene chloride, which is used as a solvent and paint stripper by a number of industries. Toxic pollutants may originate from natural sources such as the radon gas coming up from the ground or from the manmade sources. Most air toxics originate from manmade mobile, indoor, and stationary sources. Stationary sources include chemical plants, steel mills, oil refineries, power plants, and hazardous waste incinerators. These sources may release air toxics from equipment leaks, during transfer of materials from one location to another, or during discharge through emission stacks or vents. The Department of Environmental Quality (the agency) indicates that the Commonwealth has significant air emissions of hazardous air pollutants. In 1999, Virginia was ranked 22nd in the nation for total releases of toxic chemicals; 75% of those releases were into the air.

The emissions of toxic substances into the air can be damaging to human health and to the environment. Human exposure to these toxics at sufficient concentrations and durations can result in increased chance of getting cancer, poisoning, and rapid onset of sickness, such as nausea or difficulty in breathing. Other less measurable effects include immunological, neurological, reproductive, and developmental problems. Pollutants deposited onto soil or into lakes and streams where they are taken up by plants and ingested by animals affect ecological systems and eventually human health through consumption of contaminated food.

State and federal regulatory approaches to toxic pollutants have evolved in two distinct periods. Between 1970 and 1990, the Environmental Protection Agency (EPA) provided a framework for protecting people and the environment from the harmful effects of toxic pollutants through establishing risk-based standards. According to the agency, the decision-making process was slow and only a limited number of national emission standards were promulgated. The process was lengthy, involving a determination of a critical level that triggered significant health effects, followed by a determination of those industry categories that contributed the highest emission level of the hazardous air pollutants under review. Concurrent with the slow progress of the federal assessment of toxic pollutants, a series of significant chemical accidents occurred worldwide, including the kepone incident that took place in Hopewell, Virginia 25 years ago. These circumstances led the State Air Pollution Control Board and policy-making groups in many other states to develop state-specific regulations for toxic pollutants. The states wanted a more expeditious process to assess and regulate hazardous pollutants than that used at the federal level. Many states, including Virginia, used occupational standards and extrapolated them for use in the ambient air. In short, the lack of confidence in federal regulations led to the development of the state regulations to address the toxic pollutants. However, the agency believes that since 1990, EPA has made

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significant improvements in the federal regulations concerning toxic air pollutants.

According to the agency, by the late 1980s, the federal government realized that its approach to the evaluation and regulation of toxics was not addressing the problem quickly enough. Instead of taking the health-based approach, the 1990 Clean Air Act accelerated the process. First, it established a list of 188 critical hazardous air pollutants. Then, directed EPA to first use a technology-based approach to significantly reduce emissions of air toxics from major sources of air pollution, and then use a risk-based approach to address any remaining, or residual health risks. Under the technology-based approach, EPA sets source categories and standards to control the emissions of air toxics. These rules, known as maximum achievable control technology (MACT) standards, are based on emissions levels that are already being achieved by the better-controlled and lower-emitting sources in an industry. EPA issued 45 air toxics rules to date, which cover many major industrial sources, such as chemical plants, oil refineries, aerospace manufacturers, and steel mills, as well as categories of smaller sources, such as dry cleaners, commercial sterilizers, and secondary lead smelters. Unlike other rules, there are no emission limits in MACT standard itself. However, the rules do provide significant ambient air concentration guidelines as a mechanism for EPA to require the source, on a case-by-case basis, to reduce emissions after analysis and review.

The proposed amendments will provide an exemption from state regulations for those sources that are subject to or exempt from the federal hazardous air pollutant standards. Under the current rules, sources must comply with both federal and state regulations. Thus, the sources have to comply with the MACT rules and perform additional actions necessary to bring the source into compliance with the state regulations. Under the proposed amendments, the sources that are subject to an emission standard under §112 of the federal Clean Air Act or that have been determined by EPA to require no regulation will be exempted from applicability of the state regulations. Thus, the sources will comply with only one set of regulations, either federal or state, but not both. During the development and evaluation of the federal MACT standards, the state program will remain in effect, but more sources will be exempt gradually as federal toxic rules are developed. The proposed amendments will phase out the applicability of the state air toxics program to the sources as they become regulated under the rapidly maturing federal program.

The proposed amendments are expected to produce various cost savings. A significant source of the cost savings is the reduced number of reviews for toxics. The agency currently issues new source review (NSR) permits and permit modifications to an average of 866 sources annually.<sup>1</sup> Of these 866 sources, approximately 300 major sources have toxics conditions written into their permits, and about 88 sources receive a toxics review as part of their evaluation

each year. Each review requires about 40 to 80 hours of time on the part of the agency permit writer and costs the state about \$1,040 to \$2,080 per source.<sup>2</sup> Under the proposed amendments, approximately two-thirds of these sources might be either subject to a federal MACT standard or exempt from regulation by the federal government. In both cases, these sources would be exempt from the revised state toxics program. This would save the state the staffing needs for about 59 toxics reviews annually, or about \$61,383 to \$122,767. The current staff assigned to these duties is expected to be utilized in other tasks.

Of the 88 sources that get a toxics review, about nine sources may also require approximately 8 to 16 hours of research on the part of an environmental specialist at the agency to assess the risks through technical research and consulting. This research generally costs the state \$208 to \$416 per source.<sup>3</sup> Under the proposed revised state toxics program, about nine sources would probably be subject to a federal MACT standard and therefore exempt from the state program. This is expected to save the agency about \$1,872 to \$3,745 in risk assessment costs annually.

About four of the 88 sources that get a toxics review annually are required to have toxics modeling done. The toxic modeling uses a computer to estimate concentrations of pollutant emissions in specific geographic areas. These four sources that require modeling are expected to be subject to federal MACT standards. The federal regulations do not require modeling. Thus, all of the modeling costs are expected to be saved. The modeling usually costs \$20,000 to \$50,000 per source. The agency has the obligation to do the modeling but the source may choose to undertake this task. About half of these sources choose to hire consultants to do the modeling; for the other half, the agency does it. The annual total cost savings is expected to be about \$80,000 to \$200,000 for the regulated community and for the state together.

There are other expected cost savings from permit modifications. The agency's permit application procedures look back at historical emissions changes in addition to the emissions changes directly resulting from the physical or operational change to determine applicability. For sources with fully permitted facilities, applying for a modification means organizing and verifying information already set out in the permits in effect for the source. This effort is time-consuming and costs the source approximately \$4,200.<sup>4</sup> Under the proposed revised state toxics program, it is expected that all of these amendment costs would be eliminated for approximately 22 sources that receive permit amendments annually because MACT sources will be subject to the federal program. This is expected to save the regulated community approximately \$92,400 annually.

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<sup>1</sup> This figure is derived from agency's Comprehensive Environmental Database System. Several members of the agency engineering staff provided other estimates in this analysis.

<sup>2</sup> The cost for a permit writer is estimated for a salaried classified employee earning about \$38,645 annually. The hourly cost of this employee's time is \$26.

<sup>3</sup> The cost for an environmental specialist is estimated for a salaried classified employee earning about \$46,183 annually. The hourly cost of this employee's time is \$31.

<sup>4</sup> The Agency



The agency does not expect any increases in health risks. According to the agency, the proposed changes should not directly produce an increase in the number of sources and an increase in the types and quantity of pollutants emitted. However, expected cost savings are likely to promote business activities of regulated toxics sources as they will be able to offer slightly cheaper services or products.<sup>5</sup> This may indirectly cause a very small increase in the quantity of regulated pollutants emitted.

It is also proposed to reduce the number of regulated pollutants to those regulated under the federal program. The list of toxic air pollutants covered by the regulations will be limited to the 188 substances regulated under § 112 of the Clean Air Act. According to the agency, this has been Virginia's policy and practice at least since 1991, but that practice has not been articulated in the regulation. The policy required focus on a number of important chemicals. Prior to 1991 the policy required regulation of 364 pollutants included in American Conference of Government Industrial Hygienists. In 1991, the policy was revised to focus on 188 pollutants listed in §112. The agency has not been enforcing regulations for the other pollutants not listed in §112 since then. This was because emission levels were too low, there was not enough staff, the agency did not have emissions factors for many pollutants, and output emissions contained many different toxics making them difficult to regulate. The proposed changes incorporate the current practice into regulations. Since there will be no change in practice, this proposed amendment is not expected to have a significant economic impact.

In addition, the amended regulations are expected to be clearer than the current regulations. The proposed clarifications include that the owner should originate the request for exemption, that the outdoor applications of pesticide are exempt from regulations, and that the fugitive emissions should be included in determining a source's potential to emit. These clarifications are expected to help the enforcement staff at the agency and the regulants.

Businesses and entities affected. Approximately 300 toxics pollutant sources may be subject to this proposal and about 59 sources may be affected annually.

Localities particularly affected. The proposed regulations apply throughout the Commonwealth.

Projected impact on employment. The proposed changes are likely to reduce staffing needs of the agency and the toxics consultants combined by about two full-time positions. Some of the savings in staffing needs are likely to accrue to the agency and are likely to be utilized in other tasks. On the other hand, lower costs associated with toxic pollutants may stimulate business activities of regulated sources and increase labor demand by a small margin. Thus, the net effect of the proposed changes on employment cannot be determined.

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<sup>5</sup> Personal conversations with Tom Knauer, a representative for the Virginia Manufacturers Association, indicated that such increases in production are likely to be insignificant.

Effects on the use and value of private property. To the extent that the reduced costs to the regulated sources improve profits, a small increase in the value of toxic sources is expected.

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

Summary:

*The rules establish emission standards consisting of control technology and other requirements that limit source emissions of toxic pollutants to a level that will not produce ambient air concentrations that may cause or contribute to the endangerment of human health. Unlike other rules, there are no definitive emission limits in the emission standard itself. However, the rules do provide significant ambient air concentration guidelines as a mechanism for the agency to require the owner, on a case-by-case basis, to reduce emissions after analysis and review by the department.*

*This regulatory action amends the current state toxic pollutant rules to (i) reduce the number of regulated pollutants to those regulated under the federal program and (ii) exempt from applicability those sources that are subject to a federal hazardous air pollutant standard. This action will integrate the state's program more logically with the federal Clean Air Act and transfers the standards from 9 VAC 5-40 and 9 VAC 5-50 into 9 VAC 5-60.*

Article 3 4.

Emission Standards for Toxic Pollutants from Existing Sources (Rule 4-3 6-4).

**~~9 VAC 5-40-160~~ 9 VAC 5-60-200. Applicability and designation of affected facility.**

~~A. Regardless of the provisions of 9 VAC 5-40-10 and, Except as provided in subsections C, D, and E of this section, the affected facility to which the provisions of this article apply is each facility or operation stationary source that emits or may emit any toxic pollutant and which is not subject to Article 3 5 (9 VAC 5-50-160 9 VAC 5-60-300 et seq.) of 9 VAC 5 Chapter 50 60. Implementation of this article shall occur upon notification to the owner by the board through means such as an information request from the board or an operating permit review under 9 VAC 5-80-40 Article 5 (9 VAC 5-80) of Part II of Chapter 80.~~

~~B. The board may establish the priorities for implementation of this article by either affected facility type or pollutant type. The priorities may be established in consideration of the following factors: potential public health impact, nature and amount of pollutants emitted on a statewide basis, degree of regulation by other governmental entities, and available resources. The board, at the request of an owner or owners, may defer implementation of this article for a facility or any group of facilities where technical issues necessitate further analysis and study in order to implement the article or the affected facility or facilities. The board may prescribe the procedures for the prioritization of implementation of this~~

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~~article and for the deferral of implementation of this article by policy.~~

~~C.~~ B. The provisions of this article apply throughout the Commonwealth of Virginia.

~~D. Exemption determination.~~ C. *This article shall not apply to the following:*

1. ~~Exempted from the provisions of this article is any A stationary source or operation not part of a stationary source which~~ that has a potential to emit a toxic pollutant with a TLV® at a level equal to or less than the ~~exempt exemption~~ emission rate calculated using the following exemption formulas set forth below for the applicable TLV®. If more than one exemption formula applies to a toxic pollutant emitted by a source, the potential to emit for that pollutant shall be equal to or less than both applicable exemption formulas in order for the source to be ~~exempt exempted~~ for that pollutant. The exemption formulas apply on an individual basis to each toxic pollutant for which a TLV® has been established.

a. For toxic pollutants with a TLV-C®, the following exemption formula applies, provided the potential to emit does not exceed 22.8 pounds per hour:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-C®} (\text{mg/m}^3) \times 0.033$$

b. For toxic pollutants with both a TLV-STEL® and a TLV-TWA®, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-STEL®} (\text{mg/m}^3) \times 0.033$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA®} (\text{mg/m}^3) \times 0.145$$

c. For toxic pollutants with only a TLV-TWA®, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-TWA®} (\text{mg/m}^3) \times 0.066$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA®} (\text{mg/m}^3) \times 0.145$$

2. ~~Exemption from the provisions of this article for any stationary source or operation not part of~~ A stationary source which that has a potential to emit any a toxic pollutant without a TLV® shall be determined by the board if, upon the owner's request, the board determines to exempt that toxic pollutant from the provisions of this article using available health effects information.

~~3.~~ The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in ~~9 VAC 5-40-200~~ 9 VAC 5-60-240.

E. Exemptions for toxic pollutants otherwise regulated.

1. Owners of sources emitting toxic pollutants regulated under any of the following may apply to the board for an exemption from this article:

a. Hazardous air pollutants regulated under § 112 of the Federal Clean Air Act, except to the extent such pollutants are emitted from facilities which are not subject to emission standards in Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.

b. Designated pollutants regulated under § 111(d) of the federal Clean Air Act, except to the extent such pollutants are emitted from facilities which are not subject to other emission standards in this chapter.

c. Substances regulated under the Virginia Hazardous Waste Management (HWM) Regulations, 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.) which are disposed of in an incinerator as defined by those regulations that (i) meets the 99.99% destruction and removal efficiency standard required by 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.), and (ii) has received an HWM permit or qualified for interim status in accordance with 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.). The board shall be furnished with an acceptable certification that such incinerator is in compliance with the standards of its HWM permit or interim status and applicable provisions of 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.). Facilities which burn hazardous waste for energy recovery are not exempt from this article.

2. Exemptions for these pollutants shall be granted provided the regulation of the toxic pollutant listed is based on an assessment of health effects and not solely on control technology considerations.

3. A stationary source subject to an emission standard or other requirement set forth in Article 2 (9 VAC 5-60-10 et seq.) of this part. If less than all of the stationary source is regulated by such an emission standard or other requirement, then only that part of the stationary source regulated by the emission standard or other requirement is exempted.

4. A stationary source in a source category that is regulated by an emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act and subject to the source category schedule for standards. If less than all of the stationary source is in a source category that is regulated by such an emission standard or other requirement, then only that part of the stationary source in the source category regulated by the emission standard or other requirement is exempted.

5. A stationary source in a source category for which the U.S. Environmental Protection Agency has made a formal determination that no regulations or other requirements need to be established pursuant to § 112 of the federal Clean Air Act and has published the determination in the source category schedule for standards.

6. A boiler, incinerator, or industrial furnace as defined in 9 VAC 20-60-10 and subject to 9 VAC 20-60, provided it (i) meets the 99.99% destruction and removal efficiency standard required by 9 VAC 20-60, and (ii) has received a

permit or has qualified for interim status in accordance with 9 VAC 20-60. The board shall be furnished with an acceptable certification that such boiler, incinerator, or industrial furnace is in compliance with the standards of its permit or interim status and applicable provision of 9 VAC 20-60. Facilities that burn hazardous waste for energy recovery are not exempted from this article.

7. A generator or boiler that burns only natural gas, #2 fuel oil, #4 fuel oil, #6 fuel oil, propane, or kerosene.

F. D. Provisions of this article do not apply to any consumer product used in the same manner as normal consumer use, provided the use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers. This may include, but not be limited to, personal use items, janitorial cleaning supplies, and facility grounds maintenance products, such as fertilizers, pesticides, and paints for structural components.

G. E. With regard to the application of pesticides, the provisions of this article shall apply only to the air quality impact from emissions from application inside the premises of the following affected facilities:

1. Industrial and manufacturing operations, including warehouse and storage operations related to the operation of these facilities.
2. Warehouse and storage operations at transportation terminals.

The provisions of this article shall not apply to the air quality impact from emissions from the application of any pesticide outside.

H. F. No provision of this article shall limit the power of the board to apply the provisions of this article to any affected facility in order to prevent or remedy a condition that may cause or contribute to the endangerment of human health.

**9 VAC 5-40-170 9 VAC 5-60-210. Definitions.**

A. For the purpose of these the Regulations for the Control and Abatement of Air Pollution and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

~~"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each toxic pollutant which the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions~~

~~standard infeasible, a design, equipment, work practice, operational standard, or combination of them may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.~~

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed for eliminating emissions from the structure.

"Pesticide" means the same as the definition given in § 3.1-249.27 of the Virginia Pesticide Control Act.

"Potential to emit" means an emission rate based on the maximum capacity of a stationary source to emit a toxic pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a toxic pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state or federally enforceable. Fugitive emissions shall be included in determining a stationary source's potential to emit.

"Significant ambient air concentration" means the concentration of a toxic pollutant in the ambient air that if exceeded may have the potential to injure human health.

"Source category schedule for standards" means the schedule issued pursuant to § 112(e) for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and published in the Federal Register at 66 FR 8220, January 30, 2001.

"Threshold limit value (TLV®)" means the maximum airborne concentration of a substance to which the ACGIH believes that nearly all workers may be repeatedly exposed day after day without adverse effects and which is published in the American Conference of Governmental Industrial Hygienists (ACGIH) Handbook (see 9 VAC 5-20-21). The TLV® is divided into three categories: TLV-Time-Weighted Average® (TLV-TWA®), TLV-Short-Term Exposure Limit® (TLV-STEL®), and TLV-Ceiling® (TLV-C®).

"TLV-TWA®" means the time-weighted average concentration for a normal eight-hour workday and a 40-hour workweek, to which nearly all workers may be repeatedly exposed, day after day, without adverse effect (as defined in the ACGIH Handbook).

"TLV-STEL®" means the concentration to which workers may be exposed continuously for a short period of time without suffering from irritation, chronic or irreversible tissue damage, or narcosis of sufficient degree to increase the likelihood of accidental injury, impair self-rescue or materially reduce work efficiency. The TLV-STEL® supplements the TLV-TWA® where there are recognized acute effects from a substance whose toxic effects are primarily of a chronic nature.

"TLV-C®" means the concentration that should not be exceeded during any part of the working exposure.

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~~"Toxic pollutant" means any air pollutant for which no ambient air quality standard has been established. Particulate matter and volatile organic compounds are not toxic pollutants as generic classes of substances but individual substances within these classes may be toxic pollutants because of their toxic properties or because a TLV® has been established listed in § 112(b) of the Act, as amended by 40 CFR 63.60, or any other air pollutant that the board determines, through adoption of regulation, to present a significant risk to public health. This term excludes asbestos, fine mineral fibers, radionuclides, and any glycol ether that does not have a TLV®.~~

~~**9-VAC 5-40-180**~~ **9 VAC 5-60-220. Standard for toxic pollutants.**

~~If a stationary source or operation not part of a stationary source is not exempt under 9-VAC 5-40-160 9 VAC 5-60-200 C or, D, or E, then the following standards shall be met:~~

1. ~~Regardless of any other provision of these regulations any other regulation of the board, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions of toxic pollutants in such quantities as to cause, or contribute to, any significant ambient air concentration that may cause, or contribute to, the endangerment of human health.~~

2. ~~The owner of an affected facility shall employ control strategies as may be directed by the board for the control of toxic pollutants. The board may consider the potency and toxicity of each regulated toxic pollutant as well as the technical and economic feasibility of any available control strategies. Possible control strategies may include but are not limited to emission control equipment, process changes, substitution of less toxic or nontoxic materials, or operation and maintenance procedures which lower or eliminate emissions of toxic pollutants.~~

~~**9-VAC 5-40-190**~~ **9 VAC 5-60-230. Significant ambient air concentration guidelines.**

~~For the purpose of case-by-case consideration between the board and the owner, significant ambient air concentrations are any of the following:~~

1. ~~For pollutants with a TLV-C®, any one-hour concentration of a toxic pollutant in excess of 1/40 of the TLV-C®.~~

2. ~~For pollutants with both a TLV-STEL® and a TLV-TWA®, any one-hour concentration of a toxic pollutant in excess of 1/40 of the TLV-STEL® and any annual concentration of a toxic pollutant in excess of 1/500 of the TLV-TWA®.~~

3. ~~For pollutants with only a TLV-TWA®, any annual concentration of a toxic pollutant in excess of 1/500 of the TLV-TWA® and any one-hour concentration of a toxic pollutant in excess of 1/20 of the TLV-TWA®.~~

4. ~~Any concentration resulting from the emissions of a toxic pollutant from an affected facility which the owner knows, or reasonably should be expected to know, may cause, or contribute to, the endangerment of human health.~~

5. Any concentration, other than those specified in subdivision 1, 2, 3, or 4 of this section, including those resulting from toxic pollutants not having a TLV®, which the board determines to cause, to have the potential to cause, or to contribute to, the endangerment of human health. This determination shall be made by considering information by recognized authorities on the specific health effects of such toxic pollutants.

~~**9-VAC 5-40-200**~~ **9 VAC 5-60-240. Submittal of information.**

~~The owner of an affected facility shall upon the request of the board submit such information as may be needed to determine the applicability of, or compliance with, this article. The board may determine the manner and form for the submittal of the information. Such information shall be submitted within 60 days of the request. Reasonable extensions may be granted when deemed appropriate by the board for extensive information gathering, such as emissions testing or review of large and complex facilities, and only if the request is accompanied by a written schedule.~~

~~**9-VAC 5-40-210**~~ **9 VAC 5-60-250. Determination of ambient air concentrations.**

A. ~~The owner shall, upon the request of the board, provide an assessment as to whether his facility emits, or may emit, any toxic pollutant in such quantities as to cause, or contribute to, any concentration exceeding, or which may exceed, any significant ambient air concentration.~~

B. ~~Ambient air concentrations shall be determined using air quality analysis techniques (modeling) based on emission rates equal to the potential to emit of the stationary source for the applicable averaging time or any other method acceptable to the board.~~

C. ~~Ambient air concentrations shall include all emissions from the stationary source, including those from sources exempted under 9 VAC 5-60-200 C.~~

~~**9-VAC 5-40-220**~~ **9 VAC 5-60-260. Compliance.**

A. ~~If the board has reason to believe that the emissions from an affected facility are, or may be, discharged in such quantities so as to cause, or contribute to, any ambient air concentration that is (i) in excess of any significant ambient air concentration specified in 9-VAC 5-40-190 9 VAC 5-60-230 or (ii) has the potential to cause or contribute to substantial and imminent endangerment of human health, the owner shall choose one or more of the following options and comply with the following: schedules contained in 9 VAC 9-60-260 B.~~

~~1. For emissions resulting in concentrations which exceed the significant ambient air concentration by a factor of 10 or more times or which the board determines exceed the significant ambient air concentration so as to have the potential to cause or contribute to substantial and imminent endangerment of human health, the owner shall within an approved timetable implement controls which reduce these emissions to a level specified by the board. For any emissions which remain in excess of the guidelines established under 9-VAC 5-40-190, the owner shall choose one or more of the options available under 9 VAC 5-40-220~~

~~A 2 and shall comply with the schedules contained in 9 VAC 5-40-220 B.~~

~~2. For emissions other than those specified in 9 VAC 5-40-220 A 1, the owner shall choose one or more of the following options and comply with the schedules contained in 9 VAC 5-40-220 B.~~

~~a. 1. Demonstrate that the emissions from the facility do not, and will not, cause, or contribute to, any of the significant ambient air concentration in 9 VAC 5-40-190 9 VAC 9-60-230 being exceeded.~~

~~b. 2. Demonstrate that the applicable significant ambient air concentration in 9 VAC 5-40-190 9 VAC 9-60-230 is inappropriate for the toxic air pollutant in question by showing that the emissions from the affected facility produce no endangerment of human health.~~

~~c. 3. Control the emissions from the affected facility to a level resulting in ambient air concentrations that are below the significant ambient air concentrations or resulting in such other ambient air concentrations acceptable to the board.~~

B. The owner shall notify the board of his choice under ~~subdivision subsection A 2~~ of this section within 45 days of notification by the department that his facility exceeds the significant ambient air concentration specified in ~~9 VAC 5-40-190 9 VAC 9-60-230~~. Within 45 days of notifying the board of the option under ~~subdivision subsection A 2~~ of this section, the owner shall submit a plan and schedule to the board for approval. If the owner fails to submit either his choice of an option *as set out in subsection A* or a plan and schedule to implement that option, the board ~~may shall~~ require the owner, *on a schedule set out by the board*, to ~~install best available control technology to control the facility's emissions in a manner and by a schedule set out by the board comply with subdivision A 3 of this section. All options shall be completed within a reasonable time: 30 days for 9 VAC 5-40-220 A 2 a, 60 days for 9 VAC 5-40-220 A 2 b, and 18 months for 9 VAC 5-40-220 A 2 c.~~ None of the times specified in this subsection include time needed for board approval. Reasonable extensions may be granted when deemed appropriate by the board.

C. Failure of the owner to accomplish any of the alternatives set forth in subsection A of this section in a manner acceptable to the board shall constitute a violation of ~~9 VAC 5-40-180 9 VAC 5-60-220~~.

**~~9 VAC 5-40-230 9 VAC 5-60-270. Public participation.~~**

If the owner of an affected facility chooses the demonstration under ~~9 VAC 5-40-220 9 VAC 5-60-260 A 2 b~~, the provisions of this section shall apply.

1. Prior to the decision of the board on the acceptability of the demonstration, the demonstration shall be subject to a public comment period of at least 30 days.

2. The board shall notify the public of the opportunity for public comment on the information available for public inspection under the provisions of ~~subsection C subdivision 3~~ of this section. The notification shall be made by advertisement in one newspaper of general circulation in

the affected air quality control region and, if available, one newspaper that circulates in the area where the affected facility is located. A copy of the notice shall be sent to the governing body of the locality where the affected facility is located and to the governing bodies of the localities where ambient air quality impacts from the affected facility exceed the significant ambient air concentration guidelines in ~~9 VAC 5-40-190 9 VAC 5-60-230~~. The notice shall include a brief description of the *pollutants of concern and their possible impacts*, the demonstration, a statement listing the requirements in ~~9 VAC 5-40-230 subdivisions 4 and 5 of this section~~, and the name and telephone number of a *department staff* person from whom detailed information on the demonstration *and the pollutants* may be obtained.

3. Information relevant to the demonstration, including (i) information produced by the owner showing that the emissions from the affected facility do not endanger human health and (ii) the preliminary review, analysis and tentative determination of the board, shall be available for public inspection during the entire comment period in at least one location in the affected air quality control region.

4. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to consider the source's demonstration under ~~9 VAC 5-40-220 9 VAC 5-60-260 A 2 b~~. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

- a. The name, mailing address and telephone number of the requester;
- b. The names and addresses of all persons for whom the requester is acting as a representative;
- c. The reason why a hearing is requested; and
- d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including an explanation of how and to what extent such interest would be directly and adversely affected by the demonstration in question.

5. The board shall review all timely requests for public hearing filed during the 30 days following the appearance of the public comment notice in the newspaper. Within 30 calendar days following the expiration of the public comment period the board shall grant a public hearing if it finds that one or both of the following apply:

- a. There is significant public interest in the demonstration in question.
- b. There are substantial, disputed issues relevant to the demonstration in question.

6. The board shall notify by mail the owner making the demonstration and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain a description of the procedures for the public hearing and for the final determination under this section.

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7. If the board decides to hold a public hearing, the hearing shall be scheduled at a time between 30 and 60 days after mailing the notification required by ~~9 VAC 5-40-230 subdivision 6 of this section~~. The public hearing shall be held in the affected air quality control region.

8. The procedures for notification to the public and availability of information used for the public comment period and provided in ~~subsections B and C subdivisions 2 and 3 of this section~~ shall also be followed for the public hearing.

NOTE: In adopting amendments to this article to be effective ~~October 1, 1994 [effective date]~~, the board replaced the term "noncriteria" with the term "toxic," *renumbered the sections*. In the interest of economy and efficiency, the board did not make the corresponding change at each place the term "noncriteria" ~~occurs~~ *old section numbers occur* throughout the Regulations for the Control and Abatement of Air Pollution. However, it is the intent of the board to make that change in other parts of the regulations as the opportunity presents itself. Until such changes are made the term "noncriteria" *old section numbers (9 VAC 5-40-160 through 9 VAC 5-40-230)* shall be construed to mean "toxic" *the new section numbers (9 VAC 5-60-200 through 9 VAC 5-60-270)* throughout ~~these chapters~~ *the regulations of the board*.

## Article 3 5.

*Emission Standards of Performance for Toxic Pollutants from New and Modified Sources (Rule 5-3 6-5).*

### ~~9 VAC 5-50-160~~ **9 VAC 5-60-300. Applicability and designation of affected facility.**

A. ~~Regardless of the provisions of 9 VAC 5-50-10 and, Except as provided in subsections C, D, and E of this section, the affected facility to which the provisions of this article apply is each facility or operation, which stationary source that emits or may emit any toxic pollutant and that either (i) is subject to the new source review program or (ii) has a permit containing emission limits and other requirements pursuant to this article or which is subject to the new and modified source provisions of 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.), that emits or may emit any toxic pollutant.~~

~~B. The board may establish the priorities for implementation of this article by either affected facility type or pollutant type. The priorities may be established in consideration of the following factors: potential public health impact, nature and amount of pollutants emitted on a statewide basis, degree of regulation by other governmental entities, and available resources. The board, at the request of an owner or owners, may defer implementation of this article for a facility or any group of facilities where technical issues necessitate further analysis and study in order to implement the article for the affected facility or facilities. The board may prescribe the procedures for the prioritization of implementation of this article and for the deferral of implementation of this article by policy.~~

~~C. B. The provisions of this article apply throughout the Commonwealth of Virginia.~~

~~D. Exemption determination C. This article shall not apply to the following.~~

~~1. Exempted from the provisions of this article is any A stationary source or operation not part of a stationary source which that has a potential to emit a toxic pollutant with a TLV® at a level equal to or less than the exempt exemption emission rate calculated using the following exemption formulas set forth below for the applicable TLV®. If more than one exemption formula applies to a toxic pollutant emitted by a source, the potential to emit for that pollutant shall be equal to or less than both applicable exemption formulas in order for the source to be exempt exempted for that pollutant. The exemption formulas apply on an individual basis to each toxic pollutant for which a TLV® has been established.~~

a. For toxic pollutants with a TLV-C®, the following exemption formula applies, provided the potential to emit does not exceed 22.8 pounds per hour:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-C®}(\text{mg/m}^3) \times 0.033$$

b. For toxic pollutants with both a TLV-STEL® and a TLV-TWA®, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-STEL®}(\text{mg/m}^3) \times 0.033$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA®}(\text{mg/m}^3) \times 0.145$$

c. For toxic pollutants with only a TLV-TWA®, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-TWA®}(\text{mg/m}^3) \times 0.066$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA®}(\text{mg/m}^3) \times 0.145$$

~~2. Exemption from the provisions of this article for any A stationary source or operation not part of a stationary source which that has a potential to emit any toxic pollutant without a TLV® will be determined by the board if, upon the owner's request, the board determines to exempt that toxic pollutant from the provisions of this article using available health effects information.~~

~~3. The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in ~~9 VAC 5-50-200~~ 9 VAC 5-60-340.~~

### ~~E. Exemptions for toxic pollutants otherwise regulated.~~

~~1. Owners of sources emitting toxic pollutants regulated under any of the following may apply to the board for an exemption from this article:~~

a. ~~Hazardous air pollutants regulated under § 112 of the Federal Clean Air Act, except to the extent such pollutants are emitted from facilities which are not subject to emission standards in Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.~~

~~b. Substances regulated under 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.) (the Virginia Hazardous Waste Management (HWM) Regulations) which are disposed of in an incinerator as defined by those regulations that (i) meets the 99.99% destruction and removal efficiency standard required by 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.) and (ii) has received an HWM permit or qualified for interim status in accordance with 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.). The board shall be furnished with an acceptable certification that such incinerator is in compliance with the standards of its HWM permit or interim status and applicable provisions of 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.). Facilities which burn hazardous waste for energy recovery are not exempt from this article.~~

~~2. Exemptions for these pollutants shall be granted provided the regulation of the toxic pollutant listed is based on an assessment of health effects and not solely on control technology considerations.~~

~~3. A stationary source subject to an emission standard or other requirement set forth in Article 2 (9 VAC 5-60-10 et seq.) of this part. If less than all of the stationary source is regulated by such an emission standard or other requirement, then only that part of the stationary source regulated by the emission standard or other requirement is exempted.~~

~~4. A stationary source in a source category that is regulated by an emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act and subject to the source category schedule for standards. If less than all of the stationary source is in a source category that is regulated by such an emission standard or other requirement, then only that part of the stationary source in the source category regulated by the emission standard or other requirement is exempted.~~

~~5. A stationary source in a source category for which the U.S. Environmental Protection Agency has made a formal determination that no regulations or other requirements need to be established pursuant to § 112 of the federal Clean Air Act and has published the determination in the source category schedule for standards.~~

~~6. A boiler, incinerator, or industrial furnace as defined in 9 VAC 20-60-10 and subject to 9 VAC 20-60, provided it (i) meets the 99.99% destruction and removal efficiency standard required by 9 VAC 20-60, and (ii) has received a permit or has qualified for interim status in accordance with 9 VAC 20-60. The board shall be furnished with an acceptable certification that such boiler, incinerator, or industrial furnace is in compliance with the standards of its permit or interim status and applicable provision of 9 VAC 20-60. Facilities that burn hazardous waste for energy recovery are not exempted from this article.~~

~~7. A generator or boiler that burns only natural gas, #2 fuel oil, #4 fuel oil, #6 fuel oil, propane, or kerosene.~~

~~F. D. Provisions of this article do not apply to any consumer product used in the same manner as normal consumer use, provided the use results in a duration and frequency of exposure which is not greater than exposures experienced by~~

consumers. This may include, but not be limited to, personal use items, janitorial cleaning supplies, and facility grounds maintenance products, such as fertilizers, pesticides, and paints for structural components.

~~G. E.~~ With regard to the application of pesticides, the provisions of this article shall apply only to the air quality impact from emissions from application inside the premises of the following affected facilities:

1. Industrial and manufacturing operations, including warehouse and storage operations related to the operation of these facilities; and
2. Warehouse and storage operations at transportation terminals.

*The provisions of this article shall not apply to the air quality impact from emissions from the application of any pesticide outside.*

~~H. F.~~ No provision of this article shall limit the power of the board to apply the provisions of this article to any affected facility in order to prevent or remedy a condition that may cause or contribute to the endangerment of human health.

~~9 VAC 5-50-170~~ **9 VAC 5-60-310. Definitions.**

A. For the purpose of ~~these~~ the Regulations for the Control and Abatement of Air Pollution and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each toxic pollutant which the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination of them, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed for eliminating emissions from the structure.

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"Pesticide" means the same as the definition given in § 3.1-249.27 of the Virginia Pesticide Control Act.

"Potential to emit" means an emission rate based on the maximum capacity of a stationary source to emit a toxic pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a toxic pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state or federally enforceable. *Fugitive emissions shall be included in determining a stationary source's potential to emit.*

"Significant ambient air concentration" means the concentration of a toxic pollutant in the ambient air that if exceeded may have the potential to injure human health.

"Source category schedule for standards" means the schedule issued pursuant to § 112(e) for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and published in the Federal Register at 66 FR 8220, January 30, 2001.

"Threshold limit value (TLV®)" means the maximum airborne concentration of a substance to which the ACGIH believes that nearly all workers may be repeatedly exposed day after day without adverse effects and which is published in the American Conference of Governmental Industrial Hygienists (ACGIH) Handbook (see 9 VAC 5-20-21). The TLV® is divided into three categories: TLV-Time-Weighted Average® (TLV-TWA®), TLV-Short-Term Exposure Limit® (TLV-STEL®), and TLV-Ceiling® (TLV-C®).

"TLV-TWA®" means the time-weighted average concentration for a normal eight-hour workday and a 40-hour workweek, to which nearly all workers may be repeatedly exposed, day after day, without adverse effect (as defined in the ACGIH Handbook).

"TLV-STEL®" means the concentration to which workers may be exposed continuously for a short period of time without suffering from irritation, chronic or irreversible tissue damage, or narcosis of sufficient degree to increase the likelihood of accidental injury, impair self-rescue or materially reduce work efficiency. The TLV-STEL supplements the TLV-TWA® where there are recognized acute effects from a substance whose toxic effects are primarily of a chronic nature.

"TLV-C®" means the concentration that should not be exceeded during any part of the working exposure.

"Toxic pollutant" means any air pollutant for which no ambient air quality standard has been established. ~~Particulate matter and volatile organic compounds are not toxic pollutants as generic classes of substances but individual substances within these classes may be toxic pollutants because of their toxic properties or because a TLV® has been established listed in § 112(b) of the Act, as amended by 40 CFR 63.60, or any other air pollutant that the board determines, through adoption of regulation, to present a significant risk to public health. This term excludes asbestos, fine mineral fibers, radionuclides, and any glycol ether that does not have a TLV®.~~

## ~~9 VAC 5-50-180~~ 9 VAC 5-60-320. Standard for toxic pollutants.

If a stationary source ~~or operation not part of a stationary source~~ is not exempt under ~~9 VAC 5-50-160~~ 9 VAC 5-60-300 C or, D, or E, then the following standards shall be met:

1. Regardless of any ~~other~~ provision of ~~these regulations~~ *any other regulation of the board*, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions of toxic pollutants in such quantities as to cause, or contribute to, any significant ambient air concentration that may cause, or contribute to, the endangerment of human health.
2. The owner of new or modified sources shall employ best available control technology as may be approved by the board for the control of toxic pollutants.

## ~~9 VAC 5-50-190~~ 9 VAC 5-60-330. Significant ambient air concentration guidelines.

For the purpose of case-by-case consideration between the board and the owner, significant ambient air concentrations are any of the following:

1. For pollutants with a TLV-C®, any one-hour concentration of a toxic pollutant in excess of 1/40 of the TLV-C®.
2. For pollutants with both a TLV-STEL® and a TLV-TWA®, any one-hour concentration of a toxic pollutant in excess of 1/40 of the TLV-STEL® and any annual concentration of a toxic pollutant in excess of 1/500 of the TLV-TWA®.
3. For pollutants with only a TLV-TWA®, any annual concentration of a toxic pollutant in excess of 1/500 of the TLV-TWA® and any one-hour concentration of a toxic pollutant in excess of 1/20 of the TLV-TWA®.
4. Any concentration resulting from the emissions of a toxic pollutant from an affected facility which the owner knows, or reasonably should be expected to know, may cause, or contribute to, the endangerment of human health.
5. Any concentration, other than those specified in subdivision 1, 2, 3, or 4 of this section, including those resulting from toxic pollutants not having a TLV®, which the board determines to cause, to have the potential to cause, or to contribute to, the endangerment of human health. This determination will be made by considering information by recognized authorities on the specific health effects of such toxic pollutants.

## ~~9 VAC 5-50-200~~ 9 VAC 5-60-340. Submittal of information.

The owner of an affected facility shall upon the request of the board submit such information as may be needed to determine the applicability of, or compliance with, this article. The board may determine the schedule, manner and form for the submittal of the information.

## ~~9 VAC 5-50-210~~ 9 VAC 5-60-350. Determination of ambient air concentrations.

A. The owner shall, upon the request of the board, provide an assessment as to whether his facility emits, or may emit, any toxic pollutant in such quantities as to cause, or contribute to,



any concentration exceeding, or which may exceed, any significant ambient air concentration.

B. Ambient air concentrations shall be determined using air quality analysis techniques (modeling) based on emission rates equal to the facility's potential to emit for the applicable averaging time or any other method acceptable to the board.

C. Ambient air concentrations shall include all emissions from the stationary source, including those from sources exempted under 9 VAC 5-60-300 C.

## ~~9 VAC 5-50-220~~ 9 VAC 5-60-360. Compliance.

If the board has reason to believe that the emissions from an affected facility are, or may be, discharged in such quantities so as to cause, or contribute to, any ambient air concentration that is (i) in excess of any significant ambient air concentration specified in ~~9 VAC 5-50-190~~ 9 VAC 5-60-330 or (ii) has the potential to cause or contribute to substantial and imminent endangerment of human health, a permit shall not be issued until the owner complies with one or more of the following:

1. Demonstrate that the emissions from the facility do not, and will not, cause, or contribute to, any of the significant ambient air concentrations in ~~9 VAC 5-50-190~~ 9 VAC 5-60-330 being exceeded;
2. Demonstrate that the applicable significant ambient air concentration in ~~9 VAC 5-50-190~~ 9 VAC 5-60-330 is inappropriate for the toxic air pollutant in question by showing that the emissions from the affected facility produce no endangerment of human health; or
3. Control the emissions from the affected facility to a level resulting in ambient air concentrations that are below the significant ambient air concentrations or resulting in such other ambient air concentrations acceptable to the board.

## ~~9 VAC 5-50-230~~ 9 VAC 5-60-370. Public participation.

If the owner of an affected facility chooses the demonstration under ~~9 VAC 5-50-220~~ subdivision 2 of 9 VAC 5-60-360, the provisions of this section shall apply.

1. Prior to the decision of the board on the acceptability of the demonstration, the demonstration shall be subject to a public comment period of at least 30 days.
2. The board shall notify the public of the opportunity for public comment on the information available for public inspection under the provisions of subdivision 3 of this section. The notification shall be made by advertisement in one newspaper of general circulation in the affected air quality control region and, if available, one newspaper that circulates in the area where the affected facility is located. A copy of the notice shall be sent to the governing body of the locality where the affected facility is located and to the governing bodies of the localities where ambient air quality impacts from the affected facility exceed the significant ambient air concentration guidelines in ~~9 VAC 5-50-190~~ 9 VAC 5-60-330. The notice shall include a brief description of the pollutants of concern and their possible health impacts, the demonstration, a statement listing the requirements in subdivisions 4 and 5 of this section, and the name and

telephone number of a department staff person from whom detailed information on the demonstration and the pollutants may be obtained.

3. Information relevant to the demonstration, including (i) information produced by the owner showing that the emissions from the affected facility do not endanger human health and (ii) the preliminary review, analysis and tentative determination of the board, shall be available for public inspection during the entire comment period in at least one location in the affected air quality control region.

4. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to consider the source's demonstration under ~~9 VAC 5-50-220~~ subdivision 2 of 9 VAC 5-60-360. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

- a. The name, mailing address and telephone number of the requester;
- b. The names and addresses of all persons for whom the requester is acting as a representative;
- c. The reason why a hearing is requested; and
- d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including an explanation of how and to what extent such interest would be directly and adversely affected by the demonstration in question.

5. The board shall review all timely requests for public hearing filed during the 30 days following the appearance of the public comment notice in the newspaper. Within 30 calendar days following the expiration of the public comment period the board shall grant a public hearing if it finds that one or both of the following apply:

- a. There is significant public interest in the demonstration in question.
- b. There are substantial, disputed issues relevant to the demonstration in question.

6. The board shall notify by mail the owner making the demonstration and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain a description of the procedures for the public hearing and for the final determination under this section.

7. If the board determines to hold a public hearing, the hearing shall be scheduled at a time between 30 and 60 days after mailing the notification required by subdivision 6 of this section. The public hearing shall be held in the affected air quality control region.

8. The procedures for notification to the public and availability of information used for the public comment period and provided in subdivisions 2 and 3 of this section shall also be followed for the public hearing.

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NOTE: In adopting amendments to this article to be effective ~~October 1, 1994~~ [effective date], the board *renumbered the sections*. In the interest of economy and efficiency, the board did not make the corresponding change at each place the ~~term "noncriteria" occurs~~ *old section numbers occur* throughout the Regulations for the Control and Abatement of Air Pollution. However, it is the intent of the board to make that change in other parts of the regulations as the opportunity presents itself. Until such changes are made the ~~term "noncriteria" old section numbers~~ *(9 VAC 5-50-160 through 9 VAC 5-50-230)* shall be construed to mean ~~"toxic" in these chapters~~ *the new section numbers (9 VAC 5-60-300 through 9 VAC 5-60-370) throughout the regulations of the board.*

V.A.R. Doc. No. R01-37; Filed September 24, 2001, 1:47 p.m.

\* \* \* \* \*

**Title of Regulation:** **Regulations for the Control and Abatement of Air Pollution (Rev. D00): 9 VAC 5-80-2000, 9 VAC 5-80-2010, 9 VAC 5-80-2020, 9 VAC 5-80-2030, 9 VAC 5-80-2040, 9 VAC 5-80-2050, 9 VAC 5-80-2060, 9 VAC 5-80-2070, 9 VAC 5-80-2080, 9 VAC 5-80-2090, 9 VAC 5-80-2110, 9 VAC 5-80-2120, 9 VAC 5-80-2150, 9 VAC 5-80-2180, and 9 VAC 5-80-2190; adding 9 VAC 5-80-2200, 9 VAC 5-80-2210, 9 VAC 5-80-2220, 9 VAC 5-80-2230, and 9 VAC 5-80-2240; repealing 9 VAC 5-80-2100 and 9 VAC 5-80-2160).**

**Statutory Authority:** § 10.1-1308 of the Code of Virginia.

**Public Hearing Date:** November 27, 2001 - 9 a.m.

Public comments may be submitted until 4:30 p.m., December 21, 2001.

(See Calendar of Events section for additional information)

**Agency Contact:** Karen G. Sabasteanski, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TTY.

**Basis:** Section 10.1-1308 of the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

**Purpose:** The purpose of the regulation is to require the owner of the proposed new or expanded facility to provide such information as may be needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the emissions from the facility on air quality in order to protect public health and welfare. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The proposed amendments are being made to bring the regulation into compliance with federal regulations and policies with regard to designation of nonattainment areas for the 8-hour ozone air quality standard.

## Substance:

1. The regulation has been revised to include a new offset ratio in response to imposition of the new 8-hour ozone standard. One of the requirements of the new source review program for nonattainment areas is that a facility owner obtain emission reductions from existing sources. The emission reductions must offset the increases from the proposed facility by the ratio specified in the Clean Air Act for that particular nonattainment classification. The current offset ratio specifications are 1.1 to 1 for areas classified as marginal, 1.15 to 1 for moderate areas, 1.2 to 1 for serious areas, and 1.3 to 1 for severe areas. For the new 8-hour ozone standard, the existing offset ratios based on the above classification system are likely to be retained, and possibly an offset ratio of 1 to 1 will be added. The 1-to-1 ratio will also apply to areas designated nonattainment for pollutants other than ozone (such as PM<sub>2.5</sub>) for which there is no classification system.

2. The regulation has been revised to remove federal enforceability of certain provisions that should be enforceable only by the state. This will prevent terms and conditions that are state-only enforceable from being designated as federally enforceable in the permit, thus preventing them from being enforced by EPA or citizens through the federal Clean Air Act.

3. The regulation has been revised to clarify that the regulation applies to the construction or reconstruction of a new major stationary source or a major modification to a major stationary source, if the source or modification would be major for the pollutant for which the area is designated as nonattainment. In order to achieve this distinction, all references to hazardous air pollutants, which are regulated elsewhere, have been eliminated.

4. The regulation has been revised to add or modify definitions for "applicable federal requirement," "complete application," "emissions cap," "enforceable as a practical matter," "federally enforceable," "fugitive emissions," "major new source review," "minor new source review," "new source review program" "public comment period," "state enforceable," "state operating permit program," and "synthetic minor" in order to be consistent with other new source review regulations.

5. The regulation has been revised in order to make the following provisions consistent with other new source review regulations: general, applications, application information required, and standards and conditions for granting permits.

6. The regulation has been revised to delete the following provisions in order to be consistent with other new source review regulations: circumvention and reactivation and permanent shutdown.

7. The regulation has been revised to add the following sections in order to be consistent with other new source review regulations: changes to permits, administrative permit amendments, minor permit amendments, significant amendment procedures, and reopening for cause.

8. The regulation has been revised to make minor administrative revisions and corrections elsewhere in the regulation as necessary.

## Issues:

1. Public: There are no disadvantages to the public associated with the proposed action. Advantages to the public include a clearer understanding of what is required of a permit applicant, and thereby more efficient issuance of more accurate permits. It will also reduce the possibility of implementation of unnecessarily restrictive requirements.

2. Department: There are no disadvantages to the department associated with the proposed action. Advantages to the department include a clearer understanding of what is required of a permit applicant, and thereby more efficient issuance of more accurate permits.

Localities Particularly Affected: The proposed regulation amendments affect sources located in nonattainment areas. Currently, the Commonwealth has one area that does not meet the 1-hour federal standard for ozone: the Northern Virginia Ozone Nonattainment Area, which consists of Arlington County, Alexandria City, Fairfax County, Fairfax City, Loudoun County, Falls Church City, Prince William County, Manassas City, Stafford County, and Manassas Park City.

The areas to be covered by the new 8-hour standard are yet to be determined; however, the state has submitted a list of recommended nonattainment areas to EPA. The recommended areas include the Frederick County Nonattainment Area (Frederick County, City of Winchester); the Fredericksburg Nonattainment Area (Caroline, Spotsylvania, and Stafford Counties, City of Fredericksburg); the Northern Virginia Nonattainment Area (Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford Counties, Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park); the Shenandoah National Park Nonattainment Area (the portions of the park located in Page and Madison counties); the Roanoke Nonattainment Area (Botetourt and Roanoke Counties, Cities of Roanoke and Salem, Town of Vinton); Hampton Roads Nonattainment Area (James City and York Counties, Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg).

This list is currently undergoing review by EPA, which, in accordance with the Clean Air Act, has the final authority for determining nonattainment area designations.

Public Participation: The department is seeking comment on the proposed regulation and the costs and benefits of the proposal.

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 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private

property. The analysis presented below represents DPB's best estimate of these economic impacts.

## Summary of the Proposed Regulation

The Air Pollution Control Board (the board) proposes to establish new emission offset ratios for the sources in the potential eight-hour ozone standard nonattainment areas, and in the potential nonattainment areas for several other pollutants, and proposes to designate certain term and conditions in emission permits as state only enforceable.

Estimated economic impact. The board proposes to establish a new emission offset ratio in response to imposition of the new eight-hour ozone standard by the Environmental Protection Agency (EPA). Currently, the Department of Environmental Quality (the agency) is implementing the one-hour ozone standard, which was established in 1979. When the concentrations of ozone in the ambient air exceed the one-hour standard, the area is considered to be out of compliance and is designated as nonattainment. There are five different nonattainment area classifications for one-hour ozone standard called marginal, moderate, serious, severe, and extreme. Marginal areas are subject to the least stringent requirements while the other classes are subject to successively more stringent requirements.

The offset requirements are designed to control total emissions and improve air quality in nonattainment areas. Construction or reconstruction of new major stationary sources and modifications to existing major stationary sources in these areas are subject to offset requirements. The total tonnage of increased emissions of air pollutant from the new or modified source must be offset by an equal or greater reduction in the emissions of the same source or other sources. Under the current regulations, the offset ratios are applicable to volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>), which are the two precursors of ozone. The ratio of total emission reductions of VOC or NO<sub>x</sub> to total increased emissions of the same pollutant varies among the one-hour ozone standard nonattainment area classifications. The current offset ratio for marginal areas is 1.1 to 1, for moderate areas is 1.15 to 1, for serious areas is 1.2 to 1, and for severe areas is 1.3 to 1.

Present offset ratios are applicable to only VOC and NO<sub>x</sub> emissions and classified ozone nonattainment areas. The agency believes that the limitations of the current language in the regulations for the offset ratios are likely to be a problem in the near future because of the EPA's actions to implement the new eight-hour standard. The eight-hour standard was established in 1997 and is stricter than the one-hour standard. The new standard has been subject to litigation, which has been recently addressed by the U.S. Supreme Court.<sup>1</sup> EPA prevailed on most issues with the exception of its implementation policy, which included a classification scheme for new nonattainment areas according to the eight-hour standard. The agency expects that areas not in compliance with the new standard will be designated as nonattainment, but a specific classification may not be assigned. The current language is unclear what offset ratio would be applicable if an

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<sup>1</sup> Source: The Agency

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area is designated nonattainment for the new eight-hour ozone standard for which an area classification is not likely to be established. According to the agency, one-to-one offset ratio is likely to be applied because of the provisions of the federal Clean Air Act, which does not include any other offset ratios.

Based on the expected implementation of the new eight-hour standard by EPA and the provisions of the Clean Air Act, the board proposes to include an offset ratio of 1 to 1 for VOC and NO<sub>x</sub> emissions in unclassified ozone nonattainment areas. Currently, there is no designated nonattainment area for the new ozone standard in Virginia. Northern Virginia is designated nonattainment for the one-hour standard, and is likely to be designated as nonattainment for the eight-hour standard as well. In addition to the Northern Virginia, several more areas are expected to be designated as nonattainment under the eight-hour standard.

The proposed new offset ratio will reduce the ambiguity on the required emission offsets from sources located in the potential eight-hour standard nonattainment areas. Because of this ambiguity in current regulations, there is a chance that emission offsets cannot be enforced. The proposed amendments will make it possible to enforce emission offsets from major sources in potential nonattainment areas. Required emission offsets are likely to increase the compliance costs of major sources significantly if they choose to undertake construction, reconstruction, or modification. The potential compliance costs to all of the sources cannot be accurately estimated. At the same time, compliance costs per ton of emissions in the new nonattainment areas is expected to be lower than the unit compliance costs associated with the one-hour ozone standard. This is because emission offsets can be obtained from a larger number of sources.

A firm's incentives to locate in a geographic area may be altered. Localities that may be designated as nonattainment for the eight-hour standard are known with some degree of uncertainty. With the proposed changes, the sources in these areas will also know they will be subject to the offset requirements. Since emission offsets increase compliance costs, the potential new sources will find it more profitable to construct in other areas that are unlikely to be designated as nonattainment. This may have a negative impact on the growth of business activity in potential nonattainment areas.

The effects on air quality are expected to be significant. The emissions from the existing sources will be capped by the proposed offset requirement. If a source is to increase emissions because of a modification, it will have to provide an equal reduction from other units internally or from other sources in the nonattainment area. Also, potential new sources will be provided incentives to locate in other areas. This will help reduce growth of emissions from major sources. Prevention of air quality deterioration with the proposed offsets is likely to have a positive impact on health of citizens living in potential nonattainment areas.

Finally, less ambiguous language is expected to reduce potential dispute and litigation costs that may be incurred in the future due to the uncertainty in the present regulations.

The board also proposes to establish new emission offset ratios for criteria pollutants<sup>2</sup> other than VOC and NO<sub>x</sub> in response to the potential designation of particulate matter nonattainment areas by EPA. As mentioned before, the current offset ratios are applicable only to VOC and NO<sub>x</sub> emissions and only to classified ozone nonattainment areas. However, emission reductions of other criteria pollutants from new or modified sources may be required in the future. The current language is unclear what offset ratio would be applicable if an area is designated nonattainment for one of the other criteria pollutants. Based on the provisions of the Clean Air Act which states that non-ozone nonattainment areas must obtain offsets equal to or greater than the amount emitted, the agency expects EPA to establish at least 1 to 1 offset ratio for other pollutant nonattainment areas. Thus, it is proposed to require at least 1 to 1 offsets from sources located in the other pollutant nonattainment areas. No area in Virginia is currently designated or expected to be designated nonattainment for any of these pollutants.<sup>3</sup> Thus, this proposed change is not expected to have any immediate economic impact, but likely to increase compliance costs, discourage new sources locating in, improve air quality, and reduce potential dispute and litigation costs if an area is designated nonattainment for the other pollutants in the future.

Moreover, the proposed amendments designate "state only enforceable" terms and conditions as such in the regulations. A term or condition is state only enforceable if the authority is derived from state regulations. Examples include odor and toxic regulations for new and existing sources. These terms and conditions are enforceable by the Air Pollution Control Board or the agency. Under the current regulations, all terms and conditions including those that should be enforceable by the state are subject to federal enforcement by EPA and citizens through the Clean Air Act. With the proposed language, state-only terms and conditions can be enforced only through the state courts.

The proposed change is likely to prevent the agency and the permit holders from being sued in federal courts for the state only enforceable terms and conditions. If the dispute were with regard to the content of a permit, then the agency would bear the litigation costs. If the issue were compliance with a permit, then the permit holder would incur the costs. Under the assumption that the litigation costs are lower in the state courts relative to federal courts, the proposed change may reduce potential litigation costs to the agency or to the permit holder if a dispute arises. On the other hand, some citizens may prefer to pursue the permit terms and conditions in federal courts rather than in state courts. For those citizens, the proposed regulations will represent a loss of choice. The agency is not aware of any litigation where state enforceable terms are tried in federal courts. Furthermore, this proposed change will make this regulation consistent with the minor source review regulations which designate the same terms and conditions as state only enforceable.

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<sup>2</sup> Criteria pollutants are volatile organic compounds, nitrogen oxides, particulate matter, sulfur dioxide, carbon monoxide, and lead.

<sup>3</sup> Source: The agency

## Businesses and Entities Affected

The number of sources located in areas that may be designated as nonattainment for the new eight-hour ozone standard is expected to be between 13 and 45.<sup>4</sup> These sources currently operate under the prevention of significant deterioration program. Based on the data from this program, only one source during the last five year undertook a new construction or modification. Thus, a small number of sources over a five-year period are expected to be affected.

Localities particularly affected. The areas to be covered by the new eight-hour ozone standard are yet to be determined; however, the agency has submitted a list of recommended nonattainment areas to EPA. The recommended areas include the Frederick County Nonattainment Area (Frederick County, City of Winchester); the Fredericksburg Nonattainment Area (Caroline, Spotsylvania, and Stafford Counties, City of Fredericksburg); the Northern Virginia Nonattainment Area (Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford Counties, Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park); the Shenandoah National Park Nonattainment Area (the portions of the park located in Page and Madison counties); the Roanoke Nonattainment Area (Botetourt and Roanoke Counties, Cities of Roanoke and Salem, Town of Vinton); and Hampton Roads Nonattainment Area (James City and York Counties, Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg). Major emission sources located in these areas may particularly be affected. However, this list is currently undergoing review by EPA, which in accordance with the Clean Air Act, has the final authority for determining nonattainment area designations.

Projected impact on employment. The proposed offset requirements are likely to discourage new sources locating in potential nonattainment areas. This is expected to reduce the number of new jobs that may be created in these localities. However, the job seekers are likely to take jobs elsewhere in a strong labor market. Thus, the net impact on employment cannot be determined.

Effects on the use and value of private property. The value of major emission sources in the potential nonattainment areas may decrease if potential compliance costs exceed the potential cost savings from less litigation and disputes. Prevention of deterioration in air quality by the proposed emission offsets may have a positive impact on land values in potential nonattainment areas.

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

### Summary:

*The proposed amendments (i) revise the emission reduction offset ratio; (ii) provide for state-only permit terms and conditions; (iii) clarify the regulation's applicability; and*

*(iv) make the regulation consistent with the other new source review regulations.*

### 9 VAC 5-80-2000. Applicability.

A. The provisions of this article apply to ~~the construction or reconstruction of any person seeking to construct or reconstruct any new major stationary source or to make a major modification to a major stationary source, if the source or modification is or would be major for the pollutant for which the area is designated as nonattainment.~~

B. The provisions of this article apply in nonattainment areas.

C. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this article shall apply to the source or modification as though construction had not commenced on the source or modification.

D. Where a source is constructed or modified in contemporaneous increments which individually are not subject to approval under this article and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this article. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

E. Unless specified otherwise, the provisions of this article ~~are applicable to various sources~~ apply as follows:

1. Provisions referring to "sources," "new and/or modified sources" or "stationary sources" ~~are applicable~~ apply to the construction, reconstruction or modification of all major stationary sources and major modifications.

2. Any emissions units or pollutants not subject to the provisions of this article may be subject to the provisions of ~~9 VAC 5-80-10 Article 6~~ (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), or Article 8 (9 VAC 5-80-1700 et seq.) of this part.

3. Provisions referring to "state and federally enforceable" and "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9 VAC 5-80-2020 E.

F. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

### 9 VAC 5-80-2010. Definitions.

A. As used in this article, all words or terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10

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<sup>4</sup> Source: The agency

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(9 VAC 5-10-10 et seq.), unless otherwise required by context.

B. For the purpose of this article, 9 VAC 5-50-270 and any related use, the words or terms shall have the meanings given them in subsection C of this section.

C. Terms defined.

*"Actual emissions"* means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The board shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

*"Administrator"* means the Administrator of the U.S. Environmental Protection Agency (EPA) or his authorized representative.

*"Allowable emissions"* means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a. The applicable standards set forth in 40 CFR Parts 60 and 61;

b. Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or

c. The emissions rate limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

*"Applicable federal requirement"* means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or § 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.

d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

e. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

g. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9 VAC 5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9 VAC 5-80-1700 et seq.) of this part.

*"Begin actual construction"* means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

*"Building, structure, facility, or installation"* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except

the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9 VAC 5-20-21).

"Commence," as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

- a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

"Emissions cap" means any limitation on the rate of emissions of any regulated air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

- a. Are permanent;
- b. Contain a legal obligation for the owner to adhere to the terms and conditions;
- c. Do not allow a relaxation of a requirement of the Implementation Plan;
- d. Are technically accurate and quantifiable;
- e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the Implementation Plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent

with 9 VAC 5-80-2050 and other regulations of the board; and

f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, ~~including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or this chapter, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program, and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to the following:~~

a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

c. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

d. Limitations and conditions that are part of an implementation plan established pursuant to § 110 or § 111(d) of the federal Clean Air Act.

e. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.

f. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

g. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

h. Individual consent agreements that EPA has legal authority to create.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Fugitive emissions" means those emissions which that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed for eliminating emissions from the structure.

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"Lowest achievable emissions rate" means for any source, the more stringent rate of emissions based on the following:

- a. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or
- b. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Major modification"

- a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any *qualifying nonattainment* pollutant ~~subject to regulation under the federal Clean Air Act.~~
- b. Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.
- c. A physical change or change in the method of operation shall not include:
  - (1) Routine maintenance, repair and replacement;
  - (2) Use of an alternative fuel or raw material by a stationary source which:
    - (a) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter; or
    - (b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter;
  - (3) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter.

"Major new source review (major NSR)" means a program for the preconstruction review of changes that are subject to review as new major stationary sources or major modifications under Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Major stationary source"

- a. Means:

- (1) Any stationary source of air pollutants which emits, or has the potential to emit, (i) 100 tons per year or more of any *nonattainment* pollutant ~~subject to regulation under the federal Clean Air Act,~~ (ii) 50 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as serious in 9 VAC 5-20-204, or (iii) 25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in 9 VAC 5-20-204; or

- (2) Any physical change that would occur at a stationary source not qualifying under subdivision a (1) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

- b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

- c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (1) Coal cleaning plants (with thermal dryers).
- (2) Kraft pulp mills.
- (3) Portland cement plants.
- (4) Primary zinc smelters.
- (5) Iron and steel mills.
- (6) Primary aluminum ore reduction plants.
- (7) Primary copper smelters.
- (8) Municipal incinerators (or combinations of them) capable of charging more than 250 tons of refuse per day.
- (9) Hydrofluoric acid plants.
- (10) Sulfuric acid plants.
- (11) Nitric acid plants.
- (12) Petroleum refineries.
- (13) Lime plants.
- (14) Phosphate rock processing plants.
- (15) Coke oven batteries.
- (16) Sulfur recovery plants.
- (17) Carbon black plants (furnace process).
- (18) Primary lead smelters.
- (19) Fuel conversion plants.
- (20) Sintering plants.
- (21) Secondary metal production plants.
- (22) Chemical process plants.



(23) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(24) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(25) Taconite ore processing plants.

(26) Glass fiber manufacturing plants.

(27) Charcoal production plants.

(28) Fossil fuel steam electric plants of more than 250 million British thermal units per hour heat input.

(29) Any other stationary source category which, as of August 7, 1980, is being regulated under § 111 or § 112 of the federal Clean Air Act.

*"Minor new source review (minor NSR)" means a program for the preconstruction review of changes that are subject to review as new or modified sources and that do not qualify as new major stationary sources or major modifications under Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.*

*"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the applicable State Implementation Plan.*

*"Net emissions increase"*

a. Means the amount by which the sum of the following exceeds zero:

(1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs. For sources located in ozone nonattainment areas classified as serious or severe in 9 VAC 5-20-204, an increase or decrease in actual emissions of volatile organic compounds or nitrogen oxides is contemporaneous with the increase from the particular change only if it occurs during a period of five consecutive calendar years which includes the calendar year in which the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if:

(1) It occurs between the date five years before construction on the change specified in subdivision a (1) of this definition commences and the date that the

increase specified in subdivision a (1) of this definition occurs; and

(2) The board has not relied on it in issuing a permit for the source pursuant to this chapter which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

e. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is federally and state enforceable at and after the time that actual construction on the particular change begins;

(3) The board has not relied on it in issuing any permit pursuant to this chapter or the board has not relied on it in demonstrating attainment or reasonable further progress in the State Implementation Plan; and

(4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

f. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

*"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas), 173 (relating to permits in nonattainment areas), and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.*

*"Nonattainment pollutant" means, within an nonattainment area, the pollutant for which such area is designated nonattainment. For ozone nonattainment areas, the nonattainment pollutants shall be volatile organic compounds (including hydrocarbons) and nitrogen oxides.*

*"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.*

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*"Public comment period"* means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

*"Qualifying pollutant"* means, with regard to a major stationary source, any pollutant emitted in such quantities or at such rate as to qualify the source as a major stationary source.

*"Reasonable further progress"* means the annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of a state implementation plan and regular reductions thereafter) which are sufficient in the judgment of the board to provide for attainment of the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the State Implementation Plan for such area.

*"Reconstruction"* means when the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of subdivisions a through c of this definition. A reconstructed stationary source will be treated as a new stationary source for purposes of this article.

- a. The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility.
- b. The estimated life of the facility after the replacements compared to the life of a comparable entirely new facility.
- c. The extent to which the components being replaced cause or contribute to the emissions from the facility.

*"Regulated air pollutant"* means any of the following:

- a. Nitrogen oxides or any volatile organic compound;
- b. Any pollutant for which an ambient air quality standard has been promulgated;
- c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act;
- d. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under of 40 CFR Part 63; or
- e. Any pollutant subject to a regulation adopted by the board.

*"Secondary emissions"* means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions must be specific, well defined, quantifiable, and impact affect the same general area as the stationary source or

modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

*"Significant"* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

- a. Ozone nonattainment areas classified as serious or severe in 9 VAC 5-20-204.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Ozone	25 tpy of volatile organic compounds
Lead	0.6 tpy

- b. Other nonattainment areas.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

*"State enforceable"* means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9 VAC 5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

*"State operating permit program"* means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9 VAC 5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

*"Stationary source"* means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.

*"Synthetic minor"* means a stationary source whose potential to emit is constrained by state-enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

**9 VAC 5-80-2020. General.**

A. No owner or other person shall begin actual construction, reconstruction or modification of any major stationary source or major modification without first obtaining from the board a permit to construct and operate such source.

B. No owner or other person shall relocate any emissions unit ~~subject to the provisions of 9 VAC 5-20-160 from one stationary source to another~~ without first obtaining from the board a permit to relocate the unit.

C. The board may combine the requirements of and the permits for emissions units within a stationary source subject to ~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this part, and this article~~ *the new source review program* into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by ~~9 VAC 5-80-10, Article 8 of this part, and this article~~ *any provision of the new source review program* be combined into one application.

D. *The board may incorporate the terms and conditions of a state operating permit into a permit issued pursuant to this article. The permit issued pursuant to this article may supersede the state operating permit provided the public participation provisions of the state operating permit program are followed.*

E. *All terms and conditions of any permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.*

1. *A term or condition of any permit issued under this article shall not be federally enforceable if (i) it is derived from or is designed to implement Article 2 (9 VAC 5-40-130 et seq.) or Article 3 (9 VAC 5-40-160 et seq.) of 9 VAC 5 Chapter 40 or Article 2 (9 VAC 5-50-130 et seq.) or Article 3 (9 VAC 5-50-160 et seq.) of 9 VAC 5 Chapter 50 or (ii) it is designated in the proposed permit as provided in subdivision 2 of this subsection and public review of the designation takes place under 9 VAC 5-80-2070.*

2. *Any term or condition of any permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall only be enforceable by the board. Failure to mark a term or condition as state-only enforceable shall not render it federally enforceable. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.*

F. *Nothing in the regulations of the board shall be construed to prevent the board from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.*

**9 VAC 5-80-2030. Applications.**

A. A single application is required identifying at a minimum each ~~emissions point within the emissions unit~~ subject to *the provisions of this article*. The application shall be submitted according to procedures ~~approved by acceptable to the board~~. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted. ~~A separate application is required for each location.~~

B. ~~A separate application is required for each stationary source.~~

B- C. For projects with phased development, a single application should be submitted covering the entire project.

~~C- D.~~ Any application form, report, or compliance certification submitted to the board shall be signed by a responsible official. ~~A responsible official is defined as follows: comply with the provisions of 9 VAC 5-20-230.~~

1. ~~For a business entity such as a corporation, association or cooperative, a responsible official is either:~~

a. ~~The president, secretary, treasurer, or a vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the business entity; or~~

b. ~~A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), or (ii) the authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity.~~

2. ~~For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.~~

3. ~~For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.~~

D. ~~Any person signing a document under subsection C of this section shall make the following certification:~~

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

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~~E. As required under § 10.1-1321.1 of the Virginia Air Pollution Control Law, applications shall not be deemed complete unless the applicant has provided a notice from the locality in which the source is located or is to be located that the site and operation of the source are consistent with all local ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.~~

## **9 VAC 5-80-2040. Application information required.**

~~A. The board shall furnish application forms to applicants. Completion of these forms serves as initial registration of new and modified sources.~~

~~A. B. Each application for a permit shall include such information as may be required by the board to determine the effect of the proposed source on the ambient air quality and to determine compliance with the emissions standards which are applicable. The information required shall include, but is not limited to, the following:~~

~~1. That specified on applicable permit forms furnished by the board. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations. Completion of these forms serves as initial registration of new and modified sources. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.~~

~~2. A description of the source's processes and products (by Standard Industrial Classification Code).~~

~~3. All emissions of regulated air pollutants.~~

~~a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit or group of emissions units to be covered by the permit.~~

~~b. Emissions shall be calculated as required in the permit application form or instructions.~~

~~c. Fugitive emissions shall be included in the permit application to the extent quantifiable.~~

~~4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.~~

~~5. Actual emission rates in tons per year and other information as may be necessary to determine the net emissions increase of actual emissions.~~

~~6. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.~~

~~7. Identification and description of air pollution control equipment and compliance monitoring devices or activities.~~

~~8. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.~~

~~9. Calculations on which the information in subdivisions 3 through 8 of this subsection are based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.~~

~~2- 10. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit, including the submission of measured air quality data at the proposed site prior to construction, reconstruction or modification. Such measurements shall be accomplished using procedures acceptable to the board.~~

~~3- 11. For major stationary sources, the location and registration number for all stationary sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control with the applicant) in the Commonwealth.~~

~~4- 12. For major stationary sources, the analyses required by 9 VAC 5-80-2090 2 shall be provided by the applicant. Upon request, the board will advise an applicant of the reasonable geographic limitation on the areas to be subject to an analysis to determine the air quality impact at the proposed source.~~

~~B. C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.~~

## **9 VAC 5-80-2050. Standards/conditions Standards and conditions for granting permits.**

~~A. No permit will be granted pursuant to this article unless it is shown to the satisfaction of the board that the source will be designed, built and equipped to operate without causing a violation of the applicable provisions of these regulations and that comply with the following standards and conditions have been met:~~

~~1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) and with emission standards prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.).~~

~~2. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any the applicable ambient air quality standard provisions of regulations of the board or the applicable control strategy portion of the implementation plan.~~

~~3. The board determines that the following occurs:~~

~~a. By the time the source is to commence operation, sufficient offsetting emissions reductions shall have been obtained in accordance with 9 VAC 5-80-2120 such that total allowable emissions of qualifying nonattainment pollutants from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources, as determined in accordance with the requirements of this article, prior to the application for such permit to construct or modify so as to represent (when considered together with any applicable control measures in the State Implementation Plan) reasonable further progress; or~~

b. In the case of a new or modified major stationary source which is located in a zone, within the nonattainment area, identified by the administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source shall not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources in the State Implementation Plan.

Any emission reductions required as a precondition of the issuance of a permit under subdivision 3 a or 3 b of this ~~section~~ subsection shall be state and federally enforceable before such permit may be issued.

4. The applicant shall demonstrate that all major stationary sources owned or operated by such applicant (or by any entity controlling, controlled by, or under common control with such applicant) in the Commonwealth are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under these regulations.

5. The administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this article.

6. The applicant shall demonstrate, through an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source, that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

*B. Permits may be granted to stationary sources or emissions units that contain emission caps provided the limits or caps are made enforceable as a practical matter using the elements set forth in subsection D of this section.*

*C. Permits granted pursuant to this article may contain emissions standards as necessary to implement the provisions of this article and 9 VAC 5-50-270. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:*

*1. Standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.*

*2. In no case shall a standard result in emissions that would exceed the emissions rate based on the potential to emit of the emissions unit.*

*3. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.*

*D. Permits issued under this article shall contain, but not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:*

*1. Emission standards.*

*2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:*

*a. Limit on fuel sulfur content.*

*b. Limit on production rates with time frames as appropriate to support the emission standards.*

*c. Limit on raw material usage rate.*

*d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.*

*3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.*

*4. Specifications for air pollution control equipment installed or to be installed. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.*

*5. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, any of the following:*

*a. Pressure indicators and required pressure drop.*

*b. Temperature indicators and required temperature.*

*c. pH indicators and required pH.*

*d. Flow indicators and required flow.*

*6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.*

*7. Stack test requirements.*

*8. Reporting or recordkeeping requirements, or both.*

*9. Continuous emission or air quality monitoring requirements, or both.*

*10. Other requirements as may be necessary to ensure compliance with the applicable regulations.*

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## 9 VAC 5-80-2060. Action on permit application.

A. Within 30 days after receipt of an application, the board shall notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include (i) a determination as to which provisions of ~~this chapter~~ *the new source review program* are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board shall notify the applicant *in writing* of any deficiencies in such information. The date of receipt of a complete application for processing under subsection B of this section shall be the date on which the board received all required information *and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.*

B. Processing time for a permit is normally ~~90~~ *180* days following receipt of a complete application. *The board may extend this time period if additional information is required. Processing steps normally are as follows may include, but not be limited to, the following:*

1. Completion of the preliminary review and analysis in accordance with 9 VAC 5-80-2090 and the preliminary decision of the board.
2. Completion of the public participation requirements in accordance with 9 VAC 5-80-2070.
3. Completion of the final review and analysis and the final decision of the board.

C. The board *will* normally ~~will~~ take action on all applications after completion of the review and analysis, or expiration of the public comment period (and consideration of comments from it) when required, unless more information is needed. The board shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with 9 VAC 5-80-2080.

D. The applicant may appeal the decision pursuant to Part VIII (9 VAC 5-170-190 et seq.) of 9 VAC 5 Chapter 170.

E. Within five days after notification to the applicant pursuant to subsection C of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9 VAC 5-80-2070 F 1.

## 9 VAC 5-80-2070. Public participation.

A. No later than 30 days after receiving the initial determination notification required under 9 VAC 5-80-2060 A, applicants shall notify the public about the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection C of this section.

B. The public notice required under subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the name, location, and type of the source, and the time and place of the informational briefing.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board shall attend and provide information and answer questions on the permit application review process.

D. Upon determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. Prior to the decision of the board, all permit applications will be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period, a public hearing shall be held with notice in accordance with subsection F of this section.

F. For the public comment period and public hearing, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing.

1. Information on the permit application (exclusive of confidential information under 9 VAC 5-170-60), as well as the preliminary review and analysis and preliminary decision of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice shall be sent to all local air pollution control agencies having ~~State Implementation Plan responsibilities~~ *jurisdiction* in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

3. *Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.*

*G. In order to facilitate the efficient issuance of permits under Articles 1 (9 VAC 5-80-50 et seq.) and 3 (9 VAC 5-80-360 et seq.) of this part, upon request of the applicant the board shall process the permit application under this article using public participation procedures meeting the requirements of this section and 9 VAC 5-80-270 or 9 VAC 5-80-670, as applicable.*

*G. H. If appropriate, the board may provide a public briefing on its review of the permit application prior to the public comment period but no later than the day before the beginning of the public comment period. If the board provides a public briefing, the requirements of subsection F of this section concerning public notification shall be followed.*

**9 VAC 5-80-2080. Compliance determination and verification by performance testing.**

*A. For stationary sources other than those specified in subsection B of this section, Compliance with standards of performance shall be determined in accordance with the provisions of 9 VAC 5-50-20 and shall be verified by performance tests in accordance with the provisions of 9 VAC 5-50-30.*

*B. For stationary sources of hazardous air pollutants, compliance with emission standards shall be determined in accordance with the provisions of 9 VAC 5-60-20 and shall be verified by emission tests in accordance with the provisions of 9 VAC 5-60-30.*

*G. B. Testing required by subsections A and B of this section shall be conducted within 60 days by the owner after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.*

*D. For sources subject to the provisions of Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 or Article 4 (9 VAC 5-60-60 et seq.) of Part II of 9 VAC 5 Chapter 60, the requirements of subsections A through C of this section shall be met in all cases.*

*E. For sources other than those specified in subsection D of this section, C. The requirements of subsections A through C of this section shall be met unless the board:*

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
2. Approves the use of an equivalent method;
3. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;
4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or modified source to perform in compliance with applicable standards; or
5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's

satisfaction that the source is in compliance with the applicable standard.

*F. D. The provisions for the granting of waivers under subsection E C of this section are intended for use in determining the initial compliance status of a source, and. The granting of a waiver does not obligate the board to do so for determining compliance grant any waivers once the source has been in operation for more than one year beyond the initial startup date.*

*E. The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirements of the implementation plan, or any other applicable federal requirements promulgated under the federal Clean Air Act.*

**9 VAC 5-80-2090. Application review and analysis.**

No permit shall be granted pursuant to this article unless compliance with the standards in 9 VAC 5-80-2050 is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) and emission standards prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.).

2. Applications shall be subject to an air quality analysis to determine the impact of qualifying *nonattainment* pollutant emissions.

**9 VAC 5-80-2100. Circumvention. (Repealed.)**

*Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.*

**9 VAC 5-80-2110. Interstate pollution abatement.**

A. The owner of each new or modified source, which may significantly contribute to levels of air pollution in excess of an ambient air quality standard in any quality control region outside the Commonwealth, shall provide written notice to all nearby states of the air pollution levels which may be affected by such source at least 60 days prior to the date of commencement of construction, reconstruction or modification.

B. Any state or political subdivision may petition the administrator, ~~EPA,~~ for a finding that any new or modified source emits or would emit any air pollutant in amounts which will prevent attainment or maintenance of any ambient air quality standard or interfere with measures for the prevention of significant deterioration or the protection of visibility in the ~~state~~ implementation plan for such state. Within 60 days after receipt of such petition and after a public hearing, the administrator, ~~U.S. Environmental Protection Agency,~~ will make such a finding or deny the petition.

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C. Notwithstanding any permit granted pursuant to this article, no owner or other person shall commence construction, reconstruction or modification or begin operation of a source to which a finding has been made under the provisions of subsection B of this section.

## 9 VAC 5-80-2120. Offsets.

A. Owners shall comply with the offset requirements of this article by obtaining emission reductions from the same source or other sources in the same nonattainment area, except that for ozone precursor pollutants the board may allow the owner to obtain such emission reductions in another nonattainment area if (i) the other area has an equal or higher nonattainment classification than the area in which the source is located and (ii) emissions from such other area contribute to a violation of the ambient air quality standard in the nonattainment area in which the source is located. By the time a new or modified source begins operation, such emission reductions shall (i) be in effect, (ii) be state and federally enforceable and (iii) assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the nonattainment area.

B. The (i) ratio of total emission reductions of volatile organic compounds to total increased emissions of volatile organic compounds or (ii) the ratio of total emission reductions of nitrogen oxides to total increased emissions of nitrogen oxides in *ozone* nonattainment areas designated in 9 VAC 5-20-204 shall be at least the following:

1. ~~Ozone~~ Nonattainment areas classified as marginal --1.1 to one.
2. ~~Ozone~~ Nonattainment areas classified as moderate --1.15 to one.
3. ~~Ozone~~ Nonattainment areas classified as serious --1.2 to one.
4. ~~Ozone~~ Nonattainment areas classified as severe --1.3 to one.
5. *Nonattainment areas not classified --1 to one.*

*The ratio of total emissions reductions of the nonattainment pollutant to total increased emissions of the nonattainment pollutant in nonattainment areas (other than ozone nonattainment areas) designated in 9 VAC 5-20-204 shall be at least 1 to one.*

C. Emission reductions otherwise required by these regulations shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by these regulations shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of subsection A of this section.

D. The board shall allow an owner to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

1. Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990.

2. The source demonstrates to the satisfaction of the board that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

3. The source has obtained a written finding from the U.S. Department of Defense, U.S. Department of Transportation, National Aeronautics and Space Administration or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

4. The owner will comply with an alternative measure, imposed by the board, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the board may impose an emissions fee to be paid to the board which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that nonattainment area during the previous three years. The board shall utilize the fees in a manner that maximizes the emissions reductions in that nonattainment area.

E. For sources subject to the provisions of this article, the baseline for determining credit for emissions reduction is the emissions limit under the applicable ~~State~~ Implementation Plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area; or
2. The applicable ~~State~~ Implementation Plan does not contain an emissions limitation for that source or source category.

F. Where the emissions limit under the applicable ~~State~~ Implementation Plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

G. For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable ~~State~~ Implementation Plan for the type of fuel being burned at the time the application to construct is filed. If the owner of the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The board will ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.



H. Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally and state enforceable. In addition, the shutdown or curtailment is creditable only if it occurred on or after January 1, 1991.

I. No emissions credit may be allowed for replacing one hydrocarbon *volatile organic* compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977).

J. Where these regulations do *this article* does not adequately address a particular issue, the provisions of Appendix S to 40 CFR Part 51 shall be followed to the extent that they do not conflict with this ~~section~~ *article*.

K. Credit for an emissions reduction can be claimed to the extent that the board has not relied on it in issuing any permit under this chapter or has not relied on it in demonstrating attainment or reasonable further progress.

**9 VAC 5-80-2150. Compliance with local zoning requirements.**

~~The owner~~ *No provision of this part or any permit issued thereunder shall relieve an owner of the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under 9 VAC 5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.*

**9 VAC 5-80-2160. Reactivation and permanent shutdown. (Repealed.)**

~~A. The reactivation of a stationary source is not subject to provisions of this article unless a decision concerning shutdown has been made pursuant to the provisions of subsections B through D of this section or 9 VAC 5-80-950 C.~~

~~B. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of this chapter.~~

~~C. The final decision shall be rendered as follows:~~

- ~~1. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart up of the source~~

~~and shall include a request for a formal hearing if the owner wishes to exercise that right.~~

~~2. If the board should find that the basis for the assertion is not sound or the projected restart up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested or, if no hearing is requested, the decision to consider the shutdown permanent shall become final.~~

~~D. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shutdown permanently prior to any final decision rendered under subsection C of this section.~~

**9 VAC 5-80-2180. Permit invalidation, suspension, revocation, and enforcement.**

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within the latest of the following time frames:

1. Eighteen months from the date the permit is granted.
2. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this article) from any government entity.
3. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this article).

B. A permit granted pursuant to this article shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more or if a program of construction, reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

C. The board may extend the periods prescribed in subsections A and B of this section upon satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted ~~without being subject to the requirements of 9 VAC 5-80-2070 using the procedures for minor amendments in 9 VAC 5-80-2220.~~

D. Any owner who constructs or operates a source or modification not in accordance (i) ~~with the application submitted pursuant to this article or~~ (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all requirements of the regulations *of the board*.

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F. The board may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments thereto;
2. Fails to comply with the terms or conditions of the permit;
3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;
4. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the ~~State~~ Implementation Plan in effect at the time that an application is submitted; or
5. Fails to comply with the applicable provisions of this article.

G. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection F of this section or for any other violations of ~~these~~ the regulations of the board.

H. ~~The~~ permittee shall comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) revocation.

~~H.~~ I. Violation of ~~these~~ the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in Part V (9 VAC 5-170-120 et seq.) of 9 VAC 5 Chapter 170 and the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia).

~~I.~~ J. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit or to render a permit invalid.

## 9 VAC 5-80-2190. Existence of permit no defense.

The existence of a permit under this article shall not constitute a defense to a violation of the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia) or ~~these~~ the regulations of the board and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

## 9 VAC 5-80-2200. Changes to permits.

A. The general requirements for making changes to permits are as follows:

1. Changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9 VAC 5-80-2210 through 9 VAC 5-80-2240.
2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this part shall be made as specified in Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this part.

4. This section shall not be applicable to general permits.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit revisions can be found in 9 VAC 5-80-2210 through 9 VAC 5-80-2230.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-2240.

## 9 VAC 5-80-2210. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity that does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9 VAC 5-80-2180 have been fulfilled.

4. The combining of permits under the new source review program as provided in 9 VAC 5-80-2020 C.

B. The administrative permit amendment procedures are as follows:

1. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board shall incorporate the changes without providing notice to the public under 9 VAC 5-80-2070. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

## 9 VAC 5-80-2220. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that:

1. Do not violate any applicable federal requirement;
2. Do not involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or record keeping requirements;
3. Do not require or change a case-by-case determination of an emission limitation or other standard;
4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

- a. An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act; and

- b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act; and
6. Are not required to be processed as a significant amendment under 9 VAC 5-80-2230 or as an administrative permit amendment under 9 VAC 5-80-2210.

**B.** Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that:

1. Involve the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.
2. Require more frequent monitoring or reporting by the permittee or to reduce the level of an emissions cap.
3. Designate any term or permit condition that meets the criteria in 9 VAC 5-80-2020 E 1 as state-only enforceable as provided in 9 VAC 5-80-2020 E 2 for any permit issued under this article or any regulation from which this article is derived.

**C.** Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

**D.** A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.

2. A request that such procedures be used.

**E.** The public participation requirements of 9 VAC 5-80-2070 shall not extend to minor permit amendments.

**F.** Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board will do one of the following:

1. Issue the permit amendment as proposed.
2. Deny the permit amendment request.
3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

**G.** The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.
2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.
3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions the owner seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions the owner seeks to modify may be enforced against the owner.

## **9 VAC 5-80-2230. Significant amendment procedures.**

**A.** The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9 VAC 5-80-2220 or as administrative amendments under 9 VAC 5-80-2210.
2. Significant amendment procedures shall be used for those permit amendments that:

- a. Involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or record keeping requirements.

- b. Require or change a case-by-case determination of an emission limitation or other standard.

- c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

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(1) An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act; and

(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at his discretion, include a suggested draft permit amendment.

C. The provisions of 9 VAC 5-80-2070 shall apply to requests made under this section.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public comment period is required, processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required or if a public hearing is conducted under 9 VAC 5-80-2070.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

## **9 VAC 5-80-2240. Reopening for cause.**

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.

2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The board determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the conditions of the permit are not sufficient to meet all of the standards and requirements contained in this article.

4. A new emission standard prescribed under 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

VA.R. Doc. No. R01-14; Filed September 24, 2001, 1:48 p.m.

## **VIRGINIA WASTE MANAGEMENT BOARD**

**Title of Regulations:** 9 VAC 20-160. Voluntary Remediation Regulations (amending 9 VAC 20-160-10 through 9 VAC 20-160-40 and 9 VAC 20-160-60 through 9 VAC 20-160-120; repealing 9 VAC 20-160-50 and 9 VAC 20-160-130).

**Statutory Authority:** § 10.1-1429.1 of the Code of Virginia.

**Public Hearing Dates:** November 26, 2001 - 1 p.m.

November 27, 2001 - 1 p.m.

November 29, 2001 - 10:30 a.m.

Public comments may be submitted until 5 p.m. on December 27, 2001.

(See Calendar of Events section for additional information)

**Agency Contact:** Melissa Porterfield, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238 or e-mail: msporterfi@deq.state.va.us.

**Basis:** Section 10.1-1429.1 of the Code of Virginia directs the Virginia Waste Management Board (board) to promulgate regulations that facilitate voluntary cleanup of contaminated sites where remediation is not clearly mandated by CERCLA, RCRA, the Virginia Waste Management Act, State Water Control Law or other applicable authority. Section 10.1-1402(11) of the Code of Virginia authorizes the board to promulgate and enforce regulations necessary to carry out its powers and duties, the intent of the Virginia Waste Management Act and the federal acts. There is no corresponding federal mandate since the regulations apply only where remediation is not otherwise required under state or federal law, or where such jurisdiction has been waived.

**Purpose:** The proposed regulations are necessary to update documents incorporated by reference, and to clarify the regulations. Test methods and risk assessment guidance documents referenced in the proposed regulations have been reviewed to ensure that the most recent versions of the documents are referenced. By referencing the most recent versions of these documents, the regulations ensure that human health and the welfare of citizens are being protected.

The goals of the proposed regulations are to clarify the regulations and to make the regulations easier to understand. The remediation level section has been re-organized to clarify the Tier I, Tier II and Tier III standards for remediation. Also, the regulations have been reviewed to assure that terminology used in the regulations is consistent. Throughout the proposed regulations, the term "remedial action" has been replaced with the term "remediation" and the term "remediation cost estimate" has been replaced with the term "cost of remediation."

**Substance:** The regulations now clarify that land use controls approved for use at the site are considered remediation.

9 VAC 20-160-10. Definitions. This section has been amended to include additional definitions to clarify the regulations. The definition for "agreement" has been removed since agreements are no longer established between participants in the program and the department. Definitions for "certificate," "land use controls," and "report" have been

added. Definitions for “cost of remediation,” “engineering controls,” “institutional controls,” “owner,” “remediation level,” and “termination” have been modified. The definition of “upper-bound lifetime cancer risk level” has been removed, and a definition for “incremental upper-bound lifetime cancer risk level” has been added.

9 VAC 20-160-40. Application for participation. The timeframe for departmental review has been changed from 45 working days to 60 days. This change gives the regulations a consistent timeframe for applications to be reviewed. In the past, the regulated community has been confused with the term working days. By converting to calendar days, the timeframe is clarified. The department is proposing 60 days since 45 working days is approximately 60 calendar days.

9 VAC 20-160-50. Agreement. This section has been repealed. This section is no longer relevant to the regulations since the timeframe for electing to remain under an agreement to perform voluntary remediation of a release has passed.

9 VAC 20-160-60. Registration fee. This section has been revised to consistently use terminology defined in 9 VAC 20-160-10.

9 VAC 20-160-70. Work to be performed. This section has been changed to clarify the necessary components of the Voluntary Remediation Report. The section now describes the five elements of the report and the information to be included in each element. By revising this section to include more detail, the department anticipates participants will be able to submit complete reports that will minimize delays in obtaining a certificate. Also, the reference to Test Methods for Evaluating Solid Waste has been updated to incorporate the most recent test methods.

9 VAC 20-160-80. Review of submittals. The reference to working days has been deleted from this section. If appropriate, the director shall, within 120 days of a complete submittal, expedite issuance of such permits required to initiate and complete a voluntary remediation.

9 VAC 20-160-90. Remediation levels. This section has been re-organized to aid program participants in understanding the remediation levels. Additionally, the regulations clarify that land use controls approved by the department for use at the site are considered remediation.

9 VAC 20-160-100. Termination. The meaning of the term termination has been revised. Termination now means the discontinuation of participation in the program prior to receiving a certification of satisfactory completion of remediation.

9 VAC 20-160-110. Certification of satisfactory completion of remediation. Additional language has been added to this section that states that the site has and will continue to attain remediation levels. Participants must also demonstrate that migration of contamination has stabilized. This section also requires the certificate to contain information on land use controls on surrounding properties that were taken into account when the certificate was issued. Language now contained in the certificate that the department issues has been included in the regulations.

9 VAC 20-160-120. Public participation. The section has been re-titled “Public notice.” Program participants are now required to acknowledge any comments received during the public comment period and also provide copies of any responses made to comments.

9 VAC 20-160-130. Regulatory evaluation. This section is obsolete and has been removed. The periodic review of these regulations is now required under Executive Order Twenty-Five (98) and will be performed as required under the executive order.

Documents incorporated by reference have been updated to reference the most recent versions.

Issues: The general public, localities and Commonwealth will benefit from the remediation of contaminated sites and the economic benefits of returning a site to productive use. There are no disadvantages to the general public, local governments or the Commonwealth.

All participants in the Voluntary Remediation Program benefit from the clarifications contained in the proposed regulations. The clarifications should eliminate confusion concerning the requirements associated with receiving a certificate of satisfactory completion.

Locality Particularly Affected: No locality would be particularly affected by the proposed regulations.

Public Participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and the impacts of the regulations on farm or forest lands.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. Comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

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 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Waste Management Board proposes (i) to allow additional test methods to evaluate contamination, (ii) to set time frames in the regulations in terms of calendar days instead of working days, (iii) to require program participants to acknowledge any comments received during the public comment period and provide the Department of Environmental Quality (the agency) copies of any responses made to comments, (iv) to update

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documents incorporated by reference, and (v) to improve the readability of the regulation.

**Estimated economic impact.** The Voluntary Remediation Program encourages hazardous substance cleanups that might not otherwise take place. The program establishes procedures for voluntary owners or operators to remedy contamination at their sites. When the cleanup is satisfactorily completed, the agency issues a "certification of satisfactory completion of remediation." This certification provides an exemption from further enforcement unless new issues are discovered.

The proposed regulations expand the evaluation test methods to include "other methodologies approved by the department." This is in addition to the methods specified in the referenced documents in the regulations. The agency indicates that alternate methods that have not been incorporated by reference will not be required unless the program participant makes a request. This change is expected to increase the participant's choices in evaluating sites. According to the agency, sometimes the program participant may wish to use other methods because methods prescribed in the referenced material may not be appropriate for a specific site. In addition, analytic equipment, techniques, and methods for testing the efficacy of remediation efforts are constantly being developed. The regulatory process may not always keep up with technical advances.

In practice, the agency has been using the most recent methods. In those cases, where the referenced methods are not appropriate for a specific site, the participant will have the option to seek approval from the agency to use an alternate test method. The agency will then review the alternate test method and determine if it will be allowed. For example, the Environmental Protection Agency (EPA) may have updated test methods for evaluating solid waste and added a new test method. The participant may wish to use the new approved test method at their site and may request the director to approve the new test method. This proposed change allows the program participant to use more appropriate methods. The agency expects requests for about two cases per year to employ alternate methods instead of standard methods included in the documents incorporated by reference. The use of more appropriate test methods is expected to give more accurate results. The agency does not believe there is any increase in health risks by deviating from the test methods in referenced documents. Thus, the proposed change is expected to be beneficial for the program participants and may result in cleaner sites if more appropriate methods are employed.

The time frames in the regulation are proposed to be set in terms of calendar days instead of working days. The term, "working days," created confusion for the regulated community. The agency has received complaints concerning the ambiguity of the term "working days." The proposed changes are likely to prevent such confusions. The proposed use of calendar days instead of working days will reduce the time frame given to an applicant to contest the director's decision to deny an application to participate in the program from 30 working days to 30 calendar days. According to the agency, the new time frame is consistent with the

Administrative Process Act. Nonetheless, the program participants will have less time to contest the decision on the application. Second, the proposed change will reduce time given to the program participants to request a reimbursement of their registration fee balance from 60 working days to 60 calendar days.<sup>1</sup> Third, the time frame for the director to expedite issuance of a permit after receiving a submittal of demonstration of completion will be reduced from 120 working days to 120 calendar days. As opposed to other two changes, this change reduces the time given to the agency instead of the participant. The director will have to take action on the complete permit application sooner. The participant may realize some time savings. The agency indicates that the proposed time changes have the potential to expedite the overall process by reducing time frames for the participant and the agency. However, available information is not sufficient to determine if these changes will produce net economic benefits for the Commonwealth.

Program participants will be required to acknowledge any comments received during the public comment period and provide the agency copies of any responses made to comments. A letter will be sent to the commenter acknowledging the comment, and a copy of that acknowledgement will be forwarded to the agency. This proposed change will make sure that the commenters are being acknowledged, and the agency is aware of the correspondence between the participant and the commenter, if any takes place. The agency indicated that the number of comments received is not many. Commenters are likely to benefit from knowing that their concerns reached the participant. The agency is also likely to benefit from being notified what the concerns are. The program participant, however, is likely to incur small costs to respond to both the commenter and the agency. However small the costs may be, it is unclear what the net economic impact would be.

The proposed amendments update documents incorporated by reference. Certain scientific documents are incorporated by reference to address acceptable remediation methods. These EPA documents are needed to administer the program. They provide the necessary technical information. For example, the Test Methods for Evaluating Solid Waste is used as a guidance for analytical and sampling methods, the Soil Screening Guidance is used as a tool to standardize and accelerate evaluation and cleanup of contaminated soils, the Risk Assessment Guidance for Superfund outlines the process in risk assessment, and the Risk Based Concentration Table provides assistance in evaluating risks to human health. The proposed changes refer to the most recent version of these documents. The agency is not aware of any significant differences in referenced materials regarding the test methods. And, the agency has been using the most recent versions in practice. Thus, no significant economic impact is expected.

The other changes include changes in definitions, reorganization of the regulation, and clarifications to make it

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<sup>1</sup> Participants are not required to provide a cost estimate to determine registration fee at the time of application if they pay the statutory maximum. They may request outstanding balance after the actual costs incurred and the exact fee is calculated.

more understandable. Some participants were having problems interpreting and following the requirements prescribed because of the language in the regulations. The problems were not significant, but since the agency was amending the regulations, a decision was made to clarify and reorganize the regulations to improve readability. As a result of these changes, the proposed amendment will more clearly delineate the expectations of the department.

Businesses and entities affected. According to DEQ, 130 sites have entered the program in the last five years. Based on that information, the agency expects about 24 sites to enter the voluntary remediation program annually. Thus, the proposed changes will affect about 24 voluntary property owners per year whose sites are expected to enter the program.

Localities particularly affected. The proposed amendments apply throughout the Commonwealth.

Projected impact on employment. No significant effect on employment is expected.

Effects on the use and value of private property. Since the proposed changes allow alternate methods for the site cleanups upon request from the program participant, it is likely that the preferred method will provide benefits to the property owner. In some cases, the owner's request may be based on the desire to achieve a cleaner site with more appropriate methods in the hopes of increasing the value of the contaminated property. The value of such property may increase if a higher level of remediation is achieved.

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

#### Summary:

*The Voluntary Remediation Regulations encourage the remediation of properties not mandated by the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601 et seq. (CERCLA); the Resource Conservation and Recovery Act, 42 USC § 6901 et seq. (RCRA); the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia); State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia); or other applicable authority. The regulations are being amended to update documents incorporated by reference, and to clarify the regulations.*

#### **9 VAC 20-160-10. Definitions.**

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

"Act" means the Voluntary Remediation Act (§ 10.1-1429.1 et seq. of the Code of Virginia).

~~"Agreement" means the Voluntary Remediation Agreement entered into between the department and a Voluntary Remediation Program participant.~~

"Authorized agent" means any person who is authorized in writing to fulfill the requirements of this program.

~~"Baseline risk assessment" means the portion of a risk assessment which addresses the potential adverse human health and environmental effects under both current and planned future conditions caused by the presence of a contaminant in the absence of any control, remediation, or mitigation measures.~~

"Carcinogen" means a chemical classification for the purpose of risk assessment as an agent that is known or suspected to cause cancer in humans, including but not limited to a known or likely human carcinogen or a probable or possible human carcinogen under an EPA weight-of-evidence classification system.

"Certificate" means a written certification of satisfactory completion of remediation issued by the director pursuant to § 10.1-1429.1 of the Code of Virginia.

"Completion" means fulfillment of the commitment agreed to by the participant as part of this program.

"Contaminant" means any man-made or man-induced alteration of the chemical, physical or biological integrity of soils, sediments, air and surface water or groundwater including, but not limited to, such alterations caused by any hazardous substance (as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601(14)), hazardous waste (as defined in 9 VAC 20-60-40), solid waste (as defined in 9 VAC 20-80-10), petroleum (as defined in Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.)) of the Virginia State Water Control Law, or natural gas.

"Cost of remediation" means all costs incurred by the participant pursuant to activities necessary for completion of voluntary remediation at the site, based on an estimate of the net present value (NPV) of the combined costs of the site investigation, report development, remedial system installation, operation and maintenance, and all other costs associated with ~~the remedial action~~ participating in the program and addressing the contaminants of concern at the site.

"Department" means the Department of Environmental Quality of the Commonwealth of Virginia or its successor agency.

"Director" means the Director of the Department of Environmental Quality ~~or such other person to whom the director has delegated authority.~~

~~"Engineering controls" means remedial actions directed toward containing or controlling the migration of contaminants through the environment~~ physical modification to a site or facility to reduce or eliminate potential for exposure to contaminants. These include, but are not limited to, stormwater conveyance systems, pump and treat systems, slurry walls, liner systems, caps, monitoring systems, and leachate collection systems and groundwater recovery systems.

"Hazard index (HI)" means the sum of more than one hazard quotient for multiple contaminants or multiple exposure pathways or both. The HI is calculated separately for chronic, subchronic, and shorter duration exposures.

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"*Hazard quotient*" means the ratio of a single contaminant exposure level over a specified time period to a reference dose for that contaminant derived from a similar period.

"*Incremental upper-bound lifetime cancer risk level*" means a conservative estimate of the incremental probability of an individual developing cancer over a lifetime. Upper-bound lifetime cancer risk level is likely to overestimate "true risk."

"*Institutional controls*" means legal or contractual restrictions on property use that remain effective after remediation is completed, and are used to ~~meet remediation levels~~ reduce or eliminate the potential for exposure to contaminants. The term may include, but is not limited to, deed and water use restrictions.

"*Land use controls*" means legal or physical restrictions on the use of, or access to, a site to reduce or eliminate potential for exposure to contaminants, or prevent activities that could interfere with the effectiveness of remediation. Land use controls include but are not limited to engineering and institutional controls.

"*Noncarcinogen*" means a chemical classification for the purposes of risk assessment as an agent for which there is either inadequate ~~toxicologic~~ toxicological data or is not likely to be a carcinogen based on an EPA weight-of-evidence classification system.

"*Operator*" means the person currently responsible for the overall operations at a site, or any person responsible for operations at a site at the time of, or following, the release.

"*Owner*" means any person currently owning or holding legal or equitable title or possessory interest in a property, including the Commonwealth of Virginia, or a political subdivision thereof, including title or control of a property conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means, ~~or any person who previously owned the property.~~

"*Participant*" means a person who has received confirmation of eligibility and has remitted payment of the registration fee.

"*Person*" means an individual, corporation, partnership, association, a governmental body, a municipal corporation or any other legal entity.

"*Program*" means the Virginia Voluntary Remediation Program.

"*Property*" means a parcel of land defined by the boundaries in the deed.

"*Reference dose*" means an estimate of a daily exposure level for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of deleterious effects during a lifetime.

"*Registration fee*" means the fee paid to enroll in the Voluntary Remediation Program, based on 1.0% of the total cost of remediation at a site, not to exceed the statutory maximum.

"*Release*" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching,

dumping or disposing of any contaminant into the environment.

"*Remediation*" means actions taken to cleanup, mitigate, correct, abate, minimize, eliminate, control and contain or prevent a release of a contaminant into the environment in order to protect human health and the environment, including actions to investigate, study or assess any actual or suspected release. *Remediation may include, when appropriate and approved by the department, land use controls.*

"*Remediation level*" means the concentration of a contaminant ~~and with applicable land use controls, that are~~ is protective of human health and the environment.

"*Report*" means the Voluntary Remediation Report required by 9 VAC 20-160-70.

"*Restricted use*" means any use other than residential.

"*Risk*" means the probability that a contaminant will cause an adverse effect in exposed humans or to the environment.

"*Risk assessment*" means the process used to determine the risk posed by contaminants released into the environment. Elements include identification of the contaminants present in the environmental media, assessment of exposure and exposure pathways, assessment of the toxicity of the contaminants present at the site, characterization of human health risks, and characterization of the impacts or risks to the environment.

"*Site*" means any property or portion thereof, as agreed to and defined by the participant and the department, which contains or may contain contaminants being addressed under this program.

"*Termination*" means the formal discontinuation of participation in the Voluntary Remediation Program *without obtaining a certification of satisfactory completion.*

"*Unrestricted use*" means the designation of acceptable future use for a site at which the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site in all media.

~~"Upper-bound lifetime cancer risk level" means a conservative estimate of the probability of one excess cancer occurrence in a given number of exposed individuals. For example, a risk level of  $1 \times 10^{-6}$  equates to one additional cancer occurrence in one million exposed individuals, beyond the number of occurrences that would otherwise occur. Similarly, a risk level of  $1 \times 10^{-4}$  equates to one additional cancer occurrence in 10,000 exposed individuals. Upper bound lifetime cancer risk level is based on an assumption of continuous, lifetime exposure and is likely to overestimate "true risk."~~

## **9 VAC 20-160-20. Purpose, applicability, and compliance with other regulations.**

A. The purpose of this chapter is to establish standards and procedures pertaining to the eligibility, enrollment, reporting, remediation, and termination criteria for the Virginia Voluntary Remediation Program (VRRP) in order to protect human health and the environment.



B. This chapter shall apply to all persons who elect to and are eligible to participate in the Virginia Voluntary Remediation Program.

C. Participation in the program does not relieve a participant from the obligation to comply with all applicable federal, state and local laws, ordinances and regulations related to the ~~conduct of~~ investigation and ~~remedial activities~~ *remediation* (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) undertaken by the participant pursuant to this chapter.

### 9 VAC 20-160-30. Eligibility criteria.

A. Candidate sites shall meet eligibility criteria as defined in this section.

B. Any persons who own, operate, have a security interest in or enter into a contract for the purchase or use of an eligible site who wish to voluntarily remediate that site may participate in the program. Any person who is an authorized agent of any of the parties identified in this subsection may participate in the program.

C. Sites are eligible for participation in the program if (i) remediation has not been clearly mandated by the United States Environmental Protection Agency, the department or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ ~~10.1-400~~ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 2.1-4.2 et seq. of the Code of Virginia), or other applicable statutory or common law; or (ii) jurisdiction of the statutes listed in clause (i) has been waived.

A site on which an eligible party has completed remediation of a release is potentially eligible for the program if the actions can be documented in a way which are equivalent to the requirements for prospective remediation, and provided ~~they can meet~~ *the site meets* applicable remediation levels.

Petroleum or oil releases not mandated for remediation under Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.) of the Virginia State Water Control Law may be eligible for participation in the program.

Where an applicant raises a genuine issue based on documented evidence as to the applicability of regulatory programs in subsection D of this section, the site may be eligible for the program. Such evidence may include a demonstration that:

1. It is not clear whether the release involved a waste material or a virgin material;
2. It is not clear that the release occurred after the relevant regulations became effective; or
3. It is not clear that the release occurred at a regulated unit.

D. For the purposes of this chapter, remediation has been clearly mandated if any of the following conditions exist, unless jurisdiction for such mandate has been waived:

1. Remediation of the release is the subject of a permit issued by the U.S. Environmental Protection Agency or the department, a pending or existing closure plan, a pending or existing administrative order, a pending or existing court order, a pending or existing consent order, or the site is on the National Priorities List;

2. The site at which the release occurred, ~~in accordance with~~ *is subject to* the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-40 ~~et seq.~~) (VHWMR), is a permitted facility, is applying for or should have applied for a permit, is under interim status or should have applied for interim status, or was previously under interim status, and is thereby subject to requirements of the VHWMR;

3. The site at which the release occurred constitutes an open dump or unpermitted solid waste management facility under Part IV (9 VAC 20-80-170 et seq.) of the Virginia Solid Waste Management Regulations;

4. The director determines that the release poses an imminent and substantial threat to human health or the environment; or

5. Remediation of the release is otherwise the subject of a response action required by local, state, or federal law or regulation.

E. The director may determine that a site under subdivision D 3 of this section may participate in the ~~VRP~~ *program* provided that such participation complies with the substantive requirements of the applicable regulations.

### 9 VAC 20-160-40. Application for participation.

A. The application for participation in the Voluntary Remediation Program shall, at a minimum, provide the elements listed below:-:

1. A *written* notice of intent to participate in the program;
2. A statement of the applicant's eligibility to participate in the program (e.g., proof of ownership, security interest, etc.);
3. For authorized agents, a letter of authorization from an eligible party;
4. A legal description of the site;
5. The general operational history of the site;
6. A general description of information known to or ascertainable by the applicant pertaining to (i) the nature and extent of any contamination; and (ii) past or present releases, both at the site and immediately contiguous to the site-;
7. A discussion of the potential jurisdiction of other existing environmental regulatory programs, or documentation of a waiver thereof; and
8. A *notarized* certification by the applicant that to the best of his knowledge, ~~that~~ all the information as set forth in this subsection is true and accurate.

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B. Within ~~45 working~~ 60 days of the department's receipt of an application, the director ~~will~~ shall review the application to verify that (i) the application is complete and (ii) the applicant and the site meet the eligibility criteria set forth in 9 VAC 20-160-30.

C. If the director makes a tentative decision to reject the application, ~~then~~ he shall notify the applicant in writing that the application has been tentatively rejected and provide an explanation of the reasons for the proposed rejection. Within 30 ~~working~~ days of the applicant's receipt of notice of rejection the applicant may (i) submit additional information to correct the inadequacies of the rejected application or (ii) accept the rejection. The director's tentative decision to reject an application will become a final agency action under the Virginia Administrative Process Act (§ ~~9-6.14:4~~ 2.2-4000 et seq. of the Code of Virginia) upon receipt of an applicant's written acceptance of the director's decision to reject an application, or in the event an applicant fails to respond within 30 ~~working~~ days specified in this subsection, upon expiration of the 30 ~~working~~ days specified. If within 30 ~~working~~ days ~~specified~~ an applicant submits additional information to correct the inadequacies of an application, the review process begins again in accordance with this section.

## 9 VAC 20-160-50. Agreement. (Repealed.)

~~Within 90 working days of June 26, 1997, persons conducting remediation pursuant to a voluntary remediation agreement with the department entered into prior to the promulgation of these regulations shall notify the department in writing as to whether they wish to complete the remediation in accordance with such an agreement or in accordance with these regulations. If the participant elects to complete the voluntary remediation in accordance with this chapter, such election will result in termination of the agreement. If the participant does not notify the department of his election within 90 working days of June 26, 1997, remediation shall be completed in accordance with this chapter, and the existing agreement shall be terminated.~~

## 9 VAC 20-160-60. Registration fee.

A. In accordance with § 10.1-1429.1 A 5 of the Code of Virginia, the applicant shall submit a registration fee to defray the cost of the ~~voluntary remediation~~ program.

B. The registration fee ~~will~~ shall be at least 1.0% of the estimated cost of the remediation at the site, not to exceed the statutory maximum. Payment ~~will~~ shall be required after eligibility has been verified by the department and prior to technical review of submittals pursuant to 9 VAC 20-160-80. Payment shall be made payable to the Commonwealth of Virginia and remitted to Virginia Department of Environmental Quality, P.O. Box 10150, Richmond, VA 23240.

C. To determine the appropriate registration fee, the applicant may provide a ~~remediation cost~~ an estimate of the total anticipated ~~total cost based upon net present value~~ of remediation ~~at the site~~.

~~Remediation costs shall be based on site investigation activities; report development; remedial system installation, operation and maintenance; and all other costs associated~~

~~with participating in the program and addressing the contaminants of concern at the subject site.~~

Departmental concurrence with a ~~an estimate of the cost of remediation cost estimate~~ does not constitute approval of the remedial approach assumed in the cost estimate.

*The participant may elect to remit the statutory maximum registration fee to the department as an alternative to providing an estimate of the total cost of remediation at the time of eligibility verification.*

~~D. Upon submittal of the demonstration of completion (see 9 VAC 20-160-70 A 2) If the participant does not elect to submit the statutory maximum registration fee, the participant will shall provide the department with the actual total cost of the remediation, and prior to issuance of a certificate. The director will department shall calculate any balance adjustments to be made to the initial registration fee. Any negative balance owed to the department shall be paid by the participant prior to the issuance of a certification of satisfactory completion of remediation certificate. Any costs to be refunded shall be remitted by the agency department with issuance of the certificate of satisfactory completion of remediation.~~

~~E. As an alternative to providing a remedial cost estimate at the time of eligibility verification, If the participant may elect elected to remit the statutory maximum registration fee, the department will shall refund any balance owed to the participant after receiving the actual total cost of remediation submitted with the demonstration of completion and issuance of the certification of satisfactory completion of remediation. If no remedial cost summary is provided to the department within 60 working days of the participant's receipt of the department's concurrence with the demonstration of completion certificate, the participant will have waived the right to a refund.~~

## 9 VAC 20-160-70. Work to be performed.

A. The Voluntary Remediation Report serves as the ~~master document archive~~ for all documentation pertaining to remedial activities at the site. Each component of the report shall be submitted by the participant to the department. As various components are received, they shall be inserted into ~~this the~~ report by the participant, ~~and the report will serve as the documentation archive for the site. If The report shall consist of a site characterization, risk assessment (as appropriate), remedial action work plan and, when applicable, a demonstration of completion, and documentation of public notice.~~

~~1. Site characterization/remedial action plan. This component of the report shall consist of the following:~~

~~a. 1. The site characterization component of the submittal should shall contain a delineation of the nature and extent of releases to all media, including the vertical and horizontal extent of the contaminants.~~

~~2. The risk assessment shall contain an evaluation of the risks to human health and the environment posed by the release, a proposed set of remediation levels consistent with 9 VAC 20-160-90 that are protective of human health and the environment, and a recommended remedial action~~

remediation to achieve the proposed objectives; or a justification demonstration that no action is necessary.

~~b.~~ 3. The remedial action work plan component of the submittal shall propose the activities, schedule, any permits required to initiate and complete the remedial action remediation and specific design plans for implementing a remedial action remediation that will achieve the remediation levels specified in the site characterization risk assessment. Control or elimination of continuing onsite source or sources of releases to the environment shall be discussed. Land use controls should be discussed as appropriate.

~~c.~~ Documentation of the public notice in accordance with 9 VAC 20-160-120. Such documentation shall include a written summary of comments received as well as the applicant's responses to the comments that were received during the public comment period.

2- 4. Demonstration of completion.

a. This closure component of The report demonstration of completion should, when applicable, include a detailed summary of the performance of the remedial action remediation implemented at the site, the total cost of the remediation, and, as necessary, confirmational sampling results demonstrating that the established site-specific remedial objectives have been achieved, or that other criteria for completion of remediation have been satisfied. If the participant elected to remit the statutory maximum registration fee and is not seeking a refund of any portion of the registration fee, the total cost of remediation need not be provided.

b. As part of the demonstration of completion, the participant shall certify compliance with applicable regulations pertaining to activities performed at the site pursuant to this chapter.

5. The participant shall provide documentation that public notice has been provided in accordance with 9 VAC 20-160-120. Such documentation shall include copies of comments received during the public comment period, all acknowledgements of receipt of comments, as well as the participant's responses to comments, if any are made.

B. It is the participant's responsibility to ensure that the conduct of investigation and remediation activities (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) comply with all applicable regulations and any appropriate regulations that are not required by state or federal law but are necessary to ensure that the activities do not result in a further release of contaminants to the environment and are protective of human health and the environment.

C. All work shall be performed in accordance with Test Methods for Evaluating Solid Waste, USEPA SW-846, revised December 1987 April 1998, or other methods approved by the department.

**9 VAC 20-160-80. Review of submittals.**

A. Upon receipt of submittals, the director will department shall review and evaluate the submittals. The director department may request additional information in order to render a decision and move the participant towards expeditious issuance of the certification of satisfactory completion of remediation certificate.

B. The director may expedite, as appropriate, issuance of any permits required to initiate and complete a voluntary remediation. The director shall, within 120 working days of a complete submittal, expedite issuance of such permit in accordance with applicable regulations.

C. The participant shall submit a final voluntary remediation report (consisting of the site characterization, the remedial action work plan, and the demonstration of completion). Upon receipt of After receiving a complete Voluntary Remediation report, the director will shall make a determination regarding the issuance of the certification of satisfactory completion of remediation certificate to the participant. The determination shall be a final agency action pursuant to the Administrative Process Act (§ 9-6-14:1 2.2-4000 et seq. of the Code of Virginia).

**9 VAC 20-160-90. Remediation levels.**

A. The participant, with the concurrence of the department, shall consider impacts to human health and the environment in establishing remediation levels.

B. Remediation levels shall be based upon a risk assessment of the site and surrounding areas that may be impacted, reflecting the current and future use scenarios.

1. A site shall be deemed to have met the requirements for unrestricted use if the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site and in all media. Attainment of these levels will allow the site to be given an unrestricted use classification. No remediation techniques or land use controls which that require ongoing management (such as institutional or engineering controls) may be employed to achieve this classification.

2. For sites that do not achieve the unrestricted use classification, restrictions on site land use controls shall be applied. Restrictions shall include, but not be limited to, institutional and engineering controls. The restrictions imposed upon a site will may be media-specific and, may vary according to site-specific conditions, and may be applied to limit present and future use with restrictions may range from residential to industrial. All restrictions on use controls necessary to attain this standard the restricted use classification shall be described in the certification of satisfactory completion of remediation certificate as provided in 9 VAC 20-160-110. Land use controls approved by the department for use at the site are considered remediation.

C. Remediation levels shall be developed after appropriate site characterization data have been gathered as provided in 9 VAC 20-160-70. Remediation levels may be derived from the three-tiered approach provided in subdivision 2 of this subsection. Any tier or combination of tiers may be applied to

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establish remediation levels for contaminants present at a given site, with consideration of site use restrictions specified in subsection B of this section. ~~The criteria set forth in subdivision 1 of this subsection shall apply to the risk-based remediation levels determined through Tiers II and III.~~

## 1. General criteria.

~~a. For a site with carcinogenic contaminants, the remediation goal for individual carcinogenic contaminants shall be an incremental upper-bound lifetime cancer risk of  $1 \times 10^{-6}$ . The remediation levels for the site shall not result in an incremental upper-bound lifetime cancer risk exceeding  $1 \times 10^{-4}$  considering multiple contaminants and multiple exposure pathways, unless the use of a Maximum Contaminant Level (MCL) for groundwater that has been promulgated under 42 USC § 300g-1 of the Safe Drinking Water Act and the National Primary Drinking Water Regulations (40 CFR Part 141) results in a cumulative risk greater than  $1 \times 10^{-4}$ .~~

~~b. For noncarcinogens, the hazard index shall not exceed a combined value of 1.0.~~

~~c. For unrestricted future use, where a contaminant of concern has an MCL, the MCL for that contaminant shall be the remediation level.~~

~~d. For unrestricted future use, where a contaminant of concern exists for which surface water quality standards (WQS) have been adopted by the State Water Control Board for a specific use, the participant shall demonstrate that concentrations in other media will not result in concentrations that exceed the WQS in adjacent surface water bodies.~~

~~e. If the concentration for a contaminant is below the Practical Quantitation Limit (PQL), generally as published in Test Methods for Evaluating Solid Waste, USEPA SW-846, revised December 1987, the PQL may be considered as the remediation level.~~

~~f. In setting remediation levels, the department may consider risk assessment methodologies approved by another regulatory agency and current at the time of the VRP site characterization.~~

## 2. Tier-based criteria.

~~a. 1. Under Tier I the participant shall collect appropriate samples from background and from the area of contamination for all media of concern.~~

~~(1) a. Background levels shall be determined from a portion of the property or a nearby property that has not been impacted by the contaminants of concern.~~

~~(2) b. The participant shall compare concentrations from the area of contamination against background concentrations. If the concentrations from the area of contamination exceed established background levels, the participant may consider Tier II or Tier III methodologies, as applicable. *If concentrations are at or below background levels, no further assessment is necessary.*~~

~~b. 2. Tier II generic remediation levels are based on published, media-specific values, derived using~~

~~conservative unrestricted use default assumptions. If the remediation level determined using Tier II is below the PQL, the PQL may be used. Use of Tier II shall be limited to the following:~~

~~a. Tier II generic groundwater remediation levels shall be based on (i) federal Maximum Contaminant Levels (MCLs) or action levels for lead and copper as established by the Safe Drinking Water Act (42 USC § 300 (f)) and the National Primary Drinking Water Regulations (40 CFR Part 141) or, in the absence of a MCL, (ii) tap water values provided in the EPA Region III Risk-Based Concentration Table current at the time of the assessment. For contaminants that do not have values available under clauses (i) or (ii) above, a remediation level shall be calculated using criteria set forth under Tier III remediation levels.~~

~~(1) b. Soil remediation levels shall insure that migration of contaminants shall not cause the cleanup levels established for groundwater and surface water to be exceeded. Soil remediation levels shall be determined as the lower of either the ingestion or cross-media transfer values, according to the following:~~

~~(a) (1) For ingestion, values provided in the EPA Region III Risk-Based Concentration Table current at the time of assessment.~~

~~i. (a) For carcinogens, the soil ingestion concentration for each contaminant, reflecting an individual upper-bound lifetime cancer risk of  $1 \times 10^{-6}$ .~~

~~ii. (b) For noncarcinogens, 1/10 (i.e., Hazard Quotient = 0.1) of the soil ingestion concentration, to account for multiple systemic toxicants at the site. For sites where there are fewer than 10 contaminants exceeding 1/10 of the soil ingestion concentration, the soil ingestion concentration may be divided by the number of contaminants such that the resulting hazard index does not exceed one.~~

~~(b) (2) For cross-media transfer, values derived from the USEPA Soil Screening Guidance (OSWER, April July 1996, Document 9355.4-23, PB 96-963505, EPA/540/R-96/018) shall be used as follows:~~

~~i. (a) The soil screening level for transfer to groundwater, with adjustment to a hazard quotient of 0.1 for noncarcinogens, if the value is not based on an MCL; or~~

~~ii. (b) The soil screening level for transfer to air, with adjustment to a hazard quotient of 0.1 for noncarcinogens, using default residential exposure assumptions.~~

~~iii. (3) For noncarcinogens, for sites where there are fewer than 10 contaminants exceeding 1/10 of the soil screening level, the soil screening level may be divided by the number of contaminants such that the resulting hazard index does not exceed one.~~

~~(e)~~ (4) Values derived under 9 VAC 20-160-90 C 2 b (1) ~~(a)~~ and ~~(b)~~ (2) may be adjusted to allow for updates in approved toxicity factors as necessary.

~~(2)~~ Tier II generic groundwater remediation levels shall be based on (i) federal MCLs or action levels for lead and copper as established by the Safe Drinking Water Act (42 USC § 300 (f)) and the National Primary Drinking Water Regulations (40 CFR Part 141) or (ii) tap water ingestion values provided in the EPA Region III Risk-Based Concentration Table current at the time of the assessment.

~~(3)~~ For contaminants that do not have values available under clauses (i) or (ii) in 9 VAC 20-160-90 C 2 b (2), a remediation level shall be calculated using criteria set forth under Tier III.

(4) c. At sites where ecological receptors are of concern and there are complete exposure pathways, the participant shall perform a screening level ecological evaluation to show that remediation levels developed under Tier II are also protective of ecological receptors of concern.

d. For unrestricted future use, where a contaminant of concern exists for which surface water quality standards (WQS) have been adopted by the State Water Control Board for a specific use, the participant shall demonstrate that concentrations in other media will not result in concentrations that exceed the WQS in adjacent surface water bodies.

e. 3. Tier III remediation levels are based upon a site-specific risk assessment considering site-specific assumptions about current and potential exposure scenarios for the ~~population(s)~~ population or populations of concern, including ecological receptors, and characteristics of the affected media.

~~(4)~~ a. In developing Tier III remediation levels, and unless the participant proposes other guidance that is acceptable to the department, the participant shall consider use, for all applicable media and exposure routes, the methodology specified in Risk Assessment Guidance for Superfund, Volume 1, Human Health Evaluation Manual (Part A), Interim Final, USEPA, December 1989 (EPA/540/1-89/002) and (Part B, Development of Preliminary Remediation Goals) Interim, USEPA, December 1991 (Publication 9285.7-01B) with modifications as appropriate to allow for site-specific conditions. The participant may ~~consider other guidance that is current at the time of the assessment and is acceptable to use other methodologies approved by the department.~~

b. For a site with carcinogenic contaminants, the remediation goal for individual carcinogenic contaminants shall be an incremental upper-bound lifetime cancer risk of  $1 \times 10^{-6}$ . The remediation levels for the site shall not result in an incremental upper-bound lifetime cancer risk exceeding  $1 \times 10^{-4}$  considering multiple contaminants and multiple exposure pathways, unless the use of a MCL for groundwater that has been promulgated under 42 USC § 300g-1 of the Safe Drinking Water Act and the

National Primary Drinking Water Regulations (40 CFR Part 141) results in a cumulative risk greater than  $1 \times 10^{-4}$ .

c. For noncarcinogens, the hazard index shall not exceed a combined value of 1.0.

d. In setting remediation levels, the department may consider risk assessment methodologies approved by another regulatory agency and current at the time of the Voluntary Remediation Program site characterization.

e. Groundwater cleanup levels shall be based on the most beneficial use of the groundwater. The most beneficial use of the groundwater is for a potable water source, unless demonstrated otherwise by the participant and approved by the department.

~~(2)~~ f. For sites where a screening level ecological evaluation has shown that there is a potential for ecological risks, the participant shall perform an ecological risk assessment to show that remediation levels developed under Tier III are also protective of ecological receptors of concern. If the Tier III remediation levels developed for human health are not protective of ecological receptors of concern, the remediation levels shall be adjusted accordingly.

#### 9 VAC 20-160-100. Termination.

A. Participation in the program shall ~~conclude~~ be terminated:

~~1. When the director concurs with all work submitted, as set forth in 9 VAC 20-160-80, and the participant satisfactorily demonstrates attainment of the remediation levels. If warranted by the site-specific risk assessment, it may not be necessary to conduct remedial action in order to attain remediation levels.~~

~~2.~~ 1. When evaluation of new information obtained during participation in the program results in a determination by the director that the site is ineligible or that a participant has taken an action to render the site ineligible for participation in the program. If such a determination is made, the director shall notify the participant that participation has been terminated and provide an explanation of the reasons for the determination. Within 30 working days, the participant may submit additional information, or accept the director's determination.

~~3.~~ 2. Upon 30 working days written notice of termination by either party.

B. The department shall be entitled to receive and use, upon request, copies of any and all information developed by or on behalf of the participant as a result of work performed pursuant to participation in the program, after application has been made to the program whether the program is satisfactorily completed or terminated.

~~C. Termination of participation in the program by any method, except as provided in subdivision A 1 of this section, shall result in no refund of any registration fee submitted. No portion of the registration fee will be refunded if participation is terminated by any method as described in 9 VAC 20-160-100.~~

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# Proposed Regulations

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## 9 VAC 20-160-110. Certification of satisfactory completion of remediation.

~~A. Upon termination of program participation according to 9 VAC 20-160-100 A-1, The director shall issue a certification of satisfactory completion of remediation (certificate), when:~~

- ~~1. The participant has demonstrated that migration of contamination has been stabilized;~~
- ~~2. The participant has demonstrated that the site has met remediation levels and will continue to meet remediation levels in the future; and~~
- ~~3. The department concurs with all work submitted, as set forth in 9 VAC 20-160-80.~~

B. The issuance of the certificate shall constitute immunity to an enforcement action under the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia), or other applicable Virginia law.

~~C. The certificate shall be issued by the director and, If a use restriction is specified in the certificate, such restriction must be attached to the deed and include to the property with an explanation for such the restriction, subject to concurrence by the director, and shall be recorded by the participant with the land records for the site in the office of the clerk of the circuit court for the jurisdiction in which the site is located. The participant may also record the certificate itself. If the certificate does not include any use restriction, recordation of the certificate is at the option of the participant. The immunity accorded by the certification shall apply to the participant and shall run with the land identified as the site.~~

D. The immunity granted by issuance of the certificate shall be limited to site conditions at the time of issuance as those conditions are described in the Voluntary Remediation Report ~~and is conditioned upon completeness and accuracy of that information. The immunity is further conditioned upon satisfactory performance by the participant of all obligations required by the director under the program and upon the veracity, accuracy, and completeness of the information submitted by the director by the participant relating to the site.~~ Specific limitations of the certificate shall be enumerated in the certificate. The immunity granted by the certificate ~~will~~ shall be dependent upon the identification of the nature and extent of contamination as presented in the ~~Voluntary Remediation~~ report.

E. The certificate shall specify the ~~site~~ conditions for which immunity is being accorded, including, but not limited to:

1. A summary of the information that was considered;
2. Any restrictions on future use;
3. ~~Any local land use controls on surrounding properties that were taken into account; and~~
4. Any required ~~institutional~~ land use controls; ~~and including:~~

~~4. Any required~~ a. Engineering controls and their maintenance; ~~and~~

b. Institutional controls.

F. The certificate may be revoked by the director at any time in the event that ~~contamination posing an unacceptable conditions at the site, unknown at the time of issuance of the certificate, pose a risk to human health or the environment is rediscovered on site~~ or in the event that it is discovered that the certificate was based on information ~~provided by the participant~~ that was materially false, inaccurate, or misleading. Any and all claims may be pursued by the Commonwealth for liability for failure to meet a requirement of the program, criminal liability, or liability arising from future activities at the site that may cause contamination by pollutants. By issuance of the certificate the ~~department~~ director does not waive sovereign immunity.

G. The certificate is not and shall not be interpreted to be a permit or a modification of an existing permit or administrative order issued pursuant to state law, nor shall it in any way relieve the participant of its obligation to comply with any other federal or state law, regulation or administrative order. Any new permit or administrative order, or modification of an existing permit or administrative order, must be accomplished in accordance with applicable federal and state laws and regulations.

## 9 VAC 20-160-120. Public participation notice.

~~A. Any~~ The participant shall give public notice of either the proposed voluntary remediation or the completed voluntary remediation ~~shall be given public notice paid for by the applicant. The notice shall be made after the department concurs with the site characterization report and the proposed remediation, and shall occur prior to the department's issuing a certificate. Such notice shall be paid for by the participant.~~

~~Prior to the director's concurrence with a proposed or completed remedial action pursuant to 9 VAC 20-160-70,~~

The participant shall:

1. Provide written notice to the local government in which the facility is located ~~a description of the proposed or completed remedial action;~~
2. Provide written notice to all adjacent property owners ~~a description of the proposed or completed remedial action; and~~
3. Publish a notice once in a newspaper of general circulation in the area affected by the voluntary action. ~~Such publication shall be paid for by the applicant.~~

B. A comment period of at least 30 days must follow issuance of the notices pursuant to this section. The contents of the ~~each~~ public notice of a voluntary remediation required pursuant to 9 VAC 20-160-120 A shall include:

1. The name and address of the ~~applicant~~ participant and the location of the proposed voluntary remediation;
2. A brief description of the ~~proposed~~ remediation, the general nature of the release, and any proposed land use controls;

3. The address and telephone number of a specific person familiar with the proposed remediation from whom information regarding the proposed voluntary remediation may be obtained; and

4. A brief description of how to submit comments.

C. The participant shall provide to the department a signed statement that he has sent a written notice to all adjacent property owners and the local government, a copy of the notice, and a list of all names and addresses to whom the notice was sent.

D. The participant shall send all commenters a letter acknowledging receipt of comments.

E. The participant shall provide to the department copies of all written comments received during the public comment period, copies of acknowledgement letters, a discussion of how those comments were considered, a copy of any response to comments, and a discussion of their impact on the proposed or completed remedial action remediation.

**9 VAC 20-160-130. Regulatory evaluation. (Repealed.)**

A. Within three years after June 26, 1997, the department shall perform analysis on this chapter and provide the Waste Management Board with a report on the results. The analysis shall include:

- 1. The purpose and need for the chapter;
- 2. Alternatives which would achieve the stated purpose of this chapter in a less burdensome and intrusive manner;
- 3. An assessment of the effectiveness of this chapter;
- 4. The results of a regulatory review of current state and federal statutory and regulatory requirements, including identification and justification of this chapter's requirements which exceed federal requirements; and
- 5. The results of a review as to whether this chapter is clearly written and easily understandable by affected parties.

B. Upon review of the department's analysis, the Waste Management Board shall confirm the need to (i) continue this chapter without amendment; (ii) repeal this chapter; or (iii) amend this chapter.

C. The Waste Management Board will authorize the department to initiate the applicable regulatory process, and to carry out the decision of the Waste Management Board, if amendment or repeal of this chapter is warranted.

DOCUMENTS INCORPORATED BY REFERENCE

Test Methods for Evaluating Solid Waste: *Physical/ Chemical Methods*; EPA Publication SW-846, Third Edition (1986) with Revision 4 as amended by *Final Update I, Final Update II, Final Update IIA, Final Update IIB, Final Update III, and Final Update IIIA*, PB 88-239223 99-115 891, revised December 1987 April 1998.

U.S. EPA Soil Screening Guidance, EPA/540/F-95/044 EPA/540/R-96/018, Publication 93554-14FSA, PB96-963504 9355.4-23, July 1996.

Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation Manual (Part A) Interim Final, EPA/540/1-89/002, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, December 1989.

Risk Assessment Guidance for Superfund: Volume I - Human Health Evaluation Manual (Part B, Development of Risk-based Preliminary Remediation Goals) Interim, Publication 9285.7-01B, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, December 1991.

Risk-Based Concentration Table, Region III, United States Environmental Protection Agency, January-June 1996 October 5, 2000.

VA.R. Doc. No. R01-9; Filed October 3, 2001, 9:22 a.m.

**TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS**

**STATE CORPORATION COMMISSION**

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

Title of Regulation: **10 VAC 5-40. Credit Unions (adding 10 VAC 5-40-30).**

Statutory Authority: §§ 6.1-225.3:1 and 12.1-13 of the Code of Virginia.

Agency Contact: George H. Latham, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, Tyler Bldg., 1300 E. Main St., Richmond, VA 23219, telephone (804) 371-9657 or e-mail glatham@scc.state.va.us.

Summary:

*The State Corporation Commission is exercising its statutory authority that all credit unions be governed by federal regulations with respect to their regular reserves.*

AT RICHMOND, OCTOBER 1, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Case No. BFI010204

Ex Parte: In re: reserves of state credit unions

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# Proposed Regulations

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## ORDER TO TAKE NOTICE

WHEREAS, § 6.1-225.58 of the Code of Virginia provides for the establishment and maintenance of a regular reserve by a state credit union as described in subdivisions 1, 2, and 3 of that section, while federal law and regulations subject federally insured (federal and state-chartered) credit unions to different, generally less burdensome, requirements; and

WHEREAS, § 6.1-225.3:1 of the Code authorizes the State Corporation Commission ("Commission") to adopt regulations necessary to permit state credit unions to have powers comparable with those of federally chartered credit unions regardless of existing statutes; and

WHEREAS, the Bureau of Financial Institutions has proposed a regulation that will authorize a state credit union to establish and maintain a regular reserve account on equal terms with federal credit unions, and the Bureau recommends adoption of the regulation;

IT IS THEREFORE ORDERED THAT:

(1) The proposed regulation, entitled "Regular Reserve Accounts," is appended hereto and made a part of the record herein.

(2) On or before November 5, 2001, any person desiring to comment on the proposed regulation shall file written comments containing a reference to Case No. BFI010204, with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

(3) The proposed regulation shall be posted on the Commission's website at <http://www.state.va.us/scc>.

(4) An attested copy hereof, together with a copy of the proposed regulation, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions.

### **10 VAC 5-40-30. Regular reserve accounts.**

*Pursuant to § 6.1-225.3:1 of the Code of Virginia, a state credit union shall establish and maintain a regular reserve account in accordance with applicable provisions of Part 702 of the National Credit Union Administration Rules and Regulations, 12 CFR 702.1 through 702.403, regardless of subdivisions 1, 2, and 3 of § 6.1-225.58 of the Code of Virginia.*

VA.R. Doc. No. R02-38; Filed October 3, 2001, 9:37 a.m.

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

**Title of Regulation:** 12 VAC 5-120. Regulations for Testing Children for Elevated Blood-Lead Levels (adding 12 VAC 5-120-10 through 12 VAC 5-120-90).

**Statutory Authority:** § 32.1-46.1 of the Code of Virginia.

**Public Hearing Date:** October 24, 2001 - 10 a.m.

Public comments may be submitted until December 21, 2001.

(See Calendar of Events section for additional information)

**Agency Contact:** Clayton Pape, Director, Lead Safe Program, Department of Health, 1500 E. Main Street, Richmond, VA 23219, telephone (804) 225-4463, FAX (804) 371-6031 or toll free 1-877-668-7987.

**Basis:** Section 32.1-46.1 of the Code of Virginia directs the Board of Health to promulgate regulations establishing a protocol for the identification of children at risk for elevated blood-level levels which shall provide (i) for blood-lead level testing at appropriate ages and frequencies, when indicated, and (ii) for criteria for determining low risk for elevated blood-lead levels and when such blood-lead level testing is not indicated. The protocol may also address follow-up testing for children with elevated blood-lead levels, dissemination of the protocol and other information to relevant health care professions, appropriate information for parents, and other means of preventing lead poisoning among children.

**Purpose:** The Commonwealth of Virginia has recognized the need for early identification of children with elevated blood-lead levels to alert parents and guardians to the need for intervention to prevent developmental, behavioral, and learning problems associated with elevated blood lead levels. The purpose of this chapter is to provide a protocol for identifying children with elevated blood-lead levels.

**Substance:** The intended regulations will establish a protocol for testing children for elevated blood-lead levels. The intended protocol is based on guidelines published by the Centers for Disease Control and Prevention in 1997 to assure a sound scientific basis for effective and efficient identification of elevated blood-lead levels that will protect the health of citizens.

Part I contains provisions that define key terms and set forth general information relating to the protocol for testing children for elevated blood-lead levels. These provisions include a statement of the general policy, purpose and administration of the regulations.

Part II sets forth the protocol for identifying children with elevated blood-lead levels. The protocol includes the ages and frequencies of testing, time limits for confirming screening tests, criteria for determining low risk for elevated blood-lead levels and when blood testing is not indicated, and provisions for providing guidelines for follow-up testing and appropriate information to parents and health care professionals.

No potential issues have been identified that may need to be addressed as a permanent final regulation is developed.

**Issues:** The emergency regulations established a protocol for testing children for elevated blood-lead levels. The protocol is based on guidelines published by the Centers for Disease Control and Prevention in 1997 to assure a sound scientific basis for effective and efficient identification of elevated blood-lead levels that will protect the health of children. The protocol gives health care providers a standard for determining if children are at risk of exposure to lead and



should be tested or not at risk and not tested. The judgment of the provider takes precedence in the decision to perform a blood-lead test, or testing may also be done upon request of the parents or guardian.

A number of private laboratories are now reporting test results to the Lead-Safe Virginia program on a voluntary basis. The program will consult with laboratories not reporting at this time to determine the most efficient means to accommodate reporting through existing computer database formats.

The Commonwealth benefits from the more comprehensive reporting of blood-lead test results to the program. This will give Lead-Safe Virginia the ability to conduct a more complete analysis of who and where tests are being conducted. It will improve surveillance, epidemiologic applications and reporting. The program will be better able to identify target populations and geographic areas for intervention. The regulations will allow the program to more specifically focus resources into high-risk populations and geographic target areas within the Commonwealth. There are no disadvantages of the proposed regulation to the public or the department.

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 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation establishes a protocol for health care providers to use in identifying and testing children for elevated blood-lead levels. The regulation also requires the reporting of all laboratory blood-lead test results to the Virginia Department of Health.

Estimated economic impact. Although no threshold for the toxic effects of lead has been identified, the negative effects of lead exposure on the cognitive development of young children have been widely demonstrated.<sup>1</sup> Some researchers have also found associations between lead exposure and weakness in attention, aggression, somatic complaints, and antisocial or delinquent behaviors.<sup>2</sup>

The identification and testing protocol set forth in the proposed regulation is based on guidelines published by the

Centers for Disease Control and Prevention (CDC) in 1997. In the development of these guidelines, CDC quantitatively compared the economic costs and benefits of universal screening (previously recommended by CDC in 1991) as the prevalence of elevated blood-lead levels varied. According to the American Academy of Pediatrics, the 1997 CDC guidelines provide "a basis for public health authorities to decide on appropriate screening policy using local blood-lead level ( BLL) data and/or housing data collected from the U.S. Bureau of the Census. This strategy is intended to increase the screening and follow-up care of children who most need these services ... and to reduce unnecessary testing of children unlikely to be exposed to lead. These new recommendations will have important ramifications on pediatricians' efforts to participate in early identification, treatment, and eradication of childhood lead poisoning."<sup>3</sup>

The proposed testing protocol seems to have a sound scientific basis for effective and efficient screening of children and is likely to promote early identification of children with elevated blood-lead levels, prevent increased exposure to lead, and possibly reduce long term medical and social costs associated with lead poisoning. An increase in the number of blood-level tests performed can also be expected; however, the magnitude of this increase is unknown since the current number of children tested is not available. The average cost per test ranges from \$25 to \$50 per test, depending on the location. Medicaid and most insurance plans cover blood-lead level tests for children and tests performed at local health clinics are provided at no charge to the recipient.

Required reporting of test results will allow more comprehensive analysis by VDH to better identify target populations and geographic areas for intervention. Development of a web-based laboratory-reporting page over the next two years by VDH is expected to cost \$90,000 and system maintenance is estimated at \$12,000 to \$18,000 per year. Funding for this project has been requested from the Centers for Disease Control and Prevention, Childhood Lead Poisoning Prevention Program grant. Additional support may be funded by the Title V Maternal and Child Health grant. There are currently 15 to 18 clinical laboratories in Virginia that process blood-lead level tests. Compliance with the new reporting requirement will have a minimal effect for six of those labs that are currently reporting to VDH on a continuous basis. For the other nine to twelve labs, VDH estimates the new requirement could increase costs for each lab by \$500 to \$3,500 per year, depending on the volume of tests performed. Changing to an electronic means of reporting is likely to reduce costs for labs that are currently submitting paper test results and will also result in savings for VDH staff time by eliminating manual data entry of paper test results.

The following table summarizes the anticipated effects resulting from promulgation of this regulation. While the overall net economic impact is not measurable at this time, it is likely to be positive.

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<sup>1</sup> National Research Council. *Measuring Lead Exposure in Infants, Children, and Other Sensitive Populations*. Washington, DC: National Academy Press; 1993.

<sup>2</sup> Sciarillo W.G., Alexander G. Farrell K.P. Lead exposure and child behavior. *American Journal of Public Health*. 1992; 82:1356-1360. Needleman H.L. et al., Bone lead levels and delinquent behavior. *Journal of the American Medical Association*. 1996; 275:363-369.

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<sup>3</sup> American Academy of Pediatrics. *Policy Statement: Screening for Elevated Blood Lead Levels (RE9815)*. June 1998.

# Proposed Regulations

## Estimated Economic Impacts of the Proposed Regulations for Testing Children for Elevated Blood-Lead Levels (12 VAC 5-120)

Expected Effect	Estimated Cost	Estimated Benefit
Development of a web-based laboratory reporting page:		
Initial development (FY 2002)	\$45,000	
Expansion to facilitate exchange of information between VDH and local health departments (FY 2003)	\$45,000	
System maintenance	\$12,000 to \$18,000 per year	
Additional blood-lead level tests - unknown magnitude	\$25 to \$50 per test	
Required electronic reporting of all blood-lead level test results:		
Six laboratories currently reporting to VDH on a continuous basis	minimal	
Nine to twelve laboratories not currently reporting to VDH on a continuous basis	\$500 to \$3,500 per year	
Six laboratories currently submitting (continuous or intermittently) paper test results		not quantifiable, but likely significant
Savings in VDH staff time by eliminating manual data entry of paper test results		not quantifiable, but likely significant
More comprehensive reporting allowing VDH to better identify target populations and geographic areas for intervention		not quantifiable, but likely significant
Early identification of children with elevated blood-lead levels, prevention of increased exposure, reduction in long term medical and social costs associated with lead poisoning		not quantifiable, but likely significant

Businesses and entities affected. The proposed regulation will affect all clinical laboratories that process blood-lead tests. VDH estimates that there are currently 15 to 18 facilities in Virginia that would be affected.

Localities particularly affected. The proposed regulations are not expected to uniquely affect any particular localities.

Projected impact on employment. The proposed regulations are not expected to have any significant impact on employment.

Effects on the use and value of private property. The proposed regulations are not expected to have any significant effects on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department concurs substantially with the economic impact assessment dated June 21, 2001, prepared by the Department of Planning and Budget regarding the proposed chapter (12 VAC 5-120).

### Summary:

*The proposed regulations establish a protocol for testing children for elevated blood-lead levels and reporting all laboratory blood-lead test results to the Virginia Department of Health. The intended protocol is based on guidelines published by the Centers for Disease Control and Prevention in 1997 to assure a sound scientific basis for effective and efficient identification of elevated blood-lead levels that will protect the health of citizens.*

### CHAPTER 120.

### TESTING CHILDREN FOR ELEVATED BLOOD-LEAD LEVELS.

### PART I.

### DEFINITIONS AND GENERAL INFORMATION.

#### 12 VAC 5-120-10. Definitions.

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

*"Board" means the State Board of Health.*

*"Commissioner" means the Commissioner of Health.*

*"Elevated blood-lead level" for children means 10 or more micrograms of lead per deciliter of whole blood in a child up to and including 72 months of age.*

*"Health care provider" means a physician or his designee or an official of a local health department.*

*"High-risk zip code area" means a zip code area listed in guidelines issued by the Virginia Department of Health in which 27% or more of the housing was built before 1950 or 12% or more of the children have elevated blood-lead levels based on current available data.*

*"Physician" means a person licensed to practice medicine in any of the 50 states or the District of Columbia.*

*"Qualified laboratory" means a laboratory that is certified by the Health Care Financing Administration in accordance with the Clinical Laboratory Improvement Act (42 CFR Part 430) and is participating in the Centers for Disease Control and Prevention's Blood Lead Laboratory Proficiency Program.*

*"µg/dL" means micrograms of lead per deciliter of whole blood.*

**12 VAC 5-120-20. Statement of general policy.**

The Commonwealth of Virginia has recognized the need for early identification of children with elevated blood-lead levels to alert parents and guardians to the need for intervention to prevent physical, developmental, behavioral, and learning problems associated with elevated blood-lead levels in children, and to prevent exposure of other children.

The purpose of this chapter is to provide a protocol for identifying children with elevated blood-lead levels.

PART II.

PROTOCOL FOR IDENTIFICATION OF CHILDREN WITH ELEVATED BLOOD-LEAD LEVELS.

**12 VAC 5-120-30. Schedule for testing.**

Virginia health care providers should test all children up to and including 72 months of age for elevated blood-lead levels according to the following schedule unless they are determined under 12 VAC 5-120-60 to be at low risk for elevated blood-lead levels. All blood-lead samples shall be analyzed by a qualified laboratory.

1. Children should be tested at ages one and two years.
2. Children from 36 through 72 months of age should be tested if they have never been tested.
3. Additional testing may be ordered by the health care provider.

**12 VAC 5-120-40. Confirmation of blood-lead levels.**

Testing may be performed on venous or capillary blood collected in tubes or on filter paper. If a test of capillary blood reveals an elevated blood-lead level, the results shall be confirmed by a repeat blood test (preferably venous):

1. Within three months if the result of the capillary test is 10 µg/dL to 19 µg/dL.
2. Within one week to one month if the result of the capillary test is 20 µg/dL to 44 µg/dL. (The higher this test result, the more urgent the need for a confirmation test.)
3. Within 48 hours if the result of the capillary test is 45 µg/dL to 59 µg/dL.
4. Within 24 hours if the result of the capillary test is 60 µg/dL to 69 µg/dL.
5. Immediately as an emergency laboratory test if the result of the capillary test is 70 µg/dL or higher.

Elevated blood lead results from venous blood testing shall be deemed a confirmed test.

**12 VAC 5-120-50. Risk factors requiring testing.**

A health care provider should test a child for elevated blood-lead level, or have a child tested, if the provider determines, in the exercise of medical discretion, that such testing is warranted, and that the child meets one or more of the following criteria:

1. Eligible for or receiving benefits from Medicaid or the Special Supplemental Nutrition Program for Women, Infants and Children (WIC);

2. Living in a high-risk zip code area;
3. Living in or regularly visiting a house or child care facility built before 1950;
4. Living in or regularly visiting a house, apartment, dwelling or other structure, or a child care facility built before 1978 with peeling or chipping paint or with recent (within the last six months), ongoing, or planned renovations;
5. Living in or regularly visiting a house, apartment, dwelling or other structure in which one or more persons have elevated blood-lead levels;
6. Living with an adult whose job or hobby involves exposure to lead as described in Preventing Lead Poisoning in Young Children (CDC, 1991);
7. Living near an active lead smelter, battery recycling plant, or other industry likely to release lead;
8. The child's parent or guardian requests the child's blood be tested due to any suspected exposure; or
9. A health care provider recommends the child's blood be tested due to any suspected exposure.

The Department of Health will maintain a list of high-risk zip code areas in Virginia.

**12 VAC 5-120-60. Determination of low risk for elevated blood-lead levels.**

Blood-lead testing is not indicated for children determined by a health care provider to be at low risk for elevated blood-lead levels. A health care provider may determine a child to be at low risk for elevated blood-lead level if the child meets none of the criteria listed in 12 VAC 5-120-50.

**12 VAC 5-120-70. Samples submitted to a qualified laboratory.**

- A. All blood samples submitted to a qualified laboratory for analysis shall be accompanied by a completed laboratory requisition with all of the required data as determined by the Department of Health.
- B. All qualified laboratories accepting blood samples for lead analysis under this chapter shall submit all required data to the board within 10 business days of analysis. The data shall be sent by a secure electronic means that has been approved by the Department of Health.
- C. Any laboratory reporting under this section shall be deemed in compliance with the stipulations of § 32.1-36 of the Code of Virginia and 12 VAC 5-90-90 of the Board of Health Regulations for Disease Reporting and Control.

**12 VAC 5-120-80. Follow-up testing and information.**

The Department of Health will establish guidelines for follow-up testing for children with confirmed elevated blood-lead levels, provide or recommend appropriate information for parents, and disseminate the protocol and other information to relevant health care professionals.

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# Proposed Regulations

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## **12 VAC 5-120-90. Exclusion from testing when risk is low and on religious grounds.**

*In accordance with § 32.1-46.2 of the Code of Virginia, every child in the Commonwealth should be tested for elevated blood-lead levels unless the parent, guardian or other person standing in loco parentis obtains a determination that the child is at low risk for elevated blood-lead levels or unless the parent, guardian or other person having control or charge of such child objects to such testing on the basis that the procedure conflicts with his or her religious tenets or practices.*

VA.R. Doc. No. R01-88; Filed October 2, 2001, 10:24 a.m.

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## **Title of Regulation: 12 VAC 5-475. Regulations Implementing the Virginia Organ and Tissue Donor Registry (adding 12 VAC 5-475-10 through 12 VAC 5-475-90).**

**Statutory Authority:** § 32.1-292.2 of the Code of Virginia.

**Public Hearing Date:** October 30, 2001 - 10 a.m.

Public comments may be submitted until December 21, 2001.

(See Calendar of Events section for additional information)

**Agency Contact:** Eileen Guertler, Director, Virginia Transplant Council, Virginia Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-5589, FAX (804) 786-0892 or e-mail eguertler@vdh.state.va.us.

**Basis:** Section 32.1-292.2 of the Code of Virginia requires an Organ and Tissue Donor Registry for the Commonwealth to be administered by the Department of Health. The Board of Health, in consultation with the Virginia Transplant Council, is directed to promulgate regulations to administer the organ and tissue donor registry.

**Purpose:** The purpose of this action is to establish regulations to administer the newly established Virginia Organ and Tissue Donor Registry in order to: (i) provide a means of recovering an anatomical gift for transplantation or research and (ii) collect data to develop and evaluate the effectiveness of educational initiatives promoting organ, eye and tissue donation. The lives of Virginians, particularly those in need of organs and tissues, will be enhanced or saved by organ and tissue donation through use of the registry.

**Substance:** The regulations regarding the creation of the donor registry as proposed are identical to the emergency regulations approved by the Board of Health in January 2001. The donor registry maintains, and updates as needed, pertinent information on all Virginians who have indicated a willingness to donate their organs, eyes, and tissues for transplantation or research. The registry records the donor's full name, address, sex, birthdate, age, driver's license number or unique identifying number, and other pertinent identifying personal information. The Virginia Transplant Council analyzes registry data to promote and increase donation within the Commonwealth. Also, any Virginian may

have his name removed from the registry by filing an appropriate form with the Virginia Transplant Council.

**Issues:** These regulations will create a legitimate donor registry, which will expedite the identification of potential organ and tissue donors. These regulations will also provide the agency with data to evaluate the effectiveness of VTC's educational initiatives. Although the registry will maintain data that includes unique identifiers of individuals, inclusion in the registry is voluntary and provisions are in place for the removal of names from the registry at the request of the individual.

The agency has long recognized the problem of citizens not being aware of their right/opportunity to become a donor, the confusion of how individuals may legitimately and legally declare their decision to donate, and the difficulty of identifying individuals who have now consented to be a donor.

Presently, citizens may designate to be a donor on a donor card, through an advance medical directive, or on their driver's license when they go to a DMV Customer Service Center to either obtain or renew a Virginia license. While the population is most easily reached through contact with DMV, the driver's license/record is not advertised as being part of a recognized Virginia Donor Registry. Any change to the license results in a \$5.00 charge to the citizen, which does not allow for easy entry or exit in making a donor decision.

The Code of Virginia does not permit DMV to release the name, address, or specific age of the citizen--only the gender and age group category in which the citizen is placed. These data are too vague to be utilized for educational purposes by the agency. Also, at the hospital setting and in the absence of a license, an organ procurement organization (OPO) must contact the State Police to access the driver's record to discover if the citizen was a donor. No other information, such as an address, may be obtained from the driver's record.

These regulations will enable a one-stop shop for donor registration and designation with easy entry and exit for citizens and easy access to donation intent by OPOs and eye banks. The registry as established by these regulations would allow for quicker, more streamlined donor identification; an increase in organ and tissue recovery; improvements in organ and tissue usage; and better targeted education efforts by the agency. Both the public and the Commonwealth will greatly benefit from these regulations.

One disadvantage to the agency and the Commonwealth could be the public perception of the state attempting to create a database that further invades the right of privacy for citizens. However, persons entered into the registry will be done so according to their wishes and on a voluntary basis. Persons in the registry will have the option to have their name removed at any time and therefore there is no disadvantage to the public.

**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 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or

other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. Legislation passed by the 2000 Session of the General Assembly established an Organ and Tissue Donor Registry and directed the Department of Health (VDH) to promulgate regulations to administer the registry. The proposed regulation includes provisions regarding:

1. Access to the registry;
2. Registry membership;
3. Data to be recorded;
4. Removal from the registry; and
5. Use and dissemination of registry information.

Estimated economic impact. Currently, citizens may designate themselves to be an organ and tissue donor on a donor card, through an advance medical directive, or on their driver's license. VDH notes several problems with the current system, including the minimal level of data the Department of Motor Vehicles is allowed to release on donors, the fact that any changes to a driver's license are subject to a \$5.00 fee which affects the ease of changing donor designations, and the difficulty in certain settings of identifying individuals who have consented to be donors.

By implementing the new Virginia Organ and Tissue Donor Registry, the proposed regulation can be anticipated to expedite the identification of potential organ and tissue donors and provide data to evaluate and improve education efforts by the Virginia Transplant Council. Cost for the initial development and implementation of the registry is estimated at \$75,000 and support and maintenance of the registry is estimated at \$21,488 annually. Members of the Virginia Transplant Council authorized to use the registry will be required to report data regarding their use of the registry. The cost of these reports cannot be determined at this time but are unlikely to outweigh the benefits provided by the registry to these organizations.

One potential disadvantage noted by VDH could be the public perception of government attempting to create a database that further invades the right of privacy for citizens. If this view is held by many, the new registry could possibly reduce participation and the availability of donated organs. However, since inclusion in the registry is voluntary, individuals have the option to remove themselves at any time, and the registry will be considered confidential and available only to authorized members of the Virginia Transplant Council, the likelihood of strong negative public opinion is small.

The following table summarizes the anticipated effects resulting from promulgation of this regulation. While the overall net economic impact is not measurable at this time, it is likely to be positive.

Estimated Economic Impact of the Proposed Virginia Organ and Tissue Donor Registry (12 VAC 5-475)

Expected Effect	Estimated Cost	Estimated Benefit
Initial development of the registry	\$75,000	
Support and maintenance of the registry	\$21,588 per year	
Reporting requirements for users of the registry	not known at this time but unlikely to outweigh the benefits provided by the registry to these organizations	
Increase in organ and tissue donations resulting from quicker identification of potential donors and improved education efforts		not quantifiable, but likely very significant

Businesses and entities affected. The proposed regulation will affect any Virginian who indicates a willingness to donate his organs, eyes, and tissue for transplantation or research. Inclusion in the registry is voluntary and members may remove themselves at any time. Members of the Virginia Transplant Council authorized to use the registry will also be affected by the proposed regulation.

Localities particularly affected. The proposed regulation is not expected to uniquely affect any particular localities.

Projected impact on employment. The proposed regulation is not expected have any impact on employment in Virginia.

Effects on the use and value of private property. The proposed regulation is not expected to have any effects on the use and value of private property in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department concurs substantially with the economic impact assessment dated June 22, 2001, prepared by the Department of Planning and Budget regarding the proposed chapter (12 VAC 5-475).

Summary:

*This regulatory action creates a statewide organ and tissue donor registry that will maintain, and update as needed, pertinent information on all Virginians who have indicated a willingness to donate their organs, eyes, and tissues for transplantation or research. The registry will record the donor's full name, address, sex, birthdate, age, driver's license number or unique identifying number, and other pertinent identifying personal information. The Virginia Transplant Council will analyze registry data to promote and increase donation within the Commonwealth. Also, any Virginian may have his name removed from the registry by filing an appropriate form with the Virginia Transplant Council.*

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# Proposed Regulations

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CHAPTER 475.  
REGULATIONS IMPLEMENTING THE VIRGINIA ORGAN  
AND TISSUE DONOR REGISTRY.

PART I.  
DEFINITIONS AND GENERAL INFORMATION.

**12 VAC 5-475-10. Definitions.**

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

*“Agent” means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § 54.1-2983 of the Code of Virginia, to make health care decisions for him, including decisions relating to visitation, provided the advance directive makes express provisions for visitation and subject to physician orders and policies of the institution to which the declarant is admitted. The declarant may also appoint an adult to make, after the declarant’s death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1 of the Code of Virginia.*

*“Anatomical gift” or “organ donation” means a donation of organs, tissues, or eyes or all or any part of a human body to take effect upon or after death.*

*“Board” means the State Board of Health.*

*“Commissioner” means the State Health Commissioner or his duly designated officer or agent.*

*“Decedent” means a deceased individual and includes a stillborn infant or fetus.*

*“Department” means the State Department of Health.*

*“Document of gift” means a card, a statement attached to or imprinted on a motor vehicle driver’s or chauffeur’s license or the record of the individual’s motor vehicle driver’s or chauffeur’s license, a will, an advance directive, or other writing used to make an organ donation or an anatomical gift. “Document of gift” also includes a record of the donor’s gift stored in a registry.*

*“Donor” means an individual who makes a donation of organs, tissues, or eyes or an anatomical gift of all of his body.*

*“Disseminate” means to release, transfer, or otherwise communicate information orally, in writing, or by electronic means.*

*“Eye bank” means an agency accredited by the Eye Bank Association of America operating in the Commonwealth.*

*“Guardian” means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person’s support, care, health, safety, habilitation, education, and therapeutic treatment, and, if not inconsistent with an order of commitment, residence. Where the context plainly indicates, the term includes a “limited guardian” or a “temporary guardian.” The term includes a local or regional program designated by the Department for*

*the Aging as a public guardian pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 of the Code of Virginia.*

*“Informed consent” means the knowing and voluntary agreement, obtained without undue influence or any use of force, fraud, deceit, duress, or other form of constraint or coercion, of a person who is capable of exercising free power of choice.*

*“Organ procurement organization” means an agency certified by the United States Health Care Financing Administration as an organ procurement organization.*

*“Part” means an organ, tissue, eye, bone, artery, blood, fluid or other portion of a human body.*

*“Personal information” means all information that describes, locates or indexes anything about an individual, as defined in § 2.2-3801 of the Code of Virginia.*

*“Procurement” means the recovery of any donated part by a physician licensed, accredited, or approved under the laws of any state.*

*“Registry” means the Organ and Tissue Donor Registry for the Commonwealth, which shall be administered by the Department of Health in accordance with § 32.1-292.2 of the Code of Virginia. The registry shall maintain and update, as needed, the pertinent information on all Virginians who have indicated a willingness to donate.*

*“Tissue bank” means an agency accredited by the American Association of Tissue Banks operating in the Commonwealth.*

*“UNOS” means the United Network for Organ Sharing.*

*“VTC” means the Virginia Transplant Council, a program within the Virginia Department of Health that exists to promote and coordinate educational and information activities as related to the organ, tissue, and eye donation process and transplantation in the Commonwealth of Virginia.*

**12 VAC 5-475-20. Purpose.**

*These regulations are designed to accomplish the tasks listed in § 32.1-292.2 C 1 and 2 of the Code of Virginia by establishing procedures for the administration of the registry.*

**12 VAC 5-475-30. Administration.**

A. The board has the responsibility for promulgating regulations, in consultation with the VTC, pertaining to the administration of the organ and tissue donor registry.

B. The commissioner is the executive officer for the State Board of Health with the authority of the board when it is not in session, subject to the rules and regulations of and review by the board.

C. The VTC, as delegated by the board pursuant to § 32.1-292.2 D 2 of the Code of Virginia, is responsible for analyzing registry data under research protocols directed toward determination and identification of means to promote and increase organ, eye, and tissue donation within the Commonwealth.

D. Confidentiality. All persons responsible for the administration of the organ and tissue donor registry shall

ensure that the registry and all information therein shall be confidential in accordance with § 32.1-127.1:03 of the Code of Virginia and applicable federal law.

**12 VAC 5-475-40. Access.**

The registry and all information therein shall be accessible 24 hours a day and only to the department and the specific designees of accredited organ procurement organizations, eye banks and tissue banks operating in or serving Virginia and which are members of the VTC, for the purpose of identifying a potential donor according to the provisions of §§ 32.1-127.1 and 32.1-292.2, and subsection F of § 46.2-342.

The name of such designees shall be provided to the VTC. All other persons or entities shall be prohibited from having access to the registry. If at any time the designee is unable to carry out his responsibilities with respect to the registry, a replacement shall be selected and the VTC shall be notified of such replacement.

All accredited organ procurement organizations, eye banks, and tissue banks with authorized access to the registry shall be required to report annually to the VTC the following outcome data: (i) the number of times the registry is accessed; (ii) the number of times access to the registry results in an unsuccessful search (i.e., the individual is not a member of the registry); (iii) the number of times an organ, tissue or eye procurement proceeds solely from accessing the registry; (iv) the number of times the next of kin's consent is obtained in addition to a successful search of the registry; (v) the number of times donation of organs, tissue, or eyes occurred as a result of alternative donation designation documentation; and (vi) the number of times the next of kin's consent is obtained without accessing the registry.

**PART II.  
REGISTRY INFORMATION.**

**12 VAC 5-475-50. Registry membership.**

Those persons 18 years and older who have indicated a willingness to donate in accordance with § 32.1-290 of the Code of Virginia and have completed the required registration form (VTC-1) shall be recorded in the registry. Persons under the age of 18 may enter the registry upon completion of the registration form and only with the written consent of his parent or legal guardian. No person may enter another person in the registry.

Those persons who have indicated a willingness to donate on their driver's license or personal identification card as authorized by the Department of Motor Vehicles will be automatically entered into the registry. Through inter-agency agreement, the Department of Motor Vehicles will assist the department by electronically providing this information to the registry on a daily basis. The VTC shall contact any such self-identified persons by United States mail regarding notification of membership to the registry and request the completion of the registration form (VTC-1).

**12 VAC 5-475-60. Data to be recorded.**

The following information shall be recorded in the registry: the donor's full name, address (including county or independent

city of residence with zip code), telephone number, date of birth, age, sex, race, and driver's license number or unique identification number. If the donor is under the age of 18, the name, telephone number, address, and unique identification number of the donor's parent or legal guardian shall be recorded.

Information shall be recorded by completing the Virginia Organ and Tissue Donor Registry Form (VTC-1).

**12 VAC 5-475-70. Removal from the registry.**

A person who has joined the registry may have his name removed by filing an appropriate form (VTC-0) with the VTC or in accordance with subsections E and F of § 32.1-290 or subsection G of § 46.2-342.

The name of a person entered in the registry who has died shall be removed from the registry within 90 days of notification of death by the Virginia Office of Vital Records and Health Statistics.

**PART III.  
USE AND DISSEMINATION OF REGISTRY INFORMATION.**

**12 VAC 5-475-80. Use.**

The designees of accredited organ procurement organizations, eye banks and tissue banks with authorized access to the registry shall have an organizational or individual pass code, or both, assigned by the VTC to gain entry to the registry via the VTC website.

Once entry to the registry has been established, the designees shall enter the decedent's full name, the decedent's date of birth, the decedent's driver's license number, the decedent's unique identification number, or any combination thereof, to verify whether the decedent made a donor designation in the registry. Once the decedent's donor designation has been verified, the designees shall include the intent to donate as part of the donor record maintained by the accredited organ procurement organization, eye bank and tissue bank.

If the decedent is not in the registry, the designees shall exit the registry. Designees shall not perform a search of the registry on any other person other than the decedent.

**12 VAC 5-475-90. Dissemination.**

The accredited organ procurement organizations, eye banks and tissue banks with authorized access to the registry may disclose the decedent's documented donation designation to the decedent's next of kin, the nearest available relative, a member of the decedent's household, an individual with an affinity relationship, and the primary treating physician, in order to demonstrate the decedent's wish to donate in accordance with §§ 32.1-290, 46.2-342, 54.1-2984, and 54.1-2986 of the Code of Virginia.

The VTC may disclose to the DMV the donor designation on those persons who are recorded in the registry in order that the driver's record accurately reflect those persons' wishes to donate pursuant to subsections E and F of § 46.2-342 of the Code of Virginia.

# Proposed Regulations

**NOTICE:** The forms used in administering 12 VAC 5-475, Regulations Implementing the Virginia Organ and Tissue Donor Registry, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

## FORMS

Virginia Organ and Tissue Donor Registry Removal Form (VTC-0) (eff. 7/00).

Virginia Organ and Tissue Donor Registry Form (VTC-1) (eff. 7/00).

### Virginia Organ and Tissue Donor Registry Removal Form

For optimum accuracy, please **PRINT** in capital letters using a ballpoint pen (e.g., **A, B, C, D**...).  
Shade circles like this: ● Do not use: ✓ or X

➤ Complete items 1-4 of this form and turn in the form to the Virginia Transplant Council by mailing to:

Virginia Transplant Council  
1500 E. Main Street, Suite 104  
Richmond, Virginia 23219

1 Title:  Mr.  Mrs.  Ms. Sex:  Male  Female Today's Date: \_\_\_/\_\_\_/\_\_\_  
First Name \_\_\_\_\_ Last Name \_\_\_\_\_

Street Address \_\_\_\_\_ Driver's License or Social Security Number \_\_\_\_\_

City \_\_\_\_\_ VA \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ Date of Birth (month, day, year) \_\_\_/\_\_\_/\_\_\_

(Area Code) Telephone Number \_\_\_\_\_

2 By completing this form, I, \_\_\_\_\_, request to be removed from the Virginia Organ and Tissue Donor Registry as in accordance with Virginia law. However, removal from the registry does not preclude me from joining the registry at another time in the future. This information is to be filed with Virginia Transplant Council.

3 If the registered potential donor is under 18 years of age, the witness for removal from the registry must be his parent or legal guardian.

(Witness' signature required) \_\_\_\_\_ Address \_\_\_\_\_

(Relationship) \_\_\_\_\_ City, State, Zip \_\_\_\_\_

(Social Security Number) \_\_\_\_\_ (Area Code) Telephone Number \_\_\_\_\_

4 Reason(s) for removal from the registry (optional): \_\_\_\_\_

VTC-0  
04/00



**VIRGINIA ORGAN AND TISSUE DONOR REGISTRY FORM**  
 1500 E. Main Street, Suite 104, Richmond, Virginia 23219  
 1-800-523-6667 www.vatransplant.state.va.us

The Virginia Anatomical Gift Act gives each individual the right to donate his or her organs and tissues. Organs and tissue that have been donated will not be transplanted until they have been tested and screened in accordance with current medical standards. Organs and tissues will not be recovered if they do not meet these standards.

All information will be held in the strictest confidence.

**INSTRUCTIONS**

**In order to be entered into the Virginia Organ and Tissue Donor Registry you MUST:**

- Complete items 1-4 on the reverse side of this form (see specific instructions below)
- Turn in your completed form to the Virginia Transplant Council by mailing to:

Virginia Transplant Council  
 1500 E. Main Street, Suite 104  
 Richmond, Virginia 23219

- 1 Please know that all information will be held in the strictest confidence. Print clearly in capital letters using a ballpoint pen to all requested items in section 1.
- 2 Fill in the circles for your ethnicity, race, the organs and tissues you wish to donate, and your purpose of donation.
- 3 Sign your name in the space provided in section 3.
- 4 If you are under 18 years of age, one witness must be your parent or legal guardian and must complete all the requested items in section 4.

**Organ and Tissue Donation Facts**

Donation is free; there is no cost to the donor, the family or to the estate.

Donation does not interfere with funeral arrangements. At the time of death your mortuary professional should coordinate your arrangements with your family, the organ procurement agency or tissue bank.

No major religion opposes donation.

One donor can help more than 50 other people suffering from organ failure, bone defects, burns or blindness.

**Please call (800) 523-6667 if you:**

- Have any questions
- Want additional forms
- Wish to schedule a public presentation on organ and tissue donation
- Would like to volunteer with the Virginia Transplant Council

**VIRGINIA ORGAN AND TISSUE DONOR REGISTRY FORM**

For optimum accuracy, please **PRINT** in capital letters using a ballpoint pen (e.g., **A, B, C, D** ...). Shade circles like this: ● Do not use: ✓ or ✗

\_\_\_\_\_ Please complete the following: \_\_\_\_\_

1 Title:  Mr.  Mrs.  Ms. Sex:  Male  Female Today's Date: \_\_\_/\_\_\_/\_\_\_

First Name \_\_\_\_\_ Last Name \_\_\_\_\_

Street Address \_\_\_\_\_  
 City \_\_\_\_\_ State VA Zip Code \_\_\_\_\_  
 Date of Birth (month, day, year) (\_\_\_\_/\_\_\_\_/\_\_\_\_) Telephone Number \_\_\_\_\_  
 Driver's License or Social Security Number \_\_\_\_\_

Select one

<b>Ethnicity</b>	<b>Race</b>
<input type="radio"/> Hispanic <input type="radio"/> Non-Hispanic	<input type="radio"/> American Indian <input type="radio"/> Asian <input type="radio"/> Black/African American <input type="radio"/> Caucasian <input type="radio"/> Hawaiian/Other <input type="radio"/> Pacific Islander <input type="radio"/> Other <small>(Please list race)</small>

2  I desire to donate any and all organs and tissues deemed suitable.

Or fill in all that apply:

<b>Organs Donated</b>	<b>Tissues Donated</b>
<input type="radio"/> Heart <input type="radio"/> Lung <input type="radio"/> Kidneys <input type="radio"/> Pancreas <input type="radio"/> Liver <input type="radio"/> Small Bowel <input type="radio"/> Heart Valves <input type="radio"/> Skin Grafts <input type="radio"/> Eyes/Cornes	<input type="radio"/> Bones above Waist <input type="radio"/> Bones below Waist <input type="radio"/> Soft Tissue <small>(includes ligaments, tendons, and blood vessels)</small>

3  Both  Transplantation  Transplant Research and Education

4 I, \_\_\_\_\_, do hereby desire to:

- Make an anatomical gift of my organs and tissues as indicated in #2.
- Allocate my anatomical gift in accordance with Virginia law.
- File this information into the Virginia Organ and Tissue Donor Registry.

5 If the applicant is under 18 years of age, the witness must be a parent or legal guardian.

(Witness signature required) \_\_\_\_\_ Name (print) \_\_\_\_\_  
 (Relationship) \_\_\_\_\_ Address \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_  
 (Area Code) Telephone Number \_\_\_\_\_

(Social Security Number) \_\_\_\_\_ (Area Code) Telephone Number \_\_\_\_\_

**BE SURE TO COMPLETE THE OTHER SIDE OF THIS FORM**

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# Proposed Regulations

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**Title of Regulation:** 12 VAC 5-520. Regulations Governing the Dental Scholarship and Loan Repayment Programs (amending 12 VAC 5-520-10, 12 VAC 5-520-20, 12 VAC 5-520-30, and 12 VAC 5-520-80; adding 12 VAC 5-520-130 through 12 VAC 5-520-210; repealing 12 VAC 5-520-40 through 12 VAC 5-520-70 and 12 VAC 5-520-90 through 12 VAC 5-520-120).

**Statutory Authority:** §§ 32.1-122.9 and 32.1-122.9:1 of the Code of Virginia.

**Public Hearing Date:** October 31, 2001 - 10 a.m.

Public comments may be submitted until December 21, 2001.

(See Calendar of Events section for additional information)

**Agency Contact:** Karen Day, Director, Dental Health, Virginia Department of Health, 1500 E. Main Street, Richmond, VA 23219, telephone (804) 371-4000 or FAX (804) 371-4004.

**Basis:** Chapter 174 of the 2000 Acts of Assembly created the Dentist Loan Repayment Program in § 32.1-122.9:1 of the Code of Virginia. It authorizes the board to establish "a dentist loan repayment program for graduates of accredited dental schools ...who agree to perform a period of dental service in the Commonwealth in an underserved area as defined in § 32.1-122.5 of the dental scholarship program or a dental health professional shortage area designated in accordance with the criteria established in 42 C.F.R. Part 5." This section also authorizes the State Board of Health to "promulgate regulations to implement the Dentist Loan Repayment Program within 280 days of enactment of the provision." Additionally, subsection B of § 32.1-122.9 of the Code of Virginia authorizes the board, "after consultation with the School of Dentistry of Virginia Commonwealth University, to promulgate regulations to administer...[an annual dental] scholarship program."

**Purpose:** Adoption of the dentist loan repayment regulations and amendments to the dental scholarship regulations protect the public's health by ensuring that dental health services are available in the underserved areas of Virginia and that no citizen of the Commonwealth will be without the availability of dental services.

**Substance:** The new substantive provisions include the details for administering the newly established dentist loan repayment program. The substantive changes to the existing sections of the dental scholarship program include updating the format to conform to the Virginia Register Form, Style and Procedure Manual and ensuring that the two programs work together in an orderly manner.

Adoption of the loan repayment regulations 12 VAC 5-525-10 et seq. will include: (i) defining applicants eligible for the program, including provisions that students of economically disadvantaged backgrounds receive due consideration; (ii) setting an amount of the loan repayment award; (iii) establishing criteria for the administration of the program in concert with the dental scholarship program; (iv) defining the contractual practice obligation of loan repayment recipients; (v) defining the conditions of default; (vi) criteria for repayment

in event of default; (vii) enumerating reporting requirements of recipients; (viii) defining the loan repayment award amount; and (ix) allowing for special requests and approval in the event a fractional need for a dentist exists in an underserved community.

The following amendments to the dental scholarship program regulations will provide for the orderly administration of the program in conjunction with the dentist loan repayment program: (i) amending 12 VAC 5-520-10 and repealing 12 VAC 5-520-40 and 12 VAC 5-520-50 to define words and terms used in the regulation as provided for in the Virginia Register Form, Style and Procedure Manual; (ii) amending 12 VAC 5-520-80 and repealing 12 VAC 5-520-40 through 12 VAC 5-520-70 to concisely define dental underserved area and to be consistent between the dental scholarship and loan repayment programs; (iii) moving 12 VAC 5-520-60 and 12 VAC 5-520-70 regarding special requests and fractional need to follow general regulations as provided for in the Virginia Register Form, Style and Procedure Manual; and (iv) adopting 12 VAC 5-520-130 through 12 VAC 5-520-210 to define eligible scholarship applicants, distribution of scholarships, contractual practice obligation, default, repayment and reporting to be consistent with the regulations adopted for the dentist loan repayment program.

**Issues:** The primary advantages of the proposed regulatory action is to administer a dental scholarship and dentist loan repayment program in the most efficient manner so that it is attractive to dentists to enroll in these programs and increase dental services in underserved areas of the Commonwealth.

There are no disadvantages to the public or the agency from this proposed regulatory action.

**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 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The 2000 Session of the General Assembly passed legislation establishing a dentist loan repayment program. The proposed regulatory action sets forth the details for administering the new dentist loan repayment program and amends the existing regulations governing the dental scholarship program to ensure that the two programs work together in a consistent manner.

The General Assembly has appropriated \$25,000 for the dental scholarship program each year for FY01 and FY02. Funds for the loan repayment program will be available from the balance of funds after dental scholarships are awarded. Under the existing scholarship program, scholarships of

\$5,000 each were awarded to up to five recipients. Under the new program, two scholarships of \$12,500 each will be awarded. The proposed regulation will also expand the areas award recipients can practice in by including federal dental health professions shortage areas as defined by the U.S. Department of Health and Human Services.

Estimated economic impact. According to the Department of Health, participation in the dental scholarship program has not always reached the maximum of five recipients, with the exception of the current year, FY 2001. Increasing the award amount from \$5,000 to \$12,500 is expected to help generate interest in the program. The higher award could result in the participation of individuals who otherwise may not have chosen to practice in underserved areas. While the scholarship program is only available for students attending the Virginia Commonwealth University School of Dentistry, the loan repayment program will be available to eligible graduates of any accredited school. In addition to opening up the applicant pool at the national level, establishment of the loan repayment program allows for more flexibility on the part of recipients to decide to take part in the program as they will be able to apply after they have graduated instead of during their education when they may not be as sure of their future plans.

Given the current level of funding, the proposed changes to this regulation are not expected to have a significant effect on the availability of dental services in underserved areas of the Virginia. However, the proposed changes have the potential to increase the number of applicants for the dental scholarship and loan repayment programs and therefore could have a positive significant effect on access to dental health services in currently underserved areas of Virginia if the amount of funding were increased.

Businesses and entities affected. The proposed changes to this regulation could potentially affect any student at the VCU School of Dentistry or any eligible national dental school graduate.

Localities particularly affected. The proposed changes to this regulation could potentially increase access to dental services in underserved areas defined by the Virginia Department of Health or the federal Department of Health and Human Resources.

Projected impact on employment. Opening up the program at the national level may result in dentists deciding to practice in Virginia as opposed to another state. However, given the current level of funding, the magnitude of this effect is likely to be very small.

Effects on the use and value of private property. The proposed changes to this regulation could potentially increase the value of a new dental license for award recipients by decreasing the cost of obtaining that license.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department concurs substantially with the economic impact assessment dated June 21, 2001, prepared by the Department of Planning and Budget regarding the proposed chapter (12 VAC 5-520).

## Summary:

*The proposed amendments provide for administration of the dentist loan repayment program that was established to fund graduating dentists as an incentive to practice in underserved areas of the Commonwealth. This program will operate in conjunction with the existing scholarship program. Due to the need for both programs to function together to meet the need in underserved areas, proposed amendments are also made for the existing dental scholarship program.*

### CHAPTER 520.

### REGULATIONS GOVERNING THE STATE DENTAL SCHOLARSHIP PROGRAM AND LOAN REPAYMENT PROGRAMS.

#### PART I.

#### GENERAL PROVISIONS DEFINITIONS.

#### **12 VAC 5-520-10. Purpose Definitions.**

~~These definitions are to be used in granting approval to recipients of state dental scholarships to practice dentistry in such a manner as to fulfill the terms of the contract which they sign on receiving the state dental scholarship.~~

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

*"Accredited dental school" means any dental school in the United States receiving accreditation from the Commission on Dental Accreditation.*

*"Board" or "Board of Health" means the State Board of Health.*

*"Commissioner" means the State Health Commissioner.*

*"Dental practice" means the practice of dentistry by a recipient in general or specialty dentistry in a geographic area determined to be fulfillment of the recipient's scholarship or loan repayment obligation or practice as a dentist with a designated state facility.*

*"Dental underserved area" means a geographic area in Virginia designated by the State Board of Health as a county or city in which the ratio of practitioners of dentistry to population is less than that for the Commonwealth as a whole as determined by the commissioner or a dental health professions shortage area using criteria described in Part II (12 VAC 5-520-80 et seq.) of this chapter.*

*"Dentist loan repayment award" means an amount repaid to a dentist for dental school loans in an amount equivalent to one year in-state tuition at Virginia Commonwealth University School of Dentistry for the year in which the loan was acquired and for which the dentist is under a contractual obligation to repay through practice in an underserved area or designated state facility.*

*"Dentist loan repayment program" means the program established by § 32.1-122.9:1 of the Code of Virginia that allocates funds appropriated in conjunction with the dental scholarship program to increase the number of dentists in underserved areas of Virginia.*

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"Designated state facility" means practice as a dentist in a facility operated by the Virginia Department of Health or Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Full-time dental practice" means the practice of dentistry for an average of a minimum of 32 hours per week excluding those exceptions enumerated in Part III (12 VAC 5-520-130 et seq.) of this chapter.

"Governing Board of Virginia Commonwealth University" means the official governing body of the university or their designee.

"Interest at the prevailing bank rate for similar amounts of unsecured debt" means the prime lending rate as published in the Wall Street Journal on the last day of the month in which the decision to repay is communicated to the commissioner by the recipient, plus two percentage points.

"Internship or residency at an approved institution or facility" means an advanced dental education program in general dentistry or dental specialty accredited by the Commission on Dental Accreditation and approved by the American Dental Association.

"Participating dental school" means Virginia Commonwealth University School of Dentistry.

"Penalty" means an amount of money equal to three times the amount of all monetary scholarship or loan repayment awards paid to the recipient.

"Period of dental service" means one year of service in a dental underserved area in return for one year of scholarship or loan repayment as defined in Part III (12 VAC 5-520-130 et seq.) of this chapter.

"Practice of general or specialty dentistry" means the evaluation, diagnosis, prevention and treatment (nonsurgical, surgical or related procedures) of diseases, disorders and conditions of the oral cavity, maxillofacial and adjacent and associated structures and their impact on the human body.

"Primary dental health care" means the practice of general or specialty dentistry.

"Public health service" means employment with the United States Public Health Service.

"Restitution" means the amount of monetary reimbursement, including repayment of all pertinent scholarship or loan repayment awards plus penalty and applicable interest as set forth in this regulation, owed to the Commonwealth of Virginia by a scholarship or loan repayment recipient who is in default of his contractual obligation as provided for in this chapter.

"Scholarship recipient" means an eligible dental student who enters into a contract with the commissioner and receives one or more scholarship awards from the Virginia Dental Scholarship Program.

"Specialty dental practice" means the advanced practice of dentistry in any specialty approved by the American Dental Association and accredited by the Commission on Dental Accreditation.

"Virginia dental scholarship" means an award of an amount equivalent to one year of in-state tuition at Virginia Commonwealth University School of Dentistry for the academic year a student is enrolled in a participating dental school and for which the dental student entered a contractual obligation to repay through practice in an underserved area or designated state facility.

## 12 VAC 5-520-20. Administration of program.

The State Health Commissioner, as executive officer of the Board of Health, shall administer this program. Any requests for deviation from the prescribed definitions shall be considered on an individual basis by the board in regular session.

## 12 VAC 5-520-30. Applicability.

These definitions shall apply to all recipients who begin practice in an underserved area as fulfillment of their scholarship or loan repayment obligation on July 1, 1979 2001, or later, provided that approval given by the commissioner prior to the effective date of these regulations shall remain in full force and effect.

### PART II.

#### PRACTICE OF GENERAL DENTISTRY.

## 12 VAC 5-520-40. Definition. (Repealed.)

~~The practice of general dentistry shall be constituted when the practitioner has a general patient population which he sees in the course of his professional practice for the diagnosis, treatment, or referral of whatever dental problems may be presented. This type of practice is generally classified by the dental community as general practice.~~

### PART III.

#### AREA OF NEED.

## 12 VAC 5-520-50. Definition. (Repealed.)

~~An "area of need" shall mean any county or city in which the ratio of practitioners of general dentistry to population is less than that for the Commonwealth as a whole as determined by the commissioner using criteria described in Part IV of this chapter.~~

## 12 VAC 5-520-60. Special requests for approval. (Repealed.)

~~Requests for approval of practice of general dentistry in an area in which the ratio, or in an identified sub area of a city or county, shall be considered by the Board of Health on an individual basis. To obtain the board's approval the scholarship recipient shall substantiate to the board's satisfaction that the ratio does not correctly depict the provision of general dental services in the city or county and that additional general practitioners are necessary. Examples of situations deserving special consideration include topography, age or physical health of general practitioners in the area, and sub areas of high density population which can be geographically identified and shown to have a ratio less than the state ratio.~~

**12 VAC 5-520-70. Fractional need. (Repealed.)**

~~The Board of Health recognizes that instances will occur when the ratio of practitioners of general dentistry to population reflects a fractional share of need. In such instances and in recognition of the advantages which accrue to the dentist and the community from two or more dentists working on an associated or cooperative basis, the commissioner may in his discretion favorably consider the approval of an additional dentist in order to facilitate such an arrangement.~~

**PART IV II.  
CRITERIA FOR DEVELOPING RATIO DENTAL  
UNDERSERVED AREA.**

**12 VAC 5-520-80. Population and dentist data.**

In order to determine the *population-to-dentist* ratio, the commissioner shall:

- ~~1. Use the population estimates of the Taylor Murphy Institute of the University of Virginia, which are effective July 1 of each year data or projections from the United States Census for independent cities, counties and counties with independent cities within their boundaries; and~~
- ~~2. Determine the number of practitioners of general dentistry from data secured from questionnaires distributed by the Virginia State Board of Dentistry, supplemented by data from the board's license renewal applications, and the American Dental Association, adjusting for those dentists licensed in Virginia but practicing in other states, the military and retired dentists with active licenses;~~
- ~~3. Calculate this ratio every five years; and~~
- ~~4. Include as dental underserved areas those cities and counties determined to be dental health professions shortage areas as defined by the Department of Health and Human Services or designated a federal shortage area for the practice of dentistry as outlined in 42 CFR 5.1.~~

**12 VAC 5-520-90. Dentist classification. (Repealed.)**

~~The commissioner shall include dentists, except those in practice under assignment by the National Health Service Corps, classifying themselves as general practitioners.~~

**12 VAC 5-520-100. Weight for full-time. (Repealed.)**

~~A county or city will receive full weight for dentist indicating full-time spent in patient care.~~

**12 VAC 5-520-110. Weight for part-time. (Repealed.)**

~~A county or a city will receive the appropriate fractional weight for dentist indicating less than full-time spent in patient care.~~

**12 VAC 5-520-120. Weight for primary and secondary office locations. (Repealed.)**

~~For dentists who indicate primary and secondary office locations in separate counties or cities, a county or city shall receive its appropriate fractional weight of time spent in the primary or secondary location.~~

**PART III.  
SCHOLARSHIP AND LOAN REPAYMENT AWARDS.**

**12 VAC 5-520-130. Eligible applicants.**

A. Any currently enrolled dental student in good standing and full-time attendance at Virginia Commonwealth University School of Dentistry who has not entered the first year of an accredited residency shall be eligible for the Virginia Dental Scholarship Program. Preference for the scholarship award shall be given to residents of the Commonwealth, students who are residents of a dental underserved area, and students from economically disadvantaged backgrounds.

B. Any graduate of an accredited dental school in the United States who is establishing a practice in general or specialty dentistry in an underserved area or practicing dentistry in a designated state facility shall be eligible to apply for the Virginia Dentist Loan Repayment Program. Eligible applicants will be within five years of graduation from an accredited undergraduate dental program and have existing loans accumulated as a result of their first professional education. Dentists who have received dental scholarship program awards and dentists who have accepted Exceptional Financial Need (EFN) and Financial Assistance for Disadvantaged Health Professions Students (FADHPS) scholarships are not eligible for the Dentist Loan Repayment Program.

**12 VAC 5-520-140. Scholarship and loan repayment award.**

A Virginia dental scholarship or loan repayment shall be awarded to the recipient upon or following the recipient's execution of a contract with the commissioner for scholarship or loan repayment by practicing dentistry in an underserved area or designated state facility as defined in this chapter.

**12 VAC 5-520-150. Distribution of scholarships and loan repayment awards.**

The Virginia General Assembly establishes the total combined appropriation for the dental scholarship and dentist loan repayment programs. Funds shall be awarded for these programs based on the following criteria:

1. Virginia Commonwealth University School of Dentistry shall establish an application procedure and annually submit the names of qualified students to receive scholarships in accordance with the criteria for preference enumerated in this section. Dental scholarships will be awarded on or before October 30 of each fiscal year with remaining funds disbursed through the Dentist Loan Repayment Program. The total annual number of scholarship awards will be based on availability of funds. Individual scholarship recipients may receive a maximum of five scholarship awards.
2. The application period for the Dentist Loan Repayment Program will follow that for the Dental Scholarship Program, with awards made by January 30 of each fiscal year. Preference for loan repayment awards will be given to dental students graduating from Virginia Commonwealth University School of Dentistry and those with established financial need. Individual loan repayment recipients may receive a maximum of three awards upon graduation from

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dental school. All awards will be competitive based on the criteria enumerated in this section and will be based on availability of loan repayment funds once scholarship funds are disbursed.

## **12 VAC 5-520-160. Contractual practice obligation.**

Prior to the payment of money to a scholarship or loan repayment awardee, the commissioner shall prepare and enter into a contract with the recipient. The contract shall:

1. Provide that the recipient of the dental scholarship award shall pursue the dental course of Virginia Commonwealth University until graduation and upon graduation or upon graduation from an accredited residency program that does not exceed four years, shall notify the commissioner in writing of his proposed practice location or intent to enter a residency not more than 30 days after graduation and begin his approved practice within 90 days after completing dental school or residency, and thereafter continuously engage in full-time dental practice in a dental underserved area of Virginia or in a designated state facility for a period of years equal to the number of annual scholarships received.

2. Provide that upon graduation from an accredited dental school and receiving notification of the dentist loan repayment award, the dentist shall begin his approved practice within 90 days and thereafter continuously engage in full-time dental practice in an underserved area of Virginia or in a designated state facility for a period of years equal to the number of loan repayment awards received.

3. Provide that at any time prior to entering practice, the scholarship or loan repayment recipient shall be allowed to select a future practice location from the listing of dental underserved areas maintained by the board.

4. Provide that the recipient may request approval of a change of practice location. The commissioner in his discretion may approve such a request, but only if the change is to a practice location in a dental underserved area or a state facility designated by the Board of Health.

5. Provide that the recipient shall repay the scholarship or loan repayment obligation by practicing dentistry on a full-time basis in a dental underserved area, shall maintain office hours convenient for the population of the area to have access to the recipient's services and shall participate in all government-sponsored insurance programs designed to ensure access to dental services of recipients of public assistance. The recipient shall not selectively place limits on the numbers of such patients admitted to the practice.

6. Provide that the recipient shall not voluntarily obligate himself for more than the minimum period of military service required of dentists by the laws of the United States and that upon completion of the minimum period of military service, the recipient shall promptly begin and thereafter continuously engage in full-time dental practice in a dental underserved area of Virginia or in a designated state facility for the period of years equal to the number of scholarships received. Dental practice in federal agencies, military service or the U.S. Public Health Service may not be substituted for scholarship obligation.

7. Provide that the recipient shall receive credit toward fulfillment of his contractual obligation at the rate of 12 months of dental practice for each scholarship or loan repayment award paid to the recipient. The recipient may be absent from the place of approved practice for a total of seven weeks in each 12-month period for personal reasons. Absence for a period in excess of seven weeks without the written permission of the commissioner shall result in proportional reduction of the period of credit toward fulfillment of the contractual obligation.

8. Provide that should the scholarship recipient pay restitution by not serving his scholarship obligation in an underserved area and later fulfills the terms of his contract through dental practice as outlined in this section, that the recipient will be reimbursed for all or part of any scholarship amount paid based on the fulfillment of the scholarship obligation.

## **PART IV. SPECIAL REQUESTS.**

### **12 VAC 5-520-170. Special requests for approval.**

Special requests for approval of the practice of dentistry in an area in which the ratio does not meet the definition of an area of need shall be considered by the Board of Health on an individual basis. To obtain the board's approval, the scholarship or loan repayment recipient shall substantiate to the board's satisfaction that the ratio does not correctly depict the provision of dental services in the city or county and that additional practitioners are necessary. Examples of situations deserving special consideration may include topography, age or physical health of dental practitioners in the area, and sub-areas of high density population that can be geographically identified and shown to have a ratio less than the state ratio.

## **PART V. SPECIAL CIRCUMSTANCES.**

### **12VAC 5-520-180. Fractional need.**

The Board of Health recognizes that instances will occur when the ratio of dental practitioners to population reflects a fractional share of need. In such instances and in recognition of the advantages that accrue to the dentist and the community from two or more dentists working on an associated or cooperative basis, the commissioner may in his discretion favorably consider the approval of an additional dentist in order to facilitate such an arrangement.

## **PART VI. DEFAULT.**

### **12 VAC 5-520-190. Default.**

A. With respect to default, the contract shall provide that a scholarship or loan repayment recipient who fails to fulfill his obligation to practice dentistry as described in 12 VAC 5-520-160 shall be deemed in default under the following circumstances and shall forfeit all monetary scholarship or loan repayment awards made to him and shall make repayment of those funds plus interest plus penalty, where applicable, to the Commonwealth of Virginia as provided for in this chapter. The contract shall:

1. Provide that if the scholarship recipient defaults while still in dental school, by voluntarily notifying the commissioner in writing that he will not practice dentistry in a Virginia dental underserved area as required by his contract, by voluntarily not proceeding to the next year of dental education, or by withdrawing from dental school, the student shall pay the Commonwealth of Virginia all monetary scholarship awards plus interest at the prevailing rate for similar amounts of unsecured debt.

2. Provide that the scholarship recipient who defaults by failing to maintain grade levels that will allow the dental student to graduate, or by reason of his dismissal from dental school for any reason, shall repay the Commonwealth of Virginia all monetary scholarship awards plus interest.

3. Provide that if the scholarship or loan repayment recipient is in default due to death or permanent disability so as not to be able to engage in dental practice, the recipient or his personal representative shall repay the Commonwealth all monetary scholarship awards plus 8.0% interest on the amount of the award. Partial fulfillment of the recipient's contractual obligation by the practice of dentistry as provided for in this contract prior to death or permanent disability shall reduce the amount of repayment plus interest due by a proportionate amount of money, such proportion being determined as the ratio of the number of whole months that a recipient has practiced dentistry in an approved location to the total number of months of the contractual obligation the recipient has incurred. The commissioner may waive all or part of the scholarship or loan repayment obligation under application by the recipient or his estate under these conditions and consider whole or partial forgiveness of payment or service in consideration of individual cases of extraordinary hardship.

4. Provide that any recipient of a scholarship or loan repayment who defaults by evasion or refusal to fulfill the obligation to practice dentistry in an underserved area or designated state facility for a period of years equal to the number of annual scholarships or loan repayment awards received shall make restitution by repaying all monetary scholarship or loan repayment awards plus penalty plus interest to the Commonwealth of Virginia.

B. A scholarship or loan repayment recipient will be considered to be in such default on the date:

1. The commissioner is notified in writing by the recipient that he does not intend to fulfill his contractual obligation;
2. The recipient has not accepted a placement and commenced his period of obligated practice as provided for in subdivision 2 of 12 VAC 5-520-160; or
3. The recipient absents himself without the consent of the commissioner from the place of dental practice that the commissioner has approved for fulfillment of his contractual obligation.

## PART VII. REPAYMENT.

### 12 VAC 5-520-200. Repayment.

Repayment requirements for scholarship and loan repayment recipients are as follows:

1. Payment of restitution or repayment of award plus interest shall be due on the date that the recipient is deemed by the commissioner to be in default.
2. The commissioner in his discretion shall permit extension of the period of payment of restitution plus interest for up to 24 months from the date that the recipient is deemed to be in default.
3. Partial fulfillment of the recipient's contractual obligation by the practice of dentistry as provided for in this contract shall reduce the amount of restitution or payment plus interest due by an amount of money equal to the same percentage of all monetary awards as the number of whole months that the recipient has practiced dentistry in an approved location as a percentage of the total number of months of the contractual obligation the recipient has incurred.
4. Failure of a recipient to make any payment on his debt of restitution plus interest when it is due shall be cause for the commissioner to refer the debt to the Attorney General of the Commonwealth of Virginia for collection. The recipient shall be responsible for any costs of collection as may be provided in Virginia law.

## PART VIII. RECORDS AND REPORTING.

### 12 VAC 5-520-210. Reporting requirements.

Reporting requirements of Virginia Commonwealth University School of Dentistry scholarship and loan repayment recipients are as follows:

1. Virginia Commonwealth University School of Dentistry shall maintain accurate records of the status of scholarship recipients until the recipient's graduation from dental school. The dental school shall provide a report listing the status of each recipient annually to the commissioner.
2. Each scholarship and loan repayment recipient shall at any time provide information as requested by the commissioner to verify compliance with the practice requirements of the scholarship or loan repayment contract. The recipient shall report any changes of mailing address, change of academic standing, change of intent to fulfill his contractual obligation and any other information that may be relevant to the contract at such time as changes or information may occur. The recipient shall respond within 60 days with such information as may be requested by the commissioner.

VA.R. Doc. No. R01-87; Filed October 2, 2001, 10:23 a.m.

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# Proposed Regulations

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## STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

**Title of Regulation:** 12 VAC 35-20. Mandatory Standards for the Certification of First Offender Drug Abuse Diversion and Education Programs (REPEALING).

VA.R. Doc. No. R01-98; Filed September 24, 2001, 10:01 a.m.

**Title of Regulation:** 12 VAC 35-140. Mandatory Standards for Community Mental Health Programs (REPEALING).

VA.R. Doc. No. R01-99; Filed September 24, 2001, 10:01 a.m.

**Title of Regulation:** 12 VAC 35-150. Mandatory Standards for Community Mental Retardation Programs (REPEALING).

VA.R. Doc. No. R01-100; Filed September 24, 2001, 10:01 a.m.

**Title of Regulation:** 12 VAC 35-160. Mandatory Standards for Community Substance Abuse Programs (REPEALING).

VA.R. Doc. No. R01-101; Filed September 24, 2001, 10:01 a.m.

**Statutory Authority:** § 37.1-10 of the Code of Virginia.

**Public Hearing Date:** N/A--Public comments may be submitted until December 24, 2001.

(See Calendar of Events section for additional information)

**Agency Contact:** Wendy V. Brown, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, 1220 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-0092 or e-mail [wbrown@dmhmsas.state.va.us](mailto:wbrown@dmhmsas.state.va.us).

**Basis:** Section 37.1-10 of the Code of Virginia authorizes the board to make, adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of Title 37.1 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

Section 37.1-179.1 of the Code of Virginia authorizes the commissioner to license any suitable provider to establish, maintain and operate, or to have charge of any service for persons with mental illness, mental retardation or substance addiction or abuse, subject to rules and regulations promulgated by the board.

Section 37.1-183.1 of the Code of Virginia requires that persons operating facilities that offer care or treatment to persons with mental illness, mental retardation or substance abuse be licensed in accordance with the provisions of the law.

**Purpose:** The board has determined that the four existing regulations are not necessary and has therefore undertaken this action for repeal. These regulations establish general standards for community programs in areas such as program planning and evaluation, administration, clinical management and service delivery, and service components that are intended to protect health and safety of individuals who receive services from these programs. All such program providers now require a license to operate according to § 37.1-183.1 of the Code of Virginia and the rules and

regulations that have been promulgated by the board. The licensing regulations prescribe standards for program operations that are designed to protect the individuals who receive services from these program providers. Therefore, the four regulations that the board has proposed to repeal duplicate the goals and functions of the existing licensing regulations.

**Substance:** This regulatory action is intended to repeal four unnecessary regulations that have been superseded by the existing regulations for licensing. No new substantive provisions or substantive changes are being proposed.

**Issues:** There are no disadvantages to the public or the Commonwealth associated with the repeal of these regulations. This action would not adversely affect the health, safety and welfare of Virginia citizens. These regulations have been superseded by the licensing regulations that provide the means necessary to protect the health and welfare of citizens who receive services from community mental health, mental retardation and substance abuse programs. In addition, these regulations replicate many of the elements in the department's contracts with community services boards, which are designed to ensure the accountability of community providers and protections for the clients who are served. This action will eliminate unneeded and outdated regulations and thereby eliminate any potential for confusing or conflicting regulatory standards.

**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 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Board of Mental Health, Mental Retardation, and Substance Abuse Services (board) proposes to repeal these four regulations, which have been superseded by the board's licensing regulations (12 VAC 35-102-10 et seq.).

Estimated economic impact. These four regulations, first promulgated in the early 1980s, establish the minimum standards for mental health, mental retardation and substance abuse programs of community service boards and first offender drug abuse diversion and education programs. All of these community programs are now subject to the board's licensing regulations (12 VAC 35-102-10 et seq.).<sup>1</sup>

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<sup>1</sup> Community mental health, mental retardation, and substance abuse programs (12 VAC 35-140, 12 VAC 25-150, and 12 VAC 35-160) have been subject to the licensure regulations since 1995. First offender drug abuse diversion and education programs (12 VAC 35-20) have been subject to the licensure regulations since 1991.



Since the four regulations duplicate the goals and functions of the existing licensure regulations, their repeal is not expected to have any economic impact on providers or clients in these programs.

Businesses and entities affected. Since the regulatory standards established by these four regulations are not currently being implemented, the repeal of these regulations should not affect any individuals, businesses, or other entities.

Localities particularly affected. The repeal of these regulations will not uniquely affect any particular localities.

Projected impact on employment. The repeal of these regulations is not expected to have any impact on employment in Virginia.

Effects on the use and value of private property. The repeal of these regulations is not expected to have any effect on the use and value of private property in Virginia.

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

Summary:

*The four regulations proposed for repeal prescribe minimum standards for mental health, mental retardation and substance abuse programs of community services boards and first offender drug abuse diversion and education programs. These regulations were first promulgated in the early 1980s and were designed to ensure the health, safety and welfare of individuals receiving services from these programs. All of these community programs are now subject to the board's licensing regulations that govern program operations and are intended to protect clients who receive services from these programs. The four regulations also duplicate many elements of the department's contracts with community services boards, which are monitored through routine performance reports and reviews. Therefore, these regulations are not necessary and are proposed for repeal.*

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**Withdrawal**

Title of Regulations: **12 VAC 35-140. Mandatory Standards for Community Mental Health Programs.**

VA.R. Doc. No. R98-38; Filed October 3, 2001, 8:30 a.m.

**12 VAC 35-150. Mandatory Standards for Community Mental Retardation Programs.**

VA.R. Doc. No. R98-43; Filed October 3, 2001, 8:30 a.m.

**12 VAC 35-160. Mandatory Standards for Community Substance Abuse Programs.**

VA.R. Doc. No. R98-42; Filed October 3, 2001, 8:30 a.m.

The Department of Mental Health, Mental Retardation and Substance Abuse Services has WITHDRAWN the proposed action to repeal 12 VAC 35-140, Mandatory Standards for

Community Mental Health Programs; 12 VAC 35-150, Mandatory Standards for Community Mental Retardation Programs; and 12 VAC 35-160, Mandatory Standards for Community Substance Abuse Programs that were published in 14:23 VA.R. 3385-3386 August 3, 1998. The department has initiated a new regulatory process to repeal these regulations. A Notice of Intended Regulatory Action for the new repeal process was published in 17:11 VA.R. 1628-1629 February 12, 2001.

Agency Contact: Wendy V. Brown, Policy Analyst, DMHMRSAS, 1220 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-0092, or e-mail wbrown@dmhmrsas.state.va.us.

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Title of Regulation: **12 VAC 35-200. Regulations for Respite and Emergency Care Admissions to State Mental Retardation Facilities (amending 12 VAC 35-200-10, 12 VAC 35-200-20, and 12 VAC 35-200-30).**

Statutory Authority: §§ 37.1-10 and 37.1-65.2 of the Code of Virginia.

Public Hearing Date: December 5, 2001 - 6 p.m.

Public comments may be submitted until December 24, 2001.

(See Calendar of Events section for additional information)

Agency Contact: Cynthia Smith, Office of Mental Retardation Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0946 or FAX (804) 692-0077.

Basis: Section 37.1-10 of the Code of Virginia confers authority to the board to "...make, adopt and promulgate such rules as may be necessary to carry out the provisions of the title..." Section 37.1-65.2 of the Code of Virginia states, "The Board may promulgate regulations to provide for emergency and respite care admissions to mental retardation facilities..." The board has used this discretionary legal authority to promulgate these regulations.

Purpose: Amendments to the existing regulations are necessary to update the criteria and procedures for individuals requesting respite and emergency care admissions and to assure consistency with statutory requirements, current practice and terminology. These amendments will protect the health and welfare of Virginia citizens by ensuring that those who need respite or emergency care admissions will have accurate and legal guidance for seeking such admissions. With the proposed amendments, the regulations will generally meet its major goals by (i) clearly articulating requirements that must be met to access emergency services and respite care in a mental retardation training center and (ii) assuring that procedures for obtaining such services are minimally intrusive for individuals seeking services and their families with minimal cost to training centers.

The provisions for maximum length of stay in the current regulations are not consistent with § 37.1-65.2 of the Code of

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# Proposed Regulations

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Virginia, which states “No individual shall be admitted to a mental retardation facility under an emergency or respite care admission for more than twenty-one consecutive days or seventy-five days in a calendar year.” The proposed amendments correct inaccurate references for length of stay that occur in several parts of the existing regulations. The amendments also update the procedures for admissions to correspond to §§ 37.1-65.1 and 37.1-197.1 of the Code of Virginia, which require the case management community services boards (CSB) to be responsible for assuring discharges from state facilities. The existing regulations do not explicitly identify the case management CSB as the entity responsible for processing training center discharges. The proposed amendments also enhance the clarity for users by defining additional terms such as “catastrophe,” “commissioner,” “discharge plan,” “legally authorized representative,” and revise several existing definitions to be consistent with the Code of Virginia or the context of provisions. These changes should make the process for admission more logical and, therefore, facilitate compliance with admission requirements for eligible individuals and families.

**Substance:** Parts of regulations, which provide procedural guidance, have been clarified and updated to be consistent with statutory requirements and current practice and terminology. The most substantive changes include:

1. Corrections to requirements for maximum length of stay consistent with § 37.1-65.2 of the Code of Virginia inserted in the definitions of the terms “emergency care” and “respite care” and in the sections that provide criteria for admission;
2. Insertion of a new definition for “case management community services board (CSB)” and revised provisions for admissions and discharges that clearly indicate that the CSB is responsible for processing admissions and developing the discharge plan as provided in §§ 37.1-98 and 37.1-197.1 of the Code of Virginia; and
3. Addition of specific procedures for an applicant to request reconsideration from the commissioner of any decision to deny a request for respite care admission to a training center.

**Issues:** The changes are intended to clarify the requirements and procedures for respite and emergency care admissions in accordance with the current law. This regulation has not been revised since it was first promulgated in 1979. The provisions do not reflect current terminology and changes in practice that have occurred since that time. By providing specific and accurate guidance, the amendment should reduce confusion and facilitate the process for requesting emergency and respite care admissions in state training centers. This should be advantageous to citizens who request such admissions, the case management CSB processing such requests, and the state training centers receiving the applications for admissions. The amendment should have no disadvantages to the public 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 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) proposes the following amendments to the Regulations for Respite and Emergency Care Admissions to State Mental Retardation Facilities:

1. Changing the maximum length of stay from 35 days to 75 days in a calendar year to conform to current statutory requirements;
2. Revising admissions and discharge provisions to clearly state that the case management community service board (CSB) is responsible for processing admissions and developing discharge plans, as required by current law;
3. Adding procedures for an applicant to request reconsideration from the commissioner of Mental Health of any decision to deny respite care admission; and
4. Defining additional terms, clarifying existing definitions, and other editorial changes to enhance the clarity of the regulation.

Estimated economic impact. The Code of Virginia specifies the maximum length of stay for respite and emergency care admissions at 75 days per calendar year and states that CSBs are responsible for processing applications and discharges.<sup>1</sup> Current practice in the field has reflected these requirements for the past twenty years.

According to DMHMRSAS, individuals are currently able to request reconsideration from the commissioner for respite admission denials. The proposed provision will formalize the current internal procedures. Procedures for reconsideration are not proposed for emergency care admissions given the time-sensitive nature of these cases.

The proposed amendments to this regulation do not represent any change in the criteria used in granting respite or emergency care admission or change any requirements and responsibilities of those involved in the process. Therefore, aside from providing more accurate and up-to-date guidance for seeking and processing such admissions, the proposed changes are not expected to have any economic effects.

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<sup>1</sup> Section 37.1-65.2 of the Code of Virginia, which sets the maximum length of stay for respite and emergency care admissions to state mental retardation facilities, was enacted in 1979. Sections 37.1-65.1 and 37.1-197.1, which require the case management CSBs to be responsible for processing admissions and discharges from state facilities, was enacted in 1980.

Businesses and entities affected. The proposed changes to this regulation should not affect any individuals requesting admission, the CSB processing such requests, or the state MR facilities receiving the applications, since they do not represent any change from current practices.

Localities particularly affected. The proposed changes to this regulation will not uniquely affect any particular localities.

Projected impact on employment. The proposed changes to this regulation are not expected to have any impact on employment in Virginia.

Effects on the use and value of private property. The proposed changes to this regulation are not expected to have any effect on the use and value of private property in Virginia.

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

### Summary:

*The proposed amendments revise maximum length of stay to conform to current statutory requirements, clarify the case management community services board's responsibility for assuring discharges from state training centers and generally update the existing provisions to be consistent with current practice and statutory requirements. Minor revisions have also been made to assure internal consistency.*

### **12 VAC 35-200-10. Definitions.**

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

*"Applicant"* means a person for whom respite care or emergency care services are sought.

*"Case management community services board (CSB)"* means a citizens board established pursuant to § 37.1-195 of the Code of Virginia that serves the area in which an adult resides or in which a minor's parent, guardian or legally authorized representative resides. The case management CSB is responsible for case management, liaison with the facility when an individual is admitted to a state training center, and pre-discharge planning. If an individual, the parents of a minor receiving services, or guardian or legally authorized representative chooses to reside in a different locality after discharge from the facility, the community services board serving that locality becomes the case management CSB and works with the original case management CSB, the individual receiving services and the state facility to effect a smooth transition and discharge.

*"Catastrophe"* means an unexpected or imminent change in an individual's living situation or environment that poses a risk of serious physical or emotional harm to that individual.

*"Commissioner"* means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

*"Discharge plan" or "pre-discharge plan"* means a written plan prepared by the case management CSB in consultation with the state facility pursuant to § 37.1-197.1 of the Code of Virginia. This plan is prepared when the individual is admitted to the facility and coordinates planning for aftercare services.

*"Emergency care"* means the placement of an individual with mental retardation in a facility for the mentally retarded when immediate care is necessary due to a catastrophe and no other community alternatives are available. The total number of days that emergency or respite care services, or both, are used shall not exceed 21 consecutive days nor 35 or 75 days in a calendar year. While the facility shall make every effort to implement activities and provide care that assures continuity with the normal living patterns of the individuals served during times of crises, it should be noted that This emergency care is not intended as a means of providing evaluation and program development services, nor is it intended to be used to obtain treatment of medical or behavioral problems.

*"Facility"* means a state institutions, hospitals, or training centers with a rated bed capacity of more than 16 beds and devoted to, or with, facilities for the residential care, treatment and training of mentally retarded persons center for individuals with mental retardation under the supervision and management of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

*"Guardianship"* means:

1. For minors - An adult who is either appointed by the court as a legal guardian of said minor or exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent upon provisional adoption or otherwise by operation of law.

2. For adults - a person appointed by the court who is responsible for the personal affairs of an incapacitated adult under the order of appointment. The responsibilities may include making decisions regarding the individual's support, care, health, safety, habilitation, education and therapeutic treatment. Refer to definition of "incapacitated person" at § 37.1-134.6 of the Code of Virginia.

*"Least restrictive alternative setting"* means that program, facility, or other setting that provides services that are the least intrusive into, and least disruptive of, the individual's life and represent the least departure from normal patterns of living that can be effective in meeting the individual's needs for care and supervision the treatment and conditions of treatment that, separately or in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit and protection from harm (to self and others) based on an individual's needs.

*"Legally authorized representative"* means a person permitted by law or regulations to give informed consent for disclosure of information and give informed consent to treatment on behalf of an individual who lacks the mental capacity to make such decisions.

*"Mental retardation"* means the substantial subaverage general intellectual functioning that originates during the

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developmental period and is associated with impairment in adaptive behavior.

"Respite care" means the placement of an individual with mental retardation in a state facility for the mentally retarded when placement is solely for the purpose of providing temporary care because of medical or other urgent conditions of the caretaking person or to allow the caretaking person or persons to take a vacation. The total number of days that respite or emergency care services, or both, are used is not to exceed 21 consecutive days ~~nor 35 or 75 days in a calendar year. While the facility shall implement activities and provide care that assures continuity with the normal living patterns of the individuals served by respite care programs, it should be noted that~~ Respite care services are not intended as a means of providing evaluations and program development services, nor are they intended to be used to obtain treatment of medical or behavioral problems or both.

"Responsible persons" means relatives, legal guardians, state or local agencies, or other persons who have a legitimate concern for the health, safety, and welfare of mentally retarded individuals who may be in need of temporary care.

## 12 VAC 35-200-20. Respite care.

A. Applications for respite care in state ~~mental retardation facilities shall be processed through the community mental health and mental retardation services board case management CSB.~~ A parent, guardian, or other responsible person ~~legally authorized representative~~ seeking respite care for a ~~mentally retarded person~~ an individual with mental retardation shall apply first to the ~~community mental health and mental retardation services board CSB that serves the area where the applicant, his parent, or guardian, or legally authorized representative resides.~~ If the ~~services board case management CSB~~ determines that respite care services for the applicant are not available in the community, ~~they~~ it shall forward an application to the facility serving the ~~mentally retarded individuals with mental retardation~~ from that geographic section of the state in which the applicant or his parent or guardian, or legally authorized representative is currently residing.

The application ~~must~~ shall include:

1. An application for services;
2. A medical history ~~and current status including a statement that the applicant is or is not suffering from a~~ indicating the presence of any current medical problems as well as the presence of any known communicable disease. In all cases, the application shall include any currently prescribed medications as well as any known medication allergies;
3. A social history and current status;
4. A psychological evaluation that has been performed in the past three years. ~~This requirement may be waived if unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received;~~
5. ~~If the applicant is school aged, A current individualized education plan. This requirement may be waived if for~~

~~school aged applicants unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received;~~

~~6. If the applicant is an adult, A vocational assessment. This requirement may be waived if for adult applicants unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received; and~~

~~7. A statement from the community mental health and mental retardation services board case management CSB that respite care services for the applicant are not available in the community; and~~

~~8. A statement from the case management CSB that the appropriate arrangements will be made to return the individual to the CSB within the time frame required under this regulation.~~

B. Determination of eligibility for respite care services shall be based upon the following criteria:

1. The individual applicant has a primary diagnosis of mental retardation and functions on a level that meets the ~~facilities~~ facility's regular admission criteria;
2. The individual's applicant's needs for care and supervision are such that, in the event of a need for temporary care, respite care services would not be available in a less restrictive ~~environment setting~~; and
3. The facility has appropriate resources to meet the care, ~~and supervision, and activity~~ needs of the applicant.

Within a reasonable time of the receipt of the completed application, the ~~facility's~~ facility director, or his designee, ~~will reply in writing to the person seeking respite care services shall provide written notice of his decision to the case management CSB. This notice shall state the reasons for the decision.~~

*If it is determined that the applicant is not eligible for respite care, the person seeking respite care services may ask for reconsideration of the decision by submitting a written request for such reconsideration to the commissioner. Upon receipt of such request, the commissioner shall notify the facility director and the facility director shall forward the application packet and related information to the commissioner within 48 hours. The commissioner shall also provide an opportunity for the person seeking respite care to submit for consideration any additional information or reasons as to why the admission should be approved. The commissioner shall render a written decision on the request for reconsideration within 10 days of the receipt of such request and notify all involved parties. The commissioner's decision shall be binding.*

~~If it is determined that the applicant is eligible for respite care services, the reasons for this decision shall be stated in writing along with the following information:~~

1. ~~A summary of the facility's procedures pertaining to respite care admissions; and~~
2. ~~The name and phone number of an appropriate staff member to contact to request a respite care admission.~~

~~If it is determined that the services of the facility are not suitable to meet temporary care of the applicant, the reasons for this determination and, if possible, recommendations as to alternative sources for the needed services shall be stated in writing.~~

~~C. Once eligibility has been established, a respite care candidate, parent, guardian or other responsible person or persons may request respite care services for specific dates.~~

~~The facility may agree to provide respite care services as long as the following provisions are made:~~

~~C. Respite care is provided in state facilities under the following conditions:~~

~~1. The length of the respite care stay at the facility does shall not exceed 21 consecutive days or a total limit cannot be exceeded unless expressly authorized by the Commissioner of the Department of Mental Health and Mental Retardation in an individual case, based on his review of any unusual circumstances which may require an extension of this time limit. In no case shall this time limit exceed of 75 days in one a calendar year;~~

~~2. Information on file at the facility is current;~~

~~3. Space and adequate staff coverage are available on a unit with an appropriate peer group for the candidate applicant and suitable resources to meet his care, and supervision and activity needs; and~~

~~4. A physical examination performed by the facility's health service personnel at the time of the respite care admission has determined that the candidate's applicant's health care needs can be met by the facility's resources during the scheduled respite care stay; and.~~

~~5. There is a contract between the parent, guardian or other responsible person or persons and the facility. The contract shall specify the length of the respite care stay, date and time of discharge, and the cost of the care.~~

~~If for any reason a person admitted for respite care services is not discharged at the agreed upon time, the case management CSB shall develop a discharge plans will be arranged through the appropriate community services board plan as provided in §§ 37.1-98 and 37.1-197.1 of the Code of Virginia.~~

~~Respite care is shall not to be used as a mechanism to circumvent the standard admissions procedures as provided in § 37.1-65.1 of the Code of Virginia. No person who is admitted to a training center in response to this chapter shall, during the time of such respite care admission, be eligible for admission to any training center in response to § 37.1-65.1 of the Code of Virginia.~~

### **12 VAC 35-200-30. Emergency care.**

~~A. In the event of a catastrophe necessitating immediate, short-term care for a mentally retarded person an individual with mental retardation, emergency care may be requested by a parent, guardian, or other responsible person legally authorized representative by calling the community mental health and mental retardation services board of the area of the Commonwealth in which the applicant, parent, or guardian~~

~~resides case management CSB. If the community mental health and mental retardation services board case management CSB determines that respite care services for the applicant are not available in the community, the board it may request an emergency admission to the facility serving that geographic area in which the applicant, his parent, or guardian, or legally authorized representative resides.~~

~~The facility case management CSB shall make every effort to obtain the same case information required for respite care admissions, as described in 12 VAC 35-200-20 A, before assuming responsibility for the care of the individual in need of emergency services. However, if the information is not available, this requirement may temporarily be waived if, and only if, arrangements have been made for receipt of the required information within 48 hours of the emergency care admission.~~

~~B. Acceptance for emergency care admissions shall be based upon the following criteria:~~

~~1. A catastrophe has indeed occurred and requiring immediate alternate arrangements must be made immediately to protect the individual's health and safety;~~

~~2. The individual has a primary diagnosis of mental retardation and functions on a level that meets the facility's regular admissions criteria;~~

~~3. All other alternate care resources in the community have been explored and found to be unavailable;~~

~~4. Space is available on a unit with suitable appropriate resources to meet the individual's care and supervision needs;~~

~~5. The facility's health services personnel have determined that the individual's health care needs can be met by the facility's resources; and~~

~~6. The length of the emergency care stay at the facility will not exceed 21 consecutive days or a total of 35 75 days in a calendar year.~~

~~C. Within 24 hours of receiving a request for short-term care which qualifies as emergency in nature care, the facility's facility director, or his designee, will inform the parent, guardian, or other responsible person or persons as to case management CSB whether or not the applicant is eligible for emergency care and whether the facility is able to provide emergency care services.~~

~~If the facility is able to provide emergency care services, arrangements shall be made to effect the admission as soon as possible.~~

~~If the facility is unable to provide emergency care services to an eligible applicant, the reasons for this will be explained to the parent, guardian or other responsible person or persons facility director or designee shall provide written notice of this determination to the case management CSB and may offer to try to obtain emergency care services from another appropriate facility.~~

~~If the facility is unable to provide emergency care services due to lack of space or because of the medical condition of the individual in need of care, the director, or his designee,~~

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~~shall offer to try to obtain emergency care services from another mental retardation facility.~~

If for any reason a person admitted to a facility for emergency care is not discharged at the agreed upon time, ~~discharge plans shall be arranged through the appropriate community services board~~ the case management CSB shall develop a discharge plan as provided in §§ 37.1-98 ~~(e)~~ and 37.1-197.1 of the Code of Virginia.

VA.R. Doc. No. R01-102; Filed September 28, 2001, 11:32 a.m.

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## TITLE 14. INSURANCE

### STATE CORPORATION COMMISSION

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

**Title of Regulation:** 14 VAC 5-200. Rules Governing Long-Term Care Insurance (amending 14 VAC 5-200-20, 14 VAC 5-200-30, 14 VAC 5-200-40, 14 VAC 5-200-70, 14 VAC 5-200-80, 14 VAC 5-200-160, and 14 VAC 5-200-175; adding 14 VAC 5-200-75).

**Statutory Authority:** §§ 12.1-13 and 38.2-5202 of the Code of Virginia.

**Agency Contact:** Bob Wright, Special Projects Coordinator, Life and Health Division, Bureau of Insurance, P.O. Box 1157, Richmond, Virginia 23218, telephone (804) 371-9074 or e-mail [rwright@scc.state.va.us](mailto:rwright@scc.state.va.us).

**Summary:**

*The purpose of the revisions to the rules is to carry out those provisions of Chapter 114 of the 2001 Acts of Assembly that amended § 38.2-5202 of the Code of Virginia to permit the commission to adopt standards regarding the rating practices of insurers to consumers. In addition, these amendments clarify that advertisements must be filed with the commission, clarify the disclosure that must be made in connection with the renewability of long-term care policies, and provide that the Bureau of Insurance may amend the forms attached to these rules.*

*Significant revisions include the following: (i) clarification of the disclosure to be made in connection with policy renewability in 14 VAC 5-200-70 A, (ii) provision of requirements for disclosure of rating practices to the consumer in 14 VAC 5-200-75, and (iii) clarification that advertisements must be filed with the commission.*

AT RICHMOND, SEPTEMBER 21, 2001

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS010248

Ex Parte: In the matter of  
Adopting Revisions to the Rules  
Governing Long-Term Care Insurance

### ORDER TO TAKE NOTICE

WHEREAS, § 12.1-13 of the Code of Virginia provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia;

WHEREAS, § 38.2-5202 of the Code of Virginia also provides that the Commission shall promulgate such regulations regarding long-term care insurance policies and certificates as it deems appropriate;

WHEREAS, the rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code;

WHEREAS, the Bureau of Insurance has submitted to the Commission proposed revisions to Chapter 200 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Long-Term Care Insurance," which amend the rules at 14 VAC 5-200-20, 14 VAC 5-200-30, 14 VAC 5-200-40, 14 VAC 5-200-70, 14 VAC 5-200-75, 14 VAC 5-200-80, 14 VAC 5-200-160, and 14 VAC 5-200-175, add new Forms A and E, and designate current Forms A, B, and C to be Forms B, C, and D, respectively, as well as amend the newly designated Form B;

WHEREAS, the proposed revisions reflect amendments which clarify disclosure requirements in connection with policy renewability, provide disclosure requirements in connection with rating practices, clarify that copies of advertisements must be provided to the Commission, and provide that the Bureau of Insurance may amend the forms attached to these Rules; and

WHEREAS, the Commission is of the opinion that the proposed revisions should be considered for adoption with a proposed effective date of February 1, 2002;

THEREFORE, IT IS ORDERED THAT:

(1) The proposed revisions to the "Rules Governing Long-Term Care Insurance," which amend the rules at 14 VAC 5-200-20, 14 VAC 5-200-30, 14 VAC 5-200-40, 14 VAC 5-200-70, 14 VAC 5-200-75, 14 VAC 5-200-80, 14 VAC 5-200-160, and 14 VAC 5-200-175, add new Forms A and E, and designate current Forms A, B, and C to be Forms B, C, and D, respectively, as well as amend the newly designated Form B, be attached hereto and made a part hereof;

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed revisions shall file such comments or hearing request on or before October 31, 2001, in writing with the Clerk of the Commission, Document Control Center,

P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS010248;

(3) If no written request for a hearing on the proposed revisions is filed on or before October 31, 2001, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions, may adopt the revisions proposed by the Bureau of Insurance;

(4) AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky, who forthwith shall give further notice of the proposed adoption of the revisions to the rules by mailing a copy of this Order, together with a draft of the proposed revisions, to all insurers licensed by the Commission to write long-term care insurance in the Commonwealth of Virginia; and by forwarding a copy of this Order, together with a draft of the proposed revisions, to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations; and

(5) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

**14 VAC 5-200-20. Contracts effective prior to ~~December 1, 2000~~ February 1, 2002.**

Except as otherwise specifically provided, each long-term care policy delivered or issued for delivery in this Commonwealth prior to ~~December 1, 2000~~ February 1, 2002, shall be subject to this chapter as it existed at the time the policy was issued or issued for delivery.

**14 VAC 5-200-30. Applicability and scope.**

Except as otherwise specifically provided, this chapter applies to all long-term care Insurance policies delivered or issued for delivery in this Commonwealth, on or after ~~December 1, 2000~~ February 1, 2002, by insurers, fraternal benefit societies, health services plans, health maintenance organizations, cooperative non-profit life benefit companies or mutual assessment life, accident and sickness insurers.

**14 VAC 5-200-40. Definitions.**

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

*"Applicant"* means in the case of an individual long-term care insurance policy, the person who seeks to contract for such benefits, or in the case of a group long-term care insurance policy, the proposed certificateholder.

*"Certificate"* means any certificate or evidence of coverage issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this Commonwealth.

*"Commission"* means the Virginia State Corporation Commission.

*"Expected loss ratio"* means the ratio of the present value of future premiums to the present value of future benefits over the entire period of the contract.

*"Group long-term care insurance"* means a long-term care insurance policy which complies with § 38.2-3521.1 or § 38.2-3522.1 of the Code of Virginia delivered or issued for delivery in this Commonwealth.

*"Insurer"* means any insurance company, health services plan, fraternal benefit society, health maintenance organization, cooperative non-profit life benefit company, or mutual assessment life, accident and sickness insurer.

*"Long-term care insurance"* means any insurance policy or rider primarily advertised, marketed, offered or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, personal care, mental health or substance abuse services, provided in a setting other than an acute care unit of a hospital. Such term includes group and individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance ~~whether issued by insurers, fraternal benefit societies, health services plans, health maintenance organizations, cooperative non-profit life benefit companies or mutual assessment life, accident and sickness insurers.~~ Such term also includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Notwithstanding any other provision contained herein, any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions of this chapter. Health maintenance organizations, cooperative non-profit life benefit companies and mutual assessment life, accident and sickness insurers shall apply to the commission for approval to provide long-term care insurance prior to issuing this type of coverage.

*"Policy"* means any individual or group policy of insurance, contract, subscriber agreement, certificate, rider or endorsement delivered or issued for delivery in this Commonwealth by an insurer, ~~fraternal benefit society, health services plan, health maintenance organization, cooperative non-profit life benefit company, or mutual assessment life, accident and sickness insurer.~~

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## 14 VAC 5-200-70. Required disclosure provisions.

A. Renewability. Individual long-term care insurance policies that contain renewability provisions shall ~~contain~~ disclose the terms of renewability in a renewability provision.

1. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state ~~the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed that the coverage is guaranteed renewable or noncancellable.~~ This provision shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

2. A long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that the premium rates may change.

B. Riders and endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider or endorsement.

C. Payment of benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

D. Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

E. Other limitations or conditions on eligibility for benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in § 38.2-5205 A of the Code of Virginia shall set forth a description of such limitations or conditions, including any required number of days of confinement prior to receipt of benefits, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions on Eligibility for Benefits."

F. Disclosure of tax consequences. With regard to life insurance policies which provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the

accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

G. Benefit triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this section. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

## 14 VAC 5-200-75. Required disclosure of rating practices to consumer.

A. This section shall apply as follows:

1. Except as provided in subdivision 2 of this subsection, this section applies to any long-term care policy or certificate issued in this Commonwealth on or after August 1, 2002.

2. For certificates issued on or after February 1, 2002, under a group long-term care insurance policy as defined in 14 VAC 5-200-40, which policy was in force on February 1, 2002, the provisions of this section shall apply on the policy anniversary on or after February 1, 2003.

B. Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this section to the applicant no later than at the time of delivery of the policy or certificate.

1. A statement that the policy may be subject to rate increases in the future;

2. An explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option in the event of a premium rate revision;

3. The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

4. A general explanation for applying premium rate or rate schedule adjustments that shall include:

a. A description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.); and

b. The right to a revised premium rate or rate schedule as provided in subdivision 2 of this subsection if the premium rate or rate schedule is changed.



5. a. Information regarding each premium rate increase on this policy form or similar policy forms over the past 10 years for this Commonwealth or any other state that, at a minimum, identifies:

(1) The policy forms for which premium rates have been increased;

(2) The calendar years when the form was available for purchase; and

(3) The amount or percentage of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

b. The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

c. An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long-term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.

d. If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers [on or before the later of the effective date of this section] or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with subdivision 5 a of this subsection.

e. If the acquiring insurer in subdivision 5 d of this subsection files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in subdivision 5 d of this subsection, the acquiring insurer shall make all disclosures required by subdivision 5 of this subsection, including disclosure of the earlier rate increase referenced in subdivision 5 d of this subsection.

C. An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under subdivisions B 1 and 5 of this section. If due to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

D. An insurer shall use Forms B and E dated February 1, 2002, or as later modified by the Bureau of Insurance, to comply with the requirements of subsections A and B of this section.

E. An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 60 days prior to the implementation of the premium rate schedule increase by the

insurer. The notice shall include the information required by subsection B of this section when the rate increase is implemented.

#### **14 VAC 5-200-80. Prohibition of post-claims underwriting.**

A. All applications and enrollment forms for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

B. Requirements for applications or enrollment forms:

1. If an application or enrollment form for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list each medication that has been prescribed.

2. If the medications listed in such application or enrollment form were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition, even if such condition is not otherwise disclosed in the application or enrollment form.

C. Except for policies or certificates which are guaranteed issue:

1. The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application or enrollment form for a long-term care insurance policy or certificate:

Caution: If your answers on this application or enrollment form are incorrect or untrue, [company] has the right to deny benefits or rescind your [policy] [certificate].

The agent and the applicant must sign this section.

2. The following language, or language substantially similar to the following, shall be set out conspicuously, in bold face type, on the long-term care insurance policy or certificate at the time of delivery:

Caution: This policy may not apply when you have a claim! Please read! The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application [enrollment form]. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your [policy] [certificate]. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address].

3. Prior to issuance of a long-term care policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one of the following:

- a. A report of a physical examination;
- b. An assessment of functional capacity;

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# Proposed Regulations

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- c. An attending physician's statement; or
- d. Copies of medical records.

D. A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

E. Every insurer selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated, and shall annually by *March 1* furnish this information to the commission in the format prescribed by the National Association of Insurance Commissioners.

## **14 VAC 5-200-160. Filing requirements for advertising.**

A. Every insurer providing long-term care insurance or benefits in this Commonwealth shall provide a copy of any long-term care insurance advertisement, as *defined in 14 VAC 5-90-30*, intended for use in this Commonwealth whether through written, radio or television or *other electronic medium* to the commission ~~for review or approval by the Commission~~. To the extent *that* it may be required or *permitted under state law the laws of this Commonwealth, the commission may review or review for approval all such advertisements*. In addition, all advertisements shall be retained by the insurer for at least three years from the date the advertisement was first used.

B. The commission may exempt from these requirements any advertising form or material when in the commission's opinion, this requirement may not be reasonably applied.

## **14 VAC 5-200-175. Suitability.**

A. This section shall not apply to life insurance policies that accelerate benefits for long-term care.

B. Every insurer, ~~health care service plan or other entity~~ marketing long-term care insurance (the "issuer") shall:

1. Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;
2. Train its agents in the use of its suitability standards; and
3. Maintain a copy of its suitability standards and make them available for inspection upon request by the commission.

C. 1. To determine whether the applicant meets the standards developed by the issuer, the agent and issuer shall develop procedures that take the following into consideration:

- a. The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;
- b. The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and
- c. The values, benefits and costs of the applicant's

existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

2. The issuer, and, where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in subdivision 1 of this subsection. The efforts shall include presentation to the applicant, at or prior to application, of the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in Form A B dated *February 1, 2002, or as later amended by the Bureau of Insurance*, in not less than 12-point type. The issuer may request the applicant to provide additional information to comply with its suitability standards. A copy of the issuer's personal worksheet shall be filed with the commission for approval as required for a policy pursuant to § 38.2-316 of the Code of Virginia.

3. A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

4. The sale or dissemination outside the company or agency by the issuer or agent of information obtained through the personal worksheet in Form A B is prohibited.

D. The issuer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

E. Agents shall use the suitability standards developed by the issuer in marketing long-term care insurance.

F. At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in Form B C dated *February 1, 2002, or as later amended by the Bureau of Insurance*, in not less than 12-point type.

G. If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to Form G D dated *February 1, 2002, or as later amended by the Bureau of Insurance*. If a letter similar to Form G D is sent, it may be in lieu of a notice of adverse underwriting decision as set forth in § 38.2-610 of the Code of Virginia. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

H. The issuer shall report annually *by June 30* to the commission the total number of applications received from residents of this ~~state~~ *Commonwealth*, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter.

**NOTICE:** The forms used in administering 14 VAC 5-200, Rules Governing Long-Term Care Insurance, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

Long-Term Care Insurance Personal Worksheet, Form A ~~B~~ (eff. ~~12/01/00~~ rev. 02/02).

Things You Should Know Before You Buy Long-Term Care Insurance, Form ~~B~~ C (eff. ~~12/01/00~~ rev. 02/02).

Long-Term Care Insurance Suitability Letter, Form ~~C~~ D (eff. ~~12/01/00~~ rev. 02/02).

Potential Rate Increase Disclosure Form, Form E (eff. 02/02).

**FORMS**

Recission Reporting Form, Form A (eff. 02/02).

**RECISSION REPORTING FORM FOR  
LONG-TERM CARE POLICIES  
FOR THE COMMONWEALTH OF VIRGINIA  
FOR THE REPORTING YEAR 2011**

Company Name: \_\_\_\_\_  
 Company NAIC Number: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_  
 Date: March 1 annually

Instructions: The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.

Policy Form #	Policy and Certificate #	Name of Insured	Date of Policy Issuance	Date of Claims Submitted	Date of Rescission

Detailed \_\_\_\_\_ reason \_\_\_\_\_ for \_\_\_\_\_ rescission.

Signature \_\_\_\_\_  
 Name and Title (please type) \_\_\_\_\_  
 Date \_\_\_\_\_

Form A  
2-1-02

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**Long-Term Care Insurance Personal Worksheet**

People buy long-term care insurance for many reasons. Some don't want to use their own assets to pay for long-term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long-term care insurance may be expensive, and may not be right for everyone.

By state law, the insurance company must fill out part of the information on this worksheet and ask you to fill out the rest to help you and the company decide if you should buy this policy.

**Premium Information**

Policy Form Number(s) \_\_\_\_\_

The premium for the coverage you are thinking about buying considering will be \$ \_\_\_\_\_ per month, or \$ \_\_\_\_\_ per year, [a one-time single premium of \$ \_\_\_\_\_]

**Type of Policy (noncancellable/guaranteed renewable)** \_\_\_\_\_

**The Company's Right to Increase Premiums:** \_\_\_\_\_

[The company cannot raise your rates on this policy.] [The company has a right to increase premiums on this policy form in the future provided it raises rates for all policies in the same class in this Commonwealth.] [Insurers shall use appropriate bracketed statement. Rate guarantees shall not be shown on this form.]

**Rate Increase History**

The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The best rate increase for this policy in this state was in [year], when premiums went up by an average of \_\_\_\_\_%.] [The company has not raised the rates for this policy.] [The company has never raised its rates for any long-term care policy it has sold in this state, Commonwealth, or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state, Commonwealth, or any other state in the last ten years.] [The company has raised its premium rates on this policy form or similar policy forms in the last ten years. Following is a summary of the rate increase(s).]

**Questions Related to Your Income**

How will you pay each year's premium? (Check One)

From my income  From my savings/investments  My family will pay

Have you considered whether you could afford to keep this policy if the premiums went up, for example, by 20%? \_\_\_\_\_

How will you pay each year's premium?  
 From my income  From my Savings/Investments  My Family will pay

**Income**

What is your annual income? (check one)  
 Under \$10,000  \$(10-20,000)  \$(20-30,000)  \$(30-50,000)  Over \$50,000

How do you expect your income to change over the next 10 years? (check one)  
 No change  Increase  Decrease

*If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.*

Will you buy inflation protection? (check one)  Yes  No

If not, have you considered how you will pay for the difference between future costs and your daily benefit amount?  
 From my income  From my Savings/Investments  My family will pay

*The national average annual cost of care in [insert year] was [insert \$ amount], but this figure varies across the country. In ten years the national average annual cost would be about [insert \$ amount] if costs increase 3% annually.*

What elimination period are you considering? Number of days \_\_\_\_\_ Approximate cost \$ \_\_\_\_\_ for that period of care.

How are you planning to pay for your cars during the elimination period? (Check one)

From my income  From my savings/investments  My family will pay

**Questions Related to Your Savings and Investments**

Not counting your home, about how much are all of your assets (your savings and investments) worth (your savings and investments)? (check one)

Under \$20,000  \$20,000-\$30,000  \$30,000-\$50,000  Over \$50,000

How do you expect your assets to change over the next ten years? (check one)

Stay about the same  Increase  Decrease

*If you are buying this policy to protect your assets and your assets are less than \$30,000, you may wish to consider other options for financing your long-term care.*

**Disclosure Statement**

The answers to the questions above describe my financial situation.  I choose not to complete this information my financial situation.

The answers to the questions above describe my financial situation, or

I choose not to complete this information (check one)

I acknowledge that the company and/or its agent (below) has reviewed this form with me including the premium, premium rate, increase history, and potential for premium increases in the future. For direct mail situations, use the following: I acknowledge that I have reviewed this form including the premium, premium rate history and potential for premium increases in the future. I understand the above disclosures. I understand that the rates for this policy may increase in the future. (This box must be checked).

Signed: \_\_\_\_\_ (Applicant) \_\_\_\_\_ (Date)

I explained to the applicant the importance of completing this information.

Signed: \_\_\_\_\_ (Agent) \_\_\_\_\_ (Date)

Agent's Printed Name: \_\_\_\_\_

[Note: In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My agent has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application.]

**Things You Should Know Before You Buy Long-Term Care Insurance**

Long-Term  
Care  
Insurance

- A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.
- [You should **not** buy this insurance policy unless you can afford to pay the premiums every year.] [Remember that the company can increase premiums in the future.]
- The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.

Medicare

- Medicare does **not** pay for most long-term care.

Medicaid

- Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should **not** buy this policy if you are now eligible for Medicaid.
- Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.

- When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.

- Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

Shopper's  
Guide

- Make sure the insurance company or agent gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.

Counseling

- Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

Signed: \_\_\_\_\_  
(Applicant)

(Date)

The company may contact you to verify your answers.

Form AB, Page 4 of 4  
2-1-02

Form B.C.  
2-1-02

**Long-Term Care Insurance Suitability Letter**

Dear [Applicant]:

Your recent application for long-term care insurance included a "personal worksheet," which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet "Shopper's Guide to Long-Term Care Insurance" and the page titled "Things You Should Know Before Buying Long-Term Care Insurance." Your state insurance department also has information about long-term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

*Please check one box and return in the enclosed envelope.*

- Yes**, [although my worksheet indicates that long-term care insurance may not be a suitable purchase.] I wish to purchase this coverage. Please resume review of my application.
- No**. I have decided not to buy a policy at this time.

APPLICANT'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_  
*Please return to [issuer] at [address] by [date].*

Form 62D  
 12-1-00

**Instructions:**

This form provides information to the applicant regarding premium rate schedules, rate schedule adjustments, potential rate revisions, and policyholder options in the event of a rate increase.

Insurers shall provide all of the following information to the applicant:

**Long-Term Care Insurance  
 Potential Rate Increase Disclosure Form**

1. **Premium Rate** [Premium Rate Schedules]. [Premium rate] [Premium rate schedule] that [is/are] applicable to you and that will be in effect until a request is made and [filed/approved] for an increase [is/are] [on the application](\$ \_\_\_\_\_)
2. **The [premium] [premium rate schedule] for this policy [will be shown on the schedule page off [will be attached to your policy.**
3. **Rate Schedule Adjustments:**

The company will provide a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.) (fill in the blank): \_\_\_\_\_

4. **Potential Rate Revisions:**

**This policy is Guaranteed Renewable.** This means that the rates for this product may be increased in the future. Your rates can NOT be increased due to your increasing age or declining health, but your rates may go up based on the experience of all policyholders with a policy similar to yours.

If you receive a premium rate or premium rate schedule increase in the future, you will be notified of the new premium amount and you will be able to exercise at least one of the following options:

- Pay the increased premium and continue your policy in force as is.
- Reduce your policy benefits to a level such that your premiums will not increase. (Subject to state law minimum standards.)
- Exercise your nonforfeiture option if purchased. (This option is available for purchase for an additional premium.)
- Exercise your contingent nonforfeiture rights. \* (This option may be available if you do not purchase a separate nonforfeiture option.)

*Turn the Page*

**\* Contingent Nonforfeiture**

If the premium rate for your policy goes up in the future and you didn't buy a nonforfeiture option, you may be eligible for contingent nonforfeiture. Here's how to tell if you are eligible:

You will keep some long-term care insurance coverage, if:

- Your premium after the increase exceeds your original premium by the percentage shown for more) in the following table; and
- You lapse (not pay more premiums) within 120 days of the increase.

The amount of coverage (i.e., new lifetime maximum benefit amount) you will keep will equal the total amount of premiums you've paid since your policy was first issued, if you have already received benefits under the policy, so that the remaining maximum benefit amount is less than the total amount of premiums you've paid; the amount of coverage will be that remaining amount.

Except for this reduced lifetime maximum benefit amount, all other policy benefits will remain at the levels attained at the time of the lapse and will not increase thereafter.

Should you choose this Contingent Nonforfeiture option, your policy, with this reduced maximum benefit amount, will be considered "paid-up" with no further premiums due.

**Example:**

- You bought the policy at age 65 and paid the \$1,000 annual premium for 10 years, so you have paid a total of \$10,000 in premium.
- In the eleventh year, you receive a rate increase of 50%, or \$500 for a new annual premium of \$1,500, and you decide to lapse the policy (not pay any more premiums).
- Your "paid-up" policy benefits are \$10,000 (provided you have a least \$10,000 of benefits remaining under your policy.)

Turn the Page

Issue Age	Contingent Nonforfeiture Cumulative Premium Increase over Initial Premium That qualifies for Contingent Nonforfeiture
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	65%
62	62%
63	59%
64	54%
65	50%
66	48%
67	45%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

(Percentage increase is cumulative from date of original issue. It does NOT represent a one-time increase.)

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# Proposed Regulations

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHARMACY

**Title of Regulation:** 18 VAC 110-20. Regulations Governing the Practice of Pharmacy (amending 18 VAC 110-20-20).

**Statutory Authority:** §§ 54.1-2400 and 54.1-3307.2 of the Code of Virginia.

**Public Hearing Date:** November 8, 2001 - 9 a.m.

Public comments may be submitted until December 21, 2001.

(See Calendar of Events section for additional information)

**Agency Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, Southern States Building, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911.

**Basis:** Section 54.1-2400 of the Code of Virginia authorizes the board to promulgate reasonable regulations that are necessary to administer effectively the regulatory system. The specific statutory mandate for pilot projects in pharmacy is found in § 54.1-3307.2.

**Purpose:** Section 54.1-3307.2 of the Code of Virginia is specific about the content of the application for approval of a pilot project to include safety issues, potential benefit to the public, promotion of technical or scientific advances, compliance with prescriber instructions, potential for diversion, impact on costs, means of monitoring and providing quality assurance, and the reporting of outcomes to the board. The process for review and approval is through an informal conference committee, which has the authority to make a case decision on each individual application and to set certain terms and conditions for approval of a pilot project. Approval is for a finite period of time, with requirements for review of outcomes and any additional information necessary to determine renewal of approval. The applicant has the right to appeal the decision of a committee before the board of a panel of the board in accordance with the Administrative Process Act. The law requires that the application be submitted on a form provided by the board to be accompanied by a fee to be determined.

Since the law is specific about the information and data to be submitted with an application, and the approval process is a case decision on the merits and content of each application, the board determined that the fees needed to be set in regulation along with the proposed application and renewal process. Fees set by regulation are modest and consistent with other fees charged to entities regulated under the board.

Through the informal conference process, the board will have the opportunity to review a proposed project, determine which provisions of law or regulation would need to be waived, evaluate its merits and safeguards, and set certain conditions for implementation and outcome in an order that would be signed by the board and the applicant. Requirements of law and regulation for approval of a pilot program or project are

necessary and sufficient to address concerns about patient safety and the risks of drug diversion.

**Substance:** 18 VAC 110-20-20 is being amended to comply with a statutory mandate for the board to provide regulations for the implementation of pilot projects or innovative programs in pharmacy which are not specifically authorized by the Code of Virginia or board regulations. The law requires any person who proposes to use an innovative process or procedure related to the dispensing of drugs or devices that would not be in compliance with law or regulation to apply to the Board of Pharmacy for approval. The law does not permit the board to expand the current scope of practice for pharmacists nor shall a pilot project be allowed to interfere with dispensing of drugs in accordance with instructions from prescribers.

**Issues:** There are numerous advantages to the public of pilot projects, which will often serve to make pharmacy services more accessible and economical. If the necessary safeguards have been put in place, a particular law or regulation may be waived without undue risk of harm to the patient or of diversion of controlled substances. In addition to the quality control measures and outcome data outlined by an entity in its application, the board may impose additional conditions or seek additional information prior to granting approval.

Individual businesses may enjoy substantial benefits from a pilot project. For example, the Kaiser Permanente Infusion Pharmacy in Northern Virginia found it very difficult and costly to comply with the requirement that a prescription could only be delivered to the end user/patient. Many of their prescriptions were for infusion products that must be constantly refrigerated, so delivery to a mailbox or residence with no one at home was too risky. In seeking to conduct a pilot project, Kaiser had to provide a plan for delivery to an alternate pharmacy near the patient's home and agree to monthly audits to ensure that the drugs are getting to the correct patients as well as delivery logs and other measures designed to ensure drug safety and efficacy. Not only will patients benefit by being able to pick up infusion products close to their home, but Kaiser will benefit by a less costly, cumbersome method of delivery and less waste of products that have been compromised and must be destroyed.

There are no discernible advantages or disadvantages to the agency or the Commonwealth. The fee structure set in regulation is intended to ensure that costs related to review and approval of pilot projects are borne by the applicants. Agencies of the Commonwealth that offer pharmacy services may take advantage of the pilot project process to institute an innovative program.

**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 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with



the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. In accordance with legislation passed by the 2000 General Assembly, the proposed amendment establishes a process for the review and approval by the Board of Pharmacy of innovative programs (pilot projects) for which some waiver of law or regulation would be required. These programs may include new processes or procedures that relate to the form or format of prescriptions, the manner of transmitting prescriptions or prescription information, the manner of required recordkeeping, the use of unlicensed ancillary personnel in the dispensing process, and the use of new technologies in the dispensing process. The board is not authorized by the legislation, however, to expand the current scope of practice for pharmacists or to approve any program that would interfere with the dispensing of drugs in accordance with instructions from prescribers.

Estimated economic impact. The proposed regulatory provision provides an incentive for businesses to think of new and creative ways to provide pharmacy services. The benefits of this proposal include the potential implementation of programs that may make pharmacy services more accessible and economical. The review and approval process ensures that the necessary safeguards are in place to waive a particular law or regulation without negatively affecting the quality of care for patients or increasing opportunities for the diversion of controlled substances. There are no anticipated additional costs for the Board of Pharmacy, since all costs incurred in the review and approval of programs will be borne by the applicant. Since development and application for the approval of a pilot program is voluntary, it is reasonable to expect that businesses will not pursue this unless they perceive the potential benefits to be higher than the associated costs. While it is not possible to provide a measurement of the net economic impact of the proposed regulatory action without evaluating specific pilot program proposals, it is unlikely that the costs associated with the approval of any pharmacy pilot programs will outweigh the benefits to applicants and to consumers of pharmacy services.

Businesses and entities affected. The proposed amendment could potentially affect any of the 1,500 pharmacies currently licensed in Virginia. During the first three months of the emergency regulation, one pharmacy applied and received approval for a pilot program.

Localities particularly affected. The proposed amendment will not uniquely affect any particular localities.

Projected impact on employment. The approval of pilot projects that increase the use of certain personnel or make use of technological advances could potentially have an impact on employment in Virginia. However, the direction and magnitude of this impact is not measurable without evaluating specific proposals.

Effects on the use and value of private property. The approval of pilot projects that decrease the costs associated with the provision of pharmacy services could potentially increase the

value of those businesses in that field. However, the magnitude of this effect is not measurable without evaluating specific proposals.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Pharmacy concurs with the analysis of the Department of Planning and Budget for 18 VAC 110-20-10 et seq.

Summary:

*The proposed amendments comply with Chapter 876 of the 2000 Acts of the Assembly requiring the board to promulgate regulations for approval of innovative programs (pilot projects) in pharmacy for which some waiver of law or regulation would be necessary. The proposed regulations will replace emergency regulations that are currently in effect.*

**18 VAC 110-20-20. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Fee for initial pharmacist licensure.

1. The application fee for a pharmacist license shall be \$50.
2. The fees for taking all required examinations shall be paid directly to the examination service as specified by the board.
3. The application fee for a person whose license has been revoked or suspended indefinitely shall be \$300.

C. Renewal of pharmacist license.

1. The annual fee for renewal of a pharmacist license shall be \$50.
2. The annual fee for renewal of an inactive pharmacist license shall be \$35.
3. If a pharmacist fails to renew his license within the Commonwealth by the renewal date, he must pay the back renewal fee and a \$25 late fee within 60 days of expiration.
4. Failure to renew a pharmacist license within 60 days following expiration shall cause the license to lapse and shall require the submission of a reinstatement application, payment of all unpaid renewal fees, and a delinquent fee of \$50.

D. Other licenses or permits.

1. The following fees shall be required upon submission of a new facility application, change of ownership of an existing facility, or annual renewal:

a. Pharmacy permit	\$200
b. Permitted physician to dispense drugs	\$200
c. Nonrestricted manufacturing permit	\$200
d. Restricted manufacturing permit	\$150
e. Wholesale distributor license	\$200
f. Warehouser permit	\$200

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# Proposed Regulations

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- g. Medical equipment supplier permit \$150
- h. Licensed humane society permit \$10

2. The following fees shall be required for facility changes:

- a. Application for a change of the pharmacist-in-charge \$25
- b. Application for a change of location or a remodeling which requires an inspection \$100

3. The following fees shall be required for late renewals or reinstatement.

- a. If a licensee fails to renew a required license or permit prior to the expiration date, a \$25 late fee shall be assessed.
- b. If a required license or permit is not renewed within 60 days after its expiration, the license or permit shall lapse, and continued practice or operation of business with a lapsed license or permit shall be illegal. Thereafter, reinstatement shall be at the discretion of the board upon submission of an application accompanied by all unpaid renewal fees and a delinquent fee of \$50.

E. Controlled substances registration.

- 1. The annual fee for a controlled substances registration as required by § 54.1-3422 of the Code of Virginia shall be \$20.
- 2. If a registration is not renewed within 60 days of the expiration date, the back renewal fee and a \$10 late fee shall be paid prior to renewal.
- 3. If a controlled substance registration has been allowed to lapse for more than 60 days, all back renewal fees and a \$25 delinquent fee must be paid before a current registration will be issued. Engaging in activities requiring a controlled substance registration without holding a current registration is illegal and may subject the registrant to disciplinary action by the board. Reinstatement of a lapsed registration is at the discretion of the board and may be granted by the executive director of the board upon completion of an application and payment of all fees.

F. Other fees.

- 1. A request for a duplicate wall certificate shall be accompanied by a fee of \$25.
- 2. The fee for a returned check shall be \$15.
- 3. The fee for board approval of an individual CE program is \$100.
- 4. The fee for board approval of a robotic pharmacy system shall be \$150.
- 5. The fee for a board-required inspection of a robotic pharmacy system shall be \$150.

G. Approval of new process or procedure in pharmacy.

- 1. The fee for filing an application for board review of a new process, procedure or pilot project in pharmacy pursuant to § 54.1-3407.2 of the Code of Virginia shall be \$250. The

*initial application shall specify each pharmacy location in which the pilot is to be implemented.*

*2. The fee for an inspection of a pilot process or procedure, if required by the informal conference committee, shall be \$150 per location.*

*3. If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall be paid by the applicant.*

*4. The fee for a change in the name of the pharmacist responsible for the pilot program shall be \$25.*

*5. Continued approval.*

*a. In the initial order granting approval, the informal conference committee shall also set an approval period with a schedule for submission of reports and outcome data. The frequency for submission of required reports shall not exceed four times per year.*

*b. The committee shall determine the appropriate fee for continued approval, which shall be based on the requirements for review and monitoring but which shall not exceed \$200 per approval period.*

**NOTICE:** The forms used in administering 18 VAC 110-20, Regulations Governing the Practice of Pharmacy, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

## FORMS

- Application for Registration as a Pharmacy Intern (rev. 12/98).
- Affidavit of Practical Experience, Pharmacy Intern (rev. 12/98).
- Application for Licensure as a Pharmacist by Examination (rev. 12/98).
- Application to Reactivate Pharmacist License (rev. 12/98).
- Application for Approval of a Continuing Education Program (rev. 3/99).
- Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. 10/00).
- Application for License to Dispense Drugs (permitted physician) (rev. 11/98).
- Application for a Pharmacy Permit (rev. 4/00).
- Application for a Non-Resident Pharmacy Registration (rev. 12/98).
- Application for a Permit as a Medical Equipment Supplier (rev. 3/99).
- Application for a Permit as a Restricted Manufacturer (rev. 3/99).
- Application for a Permit as a Non-Restricted Manufacturer (rev. 3/99).
- Application for a Permit as a Warehouser (rev. 3/99).

Application for a License as a Wholesale Distributor (rev. 4/00).

Application for a Non-Resident Wholesale Distributor Registration (rev. 3/99).

Application for a Controlled Substances Registration Certificate (rev. 1/99).

Application for Controlled Substances Registration Certificate for Optometrists (eff. 12/98).

License Renewal Notice and Application for Pharmacists (rev. 11/00).

License Renewal Notice and Application for Facilities (rev. 11/00).

Application to Reinstate a Pharmacist License (rev. 3/99).

Application for a Permit as a Humane Society (rev. 3/99).

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. 12/98).

Closing of a Pharmacy (rev. 3/99).

Application for Approval of a Robotic Pharmacy System (8/00).

Notice of Inspection Fee Due for Approval of Robotic Pharmacy System (8/00).

*Application for Approval of an Innovative (Pilot) Program (eff. 1/01).*

Pilot Program Application  
Page 2



**COMMONWEALTH OF VIRGINIA**  
**Board of Pharmacy**

6606 W. Broad Street, 4th Floor  
Richmond, Virginia 23230

(804) 662-9911 (Tel)  
(804) 662-9313 (Fax)

**APPLICATION FOR APPROVAL OF AN INNOVATIVE (PILOT) PROGRAM**

Application Fee (non-refundable): \$250.00

The required fee must accompany the application. Make check payable to "Treasurer of Virginia".

Applicant—Please provide the information requested below. (Print or Type) Use full name not initials

Title of Pilot Program	
Name of Pharmacy where pilot program is to be conducted*	Pharmacy Permit Number 0201-
Street Address	Area Code and Telephone Number
City	State                      Zip Code
Name of Virginia Licensed Pharmacist Responsible for Pilot Program**	Virginia License Number of Pharmacist Responsible for Pilot Program

Please attach the following additional information and label as indicated. Please write this in lay terms which can be easily understood by non-pharmacists and persons not familiar with computers or other technology to be used in the practice of pharmacy:

**LABEL**                      **DESCRIPTION**

- Attachment 1:** A brief description, narrative, or summary of the new process or procedure for which approval is being sought.
- Attachment 2:** A listing of the laws or regulations for which waivers are being requested through approval of this program and a brief explanation why each waiver is needed.
- Attachment 3:** An explanation as to the rationale for the program, i.e. benefit to the consumer or industry.
- Attachment 4:** A summary of the outcomes which will be measured, method for measuring, and timelines for measurements, including requested duration of the approval.
- Attachment 5:** Any measures which will be taken to ensure security of drug product and confidentiality information in the execution of the pilot program, if applicable.
- Attachment 6:** Disclosure of any financial interests, if applicable.
- Attachment 7:** Any additional supporting information, such as technical or other descriptive literature describing equipment or a process, or information from another state where this process or procedure has been tested, etc.
- Attachment 8:** List of any additional pharmacies, permit number, corresponding responsible pharmacists and their license numbers if requesting that the pilot program be conducted at multiple sites.

<b>For Board Use Only</b>	
Date Received	Program Number Assigned
Renewed Date	Pending Number
Termination Date	

\*If requesting that the pilot program be conducted at more than one pharmacy, provide a list of additional pharmacies and responsible pharmacists as Attachment 8.  
\*\*Responsible pharmacist need not be the PIC of the pharmacy, but should be the pharmacist who will most closely oversee and supervise the operation of the pilot program.

I attest that the information furnished on this application is true and correct to the best of my knowledge.

Signature of Applicant \_\_\_\_\_

Date \_\_\_\_\_

revised January 2001

revised January 2001

## BOARD OF PSYCHOLOGY

**Title of Regulation:** 18 VAC 125-30. Regulations Governing the Certification of Sex Offender Treatment Providers (amending 18 VAC 125-30-10 through 18 VAC 125-30-50, 18 VAC 125-30-80, and 18 VAC 125-30-90; repealing 18 VAC 125-30-60).

**Statutory Authority:** §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

**Public Hearing Date:** October 26, 2001 - 4 p.m.

Public comments may be submitted until December 21, 2001.

(See Calendar of Events section for additional information)

**Agency Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913 and FAX (804) 662-9943.

**Basis:** Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

Section 54.1-3605 mandates that the board promulgate regulations for the voluntary certification of individuals who are exempt from certification under § 54.1-3610 and for the mandatory certification of individuals who are not otherwise licensed.

**Purpose:** The Board of Psychology is charged with issuing certificates and regulating the practice of sex offender treatment providers. As the regulating agency, the board has the duty to protect the public by establishing qualifications and requirements for certification that are necessary to ensure the competence and integrity of certificate holders and by taking disciplinary action for violations to applicable law and regulations. Regulations are the mechanism by which the board sets forth qualifications and requirements for certification, and standards of professional conduct that provide the basis for disciplinary action. The board considers the problems the regulations are intended to address, and utilizes professional expertise, review of requirements of other states and national associations, historical information and public comment to determine minimal requirements that will ensure competency of its licensees and protect the public health, safety and welfare.

Although the board has determined that the regulations are generally clear and easily understandable, it has identified several areas where unnecessary or outdated language needs to be rescinded, and several areas where new language is needed for clarification or improved consistency with its other regulations.

**Substance:** The board is recommending amendments to its regulations for the certification of sex offender treatment providers in order to update and clarify the regulations. The requirement of 50 clock hours of training would be redistributed among the five subject areas in recognition of the fact that some subjects are more essential and courses more available than others. Amendments to fees are

recommended for consistency with the department's *Principles for Fee Development*, which have already been applied and are in effect for other professions regulated under the board.

The board has proposed to remove all references to the outdated waiver of the supervision requirement and to include language to specify that no supervision will be accepted without prior registration of the supervision contract. However, the board will propose accepting verification of experience completed during the effective period of prior regulations, provided it met those regulations.

**Issues:** Since the public often relies on the professional judgment of a sex offender treatment provider to evaluate the ability of an offender to live and function safely in the community, the redistribution of required coursework to provide a greater emphasis on sex offender assessment and treatment interventions will be advantageous to the public. There are no disadvantages to the public or to individual businesses that are not affected by these regulations.

There are no discernible advantages or disadvantages to the agency or the Commonwealth. The fee structure set in regulation is intended to ensure that costs related to specific activities are borne by the applicants or certificate holders. Agencies of the Commonwealth that offer sex offender assessment and treatment may benefit from certified providers who have more specific training for their job.

**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 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. Based on its periodic review of regulations, the Board of Psychology proposes the following changes to the Regulations Governing the Certification of Sex Offender Treatment Providers.

1. Revising the fee schedule to make it consistent with other professions regulated by the board:
  - a. The fee to add or change registration of a supervisor will decrease from \$50 to \$25.
  - b. The penalty for late renewal of a certificate is reduced from \$50 to \$25 (approximately 35% of the annual renewal fee).
  - c. Reinstatement of a lapsed certificate (a certificate not renewed within one renewal cycle) will increase from \$50 to \$125.

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# Proposed Regulations

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d. Reinstatement of a revoked or suspended certificate will cost \$500.

e. Duplicate certificates will cost \$5 instead of \$10.

f. The returned check fee will increase from \$15 to \$25.

2. Adding a requirement that all three reference letters (required in the application package) be from licensed health care professionals;

3. Clarifying that supervised experience obtained in Virginia without prior written board approval will not be accepted for certification;

4. Redistributing the required 50 clock hours of training among the five subject areas;

5. Requiring reinstatement after a certificate has been lapsed for one year instead of two; and

6. Several editorial and other minor changes including changing the name of the Board of Counseling as it is now in statute, removing references to an outdated waiver of the supervision requirement, and requiring certificate holders to notify the board in writing of a change of address within 60 days.

Estimated economic impact.

**Fees.** The proposed fee changes are intended to represent more accurately the actual cost of services provided. The fees for generic services, such as duplicate certificates and returned checks, are set uniformly across all professions under the Board of Psychology and will provide consistency and equity for members. The proposed late fees and reinstatement fees are set in accordance with the *Principles for Fee Development*, which standardizes the late renewal and reinstatement processes for all categories of licensure and certification.<sup>1</sup>

In addition to charging individuals for the full costs incurred on their behalf, which is both more efficient and equitable, the proposed fees will provide consistency across professions regulated by the board, and should have a positive net economic benefit.

**Education and Supervised Experience Requirements.** The proposed regulation includes language to specify that supervised experience obtained without prior written board approval will not be accepted for certification. Similar requirements exist for other professions licensed by the Board of Psychology and a "grandfather" clause is included in the regulation that allows supervised experience obtained prior to the effective date of the proposed regulation to be accepted if it met the requirements in effect at that time.

Applicants for sex offender treatment provider certification must submit documentation of 10 clock hours of training in each of five subject areas. The proposed regulation maintains the 50 clock hours of required training, but redistributes those

hours among the five subject areas to provide a greater emphasis on sex offender assessment and treatment interventions. However, since there is no evidence available on the correlation between coursework and effective treatment, it is not possible to assess the impact of this change on the quality of sex offender treatment provided in Virginia.

**Businesses and entities affected.** The proposed changes to this regulation will affect all certified sex offender treatment providers and all new applicants. Currently, there are approximately 317 certificate holders in Virginia.

**Localities particularly affected.** The proposed changes are not expected to affect any particular localities as they are applicable statewide.

**Projected impact on employment.** The proposed changes to this regulation are not expected to have any significant impact on employment in Virginia.

**Effects on the use and value of private property.** The proposed changes to this regulation are not expected to have any significant effect on the use and value of private property in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Psychology concurs with the analysis of the Department of Planning and Budget for 18 VAC 125-30-10 et seq.

Summary:

*The proposed amendments make the miscellaneous fees consistent with other professions regulated by the board, provide clarification about supervised experience required prior to certification, and revise reinstatement requirements. The number of clock hours of required training remains at 50, but more of those hours must be in subjects specific to sex offender assessment and treatment interventions.*

**18 VAC 125-30-10. Definitions.**

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

*"Ancillary services"* means training in anger management, stress management, assertiveness, social skills, substance abuse avoidance and sex education as part of an identified sex offender treatment provider program.

*"Applicant"* means an individual who has submitted a completed application with documentation and the appropriate fees to be examined for certification as a sex offender treatment provider.

*"Assessment"* means using specific techniques of evaluation and measurement to collect facts related to sexually abusive thoughts and behaviors contributing to sexual offense.

*"Board"* means the Virginia Board of Psychology.

*"Certified sex offender treatment provider"* means a person who is certified to provide treatment to sex offenders and who provides such services in accordance with the provisions of §§ 54.1-2924.1, 54.1-3005, 54.1-3505, 54.1-3609, 54.1-3610,

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<sup>1</sup> This document, dated May 20, 1999, outlines the principles by which DHP sets its licensing fees. The principles are intended to provide structure, consistency, and equity for all the professionals regulated within the department.

54.1-3611, and 54.1-3705 of the Code of Virginia and the regulations promulgated pursuant to these provisions.

"Competency area" means an area in which a person possesses knowledge and skills and the ability to apply them in the clinical setting.

"Sex offender" means (i) any person who has been adjudicated or convicted of a sex offense or has a founded child sexual abuse status by the Department of Social Services; (ii) any person for whom any court has found sufficient evidence without specific finding of guilt of committing a felony or misdemeanor which may be reasonably inferred to be sexually motivated; or (iii) any person who admits to or acknowledges behavior which would result in adjudication, conviction, or a founded child sexual abuse status.

"Sex offense" means behavior in violation of any of the following statutes in the Code of Virginia: § 18.2-48 in part (abduction of any person with intent to defile such person), § 18.2-60.3 in part (includes only those instances in which sexual motivation can be reasonably inferred), § 18.2-61, § 18.2-63, § 18.2-64.1, § 18.2-67.1, § 18.2-67.2, § 18.2-67.2:1, § 18.2-67.3, § 18.2-67.4, § 18.2-67.5, § 18.2-130 in part (includes only those instances in which sexual motivation can be reasonable inferred), subsection A of § 18.2-361 in part "If any person carnally knows in any manner any brute animal" and subsection B § 18.2-361 in its entirety, § 18.2-366, § 18.2-370, § 18.2-370.1, § 18.2-374.1 (not to include plethysmographic testing materials in the possession of qualified mental health professionals or technicians), § 18.2-387.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular documented individual consultation, guidance and instruction with respect to the skills and competencies of the person providing sex offender treatment services.

"Supervisor" means an individual who assumes full responsibility for the education and training activities of a person as it relates to sex offender treatment and provides the supervision required by such a person. The supervisor ~~must~~ shall be a certified sex offender treatment provider and licensed by the Board of Medicine; Nursing; ~~Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Professionals;~~ Counseling, Psychology or Social Work.

"Treatment" means therapeutic intervention to change sexually abusive thoughts and behaviors which specifically addresses the occurrence and dynamics of sexual behavior and utilizes specific strategies to promote change.

**18 VAC 125-30-20. Fees required by the board.**

A. The board has established the following fees applicable to the certification of sex offender treatment providers:

Registration of supervision	\$50
Add or change supervisor	\$25
Application processing and initial certification fee	\$90

Certification renewal	\$75
Duplicate certificate	<del>\$40</del> \$5
Late renewal	\$25
Reinstatement <del>fee of an expired certificate</del>	<del>\$50</del> \$125
Replacement of or additional wall certificate	\$15
Returned check	<del>\$15</del> \$25
Reinstatement following revocation or suspension	\$500

B. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the Board of Psychology. All fees are nonrefundable.

**18 VAC 125-30-30. Prerequisites to certification.**

~~A. A candidate for certification as a sex offender treatment provider shall meet all the requirements of this chapter.~~

~~B.~~ A. Every applicant for certification by the board shall:

1. Meet the educational requirements prescribed in 18 VAC 125-30-40;
2. Meet the experience requirements prescribed in 18 VAC 125-30-50 and ~~18 VAC 125-30-60~~;
3. Submit to the executive director of the board:
  - a. A completed application form;
  - b. Documented evidence of having fulfilled the education, experience and supervision set forth in 18 VAC 125-30-40, and 18 VAC 125-30-50, ~~and 18 VAC 125-30-60~~; and
  - c. Reference letters from three health care professionals familiar with and attesting to the applicant's skills and experience.

~~C.~~ B. The board may certify by endorsement an individual who can document current certification as a sex offender treatment provider in good standing obtained by standards substantially equivalent to those outlined in this chapter as verified by an out-of-state certifying agency on a board-approved form.

**18 VAC 125-30-40. Educational requirements.**

An applicant for certification as a sex offender treatment provider shall:

1. Document completion of one of the following degrees:
  - a. A master's or doctoral degree in social work, psychology, counseling, or nursing from a regionally accredited university;
  - b. The degree of Doctor of Medicine or Doctor of Osteopathic Medicine from an institution that is approved by an accrediting agency recognized by the Virginia Board of Medicine; or
  - c. A comparable degree acceptable to the board.

Graduates of institutions ~~which~~ that are not accredited by an acceptable accrediting agency shall establish the equivalency of their education to the educational

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# Proposed Regulations

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requirements of the Virginia Board of Social Work, Psychology, ~~Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Professionals~~; *Counseling*, Nursing or Medicine.

2. Provide documentation of 50 clock hours of training acceptable to the board in the following areas, with ~~at least 40~~ 15 clock hours in each area *identified in subdivisions 2 a and b of this section*, 10 clock hours in each area *identified in subdivision 2 c of this section*, and five clock hours in each area *identified in subdivisions 2 d and e of this section*:

- ~~a. Etiology/developmental issues of sex offense behavior;~~
- ~~b. a. Sex offender assessment;~~
- ~~e. b. Sex offender treatment interventions;~~
- c. Etiology/developmental issues of sex offense behavior;*
- d. Criminal justice and legal issues related to sexual offending; and*
- e. Program evaluation, treatment efficacy and issues related to recidivism of sex offenders.*

## **18 VAC 125-30-50. Experience requirements; supervision.**

A. An applicant for certification as a sex offender treatment provider shall provide documentation of having 2,000 hours of post-degree clinical experience in the delivery of clinical assessment/treatment services. At least 200 hours of this experience must be face-to-face treatment and assessment with sex offender clients.

## **~~18 VAC 125-30-60. Supervision requirement.~~**

~~A. Hours. After August 6, 1998, The experience set forth in 18 VAC 125-30-50 shall also include a minimum of 100 hours of face-to-face supervision within the 2,000 hours experience with a minimum of six hours per month. A ~~maximum~~ minimum of 50 hours of this shall be in individual face-to-face supervision. Face-to-face supervision may be obtained in a group setting including up to shall include no more than six trainees in a group.~~

~~B. Supervised experience obtained in Virginia without prior written board approval shall not be accepted toward certification. Candidates shall not begin the experience until after completion of the required degree as set forth in 18 VAC 125-30-40. An individual who proposes to obtain supervised post-degree experience in Virginia shall, prior to the onset of such supervision, submit a supervisory contract along with the application package and pay the registration of supervision fee set forth in 18 VAC 125-30-20.~~

~~B. C. The supervisor.~~

1. The supervisor shall assume responsibility for the professional activities of the applicant.
2. The supervisor shall not provide supervision for activities for which the prospective applicant has not had appropriate education.
3. The supervisor shall provide supervision only for those sex offender treatment services which he is qualified to render.

4. At the time of formal application for certification, the board approved supervisor shall document for the board the applicant's total hours of supervision, length of work experience, competence in sex offender treatment and any needs for additional supervision or training.

~~G. D. Registration of supervision.~~

1. ~~Individuals who wish~~ In order to register supervision with the board, *individuals* shall submit in one package:

- a. A completed supervisory contract;
- b. The registration fee prescribed in 18 VAC 125-30-20; and
- c. Official graduate transcript.

2. The board may waive the registration requirement for individuals who have obtained at least five years documented work experience in sex offender treatment in another jurisdiction.

*E. Supervised experience obtained prior to [effective date of these regulations] may be acceptable if they met the board's requirements that were in effect at the time the supervision was rendered.*

## **18 VAC 125-30-80. Annual renewal of certificate.**

A. Every certificate issued by the board shall expire on June 30 of each year.

B. Along with the renewal application, the certified sex offender treatment provider shall submit the renewal fee prescribed in 18 VAC 125-30-20.

C. *Certificate holders shall notify the board in writing of a change of address within 60 days.* Failure to receive a renewal notice and application form(s) shall not excuse the certified sex offender treatment provider from the renewal requirement.

## **18 VAC 125-30-90. Reinstatement.**

A. A person whose certificate has expired may renew it within ~~two years~~ one year after its expiration date by paying the renewal fee and the ~~reinstatement~~ late renewal fee prescribed in 18 VAC 125-30-20.

B. A person whose certificate has expired beyond ~~two years~~ one year and who wishes to resume practice shall:

1. Submit a reinstatement application along with the ~~renewal and~~ reinstatement ~~fees and fee~~.
2. Provide evidence satisfactory to the board of current ability to practice.
3. *Submit verification of any professional certification or licensure obtained in any other jurisdiction subsequent to the initial application for certification.*

<p><b>NOTICE:</b> The forms used in administering 18 VAC 125-30, Regulations Governing the Certification of Sex Offender Treatment Providers, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board of Psychology, 6606 W. Broad Street, 4th Floor, Richmond,</p>
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Virginia, or at the office of the Registrar of Regulations,  
General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for Certification as a Sex Offender Treatment  
Provider, *Form 1 (rev. 9/01)*.

Licensure or Certification Verification of *Applicant, Form 2*  
(rev. 9/01).

*Sex Offender Treatment Provider, Verification of Supervision,*  
*Form 3 (rev. 9/01)*.

*Licensure Verification of Out-of-State Supervisor, Form 4 (rev.*  
*5/98)*.

Registration of Supervision, Post-Graduate Degree  
Supervised Experience, *Form A (rev. 9/01)*.

~~Sex Offender Treatment Provider Verification of Supervision.~~

Application for Reinstatement of Certification as a Sex  
Offender Treatment Provider (rev. 9/01).

Renewal Notice and Application (rev. 9/01).

VA.R. Doc. No. R01-73; Filed September 26, 2001, 1:54 p.m.



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# FINAL REGULATIONS

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For information concerning Final Regulations, see Information Page.

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## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

**REGISTRAR'S NOTICE:** The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

**Title of Regulation:** 4 VAC 20-720. Pertaining to Restrictions on Oyster Harvest (amending 4 VAC 20-720-20 and 4 VAC 20-720-40 through 4 VAC 20-720-80).

**Statutory Authority:** §§ 28.2-201 and 28.2-507 of the Code of Virginia.

**Effective Date:** October 1, 2001.

#### Summary:

*The amendments establish restrictions on the 2001-2002 public oyster harvest season.*

**Agency Contact:** Copies of the regulation may be obtained from Katherine V. Leonard, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2120.

#### 4 VAC 20-720-20. Definitions.

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

*"Deep Water Shoal State Replenishment Seed Area (DWS)"* in the James River (574.66 Acres) means the areas beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1 as located by Virginia State Plane Coordinates, South Zone, NAD 1927, North 302,280.00, East 2,542,360.00; thence North Azimuth 30°49'59", 4,506.99 feet to Corner 2, North 306,150.00, East 2,544,670.00; thence North Azimuth 135°08'57", 5,430.60 feet to Corner 3, North 302,300.00, East 2,548,500.00; thence North Azimuth 212°13'54", 3,487.42 feet to Corner 4, North 299,350.00, East 2,546,640.00; thence North Azimuth 269°10'16", 2,765.29 feet to Corner 5, North 299,310.00, East 2,543,875.00; thence North Azimuth 332°58'26", 3,334.09 feet to Corner 1, being the point of beginning.

*"Hand scrape"* means any device or instrument with a catching bar having an inside measurement of no more than 22 inches, which is used or usable for the purpose of extracting or removing shellfish from a water bottom or the bed of a body of water.

*"Pocomoke and Tangier Sounds Management Area (PTSMA)"* means the area as defined in § 28.2-524 of the Code of Virginia.

*"Pocomoke Sound"* means that area northeast from a line from Beach Island Light to the house on the Great Fox Island.

*"Public oyster ground"* means all those grounds defined in § 28.2-551 of the Code of Virginia, all ground set aside as public oyster ground by court order, and all ground set aside as public oyster ground by order of the Marine Resources Commission.

*"Rappahannock River Hand Scrape Area"* means that area including all public grounds between a line extending from the eastern-most point of Long Point thence in an easterly direction to flashing red buoy "8"; thence due east to Rogue Point, upriver to a line extending from Tarpley Point; thence in a southwesterly direction to flashing green buoy "13"; thence south-southwesterly to Jones Point. (See map.)

*"Tangier Sound"* means that area of Tangier Sound from Tangier Sound Light, east to the south end of Watts Island, thence north to the Virginia-Maryland state line west of the Tangier Channel from Tangier Light North to the Maryland-Virginia line (red buoy #6).

*"Tangier Sound Hand Tong Area"* means that area in the PTSMA south and west of a line from Fishbone Island thence southeast to bell buoy "5", thence south southwest to buoy "3" (such area to include all of Public Ground 3 and Flat Rock) and shall be a hand tong area only (see map) and Cod Harbor (approximately 1,124 acres) beginning at a point of East Point Marsh, said point having the Virginia state coordinates, south section, coordinates of north 555,414.89, east 2,730,388.85; thence south 79°59', east 2,260 feet to a line designating the western extent of the PTSMA as described in § 28.2-524 of the Code of Virginia; thence south 10°16', west 2,800 feet; thence south 28°46', west 8,500 feet to a point on Sand Spit, position north 545,131.78, east, 2,728,014.94; thence along the mean low water line of Cod Harbor in a west, north and northeast direction crossing Canton Creek and Mailboat Harbor from headland to headland to the point of beginning. (See map.)

*"Unassigned ground"* means all grounds other than public oyster ground as defined by this chapter and which have not been set aside or assigned by lease, permit, or easement by the Marine Resources Commission.

#### 4 VAC 20-720-40. Open season and areas.

The lawful seasons and areas for the harvest of oysters from the public oyster grounds and unassigned grounds are as follows:

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2000 2001, through April 30, 2004 2002.

2. James River Jail Island and Point of Shoals Clean Cull Areas: October 1, ~~2000~~ 2001, through April 30, ~~2004~~ 2002.

3. Seaside of Eastern Shore: for clean cull oysters only, November 1, ~~2000~~ 2001, through January 31, ~~2004~~ 2002.

4. That area of Piankatank River, west of the Route 3 bridge: October 1, ~~2000~~ 2001, through December 31, ~~2000~~ 2001.

5. The area of the Rappahannock River west of the Route 3 bridge, including the Corrotoman River and the Rappahannock River Hand Scrape Area: October 1, ~~2000~~ 2001, through December 31, ~~2000~~ 2001.

6. That area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line (Nomini-PRV6A to PRV6B; Lower Machodoc PRV5A to PRV5C): October 1, ~~2000~~ 2001, through December 31, ~~2000~~ 2001.

7. That area of the Coan River to the Virginia-Maryland state line (PRV1A to PRV1B) except for that area above a line from Walnut Point (Survey Station Walnut) to Stephens Point (Survey Station Arthur): October 1, ~~2000~~ 2001, through December 31, ~~2000~~ 2001.

8. That area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113: October 1, ~~2000~~ 2001, through December 31, ~~2000~~ 2001.

9. That area of the PTSMA in Tangier Sound, *west of the Tangier Channel from Tangier Light north the Maryland-Virginia Line (red buoy #6) and in the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island*, including the Tangier Sound Hand Tong Areas: December 1, ~~2000~~ 2001 through December 31, ~~2000~~ 2001.

10. Little Wicomico River: October 1, ~~2000~~ 2001, through December 31, ~~2000~~ 2001.

#### 4 VAC 20-720-50. Closed harvest season and areas.

It shall be unlawful for any person to harvest oysters from the following areas during the specified periods:

1. All public oyster grounds and unassigned grounds in the Chesapeake Bay and its tributaries, including the tributaries of the Potomac River, except that area of the Rappahannock River west of the Route 3 bridge, including the Corrotoman River and the Rappahannock River Hand Scrape Area, that area of the Piankatank River west of the Route 3 bridge, that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line (Nomini PRV6A to PRV6B; Lower Machodoc PRV5A to PRV5C), that area of the Coan River to the Virginia-Maryland state line (Coan PRV1A to PRV1B) except for above a line from Walnut Point (Survey Station Walnut) to Stephens Point (Survey Station Arthur), and that area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113, the Little Wicomico River, that area in the PTSMA in Tangier Sound, *west of the Tangier Channel from Tangier Light north the Maryland-Virginia Line (red buoy #6) and in the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island*, including the Tangier Sound Hand Tong Area, the

James River Seed Area and the James River Jail Island and Point of Shoals Clean Cull Areas: October 1, ~~2000~~ 2001, through September 30, ~~2004~~ 2002.

2. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, and James River Jail Island and Point of Shoals Clean Cull Areas: May 1, ~~2004~~ 2002, through September 30, ~~2004~~ 2002.

3. All public oyster grounds and unassigned grounds on the Seaside of Eastern Shore: for clean cull oysters, October 1 through October 31, ~~2000~~ 2001, and February 1, ~~2004~~ 2002, through September 30, ~~2004~~ 2002; and for seed oysters, all year. Oyster harvest from leased oyster ground and fee simple oyster ground shall require a permit from the Marine Resources Commission as set forth in 4 VAC 20-720-90.

4. That area of the Rappahannock River west of the Route 3 bridge, including the Corrotoman River and the Rappahannock River Hand Scrape Area, and that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line (Nomini PRV6A to PRV6B; Lower Machodoc PRV5A to PRV5C), that area of the Coan River to the Virginia-Maryland state line (Coan PRV1A to PRV1B) except for above a line from Walnut Point (Survey Station Walnut) to Stephens Point (Survey Station Arthur), that area of the Piankatank River west of the Route 3 bridge, and that area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113: January 1, ~~2004~~ 2002, through September 30, ~~2004~~ 2002.

5. That area of the PTSMA in Tangier, *west of the Tangier Channel from Tangier Light north the Maryland-Virginia Line (red buoy #6) and in the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island*, including the Tangier Sound Hand Tong Area: October 1, ~~2000~~ 2001, through November 30, ~~2000~~ 2001, and January 1, ~~2004~~ 2002, through September 30, ~~2004~~ 2002.

6. Little Wicomico River: January 1, ~~2004~~ 2002, through September 30, ~~2004~~ 2002.

#### 4 VAC 20-720-60. Day and time limit.

A. It shall be unlawful to take, catch or harvest oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest. The presence of any gear normally associated with the harvesting of oysters on board the boat or other vehicle used during any harvesting under this exception shall be prima facie evidence of violation of this chapter.

B. Harvest on the public oyster grounds in that area of the Rappahannock River west of the Route 3 bridge, including the Corrotoman River and the Rappahannock River Hand Scrape Area, that area of the Piankatank River west of the Route 3 bridge, and that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line (Nomini PRV6A to PRV6B; Lower Machodoc PRV5A to PRV5C), that area of the

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Coan River to the Virginia-Maryland state line (Coan PRV1A to PRV1B) except for above a line from Walnut Point (Survey Station Walnut) to Stephens Point (Survey Station Arthur), and that area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113, the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, the James River Jail Island and Point of Shoals Clean Cull Areas, Little Wicomico River, and that area in the PTSMA in Tangier Sound, *west of the Tangier Channel from Tangier Light north the Maryland-Virginia Line (red buoy #6) and in the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island*, including the Tangier Sound Hand Tong area shall be from sunrise to 2 p.m. daily. It shall be unlawful for any person to harvest oysters from the public grounds in that area of the Rappahannock River west of the Route 3 bridge, including the Corrotoman River and the Rappahannock River Hand Scrape Area, that area of the Piankatank River west of the Route 3 bridge, and that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line (Nomini PRV6A to PRV6B; Lower Machodoc PRV5A to PRV5C), that area of the Coan River to the Virginia-Maryland state line (Coan PRV1A to PRV1B) except for above a line from Walnut Point (Survey Station Walnut) to Stephens Point (Survey Station Arthur), and that area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113, the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, the Jail Island and Point of Shoals Clean Cull Areas, Little Wicomico River, and that area in the PTSMA in Tangier Sound, *west of the Tangier Channel from Tangier Light north to the Maryland-Virginia Line (red buoy #6) and in the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island*, including the Tangier Sound Hand Tong Area prior to sunrise or after 2 p.m. daily.

C. The Commissioner of Marine Resources hereby is authorized to issue permits to applicants to dredge for oysters where permitted by the Code of Virginia and Marine Resources Commission regulation or order, provided the applicant is eligible under all applicable laws and regulations, and further provided that such permit shall be granted only upon the condition that the boat not leave the dock until one-half hour before sunrise and be back at dock before sunset.

D. The Commissioner of Marine Resources hereby is authorized to issue permits to applicants to hand scrape, as described in 4 VAC 20-720-20, for oysters where permitted by the Code of Virginia and Marine Resources Commission regulation or order, provided the applicant is eligible under all applicable laws and regulations, and further provided that such permit shall be granted only upon the condition that the boat not leave the dock until one-half hour before sunrise and be back at dock before sunset.

#### **4 VAC 20-720-70. Gear restrictions.**

A. It shall be unlawful for any person to harvest oysters from public oyster grounds or unassigned grounds in the James River, including the Deep Water Shoal State Replenishment Seed Area, that area of the Rappahannock River west of the Route 3 bridge, including the Corrotoman River, that area of the Piankatank River west of the Route 3 bridge and that area

of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line (Nomini PRV6A to PRV6B; Lower Machodoc PRV5A to PRV5C), the Little Wicomico River, and that area of the Coan River to the Virginia-Maryland state line (Coan PRV1A to PRV1B) except for above a line from Walnut Point (Survey Station Walnut) to Stephens Point (Survey Station Arthur), that area known as the Tangier Sound Hand Tong Area, and that area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113 with shaft tongs longer than 18 feet in total overall length, except shaft tongs may exceed 18 feet in total overall length from Morattico Bar to the Route 3 bridge in the Rappahannock River.

B. It shall be unlawful for any person to harvest shellfish with a dredge from the public oyster grounds who has not first obtained a current gear license to use said dredge, and only at times and in areas as established by the commission can this dredge be used for harvesting on public oyster grounds. In order to be allowed to operate a dredge for harvesting oysters from any public oyster grounds, a harvester must have a current dredge gear license and the cost of this license shall be \$50.

C. The use of the hand scrape shall be allowed in the Rappahannock River Hand Scrape Area. In order to be allowed to operate a hand scrape for harvesting oysters from any public oyster grounds, a harvester must have a current hand scrape gear license and the cost of this license shall be \$50. It shall be unlawful for any person to harvest shellfish with a hand scrape from the public oyster grounds that has not first obtained a current gear license to use said hand scrape and only at times and in areas as established by the commission can this hand scrape be used for harvesting on public oyster grounds. No more than one license may be issued to any one boat for hand scrape and no more than one hand scrape may be on board any boat so licensed at any time. No hand tongs may be used or possessed aboard the licensed boat at the same time as said hand scrape.

D. Harvesting with a standard oyster dredge shall be allowed in that area in the PTSMA in Tangier Sound, *west of the Tangier Channel from Tangier Light north to the Maryland-Virginia Line (red buoy #6) and in the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island*, except for the designated hand tong areas. Only standard oyster dredges (maximum weights 100 pounds with attachment, maximum width of 50 inches, maximum tooth length of four inches, minimum teeth spacing of three inches) may be used.

#### **4 VAC 20-720-80. Quotas and catch limits.**

A. In the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, there shall be an oyster harvest quota of 80,000 bushels of seed oysters. It shall be unlawful for any person to harvest seed oysters from the James River Seed Area after the 80,000 bushel quota has been reached. In the James River Seed, including the Deep Water Shoal State Replenishment Seed Area, and Clean Cull Areas there shall be an oyster harvest quota of 15,000 bushels of market oysters. It shall be unlawful for any person to harvest market oysters from the James River Seed and Clean Cull Areas after the 15,000 bushel quota has been reached.

B. In the Rappahannock River west of the Route 3 bridge, including the Corrotoman River and the Rappahannock River Hand Scrape Area, and in the Little Wicomico, Nomini, Lower Machodoc, Coan, Piankatank, and Yeocomico Rivers, and the Tangier Sound Hand Tong Areas there shall be a six-bushel per ~~person~~ *licensed harvester* daily limit of clean cull oysters. It shall be unlawful to possess more than six bushels of clean cull oysters per ~~person~~ *licensed harvester* in the Rappahannock River west of the Route 3 bridge, including the Corrotoman River and the Rappahannock River Hand Scrape Area, and in the Little Wicomico River, Nomini, Lower Machodoc, Coan, Piankatank, and Yeocomico Rivers and the Tangier Sound Hand Tong Areas.

C. In the PTSMA in Tangier Sound, *west of the Tangier Channel from Tangier Light north the Maryland-Virginia Line (red buoy #6) and in the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island*, where harvesting is allowed by dredge, there shall be a catch limit of 15 bushels per day, per boat. It shall be unlawful to catch more than 15 bushels per day, per boat. No hard clam or blue crab bycatch is allowed. Harvest shall be reported for each day of harvest. Failure to report oysters harvested or violation of any requirements for the harvesting of oysters shall result in the forfeiture of all harvested oysters and revocation of the dredge gear license for the remainder of the season.

VA.R. Doc. No. R02-33; Filed September 28, 2001, 9:32 a.m.

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Title of Regulation: **4 VAC 20-910. Pertaining to Scup (amending 4 VAC 20-910-45).**

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

Effective Date: October 1, 2001.

Summary:

*The amendments modify the landing requirements for the November 1 through December 31 period.*

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

**4 VAC 20-910-45. Possession limits and harvest quotas.**

A. During the period January 1 through April 30 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 10,000 pounds of scup; except when it is projected and announced that 85% of the coastwide quota for this period has been landed, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 1,000 pounds of scup.

B. During the period November 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than ~~500~~ *2,000* pounds of scup; except when it is announced that ~~50%~~ *70%* of the coastwide quota for this period has been taken, it shall be unlawful for any person to possess aboard any vessel or land in Virginia more than ~~200~~ *500* pounds of scup, until such

time that the coastwide quota for this period has been reached.

C. During the period May 1 through October 31 of each year, the commercial harvest and landing of scup in Virginia shall be limited to 2,149 pounds.

D. For each of the time periods set forth in this section, the Marine Resources Commission will give timely notice to the industry of calculated poundage possession limits and quotas and any adjustments thereto. It shall be unlawful for any person to possess or to land any scup for commercial purposes after any winter period coastwide quota or summer period Virginia quota has been attained and announced as such.

E. It shall be unlawful for any buyer of seafood to receive any scup after any commercial harvest or landing quota has been attained and announced as such.

F. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 50 scup. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 50. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any scup taken after the possession limit has been reached shall be returned to the water immediately.

VA.R. Doc. No. R02-35; Filed October 1, 2001, 9:52 a.m.

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Title of Regulation: **4 VAC 20-950. Pertaining to Black Sea Bass (amending 4 VAC 20-950-45).**

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

Effective Date: October 1, 2001.

Summary:

*The amendments modify the landing requirements for the October 1 through December 31 period.*

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

**4 VAC 20-950-45. Possession limits and harvest quotas.**

A. During the period January 1 through March 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 9,000 pounds of black sea bass, except when it is announced that 75% of the coastwide quota for this period has been taken; then, it shall be unlawful for any person to possess aboard any vessel or land in Virginia more than 4,500 pounds of black sea bass, until such time that the coastwide quota for this period has been reached.

B. During the period April 1 through June 30 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 1,500 pounds of black sea bass. When it is announced that 40% of the coastwide

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quota for this period is projected to have been taken, the provisions of subsection E of this section shall apply.

C. During the period July 1 through September 30 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 1,000 pounds of black sea bass. When it is announced that 40% of the coastwide quota for this period is projected to have been taken, the provisions of subsection E of this section shall apply.

D. During the period October 1 through December 31 of each year, it shall be unlawful for any person to ~~possess aboard any vessel or to land in Virginia more than 2,000 pounds of black sea bass. When it is announced that 40% of the coastwide quota for this period has been taken, the provisions of subsection E of this section shall apply. do any of the following:~~

1. Possess aboard any vessel in Virginia waters more than 2,000 pounds of black sea bass;
2. Land black sea bass in Virginia for commercial purposes more than four times within each consecutive seven-day period, with the first seven-day period beginning on October 1;
3. Land in Virginia more than a total of 2,000 pounds of black sea bass during each consecutive seven-day period, with the first seven-day period beginning on October 1;
4. Fail to contact within 24 hours of landing the Marine Resources Commission's Interactive Voice Recording system to report the name of the vessel and fisherman and the weight of each landing of black sea bass.

E. When it is announced that 40% of the coastwide quota for any of the periods designated in subsections B ~~7~~ and C, ~~and D~~ of this section has been taken, it shall be unlawful for any person to do any of the following:

1. Possess aboard any vessel in Virginia waters more than 1,000 pounds of black sea bass.
2. Land black sea bass in Virginia, for commercial purposes, more than four times within each consecutive seven-day period, with the first seven-day period beginning upon the announcement that 40% of the coastwide quota for the period has been taken.
3. Land in Virginia more than a total of 1,000 pounds of black sea bass during each consecutive seven-day period, with the first seven-day period beginning upon the announcement that 40% of the coastwide quota for the period has been taken.
4. Fail to contact the Marine Resources Commission's Interactive Voice Recording system within 24 hours of landing to report the name of the vessel and fisherman and the weight of each landing of black sea bass.

F. It shall be unlawful for any person to possess or to land any black sea bass for commercial purposes after the coastwide quota for the designated period as described in subsections A through D of this section has been attained and announced as such.

G. It shall be unlawful for any buyer of seafood to receive any black sea bass after any commercial harvest quota has been attained and announced as such.

H. It shall be unlawful for any person to possess or to land any black sea bass for recreational purposes from March 1 through March 31 and from July 15 through August 14 of each year.

I. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 25 black sea bass. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 25. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

J. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection I of this section shall be presumed to be for commercial purposes.

VA.R. Doc. No. R02-34; Filed October 2, 2001, 1:05 p.m.

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## TITLE 9. ENVIRONMENT

### VIRGINIA WASTE MANAGEMENT BOARD

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

**Title of Regulation:** 9 VAC 20-60. Virginia Hazardous Waste Management Regulations (amending 9 VAC 20-60-18).

**Statutory Authority:** § 10.1-1402 of the Code of Virginia.

**Effective Date:** November 21, 2001.

**Summary:**

*Amendment 15C to this regulation included requirements in the form of incorporated federal regulatory text at Title 40 of the Code of Federal Regulations. The federal regulatory text as it existed July 1, 2000, was specified as that incorporated. Immediate Final Rule: Amendment 2001 addresses only 9 VAC 20-60-18, the section making the specification of the date of incorporated text. This section is altered by striking the previous prescribed date and adopting the new date of July 1, 2001, thus making it the new date of reference of all incorporated federal regulatory text. The text is modified also to make it clear that federal regulations adopted as final by the U.S. Environmental*

Protection Agency before July 1 are incorporated, even when the effective date occurs after July 1. The effective date of the incorporated text will be the effective date as published in the Federal Register notice or the effective date of this amendment, whichever is later.

**9 VAC 20-60-18. Applicability of incorporated references based on the dates on which they became effective.**

When a regulation of the United States Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is adopted herein and incorporated by reference, that regulation shall be as it exists and is in effect on July 1, 2000, unless an exception or an alternate date is specified has been published as a final regulation in the Federal Register prior to July 1, 2001, with the effective date as published in the Federal Register notice or the effective date of these regulations, whichever is later.

VA.R. Doc. No. R02-13; Filed September 24, 2001, 1:49 p.m.

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Title of Regulation: **9 VAC 20-70. Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities (amending 9 VAC 20-70-10, 9 VAC 20-70-50 through 9 VAC 20-70-75, 9 VAC 20-70-81, 9 VAC 20-70-90, 9 VAC 20-70-111, 9 VAC 20-70-112, 9 VAC 20-70-113, 9 VAC 20-70-150 through 9 VAC 20-70-230, [ 9 VAC 20-70-250, ] and 9 VAC 20-70-260; adding 9 VAC 20-70-290; repealing 9 VAC 20-70-41, 9 VAC 20-70-240, 9 VAC 20-70-280, and Appendices I through VI).**

Statutory Authority: §§ 10.1-1402 and 10.1-1410 of the Code of Virginia.

Effective Date: November 21, 2001.

Summary:

*The amendments require submission of documentation that enables the department to verify that mechanisms are funded to the required amounts, incorporate statutory changes that have been enacted since the regulations were last amended, and maintain consistency with federal regulations. Facilities that have statistically exceeded groundwater protection standards will be required to provide an additional \$1 million of financial assurance using any one of the available financial mechanisms. Clarification is being provided as to when facilities will be required to provide the additional financial assurance and when a facility's obligation to provide the additional financial assurance ends. Also, the local government financial test is being modified so that those using a financial test that assures between 20% and 43% of their total annual revenue for environmental liabilities now will have the option of obtaining a letter of credit in addition to the options of establishing a restricted sinking fund or escrow account.*

Agency Contact: Copies of the regulation may be obtained from Melissa Porterfield, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238.

CHAPTER 70.  
FINANCIAL ASSURANCE REGULATIONS FOR SOLID  
WASTE [ DISPOSAL, TRANSFER AND TREATMENT ]  
FACILITIES.

**9 VAC 20-70-10. Definitions.**

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

"Abandoned facility" means any inactive solid waste management facility that has not met closure and post-closure care requirements.

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at the completion of closure activities required by 9 VAC 20-80-10 et seq. Active life does not include the post-closure care monitoring period.

"Anniversary date" means the date of issuance of a financial mechanism.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Authority" means an authority created under the provisions of the Virginia Water and Waste Authorities Act, Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2 of the Code of Virginia, or, if any such authority shall be abolished, the board, body, or commission succeeding to the principal functions thereof or to whom the powers given by the Virginia Water and Waste Authorities Act to such authority shall be given by law.

"Board" means the Virginia Waste Management Board.

"Cash plus marketable securities" means all the cash plus marketable securities held on the last day of a fiscal year, excluding cash and marketable securities designed to satisfy past obligations such as pensions.

"Closed facility" means a solid waste management facility that has been properly secured in accordance with the facility closure plan requirements of 9 VAC 20-80-10 et seq., 9 VAC 20-101-10 et seq., 9 VAC 20-120-10 et seq., or 9 VAC 20-170-10 et seq. A closed facility may be undergoing post-closure care.

"Closure" means the act of securing a solid waste management facility pursuant to the requirements of this chapter and any other applicable solid waste management standards.

"Commercial transporter" means any person who transports for the purpose of commercial carriage of solid wastes or regulated medical wastes as cargo.

"Corrective action" means all actions necessary to mitigate the public health or environmental threat from a release to the environment of solid waste or constituents of solid waste from an operating, abandoned, or closed solid waste management facility and to restore the environmental conditions as required.

"Current annual inflation factor" means the annual inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business.

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"*Current assets*" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during normal operating cycle of the business.

"*Current closure cost estimate*" means the most recent of the estimates prepared in accordance with the requirements of 9 VAC 20-70-111.

"*Current dollars*" means the figure represented by the total of the cost estimate multiplied by the current annual inflation factor.

[ "*Current year expenses for closure*" means expenditures documented by the facility during the previous fiscal year for construction-related activities associated with closing the facility. Expenses for closure must be detailed and identified in an approved closure plan. ]

"*Current liabilities*" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"*Current post-closure cost estimate*" means the most recent of the estimates prepared in accordance with the requirements of 9 VAC 20-70-112.

"*Debt service*" means the amount of principal and interest due on a loan in a given time period, typically the current year.

"*Deficit*" means total annual revenues less total annual expenditures.

"*Department*" means the Virginia Department of Environmental Quality.

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

"*Disposal*" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters.

"*Facility*" means any [ *solid* ] waste management facility unless the context clearly indicates otherwise. [ *The term "facility" includes transfer stations.* ]

"*Federal agency*" means any department, agency, or other instrumentality of the federal government, any independent agency, or establishment of the federal government including any government corporation and the Government Printing Office.

[ "~~*Garbage and refuse collection and disposal system*~~" means a system, plant or facility designed to collect, manage, dispose of, or recover and use energy from solid waste and the land, structures, vehicles and equipment for use in connection therewith. ]

"*Governmental unit*" means any department, institution or commission of the Commonwealth and any public corporate instrumentality thereof, and any district, and shall include local governments.

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

"*Hazardous waste*" means a "*hazardous waste*" as defined by the Virginia Hazardous Waste Management Regulations ( [ ~~9 VAC 20-60-10~~ 9 VAC 20-60-12 ] et seq.).

"*Landfill*" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill.—*See as defined by the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) for further detail.*

"*Leachate*" means a liquid that has passed through or emerged from solid waste and that contains soluble, suspended, or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation for disposal in an off-site facility is regulated as septage, and leachate discharged into a wastewater collection system is regulated as industrial wastewater.

"*Liabilities*" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"*Local government*" means a county, city or town or any authority, commission, or district created by one or more counties, cities or towns.

"*Net working capital*" means current assets minus current liabilities.

"*Net worth*" means total assets minus total liabilities and is equivalent to owner's equity.

"*Operator*" means the person responsible for the overall operation and site management of a solid waste management facility.

"*Owner*" means, a person who owns a solid waste management facility or part of a solid waste management facility. For the purposes of this chapter, all individuals, [ ~~incorporated companies, copartnerships corporations, companies, partnerships~~ ], societies or associations, and any federal agency or governmental unit of the Commonwealth having any title or interest in any ~~garbage and refuse collection and disposal system, solid waste management facility~~ or the services or facilities to be rendered thereby *shall be considered an owner.*

"*Parent corporation*" means a corporation that directly owns at least 50% of the voting stock of the corporation that is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

"*Permit*" means the written permission of the director to own, operate, modify, or construct a solid waste management facility.



"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation or any other legal entity.

"Post-closure care" means the requirements placed upon an owner or operator of a solid waste disposal facility after closure to ensure environmental and public health *and* safety are protected for a specified number of years after closure.

"Receiving facility" means a facility, vessel or operation that receives solid wastes or regulated medical wastes transported, loaded or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial transporter. A receiving facility is considered as a solid waste management facility. A facility that receives solid waste from a ship, barge or other vessel and is regulated under § 10.1-1454.1 of the Code of Virginia shall be considered a transfer facility for purposes of this chapter.

"Regulated medical waste" means solid waste so defined to be regulated medical waste in Part III of the Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.) as promulgated by the Virginia Waste Management Board.

"Sanitary landfill" means an engineered land burial facility for the disposal of solid waste which is so located, designed, constructed and operated to contain and isolate the solid waste so that it does not pose a substantial present or potential hazard to human health or the environment.

[ ~~"Secure access control" means the use of fences with locking gates, entry control, operational inspection of incoming solid waste and positive limitations on unauthorized disposal. Natural barriers which prevent unauthorized access may be considered as a replacement for fence sections. ]~~

~~"Shadow bond rating" means bond rating as determined by Moody's or Standard and Poor's after analysis of the debt capacity of a local government with no outstanding general obligation bonds.~~

"Signature" means the name of a person written with his own hand.

"Site" means all land and structures, other appurtenances, and improvements thereon used for treating, storing, and disposing of solid waste. This term includes adjacent land within the property boundary used for utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

"Solid waste" means any of those materials defined as "solid waste" in the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.).

"Solid waste disposal facility" means a solid waste management facility at which solid waste will remain after closure.

"Solid waste management facility (SWMF)" means a site used for planned treating, storing, transferring, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Storage" means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.

"Substantial business relationship" means the extent of a business relationship necessary under applicable Virginia law to make a guarantee contract incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent and on-going business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the director.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

"Total expenditures" means all expenditures excluding capital outlays and debt repayment.

"Total revenue" means revenue from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed on behalf of a specific third party.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration or resource recovery.

"Treatment" means any method, technique, or process, including but not limited to incineration or neutralization, designed to change the physical, chemical, or biological character or composition of any waste to render it more stable neutralize it or render it less hazardous or nonhazardous, safer for transport, or more amenable to use, reuse, reclamation or recovery.

"Unit" means a discrete area of land used for the management of solid waste.

## **9 VAC 20-70-41. Analysis of this chapter. (Repealed.)**

~~A. Within three years after January 7, 1998, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include:~~

- ~~1. The purpose and need for the chapter;~~
- ~~2. Alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner;~~
- ~~3. An assessment of the effectiveness of this chapter;~~
- ~~4. The results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and~~
- ~~5. The results of a review as to whether this chapter is clearly written and easily understandable by affected entities.~~

~~B. Upon review of the department's analysis, the board shall confirm the need to:~~

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1. Continue this chapter without amendment;
2. Repeal this chapter; or
3. Amend this chapter.

~~C. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

## 9 VAC 20-70-50. Applicability of chapter.

A. This chapter applies to all persons who own, operate, or allow the following permitted or unpermitted [ ~~waste management~~ ] facilities to be operated on their property:

1. Solid waste treatment, *transfer* and disposal facilities regulated under the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.);
2. Facilities regulated under *the* Vegetative Waste Management and Yard Waste Composting Regulations (9 VAC 20-101-10 et seq.); ~~or~~
3. Medical waste treatment, *transfer* or disposal facilities regulated under *the* Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.); *or*
4. *Receiving facilities as defined herein [ ~~or otherwise regulated under the Transportation of Solid and Medical Wastes on State Waters Regulations (9 VAC 20-170-10 et seq.).~~ ]*

## B. Exemptions.

1. Owners or operators of facilities who are federal or state government entities whose debts and liabilities are the debts or liabilities of the United States or the Commonwealth, are exempt from this chapter;
2. Owners and operators of facilities conditionally exempt under 9 VAC 20-80-60 D of the Virginia Solid Waste Management Regulations are exempt from this chapter so long as they meet the conditions of the exemption;
3. Owners and operators of facilities that manage solely wastes excluded under 9 VAC 20-80-150 or conditionally exempt under 9 VAC 20-80-160 of the Virginia Solid Waste Management Regulations are exempt from this chapter;
4. Owners or operators of [ ~~regulated medical waste management~~ ] facilities exempt [ *under 9 VAC 20-120-120* ] or excluded under [ *Article 2, Part III, 9 VAC 20-120-130* ] of the Virginia Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.) are exempt from this chapter; ~~and~~
5. Owners and operators of yard waste composting facilities exempt under 9 VAC 20-101-60 and 9 VAC 20-101-70 of the Vegetative Waste Management and Yard Waste Composting Regulations are exempt from this chapter; and
6. Owners and operators of hazardous waste management units regulated under the Virginia Hazardous Waste Management Regulations ( [ ~~9 VAC 20-60-10~~ 9 VAC

20-60-12 ] et seq.) are exempt from this chapter as far as such units are concerned.

C. Owners and operators of facilities or units that treat or dispose of wastes which are exempted from the Virginia Hazardous Waste Management Regulations ([ ~~9 VAC 20-60-10~~ 9 VAC 20-60-12 ] et seq.) are subject to these regulations unless also exempted herein.

D. Facilities with separate ownership and operation. If separate, nonexempt persons own and operate a [ ~~waste management~~ ] facility subject to this chapter, the owner and operator shall be jointly and severally ~~responsible~~ *liable* for meeting the requirements of this chapter. If either the owner or operator is exempt, as provided in 9 VAC 20-70-50 B, then the other person shall be [ ~~responsible~~ *liable* ] for meeting the requirements of this chapter. If both the owner and the operator are exempt, as provided in 9 VAC 20-70-50 B, then the requirements of this chapter are not applicable to that [ ~~waste management~~ ] facility.

E. Exemptions for facilities owned and operated by local governments.

1. Closed facilities. Owners and operators of facilities who are local governmental entities or regional authorities that have completed [ ~~the~~ ] closure by October 9, 1994, are exempt from all the requirements of this chapter, provided they:

- a. Have (i) disposed of less than 100 tons per day of solid waste during a representative period prior to October 9, 1993; (ii) disposed of less than 100 tons per day of solid waste each month between October 9, 1993, and April 9, 1994; (iii) ceased to accept solid waste prior to April 9, 1994; and (iv) whose units are not on the National Priority List as found in Appendix B to 40 CFR Part 300; or
- b. Have (i) disposed of more than 100 tons per day of solid waste prior to October 9, 1993, and (ii) ceased to accept solid waste prior to that date.

2. All other facilities. Owners and operators of facilities who are local governmental entities or regional authorities that are not exempt under subdivision 1 of this subsection are subject to the requirements of this chapter ~~on January 7, 1998. The director may delay on a case-by-case basis the effective date for such entities until April 9, 1998, provided that the owner/operator demonstrates to the director's satisfaction that an earlier deadline does not provide sufficient time to comply with these requirements and that such a waiver will not adversely affect human health and the environment.~~

## 9 VAC 20-70-60. Enforcement and appeal procedures; offenses and penalties.

A. An enforcement action commences with a notice from the department or its representative that there is information indicating that a named party (i) is or may be in violation of a law or regulation; or (ii) is not or may not be in compliance with any existing requirement for obtaining or retaining a permit or other benefit or right. The commencement of an enforcement action is not a case decision. An enforcement action ends when a case decision becomes final, either administratively or on court review.

B. All administrative enforcement actions ~~and taken under this chapter are subject to the provisions of the Waste Management Act and § 10.1-1186 of the Code of Virginia. All~~ appeals taken from actions of the director relative to the provisions of § 10.1-1457 of the Virginia Waste Management Act and this chapter shall be governed by the Administrative Process Act [ ~~Chapter 1.1:1~~ ] (§ [ ~~9-6.14:1 2.2-4000~~ ] et seq. [ ~~of Title 9~~ ] of the Code of Virginia [ ] ).

C. Orders. The ~~executive~~ director is authorized to issue orders to require any person to comply with this chapter as stated or to require such steps he deems necessary to bring about compliance. ~~Orders will be issued in written form through certified mail and will be issued in accord with provisions of the Virginia Administrative Process Act.~~

**9 VAC 20-70-70. Suspensions and revocations.**

The director may revoke, suspend, or amend any permit for cause as set in § 10.1-1409 of the Code of Virginia and as provided for in 9 VAC 20-80-600 and 9 VAC 20-80-620 of [ the ] Virginia Solid Waste Management Regulations, 9 VAC 20-120-790 and 9 VAC 20-120-810 of the Regulated Medical Waste [ Management ] Regulations, 9 VAC 20-101-200 of the Vegetative Waste Management and Yard Waste Composting Regulations, and [ ~~9 VAC 20-170-130 of the Transportation of Solid and Medical Wastes on State Waters Regulations any other applicable regulations~~ ]. Failure to provide or maintain adequate financial assurance in accordance with these regulations shall be a basis for revocation of such facility permit. Failure to provide or maintain adequate financial assurance in accordance with this chapter, taken with other relevant facts and circumstances, may be a basis for summary suspension of such facility permit pending a hearing to amend or revoke the permit, or to issue any other appropriate order.

**9 VAC 20-70-75. Forfeitures.**

Forfeiture of any financial obligation imposed pursuant to this chapter shall not relieve any [ ~~holder of a permit issued pursuant to the owner or operator of a solid waste management facility from any obligations to comply with~~ ] provisions of Part VII of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) or ~~Parts IV and X~~ of the Regulated Medical Waste [ Management ] Regulations (9 VAC 20-120-10 et seq.), [ ~~the Transportation of Solid and Medical Wastes on State Waters Regulations (9 VAC 20-170-10 et seq.)~~, ] the Vegetative Waste Management and Yard Waste Composting Regulations (9 VAC 20-101-10 et seq.), [ and any other applicable regulations ] or any other legal obligations for the consequences of abandonment of any facility.

**9 VAC 20-70-81. General purpose and scope.**

A. In order to assure that the costs associated with protecting the public health and safety from the consequences of an abandonment or a failure to properly execute closure, post-closure care or corrective action at a [ ~~solid waste management~~ ] facility are to be recovered from the owner or operator, the owner or operator of such facility shall obtain one, or a combination of the financial responsibility mechanisms described in this part. Financial responsibility mechanisms shall be in *the* amount [ ~~calculated~~ ] as [ ~~#~~

*equal to* ] the cost estimate *approved by the department* using the procedures set forth in Article 3 (9 VAC 20-70-111 et seq.) of this part.

B. In the case of new facilities, the selected financial responsibility mechanism or mechanisms shall be filed with the Department of Environmental Quality as part of the permit application procedures and prior to the issuance of an operating permit.

C. In the case of existing facilities that become regulated as the result of a regulatory amendment, the selected financial responsibility mechanism shall be filed with the Department of Environmental Quality within ~~480~~ 120 days of the effective date of the amendment.

D. The director may reject the proposed evidence of financial responsibility if the mechanism or mechanisms submitted do not adequately assure that funds will be available for closure, post-closure care, or corrective action. The owner or operator shall be notified in writing within ~~45~~ [ ~~420~~ 60 ] days of receipt of ~~the~~ a complete financial assurance [ ~~mechanism submission~~ ] of the tentative decision to accept or reject the proposed evidence.

**9 VAC 20-70-90. Closure, post-closure care and corrective action requirements.**

A. The owner or operator shall close his facility in a manner that minimizes the need for further maintenance; and controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or to the atmosphere. [ *The owner or operator shall close his facility in accordance with all applicable regulations.* ]

The closure standards applicable to the solid waste management facilities are described in ~~9 VAC 20-80-200 D~~ 9 VAC 20-80-210 B, ~~9 VAC 20-80-210 A-7~~ 9 VAC 20-80-210 B 2, 9 VAC 20-80-250 E, 9 VAC 20-80-260 E, 9 VAC 20-80-270 E, 9 VAC 20-80-330 E, 9 VAC 20-80-340 E, ~~9 VAC 20-80-350~~ 9 VAC 20-80-360 E, 9 VAC 20-80-370 E, 9 VAC 20-80-380 B, and 9 VAC 20-80-470 E of the Solid Waste Management Regulations. The closure requirements applicable to the regulated medical waste facilities are specified in 9 VAC 20-120-290 of the Regulated Medical Waste Management Regulations. The closure requirements for vegetative waste management and yard waste composting facilities are specified in 9 VAC 20-101-150 of the Vegetative Waste Management and Yard Waste Composting Regulations. [ ~~The closure requirements for receiving facilities are specified in 9 VAC 20-170-90 A of the Transportation of Solid and Medical Wastes on State Waters Regulations.~~ ]

B. Following closure of each solid waste disposal unit, the owner or operator shall conduct post-closure care in accordance with the requirements of 9 VAC 20-80-250 F, 9 VAC 20-80-260 F, or 9 VAC 20-80-270 F of the Solid Waste Management Regulations, as applicable.

C. The owner or operator shall institute a corrective action program when required to do so by 9 VAC 20-80-190, 9 VAC

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20-80-210 A-7 B 2, or 9 VAC 20-80-310 of the Solid Waste Management Regulations, as applicable.

*D. During any [ ~~appeal~~ re-examination ] of a determination of the amount of financial assurance required, the owner or operator of a landfill facility not closed in accordance with 9 VAC 20-80-10 et seq. shall demonstrate financial assurance by using one or more of the approved mechanisms listed in Article 4 (9 VAC 20-80-140 et seq.) of this part for the lesser of the following:*

1. *The amount requested by the director [ - ; or ]*
2. *The following default amounts:*
  - a. *\$200,000 per acre of fill for sanitary landfills [ - ; or ]*
  - b. *\$150,000 per acre of fill for construction demolition debris landfills and industrial landfills.*

## **9 VAC 20-70-111. Cost estimate for facility closure.**

A. The owner or operator shall ~~have~~ submit to the department a detailed written cost estimate, in current dollars, of the cost of closing the facility in accordance with the requirements of 9 VAC 20-70-90 A as part of any permit application, or at the request of the director. The owner or operator shall also submit to the department a revised cost estimate in current dollars when requesting a permit modification that changes the closure cost estimate. The closure cost estimate shall be approved by the director.

1. The estimate shall equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.
2. The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility. A third party may not be either a parent or a subsidiary of the owner or operator.
3. The closure cost estimate may not incorporate any salvage value that may be realized by the sale of wastes, facility structures or equipment, land or other facility assets at the time of partial or final closures.

B. During the active life of the facility, the owner or operator shall adjust the closure cost estimate *annually* for inflation within 60 days prior to the anniversary date of the establishment of the financial mechanisms used to comply with this ~~part~~ chapter. For owners and operators using the financial test or guarantee, the closure cost estimate shall be updated for inflation within 30 days after the close of the owner's or operator's fiscal year. The adjustment ~~may~~ shall be made by ~~recalculating the maximum costs of closure in current dollars, or by~~ using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified below. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

1. The first adjustment is made by multiplying the closure cost estimate by the latest inflation factor. The result is the adjusted closure cost estimate.

2. Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

C. During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than 30 days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate shall be revised no later than 30 days after the closure plan has been modified, if the change in the closure plan increases the cost of closure. The revised closure cost estimate shall also be adjusted for inflation as specified in subdivisions B 1 and B 2 of this section.

D. The owner or operator shall [ ~~keep at the facility~~ maintain in the facility's operating record ] the latest closure cost estimate prepared in accordance with subsections A through C of this section during the operating life of the facility.

E. The owner or operator of each [ *solid* ] waste management unit shall establish financial assurance [ ~~for the~~ in ] current [ *dollars for the* ] cost of closure of the unit in compliance with 9 VAC 20-70-140. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by the director.

F. The owner or operator may ~~reduce~~ request a reduction in the closure cost estimate and the amount of financial assurance provided under subsection E of this section, if the cost estimate exceeds the maximum cost of closure at any time during the ~~remaining~~ active life of the unit. The owner or operator shall ~~notify the director that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record~~ submit a revised cost estimate with the justification for the reduction to the director when requesting a reduction in the amount of the closure cost estimate and the amount of financial assurance provided. The justification shall include an itemization of all closure costs. No reduction request shall be reviewed until a complete cost estimate acceptable to the department has been submitted. A request for a reduction in the closure cost estimate shall be reviewed in a timely manner.

## **9 VAC 20-70-112. Cost estimate for facility post-closure.**

A. The owner or operator shall ~~have~~ submit to the department a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the solid waste disposal unit in compliance with the post-closure plan required by 9 VAC 20-70-90 B. The post-closure cost estimate used to demonstrate financial assurance shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator shall ~~notify~~ submit the estimate to the director ~~that and place the estimate has been placed in the operating record.~~ The post-closure cost estimate shall be approved by the director.

1. The cost estimate for post-closure care shall be based on the ~~most expensive~~ total costs of post-closure care during the post-closure care period.

2. During the active life of the solid waste disposal unit and during the post-closure care period, the owner or operator shall ~~annually~~ adjust the post-closure cost estimate ~~annually~~ for inflation within 60 days prior to the anniversary date of the establishment of the financial mechanism used to comply with this part. For owners or operators using the financial test or guarantee, the post-closure care cost estimate shall be updated for inflation within 30 days after the close of the owner's or operator's fiscal year. The adjustment process to be used is described in 9 VAC 20-70-111 B.

3. The owner or operator shall increase the post-closure care cost estimate and the amount of financial assurance provided under subsection B of this section ~~if changes in no later than 30 days after a revision [ has been made ] to the post-closure plan [ has been approved by the director ] or where a change in the solid waste disposal unit conditions increase the maximum costs of post-closure care.~~

4. The owner or operator may ~~reduce~~ request a reduction in the post-closure cost estimate and the amount of financial assurance provided under subsection B of this section if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator shall ~~notify the director that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance has been placed in the operating record~~ submit a revised post closure cost estimate with the justification for the reduction to the director when requesting a reduction in the amount of the post-closure cost estimate and the amount of financial assurance provided. The justification shall include an itemization of all post-closure costs. No reduction request shall be reviewed until a complete cost estimate acceptable to the department has been submitted. A request for a reduction in the post-closure cost estimate shall be reviewed in a timely manner.

B. The owner or operator of each solid waste disposal unit shall establish, in a manner under 9 VAC 20-70-140, financial assurance [ in current dollars ] for the [ current ] costs of post-closure care as required under 9 VAC 20-70-90 B. The owner or operator shall provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by the director.

C. The owner or operator shall [ ~~keep maintain in the facility's operating record~~ ] the latest post-closure cost estimate prepared in accordance with subsection B of this section during the ~~operating~~ active life of the facility and during the entire post-closure care period [ ~~at a place specified in the post-closure plan~~ ].

**9 VAC 20-70-113. Financial assurance for corrective action.**

A. [ ~~Upon statistically exceeding~~ Within 120 days of a facility's finding or the director's determining (whichever first occurs) that ] Groundwater Protection Standards established as required by 9 VAC 20-80-250 D 6, or Appendix 5.6 D of 9 VAC 20-80-10 et seq. as applicable [ have been statistically exceeded ], an owner or operator of a landfill or other unit subject to groundwater monitoring shall [ ~~post \$1 million~~

~~dollars provide additional ] financial assurance [ with in the amount of \$1 million to ] the department using the mechanisms listed under Article 4 (9 VAC 20-70-140 et seq.) of this part. [ The director shall release the owner or operator from this requirement after the director has determined:~~

1. The owner or operator is providing financial assurance for a corrective action program using one or more mechanisms listed under Article 4 (9 VAC 20-70-140 et seq.) of this part, as required under 9 VAC 20-70-90 C and subsections B and C of this section; or

2. The owner of operator has achieved compliance with Groundwater Protection Standards by demonstrating that concentrations of APPENDIX 5.1 constituents of 9 VAC 20-80-10 et seq. have not exceeded the Groundwater Protection Standards for a period of three consecutive years using the appropriate statistical procedures and performance standards. ]

A- B. An owner or operator of a solid waste management unit required to undertake a corrective action program under 9 VAC 20-70-90 C shall ~~have~~ [ prepare and ] submit to the director a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate shall account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator shall notify the director that the estimate has been placed in the operating record unless corrective action is proceeding under Part IV of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.). In the latter case, the new corrective action cost estimate shall be submitted to the director within 30 days of its preparation. The corrective action cost estimate shall be approved by the director.

1. The owner or operator shall ~~annually~~ adjust the estimate ~~annually~~ for inflation ~~until the corrective action program is completed~~ within 60 days prior to the anniversary date of the establishment of the financial mechanism used to comply with this part ~~until the corrective action program is completed~~. For owners or operators using the financial test or guarantee, the corrective action cost estimate shall be updated for inflation within 30 days after the close of the owner's or operator's fiscal year. The adjustment process to be used is described in 9 VAC 20-70-111 B.

2. The owner or operator shall increase the corrective action cost estimate and the amount of financial assurance provided under subsection B of this section ~~if changes in no later than 30 days after revisions to the corrective action program or where a change in the solid waste management unit conditions increase the maximum costs of corrective action.~~

3. The owner or operator may ~~reduce~~ request a reduction in the amount of the corrective action cost estimate and the amount of financial assurance provided under subsection B of this section if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator shall ~~notify the director that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating~~

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~~request~~ submit a revised cost estimate with the justification for the reduction to the director when requesting a reduction in the amount of the corrective action cost estimate and the amount of financial assurance provided. The justification shall include an itemization of all corrective action costs. No reduction request shall be reviewed until a complete cost estimate acceptable to the department has been submitted. A request for a reduction in the corrective action cost estimate shall be reviewed in a timely manner.

~~B.~~ C. The owner or operator of each solid waste management unit required to undertake a corrective action program under 9 VAC 20-70-90 C shall establish financial assurance ~~for~~ in the amount specified by the most ~~recent~~ recently approved [ ~~corrective action~~ ] program [ ~~plan~~ cost estimate for the selected remedy ] in accordance with 9 VAC 20-70-140. The owner or operator shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by the director.

## 9 VAC 20-70-150. Trust fund.

A. [ ~~The An~~ ] owner or operator [ ~~of a solid waste management facility~~ ] may satisfy the requirements of this article by establishing a trust fund that conforms to the requirements of this section and by submitting an originally signed ~~duplicate~~ triplicate of the trust agreement to the director. [ ~~The owner or operator shall also place a copy of the trust agreement into the facility's operating record.~~ ] The trustee for the trust fund shall be a bank or financial institution that has the authority to act as a trustee and whose trust operations are regulated and examined by the Commonwealth of Virginia.

B. Payments into the trust fund shall be made annually by the owner or operator over the ~~useful~~ active or the remaining life of the solid waste management ~~facility~~ unit, whichever is shorter. In the case of a trust fund for closure or post-closure care, ~~or over this is known as the "pay-in period."~~ In the case of a trust fund for corrective action for known releases, the "corrective action pay-in period" is one-half of the estimated length of the corrective action program ~~in the case of corrective action for known releases. This period is hereafter referred to as the "pay-in period."~~

C. If a trust fund is used to demonstrate financial assurance for closure and post-closure care:

1. For a new facility, the first payment shall be made at least 60 days before the initial receipt of waste for treatment or disposal. A receipt from the trustee for this payment shall be submitted by the owner or operator to the director before this initial receipt of waste. For an existing facility, permitted or unpermitted, the first payment is due on the effective date of the trust agreement.

2. The first payment shall be at least equal to the current closure cost and, if applicable, post-closure care estimate divided by the number of years in the pay-in period. The amount of the first payment shall be determined by the formula:

$$\text{First payment is the } \frac{\text{Cost Estimate}}{\text{Total Years}} \text{ or } \frac{\text{CE}}{\text{TY}}$$

where CE is the current closure and post-closure cost estimate and TY is the number of years in the pay-in period. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

$$\frac{\text{Next payment} = \text{CE} - \text{CV}}{\text{Y}}$$

$$\text{Next Payment is the } \frac{\text{Cost Estimate} - \text{Current Value of the trust fund}}{\text{Remaining Years}} \text{ or } \frac{\text{CE} - \text{CV}}{\text{RY}}$$

where CE is the current closure and post-closure care cost estimate (updated for inflation), CV is the current value of the trust fund, and RY is the number of years remaining in the pay-in period.

D. For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund shall be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subsection B of this section. The amount of subsequent payments shall be determined by the following formula:

$$\frac{\text{Next payment} = \text{RB} - \text{CV}}{\text{Y}}$$

$$\text{Next payment is } \frac{\text{The most recent estimate of the trust fund balance} - \text{the Current Value of the trust fund}}{\text{Corrective Action Remaining Years}}$$

$$\text{Or } \frac{\text{RB} - \text{CV}}{\text{CARY}}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and CARY is the number of years remaining on the pay-in period. The initial payment into the trust fund shall be made no later than 120 days after the corrective action remedy has been selected.

E. The owner or operator must submit to the director [ ~~no less than 15 days~~ ] prior to the anniversary date:

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

2. A statement from the trustee documenting the current fund value used to calculate the appropriate trust payment (this is the CV value); and

3. A statement from the trustee indicating the amount of the deposit into the trust fund.

~~E.~~ F. If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this section, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund

were established initially and annual payments made according to the specifications of this section, as applicable.

~~F.~~ G. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the cost estimate at the time the fund is established. However, the value of the fund shall be maintained at no less than the value would have been if annual payments were made as specified in subsections B through ~~E~~ F of this section, as applicable. *Owners and operators of solid waste management units other than landfills shall deposit the full amount of the cost estimate at the time the fund is established.*

~~G.~~ H. Whenever the cost estimate changes after the pay-in period is completed, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new cost estimate, the owner or operator shall, within 60 days of the change in the cost estimate, deposit a sufficient amount into the fund so that its value after payment at least equals the amount of the new estimate, or obtain other financial assurance as specified in this article to cover the difference. If the value of the trust fund is greater than the total amount of the cost estimate, the owner or operator may submit a written request to the director for release of the amount that is in excess of the cost estimate.

~~H.~~ I. If the owner or operator substitutes other financial assurance as specified in this article for all or part of the trust fund, he may submit a written request to the director for release of the amount in excess of the current cost estimate covered by the trust fund.

~~I.~~ J. Within 60 days after receiving a request from the owner or operator for release of funds specified in subsections ~~G~~ through H and I of this section, the director will instruct the trustee to release to the owner or operator such funds as the director deems appropriate, if any, in writing.

~~J.~~ K. After beginning closure or during the period of post-closure care [ *or corrective action* ], an owner or operator or any other person authorized to conduct closure [ ~~or~~ , ] post-closure care, [ *or corrective action* ] may request reimbursement for closure [ ~~or~~ , ] post-closure [ , *or corrective action* ] expenditures by submitting itemized bills to the director. *Requests for reimbursement will be granted by the director only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action. [ Reimbursements will not be made from the trust fund until the pay-in period is complete. ]* Within 60 days after receiving bills for closure [ ~~or~~ , ] post-closure care [ , *or corrective action* ] activities, the director shall instruct the trustee to make reimbursements in those amounts as the director determines are in accordance with the closure or post-closure plan or are otherwise justified.

~~K.~~ L. The director shall agree to terminate the trust when:

1. The owner or operator substitutes alternate financial assurance as specified in this article; or
2. The director notifies the owner or operator that he is no longer required by this article to maintain financial assurance for the closure, post-closure care or corrective action.

~~L.~~ M. The wording of the trust agreement shall be identical to the wording specified in ~~Appendix 4~~ 9 VAC 20-70-290 A and the trust agreement shall be accompanied by a formal certification of acknowledgment. Schedule A of the trust agreement, as described in ~~Appendix 4~~ 9 VAC 20-70-290 A, shall be updated within 60 days after a change in the amount of the current cost estimate covered by the agreement.

## 9 VAC 20-70-160. Surety bond guaranteeing payment or performance.

A. An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond that satisfies the requirements of this section. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this section. [ *A copy of the bond shall be placed in the facility's operating record.* ]

1. An owner or operator of a new facility shall submit the *original* bond to the director at least 60 days before the date on which waste is first received for treatment or disposal. In case of existing facilities, the owner or operator who substitutes a surety bond for another financial assurance mechanism already in place shall submit the bond to the director at least 30 days before the expiration date of the previous mechanism.

2. The bond shall be effective before the initial receipt of waste; January 7, 1998; or the expiration date of the previous assurance mechanism, whichever is later, or no later than 120 days after the corrective action remedy has been selected.

3. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of Treasury and must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia.

[ 4. *The owner or operator shall submit with the bond evidence that the power of attorney of the attorney-in-fact executing the bond is recorded pursuant to § 38.2-2416 of the Code of Virginia.* ]

B. The surety bond shall name the facility operator or owner as the principal and name the *Department of Environmental Quality*, Commonwealth of Virginia as the obligee.

C. The penal sum of the bond shall be in an amount at least equal to the current closure, post-closure care or corrective action cost estimate, whichever is applicable.

D. The term of ~~the~~ a closure bond shall be for the active life of the [ ~~waste management~~ ] facility for which a permit is applied by the owner or operator through the closure period. A bond used for post-closure care assurance shall extend through the post-closure period. A bond used for corrective action shall extend through the corrective action period.

E. The bond shall guarantee that the owner or operator will:

1. Perform final closure, post-closure care, or corrective action in accordance with the closure or post-closure plan and other requirements in any permit for the facility;

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2. Perform final closure, post-closure care, or corrective action following an order to begin closure, post-closure, or corrective action issued by the director or by a court, or following issuance of a notice of termination of the permit; or
3. Provide alternate financial assurance as specified in this article within 60 days after receipt by the director of a notice of cancellation of the bond from the surety.

F. The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

G. *Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the director by certified mail of such commencement.*

G. H. The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of 9 VAC 20-70-150 except the requirements for initial payment and subsequent annual payments.

H. I. Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee.

I. J. If upon amendment of the permit, the cost estimate increases to an amount greater than the amount of the penal sum of the bond, the owner or operator shall, within 60 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this article to cover the increase. Whenever the cost estimate decreases, the penal sum may be reduced to the amount of the cost estimate following written approval by the director. Notice of an increase or decrease in the penal sum shall be sent to the director by certified mail within 60 days after the change.

J. K. The bond shall remain in force for its term unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the director. Cancellation cannot occur, however:

1. During the 120 days beginning on the date of receipt of the notice of cancellation by the director as shown on the signed return receipt; or
2. While an enforcement ~~procedure~~ *action* is pending.

K. L. ~~[ Following a determination that the owner or operator has failed to perform closure or post-closure in accordance with the approved plan and any other permit or order requirements when required to do so, the surety shall perform, or cause to have performed, closure, post-closure care or corrective action in accordance with the terms of the bond, approved plan and any other permit requirement or enforcement order. In the event of failure of the owner or operator to comply with the final closure, post-closure care or corrective action requirements, the director shall request the surety to perform or cause to have performed closure, post-closure, or corrective action. ]~~ As an alternative to performing final closure [ or, ] post-closure [ , or corrective action ], the

surety may forfeit the full amount of the penal sum to the *Department of Environmental Quality, Commonwealth of Virginia.*

L. M. The owner or operator may cancel the bond if the director has given prior written consent based on receipt of evidence of alternative financial assurance as specified in this article or if the owner or operator is no longer required to demonstrate financial responsibility.

M. N. The director will notify the surety if the owner or operator provides alternate financial assurance as specified in this article.

N. O. The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the owner or operator has been notified by the director that the owner or operator is no longer required by this article to maintain financial assurance for closure or post-closure care of the facility.

O. P. In regard to closure or post-closure performed either by the owner or operator or by the surety, proper final closure of a *solid* waste management facility shall be deemed to have occurred when the director determines that final closure or post-closure has been completed. ~~[ Such final closure shall be deemed to have been completed when the provisions of the site's approved plan have been executed and the provisions of any other permit requirements or enforcement orders relative to closure or post-closure care have been complied with. ]~~

[ Q. *In regard to corrective action performed by either the owner or operator or by the surety, completion of a corrective action plan of a solid waste management facility shall be deemed to have occurred when the director determines that corrective action has been completed.*

Q. R. ] *The director [ shall call or may ] cash the surety bond if it is not replaced 30 days prior to expiration with alternate financial assurance acceptable to the director or if the owner or operator fails to fulfill the conditions of the bond.*

R. [ R. S. ] The wording of the surety bond shall be identical to the wording specified in ~~Appendix H~~ 9 VAC 20-70-290 B.

## 9 VAC 20-70-170. Letter of credit.

A. An owner or operator ~~[ of a solid waste management facility ]~~ may satisfy the requirements of this article by obtaining an irrevocable standby letter of credit that satisfies the requirements of this section and by submitting the *original* letter of credit to the director. ~~[ A copy of the letter of credit shall be placed in the facility's operating record. ]~~ The letter of credit shall be effective before the initial receipt of waste or before January 7, 1998, whichever is later, in case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected. The issuing institution shall be a bank or other financial institution that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Commonwealth of Virginia, by a federal agency, or by an agency of another state.

B. The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the



current cost estimate for closure, post-closure care, or corrective action, whichever [ is ] applicable. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the current expiration date it shall, at least 120 days before the date, notify both the owner or operator and the director by certified mail of that decision. The 120-day period will begin on the date of receipt by the director as shown on the signed return receipt. Expiration cannot occur, however, while an enforcement procedure action is pending. ~~If the letter of credit is canceled by~~ *Within 60 days of receipt of notice from the issuing institution that it does not intend to extend the letter of credit, the owner or operator shall obtain alternate financial assurance and submit it to the director.*

C. Whenever the cost estimate increases to an amount greater than the amount of credit, the owner or operator shall, within 60 days of the increase, cause the amount of credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this article to cover the increase. Whenever the cost estimate decreases, the letter of credit may be reduced to the amount of the new estimate following written approval by the director. The issuing institution shall send the notice of an increase or decrease in the amount of the credit to the director by certified mail within 60 days of the change.

D. ~~Following a determination that~~ *In the event of failure of* the owner or operator ~~[ has failed to perform to comply with the final ]~~ closure, post-closure ~~[ care ]~~ or corrective action ~~[ in accordance with the approved plan or other permit or order ]~~ requirements, the director ~~will draw on~~ *[ shall call or may ]* cash the letter of credit.

E. The owner or operator may cancel the letter of credit only if alternate financial assurance acceptable to the director is substituted as specified in this article or if the owner or operator is released by the director from the requirements of this chapter.

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

1. The owner or operator substitutes acceptable alternate financial assurance for closure, post-closure care, or corrective action as specified in this article; or
2. The director notifies the owner or operator that he is no longer required by this article to maintain financial assurance for closure ~~[ or ]~~ , post-closure ~~[ , or corrective action ]~~ of the facility.

G. *The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of 9 VAC 20-70-150 except the requirements for initial payment and subsequent annual payments.*

H. *Payments made under the terms of the letter of credit will be deposited by the [ surety issuing institution ] directly into the standby trust fund. Payments from the trust fund shall be approved by the [ trustee director ].*

I. *The director [ shall call or may ] cash the letter of credit if it is not replaced [ 30 days ] prior to [ 30 days of ] expiration with alternate financial assurance acceptable to the director.*

~~G. J.~~ The wording of the letter of credit shall be identical to the wording specified in the Appendix III 9 VAC 20-70-290 C.

## **9 VAC 20-70-180. Certificate of deposit of acceptable collateral.**

A. An owner or operator of a ~~[ solid waste management ]~~ facility (with the exception of sanitary landfills) may satisfy the requirements of this article, wholly or in part, by ~~filing with the director a collateral bond payable assigning all rights, title and interest of a certificate of deposit to the Department of Environmental Quality, Commonwealth of Virginia, conditioned so that the owner or operator shall comply with the closure, post-closure care or corrective action plan filed for the site. The amount of the bond certificate of deposit shall be at least equal to the estimated closure, post-closure care or corrective action cost for the site for which the permit application has been filed or any part thereof not covered by other financial responsibility mechanisms. [ Liability of such ] bond [ The owner or operator shall maintain the ] certificate of deposit [ shall be for the term of the permit or until proper final closure, post-closure care or corrective action is completed, whichever comes last. Such bond shall be executed by the owner or operator after depositing with the director acceptable collateral, the market value of which shall be at least equal to the total estimated closure, post-closure care, or corrective action cost or any part thereof not covered by other financial responsibility mechanisms. [ The original assignment and the certificate of deposit, if applicable, must be submitted to the department to prove that the certificate of deposit has been obtained and meets the requirements of this section. A copy of the certificate of deposit shall be maintained in the facility's operating record. ]~~

~~B. Acceptable collateral may include certificates of deposit, negotiable bonds of the United States Government, the Commonwealth of Virginia or any of its agencies, any government authority within the Commonwealth of Virginia, or any county, municipality or other local bond issuing authority within the Commonwealth of Virginia approved as acceptable for financial responsibility purposes by the director.~~

~~C. The director shall, upon receipt of any such collateral, place the mechanisms with the state treasurer to be held in the name of the Commonwealth of Virginia, in trust, for the purposes for which such deposit is made.~~

~~D. B.~~ The owner or operator shall be entitled to demand, receive and recover the interest and income from ~~said mechanisms the certificate of deposit~~ as it becomes due and payable as long as the market value of the ~~mechanisms certificate of deposit~~ plus any other mechanisms used continue to at least equal the amount of the estimated *current* closure, post-closure care, or corrective action cost.

~~E. The owner or operator shall also be permitted to replace the collateral mechanisms with other like mechanisms of at least equal market value upon proper notification to the director and the state treasurer.~~

~~F. C.~~ In the event of failure of the owner or operator to comply with the final closure, post-closure care or corrective action requirements, the director shall ~~declare said collateral forfeited and shall request the state treasurer to convert said collateral into cash and transfer such funds to the director to~~

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~~be used for closure, post-closure care or corrective action purposes [ call or ] cash the certificate of deposit.~~

~~[ D. The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of 9 VAC 20-70-150 except the requirements for initial payment and subsequent annual payments.~~

~~E. Payments made under the terms of the certificate of deposit will be deposited by the issuing institution directly into the standby trust fund. Payments from the trust fund shall be approved by the director.~~

~~D. F. ] The wording of the assignment shall be identical to the wording specified in 9 VAC 20-70-290 D.~~

## 9 VAC 20-70-190. Insurance.

~~A. An owner or operator may demonstrate financial assurance for closure, post-closure care or corrective action by obtaining insurance which conforms to the requirements of this section. The insurance shall be effective before the initial receipt of waste or before January 7, 1998, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The insurer must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia. The owner or operator shall notify provide the director that a with an original signed copy of the insurance policy has been placed and place a copy in the operating record. The department shall be listed as an additional insured on the policy, but the department will not be obligated for payment of the premium in any manner.~~

~~B. The insurance policy shall guarantee that funds will be available to close the solid waste management unit whenever final closure occurs, [ or ] to provide post-closure care for the solid waste disposal unit whenever the post-closure care period begins, [ or to perform corrective action whenever the corrective action period begins, ] whichever is applicable. The policy shall also guarantee that once closure [ or, ] post-closure care [ , or corrective action ] begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure [ or, ] post-closure care, [ or corrective action ] up to an amount equal to the face amount of the policy.~~

~~C. The insurance policy shall be issued and maintained for a face amount at least equal to the current cost estimate for closure [ or, ] post-closure care, [ or corrective action, ] whichever is applicable. The term face amount means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount although the insurer's future liability will be lowered by the amount of the payments.~~

~~D. [ An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or~~

~~post-closure care, and if justification and documentation of the cost ] is placed in the operating record [ has been submitted to and approved by the director. The owner or operator shall notify the director that ] the documentation of the justification for reimbursement has been placed in the operating record and that [ reimbursement has been received. The insurance policy shall provide that the insurer will pay closure, post-closure, or corrective action expenditures, whichever is applicable, on behalf of the owner or operator or any other person authorized to conduct closure, post-closure care, or corrective action. Justification and documentation of the expenditures must be submitted to and approved by the director. Requests for payment will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure, post-closure care, or corrective action, or if the director approves the payment. The insurer shall notify the director when a payment has been made. ]~~

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

~~F. The insurance policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the director 120 days in advance of cancellation. If the insurer cancels Within 60 days of receipt of notice from the insurer that it does not intend to renew the policy, the owner or operator shall obtain alternate financial assurance as specified in this section and submit it to the director.~~

~~G. For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85% of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.~~

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

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

~~I. J. ] The wording of the insurance certificate shall be identical to the wording specified in Appendix IV 9 VAC 20-70-290 E.~~

**9 VAC 20-70-200. Corporate financial test.**

An owner or operator may satisfy the requirements for financial assurance by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator shall meet the following criteria:

1. Financial component.

a. The owner or operator shall satisfy one of the following three conditions:

(1) *Supply documentation demonstrating that the owner or operator has a current rating for its ~~most recent bond issuance~~ senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;*

(2) A ratio of less than 1.5 comparing total liabilities to net worth; or

(3) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

b. The tangible net worth of the owner or operator shall be greater than the sum of the current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test plus \$10 million.

c. The owner or operator shall have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test as described in subdivision 3 of this section.

2. Reporting requirements.

a. To demonstrate that he meets the financial component, the owner or operator shall submit the following items to the director [ *and place copies of the items in the facility's operating record* ]:

(1) *A An original letter signed by the owner's or operator's chief financial officer and worded as specified in ~~Appendix V~~ 9 VAC 20-70-290 F.*

(2) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year except as provided in subdivision 2 a (2) (a) of this section:

(a) To be eligible to use the financial test, the owner's or operator's financial statements referenced in subdivision 2 of this section shall receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance. The director may evaluate qualified opinions on a case by case basis and allow use of the financial test in cases where the director deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the director does not allow use of the

test, the owner or operator shall provide alternate financial assurance as specified in this article.

(b) (Reserved.)

(3) *A copy of the owner's or operator's audited financial statements for the latest completed fiscal year.*

~~(3)~~ (4) If the chief financial officer's letter providing evidence of financial assurance includes financial data that are different from data in the audited financial statements referred to in subdivision 2 a (2) of this section or any other audited financial statement or data filed with the Securities Exchange Commission (SEC), a special report from the owner's or operator's independent certified public accountant to the owner or operator is required stating that:

(a) He has compared the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(b) In connection with that examination, no matters came to his attention which caused him to believe that the data in the chief financial officer's letter should be adjusted.

(5) *A certification from the corporation's chief financial officer stating the method for funding closure and post-closure costs, and the amount currently designated for closure and post-closure costs in the corporation's [ ~~budget financial statements~~ ] worded as specified in 9 VAC 20-70-290 H.*

b. An owner or operator shall submit the items specified in subdivision 2 of this section before the initial receipt of waste or before January 7, 1998, whichever is later in the case of closure; post-closure care, or no later than 120 days after the corrective action remedy has been selected. If the owner or operator changes the financial assurance mechanism to corporate financial test from any other mechanism, the owner or operator shall submit the items specified in subdivision 2 of this section at least 60 days before the date that the former assurance expires.

c. After the initial submission of items specified in subdivision 2 of this section, the owner or operator shall update the information and submit updated information to the director within 90 days following the close of the owner or operator's fiscal year. This information must consist of all ~~three~~ five items specified in subdivision 2 of this section.

d. The owner or operator is no longer required to submit the items specified in subdivision 2 of this section when:

(1) He substitutes alternate financial assurance as specified in this article; or

(2) He is released from the requirements of this article by the director.

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e. If the owner or operator no longer meets the requirements of subdivision 1 of this section, the owner or operator shall, within 120 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this article, notify the director that the owner or operator no longer meets the criteria of the financial test and submit the alternate assurance documentation.

f. The director may, based on a reasonable belief that the owner or operator may no longer meet the requirement of this article, require reports of financial condition at any time from the owner or operator in addition to those specified in subdivision 2 of this section. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subdivision 1 of this section, the owner or operator shall provide alternate financial assurance as specified in this article within 30 days after notification of such a finding.

g. The director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see subdivision 2 a (2) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The director will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this article within 30 days after notification of the disallowance.

3. Calculation of costs to be assured. When calculating the current cost [  $\tau$  ] estimates for closure, post-closure care, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in subdivision 1 of this section, the owner or operator must include cost estimates required for municipal solid waste management facilities under this part, as well as cost estimates required for the following environmental obligations, if it assures them through a financial test obligations associated with underground injection control (UIC) facilities under 40 CFR 144.62, petroleum underground storage tank facilities under ~~40 CFR Part 280~~ *9 VAC 25-590-10 et seq.*, [ *above ground storage tank facilities under 9 VAC 25-640-10 et seq.* ], polychlorinated biphenyls (PCB) storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

4. During the period of post-closure care, the director may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the director that the amount of the cost estimate exceeds the remaining cost of the post-closure care.

## 9 VAC 20-70-210. Local government financial test.

An owner or operator that satisfies the requirements of subdivisions 1 through 3 of this section may demonstrate financial assurance [ *using the local government financial*

*test*] up to the amount specified in subdivision 4 of this section.

### 1. Financial component.

a. The owner or operator shall satisfy the provisions of subdivision 1 a of this section, as applicable:

(1) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he shall ~~have~~ *supply the director with documentation demonstrating that the owner or operator has a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or*

~~(2) If the owner or operator has the legal authority to issue general obligation bonds but does not have any such bonds outstanding he shall have a current general obligation shadow bond rating of Aaa, Aa, A, or Baa as issued by Moody's, or AAA, AA, A, or BBB as issued by Standard and Poor's; or~~

~~(3)~~ (2) If the owner or operator does not have outstanding, rated general obligation bonds, he shall satisfy each of the following financial ratios based on the owner's or operator's most recent audited annual financial statement:

(a) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(b) A ratio of annual debt service to total expenditures less than or equal to 0.20.

b. The owner or operator shall prepare his financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant or by the Auditor of Public Accounts.

c. An owner or operator is not eligible to assure its obligations under this section if he:

(1) Is currently in default on any outstanding general obligation bonds;

(2) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;

(3) Operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years; or

(4) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or Auditor of Public Accounts auditing its financial statement as required under subdivision 1 b of this section. However, the director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the director deems the qualification insufficient to warrant disallowance of the test.

2. Public notice component. The local government owner or operator shall place a reference to the closure,

post-closure care, or corrective action costs assured through the financial test into [ *the* ] next comprehensive annual financial report (CAFR) after January 7, 1998, or prior to the initial receipt of waste at the facility, whichever is later. Disclosure shall include the nature and source of closure and post-closure requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action cost shall be placed in CAFR no later than 120 days after the corrective action remedy has been selected in accordance with 9 VAC 20-80-310. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure care costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

### 3. Recordkeeping and reporting requirements.

a. The local government owner or operator must ~~place~~ *submit to the department* the following items [ *and place copies of the items* in the facility's operating record ] :

(1) A *original* letter signed by the local government's chief financial officer ~~that:~~ *worded as specified in 9 VAC 20-70-290 G.*

~~(a) Lists all the current cost estimates covered by a financial test, as described in subdivision 4 of this section;~~

~~(b) Provides evidence and certifies that the local government meets the conditions of subdivisions 1 a, 1 b, and 1 c of this section; and~~

~~(c) Certifies that the local government meets the conditions of subdivisions 2 and 4 of this section.~~

(2) The local government's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(3) A report to the local government from the local government's independent certified public accountant (CPA) or the Auditor of Public Accounts based on performing an agreed upon procedures engagement relative to the financial ratios required by subdivision 1 a (3) of this section, if applicable, and the requirements of subdivisions 1 b, 1 c (3) and 1 c (4) of this section. The CPA or state agency's report ~~should~~ *shall* state the procedures performed and the CPA or state agency's findings; and

(4) A copy of the comprehensive annual financial report (CAFR) used to comply with subdivision 2 of this section or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(5) A certification from the local government's chief executive officer stating in detail the method selected by the local government for funding closure and post-closure costs. If the method selected by the local government is a trust fund, escrow account or similar mechanism, there shall be included a certification from the local government's chief financial officer indicating the current reserve obligated to closure and post-closure care cost. If the method selected by local governments is the use of annual operating budget and Capital Investment Funds, there shall be a certification from the local government's chief financial officer so indicating. Nothing herein shall be construed to prohibit the local government from revising its plan for funding closure and post-closure care [ ~~cost~~ ] if such revision provides economic benefit to the local government and if such revision provides adequate means for funding closure and post-closure care cost. This certification shall be worded as specified in 9 VAC 20-70-290 H.

(6) If the local government is required under this section to fund a restricted sinking fund [ ~~or,~~ ] escrow account, [ *or to obtain an irrevocable letter of credit,* ] an original letter signed by the local government's chief financial officer and worded as specified in 9 VAC 20-70-290 I must be submitted.

b. The items required in subdivision 3 a of this section shall be [ *submitted to the department and* ] placed in the facility operating record as follows:

(1) In the case of closure and post-closure care, either before January 7, 1998, or prior to the initial receipt of waste at the facility, whichever is later; or

(2) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of 9 VAC 20-80-310.

c. After the initial [ ~~placement of the items in the facility's operating record~~ *submission of the items* ], the local government owner or operator must update the information [ *and,* ] place [ *a copy of* ] the updated information in the operating record [ *,* ] and submit the updated documentation described in subdivisions 3 a (1) through [ ~~(4)~~ (6) of this section ] to the department within 180 days following the close of the owner or operator's fiscal year.

d. The local government owner or operator is no longer required to meet the requirements of subdivision 3 of this section when:

(1) The owner or operator substitutes alternate financial assurance as specified in this section; or

(2) The owner or operator is released from the requirements of this section in accordance with 9 VAC 20-70-111 E, 9 VAC 20-70-112 B, or [ ~~9 VAC 20-70-113 B~~ 9 VAC 20-70-113 C ].

e. A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it

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must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance a copy of the financial assurance mechanism in the operating record, and ~~notify submit the original financial assurance mechanism to the state director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.~~

f. The director, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government shall provide alternate financial assurance in accordance with this article.

4. Calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under subdivision 1 of this section is determined as follows:

a. If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to [ 43% 20% ] of the local government's total annual revenue or the sum of total revenues of constituent governments in the case of regional authorities. [ *If the local government assures closure, post-closure, and corrective action costs that exceed 20% (but do not exceed 43%) of the local government's total annual revenue or the sum of the revenue of constituent governments in the case of regional authorities, the locality must also establish one of the following:*

- (1) A restricted sinking fund for the purpose of funding closure of the facility;
- (2) An escrow account managed by a third party escrow agent for the purpose of funding closure of the facility; or
- (3) A letter of credit for the purpose of funding closure of the facility.

*The funding of the restricted sinking fund, escrow account, or letter of credit shall be determined by the following formula:*

*((CE\*CD)-E) where CE is the current closure cost estimate, CD is the percent of the landfill capacity used to date, and E is the current year expenses for closure. ]*

b. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280 9 VAC 25-590-10 et seq., PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under Part IX or X of the Virginia Hazardous Waste Management

~~Regulations [ (9 VAC 20-60-10 et seq.) (9 VAC 20-60-12 et seq.) ], it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under subdivision 1 of this section. The total shall not exceed [ 43% 20% ] of the local government's total annual revenue. [ *If the local government's total environmental liabilities assured through financial tests exceed 20% (but do not exceed 43%) of the local government's total annual revenue or the sum of the revenue of constituent governments in the case of regional authorities, the locality must also establish one of the following:*~~

- ~~(1) A restricted sinking fund for the purpose of funding closure of the facility;~~
- ~~(2) An escrow account managed by a third party escrow agent for the purpose of funding closure of the facility; or~~
- ~~(3) A letter of credit for the purpose of funding closure of the facility.~~

~~The funding of the restricted sinking fund, escrow account, or letter of credit shall be determined by the following formula:~~

~~((CE\*CD)-E) where CE is the current closure cost estimate, CD is the percent of the landfill capacity used to date, and E is the current year expenses for closure. ]~~

~~[ *e. If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that exceed 20% of the local government's total annual revenue or the sum of the revenue of constituent governments in the case of regional authorities but must not exceed 43% of the local government's total annual revenue or the sum of total revenues of constituent governments in the case of regional authorities. The locality must establish one of the following:*~~

- ~~(1) A restricted sinking fund for the purposes of funding closure of the facility; or~~
- ~~(2) An escrow account managed by a third party escrow agent for the purpose of funding closure of the facility.~~

~~d. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 9 VAC 25-590-10 et seq., PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under Part IX or X of the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-12 et seq.), it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under subdivision 1 of this section. The total environmental obligations assured through the financial test may exceed 20% of the local government's total annual revenue or the sum of the revenue of constituent governments in the case of regional authorities but do not~~

~~exceed 43% of the local government's total annual revenue or the sum of total revenues of constituent governments in the case of regional authorities. The locality must establish one of the following:~~

~~(1) A restricted sinking fund for the purposes of funding closure of the facility; or~~

~~(2) An escrow account managed by a third party escrow agent for the purpose of funding closure of the facility. ]~~

~~e. [ e. c. ]~~ The owner or operator shall obtain an alternate financial assurance mechanism for those costs that exceed the limits set in subdivisions 4 a and 4 b of this section.

**9 VAC 20-70-220. Corporate guarantee.**

A. An owner or operator may meet the requirements of this article by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator.

B. Financial component. The guarantor shall meet the requirements for owners or operators in 9 VAC 20-70-200 and shall comply with the terms of the corporate guarantee.

C. Reporting requirements.

1. The wording of the corporate guarantee shall be identical to the wording specified in ~~Appendix V~~ 9 VAC 20-70-290 J. The corporate guarantee shall accompany the items sent to the director as specified in subdivision 2 of 9 VAC 20-70-200. [ A copy of the guarantee and other items listed in subdivision 2 of 9 VAC 20-70-200 shall be placed in the facility's operating record. ]

2. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee.

3. The guarantee shall be effective and the guarantor shall submit the items specified in subdivision 2 of 9 VAC 20-70-200 before the initial receipt of the waste or before the effective date of this amendment, whichever is later in the case of closure or post-closure care, or no later than 120 days after the corrective action remedy has been selected. If the owner or operator changes the financial assurance mechanism to corporate guarantee from any other mechanism, the guarantor shall submit the required items 60 days before the former mechanism expires.

~~[ 4. A certification from the corporation's chief financial officer stating the method for funding closure and post-closure costs, and the amount currently designated for closure and post-closure costs in the corporation's budget worded as specified in 9 VAC 20-70-290 H. ]~~

D. The terms of the corporate guarantee shall provide that:

1. If the owner or operator fails to perform final closure or post-closure care, or corrective action of a facility covered by the corporate guarantee in accordance with the closure, post-closure care or corrective action plan and other permit or order requirements whenever required to do so, the guarantor ~~will~~ shall:

a. Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required (performance guarantee); or

b. Establish a fully funded trust fund as specified in 9 VAC 20-70-150 in the name of the owner or operator (payment guarantee).

2. The corporate guarantee will remain in force unless the guarantor sends a prior notice of cancellation by certified mail to the owner or operator and to the director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.

3. If a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator, obtain alternate financial assurance, and submit the required documentation to the director.

4. If the owner or operator fails to provide alternate financial assurance as specified in this article and to obtain the written approval of such alternate assurance from the director within 90 days after the receipt by both the owner or operator and the director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

E. If a corporate guarantor no longer meets the requirements of subdivision 1 of 9 VAC 20-70-200, the owner or operator must, within 90 days following the close of the guarantor's fiscal year, obtain alternative assurance and submit the required documentation to the director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the close of the guarantor's fiscal year, obtain alternative assurance, and submit the necessary documentation to the director.

F. The owner or operator is no longer required to submit the items specified in this section when:

1. The owner or operator substitutes alternate financial assurance; or

2. The owner or operator is released from the requirements by the director.

**9 VAC 20-70-230. Local government guarantee.**

A. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by this article, by obtaining a written guarantee provided by a local government. The guarantor shall meet the requirements of the local government financial test in 9 VAC 20-70-210 and shall comply with the terms of a written guarantee.

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B. Terms of the written guarantee. The guarantee shall be effective before the initial receipt of waste or before January 7, 1998, whichever is later, in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected. The guarantee shall provide that:

1. If the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will:

- a. Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required; or
- b. Establish a fully funded trust fund as specified in 9 VAC 20-70-150 in the name of the owner or operator.

2. The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.

3. If a guarantee is canceled, the owner or operator shall, within 90 days following receipt of the cancellation notice by the owner or operator and the director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor shall provide that alternate assurance within 120 days following the close of the guarantor's fiscal year, obtain alternative assurance *acceptable to the director*, place evidence of the alternate assurance in the facility operating record, and ~~notify~~ *submit the alternate assurance to the director*.

C. Recordkeeping and reporting.

1. The owner or operator shall ~~place a certified copy of the guarantee~~ *submit a signed original guarantee on the form in 9 VAC 20-70-290 K to the [ director department ]* along with items required under subdivision 3 of 9 VAC 20-70-210 and *place a copy of the document* into the facility's operating record before the initial receipt of waste or before January 7, 1998, whichever is later in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected.

2. The owner or operator is no longer required to maintain the items specified in 9 VAC 20-170-190 when:

- a. The owner or operator substitutes alternate financial assurance as specified in this section; or
- b. The owner or operator is released from the requirements of this chapter.

3. If a local government guarantor no longer meets the requirements of 9 VAC 20-70-210, the owner or operator shall, within 90 days following the close of the guarantor's fiscal year, obtain alternative assurance *acceptable to the director*, place evidence of the alternate assurance in the facility operating record, and ~~notify~~ *submit alternate*

*assurance* to the director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor shall provide that alternate assurance within 120 days.

~~[ 4. A certification from the local government's chief executive officer stating in detail the method selected by the local government for funding closure and post-closure costs. If the method selected by the local government is a trust fund, escrow account or similar mechanism, there shall be included a certification from the local government's chief financial officer indicating the current reserve obligated to closure and post-closure care cost. If the method selected by local governments is the use of annual operating budget and Capital Investment Funds, there shall be a certification from the local government's chief financial officer so indicating. Nothing herein shall be construed to prohibit the local government from revising its plan for funding closure and post-closure care cost if such revision provides economic benefit to the local government and if such revision provides adequate means for funding closure and post-closure care cost. This certification shall be worded as specified in 9 VAC 20-70-290 H. ]~~

## 9 VAC 20-70-240. Other mechanisms. (Repealed.)

~~A. An owner or operator may satisfy the requirements of this article by obtaining any other mechanism that is approved by the director. In order to receive such approval, the owner or operator shall submit documentation that:~~

~~1. The financial assurance mechanisms shall ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;~~

~~2. The financial assurance mechanisms shall ensure that funds will be available in a timely fashion when needed; and~~

~~3. The financial assurance mechanisms shall be obtained by the owner or operator by January 7, 1998, or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected, until the owner or operator is released from the financial assurance requirements.~~

~~B. The financial assurance mechanisms shall be legally valid, binding, and enforceable under the federal and Virginia laws.~~

## [ 9 VAC 20-70-250. Multiple financial mechanisms.

An owner or operator may satisfy the requirements of this article by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other mechanisms. The mechanisms shall be specified in 9 VAC 20-70-150 through ~~9 VAC 20-70-240~~ 9 VAC 20-70-230, except that financial assurance for the amount at least equal to the current cost estimate for closure, post-closure care, or corrective action may be provided by a combination of mechanisms, rather than a single mechanism. ]



**9 VAC 20-70-260. Release of the owner or operator from the financial assurance requirements.**

Within 60 days after receiving certification from the owner or operator that closure, post-closure care or corrective action has been accomplished in accordance with the requirements of the permit or the order, the director shall verify whether proper closure, post-closure care, or corrective action has occurred. Unless the director has reason to believe that closure, post-closure care or corrective action has not been in accordance with the appropriate plan or other requirements, he shall notify the owner or operator in writing that he is no longer required to maintain financial assurance for the particular unit or facility. Such notice shall release the owner or operator only from the requirements for financial assurance for the unit or facility; it does not release him from legal responsibility for meeting the closure, post-closure care or corrective action standards. If no written notice of termination of financial assurance requirements or failure to properly perform closure, post-closure care or corrective action is received by the owner or operator within 60 days after certifying proper closure, post-closure care or corrective action, the owner or operator may *submit a written* request to the director for an immediate decision in which case the director shall respond within 10 days after receipt of such request.

[ Article 7. ]

~~Discounting.~~ [ *Wording of Financial Mechanisms.* ]

**9 VAC 20-70-280. ~~Discounting.~~ (Repealed.)**

~~The director may allow discounting of closure cost estimates, post closure care cost estimates, and/or corrective action costs up to the rate of return for essentially risk free investments, net of inflation, under the following conditions:~~

- ~~1. The director determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer so stating;~~
- ~~2. The director finds the facility in compliance with applicable and appropriate permit conditions;~~
- ~~3. The director determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and~~
- ~~4. Discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.~~

**9 VAC 20-70-290. Wording of financial mechanisms.**

**APPENDIX I. A. Wording of trust agreements.**

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

**TRUST AGREEMENT**

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

Whereas, the Virginia Waste Management Board has established certain regulations applicable to the Grantor, requiring that the owner or operator of a (solid) (regulated medical) (yard) waste [ ~~(disposal)~~ ] (*transfer station*) (*receiving*) (management) facility must provide assurance that funds will be available when needed for (closure, post-closure care, or corrective action) of the facility,

Whereas, the Grantor has elected to establish a trust to provide (all or part of) such financial assurance for the facility identified herein,

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

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

**Section 1. Definitions. As used in this Agreement:**

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

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

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

**Section 2. Identification of Facility and Cost Estimates. This Agreement pertains to facility(ies) and cost estimates identified on attached Schedule A.**

(NOTE: On Schedule A, for each facility list, as applicable, the permit number, name, address, and the current closure ~~and/or~~, post-closure, *corrective action* cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.)

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

**Section 4. Payment for (Closure, Post-Closure Care, or Corrective Action). The Trustee will make such payments**

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from the Fund as the Department of Environmental Quality, Commonwealth of Virginia will direct, in writing, to provide for the payment of the costs of (closure, post-closure care, corrective action) of the facility covered by this Agreement. The Trustee will reimburse the Grantor or other persons as specified by the Department of Environmental Quality, Commonwealth of Virginia, from the Fund for (closure, post-closure care, corrective action) expenditures in such amounts as the Department of Environmental Quality will direct, in writing. In addition, the Trustee will refund to the Grantor such amounts as the Department of Environmental Quality specifies in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

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

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

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

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

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

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

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

B. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 80a-1 et seq., of one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of

which are sold by the Trustee. The Trustees may vote such shares in its discretion.

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

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

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

C. To register any securities held in the fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States government, or any agency or instrumentality thereof with a Federal Reserve Bank, but the books and records of the Trustee will at all times show that all such securities are part of the Fund;

D. To deposit any cash in the fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

E. To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund will be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee will be paid from the Fund.

Section 10. Annual Valuation. The Trustee will annually, at the end of the month coincident with or preceding the anniversary date of establishment of the Fund, furnish the Grantor and to the director of the Department of Environmental Quality, Commonwealth of Virginia, a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than 30 days prior to the date of the statement. The failure of the Grantor to object in writing to the Trustee within 90 days after

the statement has been furnished to the Grantor and the director of the Department of Environmental Quality, Commonwealth of Virginia will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee will be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of the appointment by the successor trustee, the Trustee will assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee and the date on which he assumes administration of the trust will be specified in writing and sent to the Grantor, the director of the Department of Environmental Quality, Commonwealth of Virginia, and the present trustees by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section will be paid as provided in Part IX.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee will be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the grantor may designate by amendment to Exhibit A. The Trustee will be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the Director of the Department of Environmental Quality, Commonwealth of Virginia, to the Trustee will be in writing, signed by the Director and the Trustee will act and will be fully protected in acting in accordance with such orders, requests and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Commonwealth of Virginia's Department of Environmental Quality hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or the Commonwealth of Virginia's Department of Environmental Quality, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee will notify the Grantor and the Director of the Department of

Environmental Quality, Commonwealth of Virginia, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee is not required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director of the Department of Environmental Quality, Commonwealth of Virginia, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust will be irrevocable and will continue until terminated at the written agreement of the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, will be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director of the Department of Environmental Quality, Commonwealth of Virginia, issued in accordance with this Agreement. The Trustee will be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement will be administered, construed and enforced according to the laws of the Commonwealth of Virginia.

Section 20. Interpretation. As used in the Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement will not affect the interpretation of the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in ~~the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia 9 VAC 20-70-290 A of the Financial Assurance [ R ] egulations for Solid Waste Management Facilities [ Regulations and Transfer Stations ]~~, as such regulations were constituted on the date shown immediately below.

(Signature of Grantor)

By: (Title)

(Date)

Attest:

---

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(Title) (Date)

(Seal)

(Signature of Trustee)

By

Attest:

(Title)

(Seal)

(Date)

Certification of Acknowledgment:

COMMONWEALTH OF VIRGINIA

STATE OF

CITY/COUNTY OF

On this date, before me personally came (owner or operator) to me known, who being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

**APPENDIX—II. B.** Wording of surety bond guaranteeing performance [ *or payment* ].

(NOTE: instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

## PERFORMANCE [ *OR PAYMENT* ] BOND

Date bond executed:.....

*Effective date*:.....

Principal: (legal name and business address)

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation")

State of incorporation:.....

Surety: (name and business address)

Name, address, permit number, if any, and (closure, post-closure care, or corrective action) cost estimate for the facility:.....

Penal sum of bond: \$.....

Surety's bond number:.....

Know all men by these present, That we, the Principal and Surety hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, (hereinafter called the Department) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the

purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of each sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have a permit from the Department of Environmental Quality, Commonwealth of Virginia, in order to own or operate the (solid, regulated medical, yard) waste management facility identified above, and

Whereas, said Principal is required to provide financial assurance for (closure, post-closure care, corrective action) of the facility as a condition of the permit [ *or an order issued by the department* ],

Now, therefore the conditions of this obligation are such that if the Principal shall faithfully perform (closure, post-closure care, corrective action), whenever required to do so, of the facility identified above in accordance with the [ *order or the* ] (closure, post-closure care, corrective action) plan submitted to receive said permit and other requirements of said permit as such plan and permit may be amended or renewed pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall faithfully perform (closure, post-closure care, corrective action) following an order to begin (closure, post-closure care, corrective action) issued by the Commonwealth of Virginia's Department of Environmental Quality or by a court, or following a notice of termination of the permit,

Or, if the Principal shall provide alternate financial assurance as specified in the Department's regulations and obtain the director's written approval of such assurance, within 90 days of the date notice of cancellation is received by the Director of the Department of Environmental Quality from the Surety, then this obligation will be null and void, otherwise it is to remain in full force and effect for the life of the management facility identified above.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of the requirements of the Department's regulations, the Surety must either perform (closure, post-closure care, corrective action) in accordance with the approved plan and other permit requirements or forfeit the (closure, post-closure care, corrective action) amount guaranteed for the facility to the Commonwealth of Virginia.

Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of an order to begin (closure, post-closure care, corrective action), the Surety must either perform (closure, post-closure care, corrective action) in accordance with the order or forfeit the amount of the (closure, post-closure care, corrective action) guaranteed for the facility to the Commonwealth of Virginia.

The Surety hereby waives notification of amendments to the (closure, post-closure care, corrective action) plans, orders, permit, applicable laws, statutes, rules, and regulations and agrees that such amendments shall in no way alleviate its obligation on this bond.

For purposes of this bond, (closure, post-closure care, corrective action) shall be deemed to have been completed when the Director of the Department of Environmental Quality, Commonwealth of Virginia, determines that the conditions of the approved plan have been met.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but ~~[ in no event shall ]~~ the obligation of the Surety hereunder ~~[ shall not ]~~ exceed the amount of said penal sum ~~[ unless the Director of the Department of Environmental Quality, Commonwealth of Virginia, should prevail in an action to enforce the terms of this bond. In this event, the Surety shall pay, in addition to the penal sum due under the terms of the bond, all interest accrued from the date the Director of the Department of Environmental Quality, Commonwealth of Virginia, first ordered the Surety to perform. The accrued interest shall be calculated at the judgment rate of interest pursuant to § 6.1-330.54 of the Code of Virginia ]~~.

The Surety may cancel the bond by sending written notice of cancellation to the owner or operator and to the Director of the Department of Environmental Quality, Commonwealth of Virginia, provided, however, that cancellation cannot occur (1) during the 120 days beginning on the date of receipt of the notice of cancellation by the director as shown on the signed return receipt; or (2) while ~~a compliance procedure an enforcement action~~ is pending.

The Principal may terminate this bond by sending written notice to the Surety, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

In witness whereof, the Principal and Surety have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and *I hereby certify* that the wording of this surety bond is identical to the wording specified in ~~the relevant regulations of the Commonwealth of Virginia, Department of Environmental Quality 9 VAC 20-70-290 B of the Financial Assurance Regulations for Solid Waste [ Management Disposal, Transfer, and Treatment ] Facilities as such regulations were constituted on the date shown immediately below.~~

Principal

Signature(s):.....

Name(s) and Title(s) (typed).....

Corporate Surety

Name and Address:.....

State of Incorporation:.....

Liability Limit: \$.....

Signature(s):.....

Name(s) and Title(s) (typed).....

Corporate Seal:

~~APPENDIX III:~~ C. Wording of irrevocable standby letter of credit.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT

Director  
Department of Environmental Quality  
P.O. Box 10009  
Richmond, Virginia 23240-0009

Dear (Sir or Madam):

We hereby establish our Irrevocable Letter of Credit No..... in your favor at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (in words) U.S. dollars \$....., available upon presentation of

- 1. Your sight draft, bearing reference to this letter of credit No..... together with
- 2. Your signed statement declaring that the amount of the draft is payable pursuant to regulations issued under the authority of the Department of Environmental Quality, Commonwealth of Virginia.

The following amounts are included in the amount of this letter of credit: (Insert the facility permit number, if any, name and address, and the closure, post-closure care, corrective action cost estimate, or portions thereof, for which financial assurance is demonstrated by this letter of credit.)

This letter of credit is effective as of (date) and will expire on (date at least one year later), but such expiration date will be automatically extended for a period of (at least one year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you and (owner or operator's name) by certified mail that we decide not to extend the Letter of Credit beyond the current expiration date. In the event you are so notified, unused portion of the credit will be available upon presentation of your sight draft for 120 days after the date of receipt by you as shown on the signed return receipt or while a compliance procedure is pending, whichever is later.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will pay to you the amount of the draft promptly and directly.

I hereby certify that I am authorized to execute this letter of credit on behalf of (issuing institution) and *I hereby certify* that the wording of this letter of credit is identical to the wording specified in ~~the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia 9 VAC 20-70-290 C of the Financial Assurance Regulations for Solid~~

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Waste [ ~~Management~~ Disposal, Transfer, and Treatment ] Facilities as such regulations were constituted on the date shown immediately below.

Attest:

( [ Signature Print name ] and title of official of issuing institution) (Date)

\_\_\_\_\_  
[ (Signature) (Date) ]

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," of "the Uniform Commercial Code.")

D. Assignment of certificate of deposit account.

City \_\_\_\_\_, 20\_\_

\_\_\_\_ FOR VALUE RECEIVED, the undersigned assigns all right, title and interest to the Virginia Department of Environmental Quality [ , Commonwealth of Virginia, ] and its successors and assigns the Virginia Department of Environmental Quality the principal amount of the instrument, including all monies deposited now or in the future to that instrument, indicated below:

( ) If checked here, this assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No. \_\_\_\_\_

This assignment is given as security to the Virginia Department of Environmental Quality in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the Virginia Department of Environmental Quality.

~~[ This contract is subject to the additional terms and provisions contained on the reverse side, which are made part of this contract.~~

Additional Security. This assignment shall secure the payment of any financial obligation of the (name of owner/operator) to the Virginia Department of Environmental Quality for ("closure" "post closure care" "corrective action") at the (facility name and permit number) located (physical address)

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial assurance obligations of (name of owner/operator) to the Virginia Department of Environmental Quality for ("closure" "post closure care" "corrective action") at the (facility name and address). The undersigned authorizes the Virginia Department of Environmental Quality to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia Department of Environmental Quality's

discretion to fund ("closure" "post closure care" "corrective action") at the (facility name) or in the event of (owner or operator's) failure to comply with the Virginia Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities, 9 VAC 20-70-10 et seq. The undersigned agrees that the Virginia Department of Environmental Quality may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. (The undersigned) agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment. ]

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its Board of Directors the day and year above written.

\_\_\_\_\_  
SEAL

(Owner)

[ \_\_\_\_\_

(print owner's name) ]

\_\_\_\_\_  
SEAL

(Owner)

[ \_\_\_\_\_

(print owner's name) ]

THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the name(s) as shown on record as owner(s) of the Certificate of Deposit indicated above. The above assignment has been properly recorded by placing a hold in the amount of \$\_\_\_\_\_ for the benefit of the Department of Environmental Quality.

( ) If checked here, the accrued interest on the Certificate of Deposit indicated above has been maintained to capitalize versus being mailed by check or transferred to a deposit account.

\_\_\_\_\_  
(Signature) (Date)

[ \_\_\_\_\_

(print name) ]

\_\_\_\_\_  
(Title)

[ ASSIGNMENT OF CERTIFICATE OF DEPOSIT ACCOUNT

~~Additional Security. This assignment shall secure the payment of any financial obligation of the [name of owner/operator] to the Virginia Department of Environmental Quality for ["closure" "post closure care" "corrective action"] at the [facility name and permit number] located [physical address]~~

~~Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial assurance obligations of [name of owner/operator] to the Virginia Department of Environmental Quality for ["closure" "post closure care" "corrective action"] at the [facility name and address]. The undersigned authorizes the Virginia Department of Environmental Quality to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia Department of Environmental Quality's discretion to fund ["closure" "post closure care" "corrective action"] at the [facility name] or in the event of [owner or operator's] failure to comply with the Virginia Financial Assurance Regulations for Solid Waste Management Facilities, 9 VAC 20-70-10 et seq. The undersigned agrees that the Virginia Department of Environmental Quality may withdraw any principal and/or interest from the indicated account or instrument without demand or notice agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment. ]~~

APPENDIX IV. E. Wording of certificate of insurance.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

CERTIFICATE OF INSURANCE

Name and Address of Insurer (herein called the "Insurer"): .....

Name and Address of Insured (herein called the "Insured"): .....

Facilities Covered: (List for each facility: Permit number (if applicable), name, address and the amount of insurance for closure, post-closure care, or corrective action. (These amounts for all facilities covered shall total the face amount shown below.))

Face Amount: \$.....

Policy Number:.....

Effective Date:.....

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for (insert "closure," "post-closure care," "corrective action") for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 9 VAC 20-70-190 of the Financial Assurance Regulations for Solid Waste [ Disposal, Transfer, and Treatment ] Facilities ("Regulations") (9 VAC 20-70-10 et seq.), as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Director, the Insurer agrees to furnish to the Director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in APPENDIX IV 9 VAC 20-70-290 E of the Financial Assurance Regulations for Solid Waste [ Management Disposal, Transfer, and Treatment ] Facilities as such regulations were constituted on the date shown immediately below.

(Authorized signature for Insurer)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:

(Date)

APPENDIX V. F. Wording of letter from chief financial officer.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

Director  
Department of Environmental Quality  
P.O. Box 10009  
Richmond, Virginia 23240-0009

Dear (Sir, Madam):

I am the chief financial officer of (name and address of firm). This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in ~~9 VAC 20-70-429~~ 9 VAC 20-70-200 of the Financial Assurance Regulations for Solid Waste [ Disposal, Transfer, and Treatment ] Facilities (9 VAC 20-70-10 et seq.) ("Regulations").

(Fill out the following four paragraphs regarding solid waste, regulated medical waste, yard waste composting, hazardous waste, underground injection (regulated under the federal program in 40 CFR Part 144, or its equivalent in other states), petroleum underground storage (9 VAC 25-590-10 et seq.), [ above ground storage facilities (9 VAC 25-640-10 et seq.) ] and PCB storage (regulated under 40 CFR Part 761) facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its name, address, permit number, if any, and current closure, post-closure care, corrective action or any other environmental obligation cost estimates. Identify each cost estimate as to whether it is for closure, post-closure care, corrective action or other environmental obligation.)

- 1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the corporate test specified in 9 VAC 20-70-200 or its equivalent in other applicable regulations. The current cost estimates covered by the test are shown for each facility:
- 2. This firm guarantees, through the corporate guarantee specified in 9 VAC 20-70-220, the financial assurance for the following facilities owned or operated by subsidiaries of this firm. The current cost estimates so guaranteed are shown for each facility:
- 3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities

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through the use of a financial test. The current cost estimates covered by such a test are shown for each facility:

4. This firm is the owner or operator of the following waste management facilities for which financial assurance is not demonstrated through the financial test or any other financial assurance mechanism. The current cost estimates for the facilities which are not covered by such financial assurance are shown for each facility:

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

1) Sum of current closure, post-closure care, corrective action or other environmental obligations cost estimates (total of all cost estimates shown in the four paragraphs above.)

\$ \_\_\_\_\_

2) Tangible net worth\* \$ \_\_\_\_\_

3) Total assets located in the United States\*  
\$ \_\_\_\_\_

YES NO

Line 2 exceeds line 1 by at least \$10 million?

Line 3 exceeds line 1 by at least \$10 million?

(Fill in Alternative I if the criteria of 9 VAC 20-70-200 1 a (1) are used. Fill in Alternative II if the criteria of 9 VAC 20-70-200 1 a (2) are used. Fill in Alternative III if the criteria of 9 VAC 20-70-200 1 a (3) are used.)

## ALTERNATIVE I-

Current bond rating of [ ~~most recent issuance of~~ ] this [ ~~firm~~ firm's senior unsecured debt ] and name of rating service

Date of issuance of bond

Date of maturity of bond

## ALTERNATIVE II-

4) Total liabilities [ \* ] (if any portion of the closure, post-closure care, corrective action or other environmental obligations cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to line 5.) \$ \_\_\_\_\_

5) Net worth [ \* ] \$ \_\_\_\_\_

Is line 4 divided by line 5 less than 2.0? YES NO

## ALTERNATIVE III-

6) Total liabilities [ \* ] \$ \_\_\_\_\_

7) The sum of net income plus depreciation, depletion, and amortization minus \$10 million\* \$ \_\_\_\_\_

Is line 7 divided by line 6 greater than 0.1? YES NO

I hereby certify that the wording of this letter is identical to the wording specified in ~~Article 4 (9 VAC 20-70-140 et seq.) of Part III 9 VAC 20-70-290 F~~ of the Financial Assurance Regulations for Solid Waste [ ~~Management Disposal, Transfer, and Treatment~~ ] Facilities as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

G. Wording of the local government letter from chief financial officer.

(NOTE: Instructions in [ ~~brackets~~ parentheses ] are to be replaced with the relevant information and the [ ~~brackets~~ parentheses ] deleted.)

## LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of (insert: name and address of local government owner or operator, or guarantor). This letter is in support of the use of the financial test to demonstrate financial responsibility for ("closure care" "post-closure care" "corrective action costs") arising from operating a solid waste management facility.

The following facilities are assured by this financial test: (List for each facility: the name and address of the facility, the permit number, the closure, post-closure and/or corrective action costs, whichever applicable, for each facility covered by this instrument).

This owner's or operator's financial statements were prepared in conformity with Generally Accepted Accounting Principles for governments and have been audited by ("an independent certified public accountant" "Auditor of Public Accounts"). The owner or operator has not received an adverse opinion or a disclaimer of opinion from ("an independent certified public accountant" "Auditor of Public Accounts") on its financial statements for the latest completed fiscal year.

This owner or operator is not currently in default on any outstanding general obligation bond. Any outstanding issues of general obligation [ ~~or revenue bonds~~ ], if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

The fiscal year of this owner or operator ends on (month, day). The figures for the following items marked with the asterisk are derived from this owner's or operator's independently audited, year-end financial statements for the latest completed fiscal year ended (date).

(Please complete Alternative I or Alternative II.)

(Fill in Alternative I if the criteria in [ ~~40 CFR 258.74 (f)(1)(A)~~ 9 VAC 20-70-210 1 a (1) ] are used. Fill in Alternative II if the criteria of [ ~~40 CFR 258.74(f)(1)(B)~~ 9 VAC 20-70-210 1 a (2) ] are used.)

## ALTERNATIVE I – BOND RATING TEST



The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding general obligation bond issues that are being used by (name of local government owner or operator, or guarantor) to demonstrate financial responsibility are as follows: (complete table):

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Any outstanding issues of general obligation [ ~~or revenue~~ ] bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A or BBB.

1) Sum of current closure, post-closure and corrective action cost estimates (total of all cost estimates listed above) \$ \_\_\_\_\_

\*2) Operating Deficit

- (a) latest completed fiscal year (insert year) \$ \_\_\_\_\_
- (b) previous fiscal year (insert year) \$ \_\_\_\_\_

\*3) Total Revenue

- (a) latest completed fiscal year (insert year) \$ \_\_\_\_\_
- (b) previous fiscal year (insert year) \$ \_\_\_\_\_

4) Other self-insured environmental costs

- (a) Amount of aggregate underground injection control systems financial assurance insured by a financial test under 40 CFR 144.62 \$ \_\_\_\_\_
- (b) Amount of annual underground storage tank aggregate coverage insured by a financial test under 40 CFR Part 280 and 9 VAC 25-590-10 et seq. \$ \_\_\_\_\_
- (c) Amount of aggregate costs associated with PCB storage facilities insured by a financial test under 40 CFR Part 761 \$ \_\_\_\_\_
- (d) Amount of annual aggregate hazardous waste financial assurance insured by a financial test under 40 CFR Parts 264 and 265 and [ ~~9 VAC 20-60-10~~ 9 VAC 20-60-12 ] et seq. \$ \_\_\_\_\_
- (e) Total of lines 4(A) through 4(d) \$ \_\_\_\_\_

YES NO

5) Is (line 2a , line 3a) < [ ~~0.05~~ 0.05 ]? \_\_\_\_\_

6) Is (line 2b , line 3b) < 0.05? \_\_\_\_\_

7) Is (line 1 + line 4e) £ (line 3a x 0.43)? \_\_\_\_\_

8) Is (line 1 + line 4e) £ (line 3a x .20)? \_\_\_\_\_

If the answer to line 7 is yes and the answer to line 8 is no, please attach [ ~~a letter~~ documentation ] from the agent/trustee [ /issuing institution ] stating the current balance of the account/fund [ /irrevocable letter of credit ] as of the latest fiscal reporting year to this form [ as required by 9 VAC 20-70-210 ].

ALTERNATIVE II – FINANCIAL RATIO TEST

1) Sum of current closure, post-closure and corrective action cost estimates \$ \_\_\_\_\_

\*2) Operating Deficit

- (a) latest completed fiscal year (insert year) \$ \_\_\_\_\_
- (b) previous fiscal year (insert year) \$ \_\_\_\_\_

\*3) Total Revenue

- (a) latest completed fiscal year (insert year) \$ \_\_\_\_\_
- (b) previous fiscal year (insert year) \$ \_\_\_\_\_

4) Other self-insured environmental costs

- (a) Amount of aggregate underground injection control systems financial assurance insured by a financial test under 40 CFR 144.62 \$ \_\_\_\_\_
- (b) Amount of annual underground storage tank aggregate coverage insured by a financial test under 40 CFR Part 280 and 9 VAC 25-590-10 et seq. \$ \_\_\_\_\_
- [ ~~(d)~~ (c) ] Amount of aggregate costs associated with PCB storage facilities insured by a financial test under 40 CFR Part 761 \$ \_\_\_\_\_
- (d) Amount of annual aggregate hazardous waste financial assurance insured by a financial test under 40 CFR Parts 264 and 265 and [ ~~9 VAC 20-60-10~~ 9 VAC 20-60-12 ] et seq. \$ \_\_\_\_\_
- (e) Total of lines 4(a) through 4(d) \$ \_\_\_\_\_

\*5) Cash plus marketable securities \$ \_\_\_\_\_

\*6) Total Expenditures \$ \_\_\_\_\_

\*7) Annual Debt Service \$ \_\_\_\_\_

YES NO

8) Is (line 2a , line 3a) < 0.05? \_\_\_\_\_

9) Is (line 2b , line 3b) < 0.05? \_\_\_\_\_

10) Is (line 1 + line 4e) £ (line 3a x 0.43)? \_\_\_\_\_

11) Is (line 5 , line 6) <sup>3</sup> 0.05? \_\_\_\_\_

12) Is (line 7 , line 6) £ 0.20? \_\_\_\_\_

13) Is (line 1 + line 4e) £ (line 3a x .20) \_\_\_\_\_

(The owner or operator must answer "Yes" to questions 8-12 to qualify to use this Alternative)

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If the answer to line 13 is no, [ ~~has a restricted sinking fund or escrow account been established?~~ please attach documentation from the agent/trustee/issuing institution stating the current balance of the account/fund/irrevocable letter of credit as of the latest fiscal reporting year to this form as required by 9 VAC 20-70-210. ]

[ ~~I hereby certify that the wording of this letter is identical to 9 VAC 20-70-290 G of the Financial Assurance Regulations for Solid Waste Management Facilities.~~ ]

I hereby certify that the wording of this letter is identical to the wording in 9 VAC 20-70-290 [ ~~F~~ G ] of the Financial Assurance Regulations for Solid Waste [ ~~Management Disposal, Transfer, and Treatment~~ ] Facilities as such regulations were constituted on the date shown immediately below.

(Signature)

(Name of person signing)

(Title of person signing)

(Date)

## H. Certification of funding.

### CERTIFICATION OF FUNDING

I certify the following information details the current plan for funding closure and post closure at the solid waste management facilities listed below.

Facility	Permit #	Source for funding closure and post closure

Name of Locality or Corporation: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

## I. Certification of escrow/sinking fund [ /irrevocable letter of credit ] balance.

Certification of Escrow/Sinking Fund Balance [ or Amount of Irrevocable Letter of Credit ]

I am the Chief Financial Officer of (name of locality) and hereby certify that as of (date) the current balance in the [ restricted sinking ] (type of fund) fund [ or the escrow account or the amount of the irrevocable letter of credit ] restricted to landfill closure costs is \$\_\_\_\_\_.

The calculation used to determine the amount required to be funded is as follows:

(Show the values that were used in the following formula:

$$(CE * CD) - E$$

Where CE is the current closure cost estimate, CD is the [ ~~capacity percentage~~ ] of landfill [ capacity ] used to date, and E is current year expenses for closure.)

Therefore, this account has been funded [ or an irrevocable letter of credit has been obtained ] in accordance with the Financial Assurance Regulations for Solid Waste [ Disposal, Transfer and Treatment ] Facilities, 9 VAC 20-70-10 et seq.

(Signature) \_\_\_\_\_

(Name of person signing) \_\_\_\_\_

(Title of person signing) \_\_\_\_\_

(Date) \_\_\_\_\_

## APPENDIX VI. J. Wording of corporate guarantee.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

### CORPORATE GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the state of (insert name of state), herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (business address), which is (one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation) of which guarantor is a subsidiary"; or "an entity with which the guarantor has a substantial business relationship, as defined in Part I of the Virginia Financial Assurance Regulations for Solid Waste [ Management Disposal, Transfer, and Treatment ] Facilities (9 VAC 20-70-10 et seq.)") to the Virginia Department of Environmental Quality ("Department"), obligee, on behalf of our subsidiary (owner or operator) of (business address).

### Recitals

1. Guarantor meets or exceeds the financial test criteria in 9 VAC 20-70-200 and agrees to comply with the reporting requirements for guarantors as specified in 9 VAC 20-70-220 of the Financial Assurance Regulations for Solid Waste [ Disposal, Transfer, and Treatment ] Facilities ("Regulations").

2. (Owner or operator) owns or operates the following (solid, regulated medical, yard) waste management facility(ies) covered by this guarantee: (List for each facility: name, address, and permit number, if any. Indicate for each whether guarantee is for closure, post-closure care, corrective action or other environmental obligations.)

3. "Closure plans" [ ~~and~~ ] "post-closure care plans" [ and "corrective action plans" ] as used below refer to the plans maintained as required by the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.), Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.) or Vegetative Waste Management and Yard Waste Composting Regulations (9 VAC 20-101-10 et seq.).

4. For value received from (owner or operator), guarantor guarantees to the Department that in the event that (owner or operator) fails to perform (insert "closure," "post-closure care," or "corrective action") of the above facility(ies) in accordance with the closure or post-closure care plans and

other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9 VAC 20-70-140 in the name of (owner or operator) in the amount of the current cost estimates.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the director by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure [ ~~or~~, ] post-closure [ *or corrective action* ] plan, [ ~~amendment or modification of the closure or post-closure plan,~~ ] amendment or modification of the permit, amendment or modification of the order, the extension or reduction of the time of performance of closure [ ~~or~~, ] post-closure, [ *or corrective action* ] or any other modification or alteration of an obligation of the owner or operator pursuant to the [ ( ) Virginia [ ~~§~~ ] Solid or Regulated Medical Waste Management or Vegetative Waste Management and Yard Waste Composting [ ~~or Transportation of Solid and Medical Wastes on State Waters~~ ] Regulations [ *or § 10.1-1454.1 of the Code of Virginia* ] .

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator [ ) ] shall comply with the applicable financial assurance requirements of Article 4 of Part III of the Regulations for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator:) Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the Department of Environmental Quality and to the (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains and the director approves, alternate (closure, post-closure, corrective action) coverage complying with the requirements of 9 VAC 20-70-10 et seq. (Insert the

following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator:) Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the director and by (the owner or operator).

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the director within 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix V 9 VAC 20-70-290 J of the *Financial Assurance Regulations for Solid Waste [ ~~Management Disposal, Transfer, and Treatment~~ ] Facilities* as such regulations were constituted on the date ~~first above written~~ shown immediately below.

(Name of guarantor) Effective date:.....

(Authorized signature for guarantor)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:.....

*K. Wording of local government guarantee.*

*(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)*

**LOCAL GOVERNMENT GUARANTEE**

*Guarantee made this (date) by (name of guaranteeing entity), a local government created under the laws of the state of Virginia, herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (address), to the Virginia Department of Environmental Quality ("Department"), obligee.*

**Recitals**

*1. Guarantor meets or exceeds the financial test criteria in 9 VAC 20-70-210 and agrees to comply with the reporting requirements for guarantors as specified in 9 VAC 20-70-230 of the Financial Assurance Regulations for Solid Waste [ *Disposal, Treatment and Transfer* ] Facilities ("Regulations").*

*2. (Owner or operator) owns or operates the following (solid, regulated medical, yard) waste management facility(ies) covered by this guarantee: (List for each facility: name, address, and permit number, if any. Indicate for each whether guarantee is for closure, post-closure care, corrective action or other environmental obligations.)*

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3. "Closure plans" and "post-closure care plans" as used below refer to the plans maintained as required by the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) or Vegetative Waste Management and Yard Waste Composting Regulations (9 VAC 20-101-10 et seq.).

4. For value received from (owner or operator), guarantor guarantees to the Department that in the event that (owner or operator) fails to perform (insert "closure," "post-closure care," or "corrective action") of the above facility(ies) in accordance with the closure or post-closure care plans and other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9 VAC 20-70-150 in the name of (owner or operator) in the amount of the current cost estimates.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the director by certified mail, of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in Article 4 of Part III of the Regulations in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the closure or post-closure plan, amendment or modification of the permit, amendment or modification of the order, the extension or reduction of the time of performance of the closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to the Virginia (Solid or Regulated Medical Waste Management or Vegetative Waste Management and Yard Waste Composting) Regulations.

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable financial assurance requirements of Article 4 of Part III of the Regulations for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the Department of Environmental Quality and to the (owner or operator), provided that this guarantee may not be terminated unless

and until (the owner or operator) obtains and the director approves, alternate (closure, post-closure, corrective action,) coverage complying with the requirements of 9 VAC 20-70-10 et seq.

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the director with 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 9 VAC 20-70-290 K of the Financial Assurance Regulations for Solid Waste [Management Disposal, Transfer and Treatment] Facilities as such regulations were constituted on the date shown immediately below.

(Name of guarantor) Effective date:.....

(Authorized signature for guarantor)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:.....

VA.R. Doc. No. R00-91; Filed September 24, 2001, 1:50 p.m.

\* \* \* \* \*

<p><b>REGISTRAR'S NOTICE:</b> The Virginia Waste Management Board has claimed an exemption from the Administrative Process Act in accordance with (i) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors, and (ii) § 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 Virginia Waste Management Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.</p>
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Title of Regulation: **9 VAC 20-190. Litter Receptacle Regulations.**

Statutory Authority: §§ 10.1-1414, 10.1-1419 and 10.1-1421 of the Code of Virginia.

Effective Date: November 21, 2001.

## Summary:

The regulations describe the responsibility of owners and operators of establishments and public places throughout the Commonwealth to place and maintain receptacles for receiving litter. The regulations establish which places must be provided with litter receptacles, the standards for the receptacles, and the requirements for removal of the litter from the receptacles.

During the codification process resulting in the Virginia Administrative Code, these regulations were inadvertently left out. They were regulations of the Department of Conservation and Economic Development, Division of Litter Control, and have been transferred to the Virginia Waste Management Board. This action reestablishes the same requirements.

Agency Contact: Copies of the regulation may be obtained from Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213.

## CHAPTER 190. LITTER RECEPTACLE REGULATIONS.

### 9 VAC 20-190-10. Definitions.

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

"Anti-litter symbol" means any symbol or logo that depicts or instructs in the proper deposit of litter.

"Board" means the Virginia Waste Management Board.

"Construction site" means any residential, commercial, industrial or other area, lot or site at which construction of any type is conducted, including roads, at buildings, and at all other places actively being constructed or renovated.

"Department" means the Department of Environmental Quality.

"Litter" means all waste material, disposable packages or containers but does not include the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing.

"Litter receptacle" means containers acceptable to the department for the depositing of litter.

"Person" means any natural person, corporation, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary, representative, or group of individuals or entities of any kind.

"Public building" means a building that is owned or operated by government and is used as a place to conduct business in which the general public is involved.

"Public place" means any area that is used or held out for use by the public, whether owned or operated by public or private interests.

### 9 VAC 20-190-20. Purpose.

Sections 10.1-1414, 10.1-1419, and 10.1-1421 of the Code of Virginia require the board to promulgate regulations that establish reasonable guidelines for placement and maintenance of litter receptacles throughout the Commonwealth. These regulations apply to owners or persons in control of any property that is held out to the public as a place for assemblage, for the transaction of business or recreation, or as a public way.

### 9 VAC 20-190-30. Responsibilities to procure, place and maintain receptacles.

Any person owning or operating any establishment or public place at which litter receptacles are required by this chapter shall at his own expense be responsible for the procuring, placing, and maintenance of receptacles as required by this chapter.

### 9 VAC 20-190-40. Places or areas requiring litter receptacles.

Litter receptacles are required at the following public places:

1. Public highways;
2. Parks;
3. Campgrounds and trailer parks;
4. Drive-in restaurants;
5. Quick service or fast-food restaurants;
6. Self-service refreshment areas;
7. Construction sites;
8. Gasoline service stations;
9. Shopping centers;
10. Parking lots operated for public use;
11. Marinas, boat moorage and fueling stations;
12. Boat launching areas;
13. Public and private piers that are operated for public use;
14. Beaches and bathing areas;
15. Sidewalks in business districts;
16. Public buildings, including schools; and
17. Sporting events, fairgrounds, carnivals, circuses, festivals, and other similar events to which the public is invited.

### 9 VAC 20-190-50. Placement of litter receptacles.

A. The following guidelines shall provide minimum standards for litter receptacle placement and frequency of placement:

1. Public highways located outside of cities and incorporated towns: one receptacle per turnout on the right-of-way, overlook, or rest stop, each of which is officially designated as such and determined to need a receptacle by the primary jurisdictional authority.

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2. *Trailer parks, recreational facilities and recreation areas, including parks, campgrounds, beaches, and bathing areas: one receptacle for each facility or area at which food or drink is sold, plus additional receptacles as necessary to accommodate the need for a litter depository. The need for additional receptacles shall be determined by the operator of the facility.*

3. *Shopping centers and all parking lots operated for public use: receptacles shall be located along pedestrian travel routes normally taken by persons using the facility. The number and placement of receptacles shall be determined by the operator or group responsible for the operation of the facility, except no less than one receptacle shall be placed at each shopping center and parking lot.*

4. *Drive-in restaurants and fast-food restaurants: one receptacle per establishment, plus additional receptacles as necessary to contain litter generated by the facility. The need for additional receptacles shall be determined by the operator of the facility.*

5. *Self-service refreshment areas: one receptacle for each separate area, provided that each separate area contains two or more machines for dispensing or serving food or drink.*

6. *Gasoline service stations: one receptacle per service island.*

7. *Construction sites: receptacles sufficient to contain workers' litter, plus those construction wastes capable of being spread by wind or water; the wind and water from hurricanes, tornadoes, and floods excepted. The primary contractor shall determine the number of receptacles and the size, except that no less than one receptacle shall be placed at each site.*

8. *Marinas, boat moorage and fueling stations, and public and private piers that are operated for public use: one receptacle for each area, plus additional receptacles as necessary to contain litter generated by the facility. The operator of the facility shall determine the need for additional receptacles.*

9. *Boat launching areas: receptacles shall be placed as needed consistent with use of the area and the need for a litter deposit. The need shall be determined by the operator of the area.*

10. *Sporting events, fairgrounds, carnivals, circuses, festivals, and other similar events: receptacles shall be placed sufficient in number to contain the litter generated at the event and spaced so as to be reasonably accessible in those areas of heavy use. The placement and need for the receptacles shall be determined by the operator, sponsor, or group operating the event, except no less than one receptacle shall be placed at each event.*

11. *Public buildings, including schools: one receptacle at or reasonably near the main, or most frequently used, entrance of each facility. The receptacle placement shall be consistent with need as determined by the person, agency, or group having primary responsibility for the operation of the facility.*

12. *Sidewalks in business districts: the need for receptacles and their placement and the responsibility for their purchase, maintenance, and service shall be determined by the local governmental authority.*

## **9 VAC 20-190-60. Minimum standards.**

*Litter receptacles purchased and placed in compliance with this chapter shall meet the following minimum standards:*

1. *The receptacle shall:*

- a. *Be of not less than a 10-gallon capacity.*
- b. *Be constructed of such quality as to maintain the original shape when placed at an outdoor location and be reasonably resistant to rust and corrosion. Construction and configuration of all receptacles shall be in conformance with all pertinent laws, ordinances, resolutions, or regulations pertaining to fire, safety, public health, and welfare.*
- c. *Be reasonably stationary and reasonably secure from movement and destruction by vandals.*
- d. *Be constructed, covered, or used in such a manner as to prevent or preclude the blowing of litter from the receptacle.*
- e. *Be serviced with a frequency sufficient to prevent spillage from overflow and to prevent the buildup of offensive odors.*
- f. *Be maintained sufficiently to present an appearance that is aesthetically pleasing.*

2. *The receptacle may:*

- a. *Be identified by the state anti-litter symbol, by a local anti-litter symbol or by printed identification and instructions regarding proper use.*
- b. *Be of a color that is readily visible.*

## **9 VAC 20-190-70. Removal of litter from receptacles.**

*The responsibility for the removal of litter from receptacles placed at parks, beaches, campgrounds, trailer parks and other public places shall remain upon those state and local agencies now performing litter removal services. The removal of litter from litter receptacles placed on private property used by the public shall remain the duty of the owner or operator of such private property.*

## **9 VAC 20-190-80. Penalties.**

*Any person who fails to place and maintain litter receptacles in a public place in the number and manner required by this chapter or who violates the provisions of this chapter shall be subject to a fine of \$25 for each day of violation.*

**NOTICE:** The forms used in administering 9 VAC 20-190, Litter Receptacle Regulations, are not being published; however, the name of each form is listed below. The form is available for public inspection at the Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, or at the office of the Register of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.



TITLE 12. HEALTH

STATE BOARD OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

REGISTRAR'S NOTICE: Final action on amendments to 12 VAC 35-110, 12 VAC 35-115, 12 VAC 35-120 and 12 VAC 35-130, was published in 17:20 VA.R. 2891-2920 June 18, 2001. Due to the number of requests for additional public comment, in accordance with § 2.2-4007 K of the Code of Virginia, the Department of Mental Health, Mental Retardation and Substance Abuse Services suspended the effective date of the regulation in order to receive additional public comment. The department further suspended the regulatory process and offered an additional 30-day public comment period, which was published in 17:23 VA.R. 3457-3458 July 30, 2001. All sections affected by this regulatory action are listed below, immediately following this notice; however, due to the length of 12 VAC 35-115, only those sections affected since publication of the final action in Volume 17, Issue 20 of the Virginia Register are published here. See 17:20 VA.R. 2891-2920 June 18, 2001, for the full text of the sections not printed below.

Title of Regulation: 12 VAC 35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.

Statutory Authority: §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

Effective Date: November 21, 2001.

Summary:

This regulation replaces three separate regulations: (i) Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (12 VAC 35-110); (ii) Rules and Regulations to Assure the Rights of Patients of Psychiatric Hospitals and Other Psychiatric Facilities Licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services (12 VAC 35-120); and (iii) Rules and Regulations to Assure the Rights of Clients in Community Programs Licensed or Funded by the Department of Mental Health, Mental Retardation and Substance Abuse Services (12 VAC 35-130).

The regulation will protect the legal and human rights of individuals who receive treatment in programs and facilities operated, funded and licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, excluding those operated by the Department of Corrections. To the extent that it is within the reasonable capabilities of the department or licensee, each individual is assured adequate care consistent with sound therapeutic treatment. The regulation will protect the rights of individuals with respect to the assurance of legal rights; evaluation, treatment, and discharge; treatment under the least restrictive conditions; participation in treatment decisions, research, and work activities; and disclosure of confidential information. The regulation also will delineate the process and remedies individuals can pursue to address violations of these rights.

Since the proposed regulation was published, there have been substantive revisions made in response to public comments regarding the requirements for seclusion, restraint, and time out; the process for filing complaints, reporting requirements for providers; and the rules of the State Human Rights Committee (SHRC) and the Local Human Rights Committee (LHRC). In addition, requirements for "consent" versus "informed consent" were clarified. Changes have also been made to clarify the criteria under which the commissioner may exempt individuals under forensic status and individuals who are committed to the custody of the commissioner as sexually violent predators from certain human rights protections.

Following publication of the regulation in 17:20 VA.R. 2891-2920 June 18, 2001. for the final 30-day adoption period, the agency received requests from more than 25 members of the public asking for an opportunity to submit additional comments. Therefore, the effective date of the regulations was postponed and the board scheduled an additional 30-

Title of Regulation: 12 VAC 35-110. Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (REPEALED).

Statutory Authority: §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

Effective Date: November 21, 2001.

Summary:

The board is repealing the current Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. This regulation, along with two other human rights regulations, is being consolidated into a newly proposed regulation (Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services, 12 VAC 35-115).

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

Agency Contact: Margaret Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988.

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day public comment period on this regulation. In response to comments received during this additional 30-day period, changes were made to the provisions for obtaining consent for electroconvulsive treatment. In addition, requirements that the LHRC approve certain restrictions were eliminated and various revisions were made to clarify the provisions.

Summary of Public Comments and Agency 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.

Agency Contact: Copies of the regulation may be obtained from Margaret Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988.

## CHAPTER 115.

### RULES AND REGULATIONS TO ASSURE THE RIGHTS OF INDIVIDUALS RECEIVING SERVICES FROM PROVIDERS OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES.

#### PART I.

#### GENERAL PROVISIONS.

#### 12 VAC 35-115-10. Authority and applicability.

A. The Code of Virginia authorizes these regulations to further define and to protect the rights of individuals receiving services from providers of mental health, mental retardation and substance abuse services in the Commonwealth of Virginia. The regulations require providers of services to take specific actions to protect the rights of each individual. The regulations establish remedies when rights are violated or in dispute, and provide a structure for support of these rights.

B. Providers subject to these regulations include:

1. Facilities operated by the department under Article 1 (§ 37.1-1 et seq.) of Chapter 1 of Title 37.1 of the Code of Virginia;
2. Sexually violent predator programs created under § 37.1-70.10 of the Code of Virginia;
3. Community services boards that provide services under Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia;
4. Behavioral health authorities that provide services under Chapter 15 (§ 37.1-242 et seq.) of Title 37.1 of the Code of Virginia;
5. Providers, public or private, that operate programs or facilities licensed by the department under Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia except those operated by the Department of Corrections; and
6. Any other providers receiving funding from or through the department.

C. Unless another law takes priority, [ and to the extent that they are not preempted by the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereto, ] these regulations apply to all

individuals who are receiving services ~~in~~ from a public or private ~~program~~ provider of services operated, licensed or funded by the Department of Mental Health, Mental Retardation and Substance Abuse Services, except those operated by the Department of Corrections.

D. These regulations apply to individuals ~~in forensics units~~ under forensic status and individuals committed to the custody of the commissioner as sexually violent predators, except to the extent that the commissioner ~~has determined that forensics units and the sexually violent predator unit are exempt.~~ may determine these regulations are not applicable to them. The exemption must be in writing and based solely on the need to protect individuals receiving services, employees, or the general public. Thereafter, the commissioner shall submit the exemption to the State Human Rights Committee (SHRC) for its information. The commissioner shall give the SHRC chairperson prior notice regarding all exemptions. Such exemptions shall be time limited and services shall not be compromised.

#### 12 VAC 35-115-20. Policy. [ No change from 17:20 VA.R. ]

#### 12 VAC 35-115-30. Definitions.

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

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or ~~mental~~ psychological harm, injury, or death to an individual receiving services. Examples of abuse include but are not limited to the following:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods or property;
5. Use of excessive force when placing a person in physical or mechanical restraint;
6. Use on a person of physical or mechanical restraints that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice or the person's individualized services plan; and
7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan. See § 37.1-1 of the Code of Virginia.

~~"Advocate" or "human rights advocate" means a person employed by the State Human Rights Director to help individuals exercise their rights under this chapter. See 12 VAC 35-115-230 C.~~

~~"Behavioral Behavior management" means the use of verbal interactions and physical restraint approved by the provider to manage an individual's behavior when it is potentially~~



~~dangerous to self or others~~ those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized service plan and written policies and procedures governing service expectations, treatment goals, safety and security.

~~“Behavioral treatment program” means a written set of procedures that are developed to address serious problem behaviors that interfere with an individual’s personal goals, prevent him from benefiting from services, or keep the individual from participating in community life. A behavioral treatment plan is a part of the individualized services plan and it is designed, implemented, and monitored by professionals who have been specially trained to perform these tasks. any set of documented procedures that are an integral part of the interdisciplinary treatment plan and are developed on the basis of a systemic data collection such as a functional assessment for the purpose of assisting an individual receiving services to achieve any or all of the following:~~

1. Improved behavioral functioning and effectiveness;
2. Alleviation of symptoms of psychopathology; or
3. Reduction of serious behaviors.

A behavioral treatment program can also be referred to as a behavioral treatment plan or behavioral support plan.

“Board” means the State Mental Health, Mental Retardation and Substance Abuse Services Board.

~~“Caregiver” means an employee or contractor trained to provide who provides care and support services; medical services; or other treatment, rehabilitation, or habilitation services.~~

“Commissioner” means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

“Community services board (CSB)” means a citizens’ board established pursuant to § 37.1-195 of the Code of Virginia that provides or arranges for the provision of mental health, mental retardation and substance abuse programs and services to consumers within the political subdivision(s) which establishes subdivision or subdivisions establishing it.

“Complaint” is an expression of dissatisfaction, grievance, or concern by, or on behalf of, an individual receiving services that has been brought to the attention of the provider, an employee of the provider, a human rights advocate, or the protection and advocacy agency, and alleges a violation or potential violation of these regulations or program policies and procedures related to these regulations. A complaint is “informal” when a resolution is pursued prior to contact with the human rights advocate. See 12 VAC 35-115-160.

“Consent” means the voluntary and expressed agreement of an individual, or that individual’s legally authorized representative if the individual has one. Informed consent is needed to disclose information that identifies an individual receiving services. Informed consent is also needed before a

provider may provide treatment to an individual which poses risk of harm greater than that ordinarily encountered in daily life or during the performance of routine physical or psychological examinations, tests, or treatments, or before an individual participates in human research. Informed consent is ~~generally~~ required for surgery, ~~intrusive~~ aversive treatment, electroconvulsive treatment, and use of ~~anti-psychotic~~ psychoactive [ ~~and other~~ ] medications. Consent is ~~“informed” only when the provider gives the individual or the individual’s legally authorized representative enough information concerning the proposed treatment, including its risks and benefits, to make a real choice to receive or not receive the treatment or participate in the research.~~ to any action for which consent is required under these regulations must be voluntary. To be voluntary, the consent must be given by the individual receiving services, or his legally authorized representative, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or any form of constraint or coercion. To be informed, consent must be based on disclosure and understanding by the individual or legally authorized representative, as applicable, of the following kinds of information:

1. A fair and reasonable explanation of the proposed action to be taken by the provider and the purpose of the action. If the action involves research, the provider shall describe the research and its purpose, and shall explain how the results of the research will be disseminated and how the identity of the individual will be protected;
2. A description of any adverse consequences and risks to be expected and, particularly where research is involved, an indication whether there may be other significant risks not yet identified;
3. A description of any benefits that may reasonably be expected;
4. Disclosure of any alternative procedures that might be equally advantageous for the individual together with their side effects, risks, and benefits;
5. An offer to answer any inquiries by the individual, or his legally authorized representative;
6. Notification that the individual is free to refuse or withdraw his consent and to discontinue participation in any prospective service requiring his consent at any time without fear of reprisal against or prejudice to him;
7. A description of the ways in which the resident or his legally authorized representative can raise concerns and ask questions about the service to which consent is given;
8. When the provider proposes human research, an explanation of any compensation or medical care that is available if an injury occurs;
9. Where the provider action involves disclosure of records, documentation must include:
  - a. The name of the organization and the name and title of the person to whom the disclosure is made;

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b. A description of the nature of the information to be disclosed, the purpose of the disclosure, and an indication whether the consent extends to information placed in the individual's record after the consent was given but before it expires;

c. A statement of when the consent will expire, specifying a date, event, or condition upon which it will expire; and

d. An indication of the effective date of the consent.

"Department" means the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS).

"Director" means the chief executive officer of any program delivering services.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and coordinates planning for aftercare services.

"Emergency" means a situation that requires a person to take immediate action to avoid harm, injury, or death to an individual receiving services or to others, or to avoid substantial property damage.

~~"Exploitation" means the use of an individual or the individual's property for another person's advantage if the use is illegal or if the individual or his legally authorized representative did not give permission.~~ misuse or misappropriation of the individual's assets, goods, or property. Exploitation is a type of abuse. (See § 37.1-1 of the Code of Virginia.) Exploitation also includes the use of position of authority to extract personal gain from an individual receiving services. Exploitation includes but is not limited to violations of 12 VAC 35-115-120 (Work) and 12 VAC 35-115-130 (Research). Exploitation does not include the billing of an individual's third party payer for services. Exploitation also does not include instances of use or appropriation of an individual's assets, goods or property when permission is given by the individual or his legally authorized representative:

1. With full knowledge of the consequences;
2. With no inducements; or
3. Without force, misrepresentation, fraud, deceit, duress of any form, constraint or coercion.

"Governing body of the provider" means the person or group of persons who have final authority to set policy and hire and fire directors.

"Habilitation" refers to the provision of services that enhance the strengths of, teach functional skills to, or reduce or eliminate problematic behaviors of an individual receiving services. These services occur in an environment that suits the individual's needs, responds to his preferences, and promotes social interaction and adaptive behaviors. In order to be considered sound and therapeutic, habilitation must conform to current acceptable professional practice.

"Historical research" means the review of information that identifies individuals receiving services for the purpose of evaluating or otherwise collecting data of general historical significance. See 12 VAC 35-115-80 C 2 j (Confidentiality).

"Human research" means any systematic investigation that uses human participants who may be exposed to potential physical or psychological injury if they participate and which departs from established and accepted therapeutic methods appropriate to meet the participants' needs. Human research shall be conducted in compliance with §§ 32.1-162.16 through 32.1-162-20 and 37.1-24.01 of the Code of Virginia, and 12 VAC 35-180-110 et seq., or any applicable federal policies and regulations.

"Human rights advocate" means a person employed by the commissioner upon recommendation of the State Human Rights Director to help individuals receiving services exercise their rights under this chapter. See 12 VAC 35-115-250 C.

"Individual" means a person who is receiving services. This term includes the terms "consumer," "patient," "resident," "recipient," and "client."

~~"Inspector General" means a person appointed by the Governor to provide oversight through inspections of activities undertaken by the department at department facilities by inspecting, monitoring, and reviewing the quality of services that providers deliver.~~

"Investigating authority" means any person or entity that is approved by the provider to conduct investigations of abuse and neglect.

"Legally authorized representative" means a person permitted by law or these regulations to give informed consent for disclosure of information and give informed consent to treatment, including medical treatment, and participation in human research for an individual who lacks the mental capacity to make these decisions.

~~"Local Human Rights Committee (LHRC)" means a group of at least seven five people appointed by the State Human Rights Committee. See 12 VAC 35-115-230 D~~ 12 VAC 35-115-250 D for membership and duties.

"Neglect" means the failure by an individual, program or facility responsible for providing services to provide nourishment, treatment, care, goods, or services necessary to the health, safety or welfare of a person receiving care or treatment for mental illness, mental retardation or substance abuse. See § 37.1-1 of the Code of Virginia.

"Next friend" means a person whom a provider may appoint in accordance with 12 VAC 35-115-70 B 9 c to serve as the legally authorized representative of an individual who has been determined to lack capacity to give consent when required under these regulations.

~~"Probation" means the issuance of a provisional license, containing specific terms and conditions.~~

~~"Probationary status" means that a provisional license containing specific terms and conditions has been issued and that the terms are currently in effect and will remain in effect for a specific period of time.~~

~~"Protection and advocacy agency" means the state designated agency designated under the federal Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act and the Developmental Disabilities (DD) Act to provide~~

~~external oversight of individuals' rights [ . ] The protection and advocacy agency is the Department for the Rights of Virginians with Disabilities (DRVD).~~

~~"Provider" means any person, entity, or organization that provides offering services to individuals with mental illness, mental retardation, or problems with substance abuse that is licensed, funded, or operated by the department.~~

~~"Research review committee" or "institutional review board" means a committee of professionals to provide complete and adequate review of research activities. The committee shall be sufficiently qualified through maturity, experience, and diversity of its members, including consideration of race, gender, and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research. (See § 37 1-24.01 of the Code of Virginia and 12 VAC 35-180-110 et seq.)~~

~~"Residential setting" means a place where an individual lives and services are available from a provider on a 24-hour basis. This includes hospital settings.~~

~~"Restraint" means the restriction of any part of an individual's body from free movement for any purpose. The term includes mechanical devices, medical or surgical devices, protective devices and caregiver "holds."~~

~~1. Mechanical restraint is a device designed to limit the movement of a client during an emergency.~~

~~2. Physical restraint means holding a client manually to limit the client's freedom of movement.~~

~~3. Protective device means a mechanical device used for a specific protective purpose or supportive purpose to maintain body position or balance, prevent injury, or assist the movement of an individual whose mobility is impaired by a physical disorder.~~

~~"Restraint" means the use of an approved mechanical device, physical intervention or hands-on hold, or pharmacological agent to involuntarily prevent an individual receiving services from moving his body to engage in a behavior that places him or others at risk. The term includes restraints used for behavioral, medical, or protective purposes.~~

~~1. A restraint used for "behavioral" purposes means the use of an approved physical hold, a psychotropic medication, or a mechanical device that is used for the purpose of controlling behavior or involuntarily restricting the freedom of movement of the individual in an instance (i) in which there is an imminent risk of an individual harming himself or others, including staff; (ii) when nonphysical interventions are not viable; and (iii) when safety issues require immediate response.~~

~~2. A restraint used for "medical" purposes means the use of an approved mechanical or physical hold to limit the mobility of the individual for medical, diagnostic, or surgical purposes and related post-procedure care processes when the use of such device is not a standard practice for the individual's condition.~~

~~3. A restraint used for "protective" purposes means the use of a mechanical device to compensate for a physical deficit~~

when the individual does not have the option to remove the device. The device may limit an individual's movement and prevent possible harm to the individual (e.g., bed rail or gerichair) or it may create a passive barrier to protect the individual (e.g., helmet).

4. A "mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or a portion of a person's body as a means to control his physical activities when the individual receiving services does not have the ability to remove the device.

5. A "pharmacological restraint" means a drug that is given involuntarily for the emergency control of behavior when it is not a standard treatment for the individual's medical or psychiatric condition.

6. A "physical restraint" (also referred to "manual hold") means the use of approved physical interventions or "hands-on" holds to prevent an individual from moving his body to engage in a behavior that places him or others at risk of physical harm. Physical restraint does not include the use of "hands-on" approaches that occur for extremely brief periods of time and never exceed more than a few seconds duration and are used for the following purposes:

a. To intervene in or redirect a potentially dangerous encounter in which the individual may voluntarily move away from the situation or hands-on approach; or

b. To quickly de-escalate a dangerous situation that could cause harm to the individual or others.

~~"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.~~

~~"Seclusion" means the placement of an individual in an area secured or locked in a manner that the individual cannot freely leave involuntary placement of an individual receiving services alone, in a locked room or secured area from which he is physically prevented from leaving.~~

~~"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss which that requires the medical attention of by a licensed health professional as defined in Subtitle III (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia physician.~~

~~"Services" means medical care and mental health, mental retardation and substance abuse care; treatment; training; habilitation; or other supports, including medical care, delivered by a provider.~~

~~"Services plan" means a plan of services that is designed to meet the needs of a specific individual. that defines and describes measurable goals and objectives and expected outcomes of service and is designed to meet the needs of a specific individual. The term "services plan" also includes, but is not limited to, individualized services plan, treatment plan, habilitation plan or plan of care.~~

~~"Services record" means all written information a provider keeps about an individual who receives services.~~

~~"Special order" means an administrative order issued to any provider licensed or funded by the department that has a~~

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~~stated duration of not more than 12 months and that may include a civil penalty that shall not exceed \$500 per violation per day, prohibition of new admissions or reduction of licensed capacity for violations of § 37.1-84.1 of the Code of Virginia, the human rights regulations, or licensing statutes or regulations contained in or promulgated under Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia.~~

"State Human Rights Committee (SHRC)" means a committee of nine members appointed by the board that is accountable for the duties prescribed in 12 VAC 35-115-230 E. See ~~12 VAC 35-115-230E~~ 12 VAC 35-115-250 E for membership and duties.

"State Human Rights Director" means the person employed by and reporting to the commissioner who is responsible for carrying out the functions prescribed in ~~42 VAC 35-115-230 F~~ 12 VAC 35-115-250 F.

"Time out" means ~~verbally or gesturally directing an individual to move to a different, open location without a closed door contingent upon the individual's exhibiting problematic behaviors~~ assisting an individual to regain emotional control by removing the individual from his immediate environment to a different, open location until he is calm or the problem behavior has subsided.

"Treatment" means individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services in those areas that show impairment as the result of mental disability, substance addiction, or physical impairment. In order to be considered sound and therapeutic, the treatment must conform to current acceptable professional practice.

## PART II. ASSURANCE OF RIGHTS.

### 12 VAC 35-115-40. Assurance of rights. [ No change from 17:20 VA.R. ]

#### PART III. EXPLANATION OF INDIVIDUAL RIGHTS AND PROVIDER DUTIES.

### 12 VAC 35-115-50. Dignity.

A. Each individual receiving services has a right to exercise his legal, civil, and human rights, including constitutional rights, statutory rights, and the rights contained in these regulations except as specifically limited herein. Each individual also has the right to be protected, respected, and supported in exercising these rights. Providers shall not partially or totally take away or limit these rights, ~~partially or totally~~, solely because an individual has a mental illness, mental retardation, or substance abuse ~~problems or problem~~ and is receiving services for these conditions or has any physical or sensory condition that may pose a barrier to communication or mobility.

B. In receiving all services, each individual has the right to:

1. Use his preferred or legal name.
2. Be protected from harm, including abuse, neglect, and exploitation.

3. Have help in learning about, applying for, and fully using any public service or benefit to which he may be entitled. These services and benefits include but are not limited to educational or vocational services, housing assistance, services or benefits under Titles II, XVI, XVIII, and XIX of the Social Security Act, United States Veterans Benefits, and services from legal and advocacy agencies.

4. Have opportunities to ~~talk~~ communicate in private with lawyers, judges, legislators, clergy, licensed health care practitioners, legally authorized representatives, advocates, the Inspector General, and employees of the protection and advocacy agency.

5. Be provided with general information about program services and policies in a manner easily understood by the individual.

C. In services provided in residential settings, each individual has the right to:

1. Have sufficient and suitable clothing for his exclusive use.
2. Receive a nutritionally adequate, varied, and appetizing diet prepared and served under sanitary conditions and served at appropriate times and temperatures.
3. Live in a safe, sanitary, and humane physical environment that gives each individual, at a minimum:
  - a. Reasonable privacy and private storage space;
  - b. An adequate number and design of private, operating toilets, sinks, showers, and tubs;
  - c. Direct outside air provided by a window that opens or by an air conditioner;
  - d. Windows or skylights in all major areas used by individuals;
  - e. Clean air, free of bad odors; and
  - f. Room temperatures that are comfortable year round and compatible with health requirements.
4. ~~Choose to attend or not attend religious services held within the program setting and to engage or not engage in any recognized religious practices.~~ Practice a religion and participate in religious services subject to their availability, provided that such services are not dangerous to self or others and do not infringe on the freedom of others.
5. Have paper, pencil and stamps provided free of charge for at least one letter every day upon request.
6. Have help in writing or reading mail as needed.
7. Communicate privately with any person by mail or telephone and get help in doing so.
8. Have or refuse visitors.

D. The provider's duties.

1. Providers shall recognize, respect, support, and protect the dignity rights of each individual at all times.

2. Providers shall develop, carry out, and regularly monitor policies and procedures that assure the protection of each individual's rights.

~~E. Abuse, neglect and exploitation.~~ 3. Providers shall assure the following relative to abuse, neglect, and exploitation.

~~4. a. Policies and procedures governing harm, abuse, neglect and exploitation of individuals receiving their services shall require that, at a minimum,~~ as a condition of employment or volunteering, any employee, volunteer, consultant, or student who knows of or has reason to believe that an individual may have been abused, neglected, or exploited at any location covered by these regulations, shall immediately report this information directly to the director.

~~2. b. The director shall immediately take necessary steps to protect the individual receiving services until an investigation is complete. This may include the following:~~

~~a. (1) Direct the employee or employees involved to have no further contact with the individual.~~

~~b. (2) Temporarily reassign or transfer the employee or employees involved to a position that has no direct contact with individuals receiving services.~~

~~c. (3) Temporarily suspend the involved employee or employees pending completion of an investigation.~~

~~3. c. The director shall immediately notify the human rights advocate within 24 hours, and the legally authorized representative, as applicable. In no case shall notification exceed 24 hours from the receipt of the initial allegation of abuse, neglect, or exploitation.~~

~~d. In no case shall the director punish or retaliate against an employee, volunteer, consultant, or student for reporting an allegation of abuse, neglect, or exploitation to an outside entity.~~

~~4. e. The director shall initiate or cooperate in an impartial investigation within 24 hours. The investigation shall be conducted by a person trained to do investigations and who is not involved in the issues under investigation.~~

~~a. (1) The investigator shall make a final report to the director or the investigating authority and to the human rights advocate within 10 working days of appointment. Exceptions to this timeframe may be requested and approved by the department if submitted prior to the close of the sixth day.~~

~~b. (2) The director or investigating authority shall, based on the investigator's report and any other available information, decide whether the abuse, neglect or exploitation occurred. Unless otherwise provided by law, the standard for deciding whether abuse, neglect, or exploitation has occurred is preponderance of evidence.~~

~~c. (3) If abuse, neglect or exploitation occurred, the director shall take any action required to protect the individual and other individuals. All actions must be~~

~~documented and reported as required by 42-VAC-35-445-240-A 12 VAC 35-115-230.~~

~~e. (4) In all cases, the director shall provide written notice, within seven working days following the completion of the investigation of the decision and all actions taken to the individual or the individual's legally authorized representative, the human rights advocate, the investigating authority, and the involved employee or employees.~~

~~e. (5) If the individual affected by the alleged abuse, neglect or exploitation or his legally authorized representative is not satisfied with the director's actions, he or his legally authorized representative, or anyone acting on his behalf, may file a petition for an LHRC hearing under 42-VAC-35-445-160 12 VAC 35-115-180.~~

~~f. The director shall cooperate with any external investigation including those conducted by the Inspector General, the protection and advocacy agency, or other regulatory and enforcement agencies.~~

~~5. g. If at any time the director has reason to suspect that an individual may have been abused, or neglected, or exploited, the director shall immediately report this information to the appropriate local Department of Social Services (see §§ 63.1-55.3 and 63.1-248.3 of the Code of Virginia) and cooperate fully with any investigation that results.~~

~~6. h. If at any time the director has reason to suspect that the abusive, neglectful or exploitive act is a crime, the director shall immediately contact the appropriate law-enforcement authorities and cooperate fully with any investigation that results.~~

~~F. E. Exceptions and conditions to the provider's duties.~~

~~1. If an individual has funds for clothing and to buy paper, pencils, and stamps to send a letter every day, the provider does not have to pay for them.~~

~~2. The provider may prohibit any religious services or practices that present a danger of bodily injury to any individual or interfere with another individual's religious beliefs or practices. Participation in religious services or practices may be reasonably limited by the provider in accordance with other general rules limiting privileges or times or places of activities.~~

~~3. If a provider has reasonable cause to believe that an individual's mail contains illegal material or anything dangerous, the director may open the mail, but not read it, in the presence of the individual. The director shall inform the individual of the reasons for the concern. An individual's ability to communicate by mail may also be limited if, in the judgment of a licensed physician or doctoral level psychologist (in the exercise of sound therapeutic practice), the individual's communication with another person or persons will result in demonstrable harm to the individual's mental health. The reasons for the restriction shall be documented in the individual's service record, the human rights advocate shall be notified [ , and the LHRC shall approve the restriction ] prior to implementation.~~

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4. Providers may limit the use of a telephone in the following ways:

a. Providers may limit use to certain times and places to make sure that other individuals have equal access to the telephone and that they can eat, sleep, or participate in an activity without being disturbed.

b. Providers may limit use by individuals receiving services for substance abuse, but only if ~~professionally accepted parameters of clinical~~ sound therapeutic practice ~~require~~ requires the restriction and the [ ~~LHRC has approved the restriction~~ human rights advocate is notified ].

c. Providers may limit an individual's access to the telephone if communication with another person or persons will result in demonstrable harm to the individual and is significantly impacting treatment in the judgment of a licensed physician or doctoral level psychologist. The reasons for the restriction shall be documented in the individual's service record [ , and ] the human rights advocate shall be notified [ , and the LHRC shall approve the restriction ] prior to implementation.

5. Providers may limit or supervise an individual's visitors when, in the judgment of a licensed physician or doctoral level psychologist, the visits result in demonstrable harm to the individual and significantly impact the individual's treatment[ , ; ] or when the visitors are suspected of bringing contraband or in any other way are threatening harm to the individual. The reasons for [ such the ] restriction shall be documented in the individual's service record, [ and ] the human rights advocate shall be notified [ , and the LHRC shall approve the restriction ] prior to implementation.

~~5.~~ 6. Providers may stop, report or intervene to prevent any criminal act.

## 12 VAC 35-115-60. Services.

A. Each individual receiving services shall receive those services according to law and ~~professionally accepted parameters of clinical~~ sound therapeutic practice.

B. The provider's duties.

1. ~~Providers shall comply with all state and federal laws, including the Americans with Disabilities Act (42 USC § 12101 et seq.), that prohibit discrimination on the basis of race, color, religion, ethnicity, age, sex, disability, or ability to pay.~~ Providers shall develop, carry out, and regularly monitor policies and procedures governing discrimination in the provision of services. Providers shall comply with all state and federal laws, including any applicable provisions of the Americans with Disabilities Act (42 USC § 12101 et seq.), that prohibit discrimination on the basis of race, color, religion, ethnicity, age, sex, disability, or ability to pay. These policies and procedures shall require, at a minimum, the following:

a. An individual or anyone acting on his behalf may complain ~~in writing~~ to the director if he believes that his services have been limited or denied ~~on an unlawful basis~~ due to discrimination.

b. If an individual makes a complaint of discrimination, the director shall assure that an appropriate investigation is conducted immediately. The director shall make a decision, take action, and document the action within 10 working days of receipt of the complaint.

c. A written copy of the decision and the director's action shall be forwarded to the individual, the human rights advocate, and any employee or employees involved.

d. If the individual or his legally authorized representative, as applicable, is not satisfied with the director's decision or action, he may file a petition for an LHRC hearing under ~~42 VAC 35-115-160~~ 12 VAC 35-115-180.

2. Providers shall ensure that all clinical services, including medical services and treatment, are at all times delivered within ~~professionally accepted parameters of clinical~~ sound therapeutic practice.

3. Providers shall develop and implement policies and procedures that address emergencies. These policies and procedures shall:

a. Identify what caregivers may do to respond to an emergency.

b. Identify qualified clinical staff who are accountable for assessing emergency conditions and determining the appropriate intervention.

c. Require that the director immediately notify the individual's legally authorized representative, if there is one, and the advocate if an emergency results in harm or injury to any individual.

d. Require documentation in the individual's services record of all facts and circumstances surrounding the emergency.

~~3.~~ 4. Providers shall assign a specific person or group of persons to carry out each of the following activities:

a. Medical, mental and behavioral screenings and assessments, as applicable, upon admission and during the provision of services;

b. Preparation, implementation, ~~ongoing reviews,~~ and appropriate changes in an individual's services plan based on the ongoing review of the medical, mental, and behavioral needs of the individual receiving services; and

c. Preparation and implementation of an individual's discharge plan.

4. 5. Providers shall not prepare or deliver any service for any individual without a services plan that is tailored specifically to the needs and expressed preferences of ~~that~~ the individual receiving services. [ ~~Responses~~ Services provided in response ] to emergencies or crises shall be [ ~~considered as deemed~~ ] part of the services plan and thereafter documented in the individual's services plan.

~~5.~~ 6. Providers shall write the services plan and discharge plan in clear, understandable language.

~~6.~~ 7. When preparing and changing an individual's services or discharge plan, providers shall ensure that all services received by the individual are integrated.

~~7.~~ 8. Providers shall ensure that the entries in an individual's services record are at all times authentic, accurate, complete, timely and pertinent.

C. Exceptions and conditions to the provider's duties.

1. Providers may deny or limit an individual's access to a service or services if ~~professionally accepted parameters of clinical sound therapeutic practice require~~ requires limiting the service to individuals of the same sex, or similar age, disability, or legal status.

2. With the individual's or legally authorized representative's consent, providers may involve family members in services and discharge planning. When the individual or the legally authorized representative requests such involvement, the provider shall take all reasonable steps to do so.

**12 VAC 35-115-70. Participation in decision making.**

A. Each individual has a right to participate meaningfully in all decisions regarding all aspects of services affecting him. This includes the right to:

1. Participate meaningfully in the preparation, implementation and any changes to the individual's services and discharge plans.

2. Express his preferences and have them incorporated into the services and discharge plans consistent with his condition and need for services and the provider's ability to provide.

3. Object to any part of a proposed services or discharge plan.

4. Give or not give consent for treatment, including medical treatment. See [ Consent ] 12 VAC 35-115-30.

5. Give or not give [ written ] informed consent for electroconvulsive treatment [ prior to the treatments or series of treatments ].

~~[ a. A second opinion shall be obtained from a qualified physician who is not involved in the treatment and services that are provided to the individual.~~

~~b. The Local Human Rights Committee shall review the decision face to face with the individual to determine that a second opinion has been obtained and that fully informed consent has been obtained from the individual or the individual's legally authorized representative.~~

a. Informed consent shall be documented on a form that shall become part of the individual's services record. In addition to containing the elements of informed consent as set forth in the definition of "consent" in 12 VAC 35-115-30, this form shall:

(1) Specify the maximum number of treatments to be administered during the series;

(2) Indicate that the individual has been given the opportunity to view an instructional video presentation about the treatment procedures and their potential side effects;

(3) Be signed by the individual receiving the treatment, or the individual's legally authorized representative, where applicable; and

(4) Be witnessed in writing by a person not involved in the individual's treatment who attests that the individual has been counseled and informed about the treatment procedures and the potential side effects of the procedures.

b. Separate consent, documented on a separate consent form, shall be obtained for any treatments exceeding the maximum number of treatments indicated on the initial consent form.

c. Providers shall inform the individual receiving services or the legally authorized representative, as applicable, that the individual may obtain a second opinion before receiving electroconvulsive treatment and shall document such notification in the individual's services record.

d. Before initiating electroconvulsive treatment for any individual under age 18 years, two qualified child psychiatrists must concur with the treatment. The psychiatrists must be trained or experienced in treating children and adolescents and not directly involved in treating the individual. Both must examine the individual, consult with the prescribing psychiatrist, and document their concurrence with the treatment in the individual's services record. ]

~~5.~~ 6. Give or not give informed consent for participation in human research.

~~6.~~ 7. Give or not give consent to the disclosure of information the provider keeps about him. See 12 VAC 35-115-80.

~~7.~~ 8. Have a legally authorized representative make decisions for him in cases where the individual ~~is unable to~~ ~~de-se~~ lacks capacity to give informed consent.

~~8.~~ 9. Object to any decision that allows a legally authorized representative to make decisions for him. This includes having a professional assessment of capacity to consent and, at the individual's own expense, an independent assessment of capacity.

10. Be accompanied by someone the individual trusts as his representative when participating in services planning.

11. Indicate by signature in the service record, the individual's participation in and agreement to services plan, discharge plan, changes to these plans, and all other significant aspects of treatment and services he receives.

~~9.~~ 12. Request admission to or discharge from any service any time.

B. The provider's duties.

1. Providers shall respect, protect, and help develop each individual's ability to participate meaningfully in all decisions

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regarding all aspects of services affecting him. This shall be done by involving the individual, to the extent permitted by his capacity, in decision-making regarding all aspects of services.

2. Providers shall ask the individual to express his preferences about all decisions regarding all aspects of services that affect him and shall honor these preferences ~~whenever they are consistent with the individual's condition and need for services and the provider's ability to provide to the extent possible.~~

3. Providers shall give each individual the opportunity, and any help he needs, to participate meaningfully in the preparation of his services plan, discharge plan, and changes to these plans, and all other aspects of services he receives. Providers shall document these opportunities in the individual's services record.

4. Providers shall obtain and document in the individual's services record the individual's consent prior to disclosing any information about him. See 12 VAC 35-115-80 for the rights, duties, exceptions, and conditions relating to disclosure.

5. Providers shall obtain and document in the individual's services record the individual's consent for any treatment, including medical treatment, before the treatment begins. If the individual is a minor in the legal custody of a natural or adoptive parent, the provider shall obtain this consent from at least one parent. The consent of a parent is not needed if a court has ordered or consented to treatment or services pursuant to § 16.1-241 D, 16.1-275, or 54.1-2969 B of the Code of Virginia, ~~the consent of the parent is not needed~~ or a local department of social services with custody of the minor has provided consent. Reasonable efforts must be made, however, to notify the parent or legal custodian promptly following the treatment or services. Additionally, a competent minor may independently consent to treatment of sexually transmitted diseases, family planning, or outpatient services or treatment for mental illness, emotional disturbance, or addictions pursuant to § 54.1-2969 ~~D E~~ of the Code of Virginia.

6. Providers shall obtain and document in the individual's services record the individual's informed consent to continue any treatment initiated in an emergency that lasts longer than 24 hours after the emergency began.

7. If the capacity of an individual to give consent is in doubt, the provider shall make sure that a ~~qualified~~ professional qualified by expertise, training, education, or credentials and not ~~currently~~ directly involved with the individual conducts an evaluation and makes a determination of the individual's capacity.

8. If the individual or his family objects to the results of the qualified professional's determination, the provider shall immediately inform the human rights advocate.

a. If the individual or family member wishes to obtain an independent evaluation of the individual's capacity, he may do so at his own expense and within reasonable timeframes consistent with his circumstances. The provider shall take no action for which consent is

required, except in an emergency, pending the results of the independent evaluation. The provider shall take no steps to designate a legally authorized representative until the independent evaluation is complete.

b. If the independent evaluation is consistent with the provider's evaluation, the evaluation is binding, and the provider shall implement it accordingly.

c. If the independent evaluation is not consistent with the provider's evaluation, the matter shall be referred to the LHRC for review and decision under Part IV ~~(12 VAC 35-115-140 et seq.)~~ (12 VAC 35-115-150 et seq.) of this chapter.

9. When it is determined that an individual lacks the capacity to give consent, the provider shall designate a legally authorized representative. The director shall have the primary responsibility for determining the availability of and designating a legally authorized representative in the following order of priority:

a. An attorney-in-fact currently authorized to give consent under the terms of a durable power of attorney, a health care agent appointed by an individual under an advance directive pursuant to § 54.1-2983 of the Code of Virginia, a legal guardian ~~or committee~~ of the individual not employed by the provider and currently authorized to give consent, or, if the individual is a minor, a parent having legal custody of the individual.

b. The individual's next of kin. In designating the next of kin, the director shall select the best qualified person, if available, according to the following order of priority unless, from all information available to the director, another person in a lower priority is clearly better qualified: spouse, an adult child, a parent, an adult brother or sister, any other relative of the individual. If the individual expresses a preference for one family member over another in the same category, the director shall appoint that family member.

c. If no other person specified in subdivisions a and b is available and willing to serve, a provider may appoint a next friend of the individual, after a review and finding by the LHRC that the proposed next friend has ~~lived~~ [ ~~share~~ shared ] a residence with or provided ~~ongoing~~ support and assistance to the individual for a period of at least six months prior to the designation, the proposed next friend has appeared before the LHRC and agreed to accept these responsibilities, and the individual has no objection to this proposed next friend being appointed authorized representative ~~and is a qualified person within the meaning of these regulations to serve in this capacity.~~

10. No provider, director, or employee of a provider or director may serve as legally authorized representative for any individual receiving services delivered by that provider or director unless the employee is a relative or legal guardian.

11. If a provider documents, ~~according to professionally accepted parameters of clinical practice, that an individual's lack of capacity to consent is perpetual, or when that the individual lacks capacity and no person is available or~~



willing to act as a legally authorized representative, the provider shall:

~~a. Ask a court to appoint a guardian to provide consent; or~~

~~b. Ask a court to authorize treatment (e.g., see § 37.1-134.21 of the Code of Virginia).~~

a. Attempt to identify a suitable person who would be willing to serve as guardian and ask the court to appoint said person to provide consent; or

b. Ask a court to authorize treatment. See § 37.1-134.21 of the Code of Virginia.

12. If the individual who has a legally authorized representative objects to the disclosure of specific information or a specific proposed treatment, the director shall immediately notify the human rights advocate and the legally authorized representative, as applicable. A petition for a LHRC review may be filed under ~~12 VAC 35-115-160~~ 12 VAC 35-115-180.

13. Providers shall make sure that an individual's capacity to consent is reviewed ~~periodically~~ and at least every six months or as the individual's condition warrants according to ~~accepted clinical~~ sound therapeutic practice to assess the continued need for a surrogate decision-maker. Such reviews, or decisions not to review, shall be documented in the individual's services record and communicated in writing to the surrogate decision-maker. Providers shall also consider an individual's request for review in a timely manner.

14. Providers shall respond to an individual's request for discharge according to requirements set forth in statute and shall make sure that the individual is not subject to punishment, reprisal, or reduction in services because he makes a request. [ However, if an individual leaves a service "against medical advice," any subsequent billing of the individual by his private third party payer shall not constitute punishment or reprisal on the part of the provider. ]

a. Voluntary admissions.

~~a.~~ (1) Individuals admitted under § 37.1-65 of the Code of Virginia to mental health facilities operated by the department who notify the director of their intent to leave shall be released when appropriate, but no later than eight hours after notification, unless another law authorizes the director to detain the individual for a longer period.

~~b.~~ (2) Minors admitted under § 16.1-338 or 16.1-339 of the Code of Virginia shall be released to the parent's (or legal guardian's) custody within 48 hours of the consenting parent's (or legal guardian's) notification of withdrawal of consent, unless a petition for continued hospitalization pursuant to § 16.1-340 or 16.1-345 of the Code of Virginia is filed.

b. Involuntary commitment.

(1) When a minor involuntarily committed under § 16.1-345 of the Code of Virginia no longer meets the

commitment criteria, the director shall take appropriate steps to arrange the minor's discharge.

~~However, if an individual leaves a service "against medical advice," any subsequent billing of the individual by his private third party payer shall not constitute punishment or reprisal on the part of the provider.~~

~~If an individual certified for admission under § 37.1-65.1 or 37.1-65.3 of the Code of Virginia requests discharge, the director will determine whether the individual continues to meet the criteria for certification. If the director denies the request for discharge, the individual and the individual's legally authorized representative shall be notified in writing of the reasons for denial and of the individual's right to seek relief in the courts. The request and reasons for denial shall be included in the individual's services record.~~

~~When an individual involuntarily committed under § 37.1-67.3 of the Code of Virginia has been receiving services for more than 30 days and makes a written request for discharge, the director shall determine whether the individual continues to meet the criteria for involuntary commitment. If the director denies the request for discharge, he shall notify the individual in writing of the reasons for denial and of the individual's right to seek relief in the courts. The request and reasons for denial shall be included in the individual's services record. Anytime an individual meets any of the criteria for discharge set out in § 37.1-98 A of the Code of Virginia, the director shall take all necessary steps to arrange the individual's discharge.~~

~~If at any time it is determined that an individual involuntarily admitted under Chapter 11 (§ 19.2-167 et seq.) or Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of the Code of Virginia no longer meets the criteria upon which the individual was admitted and retained, the director, or where appropriate the commissioner, shall immediately inform the individual, the advocate, and the appropriate court of this determination and shall seek judicial authorization to discharge or transfer the individual. Further, pursuant to § 19.2-182.6 of the Code of Virginia, the commissioner shall petition the committing court for conditional or unconditional release at any time he believes the acquittee no longer needs hospitalization.~~

(2) When an individual involuntarily committed under § 37.1-67.3 of the Code of Virginia has been receiving services for more than 30 days and makes a written request for discharge, the director shall determine whether the individual continues to meet the criteria for involuntary commitment. If the director denies the request for discharge, he shall notify the individual in writing of the reasons for denial and of the individual's right to seek relief in the courts. The request and reasons for denial shall be included in the individual's services record. Anytime an individual meets any of the criteria for discharge set out in § 37.1-98 A of the Code of Virginia, the director shall take all necessary steps to arrange the individual's discharge.

(3) If at any time it is determined that an individual involuntarily admitted under Chapter 11 (§ 19.2-167 et seq.) or Chapter 11.1 (§ 19.2-182.2 et seq.) of Title

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19.2 of the Code of Virginia no longer meets the criteria upon which the individual was admitted and retained, the director shall notify the commissioner who shall seek judicial authorization to discharge or transfer the individual. Further, pursuant to § 19.2-182.6 of the Code of Virginia, the commissioner shall petition the committing court for conditional or unconditional release at any time he believes the acquittee no longer needs hospitalization.

c. *Certified admissions.* If an individual certified for admission under § 37.1-65.1 or 37.1-65.3 of the Code of Virginia requests discharge, the director will determine whether the individual continues to meet the criteria for certification. If the director denies the request for discharge, the individual and the individual's legally authorized representative shall be notified in writing of the reasons for denial and of the individual's right to seek relief in the courts. The request and the reasons for denial will be included in the individual's services record.

## C. Exceptions and conditions to the provider's duties.

1. Providers, in an emergency, may initiate, administer, or undertake a proposed treatment without the consent of the individual or the individual's legally authorized representative ~~in an emergency in order to prevent serious harm, injury, or death to an individual receiving services or to others, or to avoid substantial property damage.~~ All emergency treatment shall be documented in the individual's services record within 24 hours.

a. Providers shall immediately notify the legally authorized representative, as applicable, of the provision of treatment without consent during an emergency.

b. Providers shall continue emergency treatment without consent beyond 24 hours only following a review of the individual's condition and if a new order is issued by a professional who is authorized by law and the provider to order the treatment.

c. Providers shall notify the human rights advocate if emergency treatment without consent continues beyond 24 hours.

d. Providers shall develop and integrate treatment strategies to address and prevent future such emergencies to the extent possible, into the individual's services plan, following the provision of emergency treatment without consent.

2. Providers may provide treatment without consent in accordance with a court order or in accordance with other provisions of law that authorize such treatment including the Health Care Decisions Act (§ 54.1-2981 et seq.). The provisions of these regulations are not intended to be exclusive of other provisions of law but are cumulative (e.g., see § 54.1-2970 of the Code of Virginia).

## 12 VAC 35-115-80. Confidentiality.

A. Each individual is entitled to have all information that a provider maintains or knows about him remain confidential. Each individual has a right to give his consent before the provider shares information about him or his care unless

another law, federal regulation, or these regulations specifically require or permit the provider to disclose certain specific information.

## B. The provider's duties:

1. Providers shall maintain the confidentiality of any information that identifies an individual receiving services from the provider. If an individual's services record pertains in whole or in part to referral, diagnosis or treatment of substance abuse, providers shall release information only according to applicable federal regulations (see 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records).

2. Providers shall tell each individual, and his legally authorized representative if he has one, about the individual's confidentiality rights. This shall include how information can be disclosed and how others might get information about the individual without his consent.

3. Providers shall prevent unauthorized disclosures of information from services records and shall convey the information in a secure manner.

4. If consent to disclosure is required, providers shall get the written consent of the individual or the legally authorized representative, as applicable, before disclosing information. In the case of a minor, the ~~concurrent~~ consent of both the custodial parent and the minor is required, ~~except in the case of treatment for outpatient substance abuse for which the minor alone may provide consent.~~ or other person authorized to consent to the minor's treatment under § 54.1-2969 is required, except as provided below:

a. Section 54.1-2969 ~~D E~~ of the Code of Virginia permits a minor to authorize the release of records related to medical or health services for a sexually transmitted disease or family planning but requires parental consent for release of records related to outpatient care, treatment or rehabilitation for mental illness or emotional disturbance.

b. A minor may ~~authorized~~ authorize the release of outpatient substance abuse records without parental consent in programs governed by 42 CFR Part 2.

5. When providers disclose information, they shall attach a statement that informs the person receiving the information that it must not be disclosed to anyone else unless the individual consents or unless the law allows or requires further disclosure without consent.

6. Upon request, providers shall tell individuals the sources of information contained in their services records and the names of anyone, other than employees of the provider, who has received information about them from the provider. Individuals receiving services ~~from a CSB or private provider~~ should be informed that the department may have ~~had~~ access to their records.

## C. Exceptions and conditions to the provider's duties.

1. Providers may encourage individuals to name family members, friends, and others who may be told of their presence and general condition or well-being. Consent

must be obtained and documented in the services record for the provider to contact family members, friends, or others. [ Nothing in this provision shall prohibit providers from taking steps necessary to secure a legally authorized representative. ]

2. Providers may disclose the following information without consent or violation of the individual's confidentiality, but only under the conditions specified in this subdivision and in subdivision 3 of this subsection. Providers should always consult 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, if applicable, because these federal regulations may prohibit some of the disclosures addressed in this section. See also § 32.1-127.1:03 of the Code of Virginia for a list of circumstances under which records may be disclosed without consent.

a. *Emergencies:* Providers may disclose information to any person who needs that particular information for the purpose of preventing injury, death or substantial property destruction in an emergency. The provider shall not disclose any information that is not needed for these specific purposes.

b. *Employees:* Providers may disclose to any full- or part-time employee, consultant, agent, or contractor of the provider, or to the department or CSB, information required to give services to the individual or to get payment for the services.

c. *Insurance companies and other third party payers:* Disclosure may be made to insurance companies and other third party payers according to Chapter 12 (§ 37.1-225 et seq.) of Title 37.1 of the Code of Virginia.

d. *Court proceedings:* If the individual, or someone acting for him, introduces any aspect of his mental condition or services as an issue before a court, administrative agency, or medical malpractice review panel, the provider may disclose any information relevant to that issue. The provider may also disclose any records if they are properly subpoenaed, if a court orders them to be produced, or if involuntary commitment or certification is being proposed or conducted.

e. *Legal counsel:* Providers may disclose information to their own legal counsel, or to anyone working on behalf of their legal counsel, in providing representation to the provider. Providers of state-operated services may disclose information to the Office of the Attorney General, or to anyone working on behalf of that office, in providing representation to the Commonwealth of Virginia.

f. *Human rights committees:* Providers may disclose to the LHRC and the SHRC any information necessary for the conduct of their responsibilities under these regulations.

g. *Others authorized or required by the commissioner, CSB or private program director:* Providers may disclose information to other persons if authorized or required by the commissioner, CSB or private program director for the following activities:

- (1) Licensing, human rights, certification or accreditation reviews;

(2) Hearings, reviews, appeals or investigations under these regulations;

(3) Evaluation of provider performance and individual outcomes (see § 37.1-98.2 of the Code of Virginia);

(4) Statistical reporting;

(5) Preauthorization, utilization reviews, financial and related administrative services reviews and audits; or

(6) Similar oversight and review activities.

h. *Preadmission screening, services and discharge planning:* Providers may disclose to the department, the CSB or to other providers information necessary to prescreen individuals or to prepare and carry out a comprehensive individualized services or discharge plan (see § 37.1-98.2 of the Code of Virginia).

i. *Protection and advocacy agency:* Providers may disclose to the protection and advocacy agency any information that may establish probable cause to believe that an individual receiving services has been abused or neglected and any information concerning the death or serious injury of any individual while receiving services, whatever the suspected cause of the death.

j. *Historical research:* Providers may disclose information to persons engaging in bona fide historical research if all of the following conditions are met:

(1) The commissioner, CSB executive director, or private program director authorizes the research;

(2) The individual or individuals who are the subject of the disclosure are deceased;

(3) There are no known living persons authorized by law to consent to the disclosure; and

(4) The disclosure would in no way reveal the identity of any person who is not the subject of the historical research.

k. A request for historical research shall include, at a minimum:

(1) A summary of the scope and purpose of the research;

(2) A description of the product to result from the research and its expected date of completion;

(3) A rationale explaining the need to access otherwise confidential records; and

(4) Specific identification of the type and location of the records sought.

l. *Protection of the public safety:* If a provider reasonably believes an individual receiving services is a present threat to the safety of the public a specifically identifiable person or the public, the provider may disclose communicate only those facts necessary to ~~express the~~ ~~potential threat~~ alleviate the potential threat.

m. *Inspector General:* Providers may disclose to the Inspector General any individual services records and

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other information relevant to the provider's delivery of services.

n. Virginia Patient Level Data System: Providers may disclose financial and services information to Virginia Health Information as required by law (see Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1 of the Code of Virginia).

o. Other statutes or regulations: Providers may disclose information to the extent required or permitted by any other state or federal statute or regulations.

3. If information is disclosed without consent to anyone other than employees of the department, CSB or other provider, providers shall take the following steps before the disclosure (or, in an emergency, promptly afterward):

a. Put a written ~~summary~~ notation of the information disclosed, the name of the person who received the information, the purpose of disclosure, and the date of disclosure permanently in the individual's services record.

b. Give the individual or his legally authorized representative written notice of the disclosure, including the name of each person who received the information and the nature of the information.

~~e.~~ 4. If the disclosure is not required by law, give strong consideration to any objections from the individual or his legally authorized representative in making the decision to release information (see [ ~~Chapter 26 (§ 2.1-377 et seq.) of Title 2.1 Virginia Government Data Collection and Dissemination Practices Act, § 2.2-3800 et seq.~~ ] of the Code of Virginia).

## 12 VAC 35-115-90. Access to and correction of services records.

A. Each individual has a right to see, read, and get a copy of his own services record (~~see §§ 2.1-342.01 A-5 and 32.1-127.1:03 of the Code of Virginia~~). Minors must have their parent or guardian's permission first. If this right is restricted according to law, the individual has a right to let certain other people see his record. Each individual has a right to challenge, correct or explain anything in his record. Whether or not corrections are made as a result, each individual has a right to let anyone who sees his record know that he tried to correct or explain his position and what happened as a result. An individual's legally authorized representative has the same rights as the individual himself has (see § [ ~~2.1-382~~ 2.2-3806 ] of the Code of Virginia).

B. The provider's duties:

1. Providers shall tell each individual, and his legally authorized representative if he has one, how he can access and ~~correct~~ provide corrections to his own services records.

2. Providers shall permit each individual to see ~~and correct~~ his records when he requests them and to provide corrections if necessary.

3. Providers shall, without charge, give individuals any help they may need to read and understand their services records and ~~make~~ provide corrections to them.

4. If the provider limits or refuses to let an individual see his services records, the provider shall notify the advocate and tell the individual that he can ask to have a lawyer, physician, or psychologist of his choice see his records. If the individual makes this request, the provider shall disclose the record to that lawyer, physician, or psychologist ( [ ~~see § 2.1-342.01 A-5, §§ 2.2-3705, ] 32.1-127.1:03 and 8.01-413 of the Code of Virginia~~).

5. The provider shall document in the record the decision and reasons for the decision to limit or refuse access to the individual's medical record. The individual shall be notified of time limits and conditions for removal of the restriction. These time limits and conditions shall also be specified in the record.

~~5.~~ 6. If an individual asks to challenge, correct, or explain any information contained in his services record, the provider shall investigate and file in the services record a written report concerning the individual's request.

a. If the report finds that the services record is incomplete, inaccurate, not pertinent, not timely, or not necessary, the provider shall:

(1) Either mark that part of the services record clearly to say so, or else remove that part of the services record and file it separately with an appropriate cross reference to indicate that the information was removed.

(2) Not disclose the original services record without separate specific consent or legal authority (e.g., if compelled by subpoena or other court order).

(3) Promptly notify in writing all persons who have received the incorrect information that the services record has been corrected and request that recipients acknowledge the correction.

b. If the report does not result in action satisfactory to the individual, the provider shall, upon request, file in the services record the individual's statement explaining his position. If needed, the provider shall help the individual to write this statement. If a statement is filed, the provider shall:

(1) Give all persons who have copies of the record a copy of the individual's statement.

(2) Clearly note in any later disclosure of the record that it is disputed and include a copy of the statement with the disputed record.

C. Exceptions and conditions to the provider's duties. A provider may deny access to all or a part of an individual's services record only if a physician or a licensed psychologist involved in providing services to the individual talks to the individual, looks over the services record as a result of the individual's request for access, signs and puts in the services record permanently a written statement that he thinks access to the services records by the individual at this time would be physically or mentally harmful to the individual. The physician or licensed psychologist must also tell the individual as much about his services record as he can without risking harm to the individual (~~see §§ 2.1-342.01 A-5, 32.1-127.1:03 and 8.01-413 of the Code of Virginia~~).

## **12 VAC 35-115-100. Restrictions on freedoms of everyday life.**

A. From admission until discharge from a service, each individual is entitled to:

1. Enjoy all the freedoms of everyday life that are consistent with his need for services, his protection, and the protection of others, and that do not interfere with his services or the services of others. These freedoms include the following:

- a. Freedom to move within the service setting, its grounds and the community.
- b. Freedom to communicate, associate, and meet privately with anyone the individual chooses.
- c. Freedom to have and spend personal money.
- d. Freedom to see, hear, or receive television, radio, books, and newspapers whether privately owned or in a library or public area of the service setting.
- e. Freedom to keep and use personal clothing and other personal items.
- f. Freedom to use recreational facilities and enjoy the outdoors.
- g. Freedom to make purchases in canteens, vending machines or stores selling a basic selection of food and clothing.

2. Receive services in that setting and under those conditions that are least restrictive of his freedom.

~~3. Be completely free from any unnecessary restrictions, including restraint, seclusion, time out, and restrictions in behavioral treatment plans.~~

B. The provider's duties.

1. Providers shall encourage each individual's participation in normal activities and conditions of everyday living and support each individual's freedoms.

2. Providers shall not limit or restrict any individual's freedom more than is needed to achieve a therapeutic benefit, maintain a safe and orderly environment, or intervene in an emergency.

3. Providers shall not impose any restriction on an individual unless the restriction is justified and carried out according to these regulations.

4. Providers shall make sure that a qualified professional regularly reviews every restriction and that the restriction is discontinued when the individual has met the criteria for removal.

~~5. Providers shall report all restrictions involving the use of seclusion or restraint which do not comply with these regulations, an approved variance, or that result in harm to an individual to the advocate within 24 hours of their imposition.~~

~~6.~~ 5. Providers shall not place any restriction on the physical or personal freedom of any individual solely

because criminal or delinquency charges are pending against that individual, except in the situation where the individual is transferred directly from jail or detention for the purpose of receiving an evaluation or treatment.

~~7. Providers shall develop and implement policies and procedures that address emergencies. These policies and procedures must:~~

~~a. Identify what caregivers may do to respond to an emergency.~~

~~b. Identify qualified clinical staff who are accountable for assessing emergency conditions and determining the appropriate intervention.~~

~~c. Require that the director immediately notify the individual's legally authorized representative, if there is one, and the advocate if an emergency results in harm or injury to any individual.~~

~~d. Require documentation in the individual's services record of all facts and circumstances surrounding the emergency.~~

~~8. Providers who use restraint or seclusion shall develop written restraint and seclusion policies and procedures that comply with professionally accepted parameters of clinical practice and include the following requirements at a minimum:~~

~~a. Providers shall get approval of all proposed restraint and seclusion policies and procedures from the LHRC before they are implemented, when changes are proposed, and upon request by the advocate or the LHRC.~~

~~b. Providers shall make sure that each individual who requires restraint or seclusion is given the opportunity to eat at normal meal times and take fluids, use the restroom, and bathe as needed.~~

~~c. Providers shall make sure that the medical and mental condition of each individual in restraint or seclusion is continuously monitored by trained, qualified staff for the duration of the restriction.~~

~~d. Each use of restraint or seclusion shall end immediately when the criteria for removal is met.~~

~~e. Incidents of seclusion and restraint, including the rationale, type and duration of the restraint, shall be reported to the department as provided in 12 VAC 35-115-210.~~

~~9. Providers shall not consider the use of restraint or seclusion unless other less restrictive techniques have been considered and documented in the individual's services record to demonstrate that these less restrictive techniques did not or would not succeed in reducing or eliminating behaviors that are self-injurious or dangerous to other people.~~

~~10. Providers of services delivered in settings other than inpatient hospital settings shall not use seclusion unless authorized by an approved variance.~~

C. Exceptions and conditions on the provider's duties.

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[ 1. Except as provided in 12 VAC 35-115-50 E, providers may impose restrictions if a qualified professional involved in providing services to the individual has, in advance:

a. Assessed and documented all possible alternatives to the proposed restriction, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and the ability to function independently;

b. Determined that the proposed restriction is necessary for effective treatment of the individual or to protect him or others from personal harm, injury or death;

c. Documented in the individual's services record the specific reason for the restriction; and

d. Explained, so the individual can understand, the reason for the restriction, the criteria for removal, and the individual's right to a fair review of whether the restriction is permissible. ]

~~1. Providers may impose a restriction in an emergency, but only to the extent necessary to stop the emergency and only if:~~

~~a. Less restrictive measures have been exhausted; or~~

~~b. The emergency is so sudden that no less restrictive measure is possible.~~

~~2. Providers may use time out, but only according to policies and procedures which comply with professionally accepted parameters of clinical practice. These policies and procedures shall require, at a minimum:~~

~~a. Documentation in the individual's services record of the justification and purpose for using time out instead of other less restrictive techniques.~~

~~b. Regular physical checks on the individual and opportunities for motion, exercise, and personal hygiene, and documentation of these checks and opportunities in the individual's services record.~~

~~3. Providers may impose restrictions if a qualified professional involved in providing services to the individual has, in advance:~~

~~a. Assessed and documented all possible alternatives to the proposed restriction, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently;~~

~~b. Determined that the proposed restriction is necessary for effective treatment of the individual or to protect him or others from personal harm, injury or death;~~

~~c. Documented in the individual's services record the specific reasons for the restriction; and~~

~~d. Explained, so that the individual can understand, the reason for restriction, the criteria for its removal, and the individual's right to a fair review of whether the restriction is permissible.~~

~~4. [ 4. 2. ] Providers may impose a restriction if a court has ordered the provider to impose the restriction or if the provider is otherwise required by law to impose such restriction, such as forensic patients. Such restriction shall be documented in the individual's services record.~~

~~5. Providers may use restrictions in a behavioral treatment plan, but only if the plan has been developed according to policies and procedures approved by the LHRC. Such procedures shall ensure that:~~

~~a. Plans are initiated, developed, carried out, and monitored within professionally accepted parameters of clinical practice.~~

~~b. Individual plans are submitted to and approved by the treating professionals, an independent external review committee, and the LHRC, and that these approvals are documented in the individual's services record before implementation.~~

~~c. Information about individual plans or aggregate data about all plans is available anytime:~~

~~(1) Upon request by the advocate, the LHRC, the SHRC, and the department; and~~

~~(2) According to any relevant reporting requirements.~~

~~d. Seclusion and restraints are not included as part of the plan.~~

~~6. [ 2. 3. ] Providers may develop and enforce written rules of conduct, but only if the rules do not conflict with these regulations or any individual's services plan, and the rules are needed to maintain a safe and orderly environment.~~

~~7. [ 3. 4. ] Providers shall, in the development of these rules of conduct:~~

~~a. Get as many suggestions as possible from all individuals who are expected to obey the rules in developing the rules.~~

~~b. Apply these rules in the same way to each individual.~~

~~c. Give the rules to and review them with each individual and his legally authorized representative in a way that the individual can understand them. This includes explaining possible consequences for violating the rules.~~

~~d. Prohibit restraint or seclusion as any type of punishment.~~

~~e. d. Post the rules in summary form in all areas to which individuals and their families have regular access.~~

~~f. e. Submit the rules to the LHRC for review and approval before putting them into effect, before any changes are made to the rules, and upon request of the advocate or LHRC.~~

~~g. f. Prohibit individuals from disciplining other individuals, except as part of an organized self-government program conducted according to a written policy approved in advance by the LHRC.~~

## **12 VAC 35-115-110. Use of seclusion, restraint, and time out.**

A. Each individual is entitled to be completely free from any unnecessary use of seclusion, restraint, and time out.

B. The provider's duties.

1. Providers shall not use seclusion or restraint as punishment, reprisal, or for the convenience of staff.

2. Providers shall limit each [ ~~written order~~ authorization ] for seclusion or [ behavioral ] restraint to four hours for individuals 18 and older, two hours for children and adolescents ages 9 to 17, and one hour for children under age 9.

3. Providers shall monitor the combined use of seclusion and restraint by a continuous face-to-face observation, not [ solely ] by an electronic surveillance device.

4. Providers shall ensure that seclusion and restraint may only be implemented, monitored, and discontinued by staff who have been trained in the proper and safe use of seclusion and restraint techniques.

5. Providers shall not utilize seclusion or restraint unless it is justified and carried out according to these regulations.

a. The justification for any seclusion or restraint procedure must be documented in the individual's services plan.

b. The authorization for the use of seclusion or restraint must be documented in the individual's services plan and include behavioral criteria the individual must meet for release.

c. The authorization for the use of seclusion or restraint must be time-limited. Authorizations for the use of seclusion or restraint procedures may not be given on an as needed basis.

d. The authorizing professional must document that he has taken into account any physical or psychological conditions that would place the individual at greater risk during restraint or seclusion.

6. Providers shall make sure that a qualified professional regularly reviews every use of seclusion or restraint and that the procedure is discontinued when the individual has met the criteria for removal.

7. Providers shall not use seclusion or restraint solely because criminal or delinquency charges are pending against the individual.

8. Providers who use seclusion or restraint shall develop written seclusion and restraint policies and procedures that comply with applicable federal and state statutes and regulations, accreditation standards, third party payer requirements, and sound therapeutic practice. These policies and procedures shall include the following requirements at a minimum:

a. Providers shall submit all proposed seclusion and restraint policies and procedures to the LHRC for review

and comment before they are implemented, when changes are proposed, and upon request by the human rights advocate or the LHRC. The SHRC may request these policies and procedures be transmitted to the SHRC for review.

b. Providers shall make sure that each individual who requires seclusion or restraint is given the opportunity for motion and exercise, to eat at normal meal times and take fluids, to use the restroom, and bathe as needed.

c. Providers shall make sure that the medical and mental condition of each individual in seclusion or restraint is continuously monitored by trained, qualified staff for the duration of the restriction.

d. Each use of seclusion or restraint shall end immediately when criteria for removal is met.

e. Incidents of seclusion and restraint, including the rationale, type and duration of the restraint, shall be reported to the department as provided in 12 VAC 35-115-230.

9. Providers shall not consider the use of seclusion or restraint unless other less restrictive techniques have been considered and documented in the individual's services plan to demonstrate that these less restrictive techniques did not or would not succeed in reducing or eliminating behaviors that are self-injurious or dangerous to other people.

10. [ ~~Providers of services delivered in settings other than~~ Only ] inpatient hospital settings [ ~~shall not~~ and residential facilities for children or adolescents licensed under the Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children (12 VA 35-40-10 et seq.) of the Standards for Interdepartmental Regulation of Children's Residential Facilities (22 VAC 42-10-10 et seq.) may ] use seclusion.

11. Providers shall comply with all applicable state and federal laws and regulations, accreditation standards, and third party payer requirements as they relate to seclusion and restraint. Whenever an inconsistency exists between these regulations and federal regulations, accreditation standards, or the requirements of third party payers, the provider will be held to the higher standard.

12. Providers shall notify the department whenever a regulatory or accreditation agency or third party payer identifies problems in the provider's compliance with any applicable seclusion or restraint standard.

13. Providers shall ensure that no individual is in time out for more than 30 minutes per episode and that the instruction to the individual to move or remain in the alternative location may not take the form of a threat.

14. Providers shall ensure that isolated time out as defined by the U.S. Health Care Financing Administration (HCFA) may be used only in compliance with HCFA requirements. Isolated time out may only be used as part of a behavioral treatment program that has been approved by the LHRC and incidents of isolated time out shall be limited to one hour.

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## C. Exceptions and conditions on the provider's duties.

1. Providers [ who use seclusion and restraint ] may impose seclusion or restraint in an emergency, but only to the extent necessary to stop the emergency and only if:

- a. Less restrictive measures have been exhausted; or
- b. The emergency is so sudden that no less restrictive measure is possible.

2. Providers [ who use seclusion and restraint ] may use seclusion or restraint if a qualified professional involved in providing services to the individual has, in advance:

- a. Assessed and documented why alternatives to the proposed use of seclusion or restraint have not been successful in changing the behavior or not attempted, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently;
- b. Determined that the proposed seclusion or restraint is necessary for effective treatment of the individual or to protect him or others from personal harm, injury, or death;
- c. Documented in the individual's service record the specific reasons for the seclusion or restraint; and
- d. Explained, so that the individual can understand, the reason for using restraint or seclusion, the criteria for its removal, the individual's right to a fair review of whether the restriction is permissible.

3. Providers [ who use seclusion and restraint ] may use restraint or seclusion in a behavioral treatment plan, but only if the plan has been developed according to policies and procedures. All plans involving the use of restraints for behavioral purposes and all plans involving the use of seclusion shall be reviewed in advance by the LHRC. Such procedures shall ensure that:

- a. Plans are initiated, developed, carried out, and monitored by professionals who are qualified by expertise, training, education or [ ~~cred~~ *cred*entials ].
- b. Individual plans are submitted to and approved by [ ~~the treating professionals;~~ ] an independent review committee, comprised of professionals with training and experience in applied behavior analysis, which shall assess the technical adequacy of the plan and data collection procedures; and the LHRC, which shall review the plans to ensure that the rights of the individuals are protected. All approvals shall be documented in the individual's services record before implementation.
- c. Information about the individual plans or aggregate data about all plans is available anytime:

(1) Upon request by the human rights advocate, the LHRC, the SHRC, the Inspector General, and the department; and

(2) According to relevant reporting requirements.

d. Seclusion and restraint shall only be included in plans:

(1) To address behaviors that present an immediate danger to the individual or others, but only after it has been demonstrated by a detailed and systematic analysis of the behavior itself and the situations in which the behavior occurs. Providers shall document the lack of success or of probable success of less restrictive procedures attempted and that the risks associated with not treating the behavior are greater than any risks associated with the use of restraint or seclusion.

(2) After review by the LHRC. If the LHRC finds that a behavioral treatment plan that utilizes seclusion or restraint violates or has the potential to violate the rights of the individual, the LHRC will notify and make recommendations to the director.

(3) If the plans include nonrestrictive procedures and environmental modifications that address the targeted behavior.

e. Plans that include the use of seclusion and restraint shall also be reviewed quarterly by the independent review committee and by the LHRC to assess if the use of restrictions has resulted in improvements in functioning.

4. Providers may use time out, but only according to policies and procedures that comply with sound therapeutic practice. These policies and procedures shall be documented in the individual's services plan with the justification and purpose for using time out instead of other less restrictive techniques.

## ~~42 VAC 35-115-110~~ 12 VAC 35-115-120. Work.

A. Individuals have a right to engage or not engage in work or work-related activities consistent with their service needs while receiving services. [ Personal maintenance and personal housekeeping by individuals receiving services in residential settings are not subject to this provision. ]

## B. The provider's duties.

1. Providers shall not require, entice, persuade, or permit any individual or his family member to perform labor for the provider as a condition of receiving services. If an individual voluntarily chooses to perform labor for the provider, the labor must be consistent with his individualized services plan. All policies and procedures, including pay, must be consistent with the Fair Labor Standards Act (29 USC § 201 et seq.).

2. Providers shall consider individuals who are receiving services for employment opportunities on an equal basis with all other job applicants and employees according to the Americans with Disabilities Act (42 USC § 12101 et seq.).

3. Providers shall give individuals and employers information, training, and copies of policies affecting the employment of individuals receiving services upon request.

~~4. In residential settings, providers may request that an individual keep his immediate living area clean, but shall not withhold or stop services because an individual refuses~~



~~to perform work, including personal maintenance or personal housekeeping.~~

~~5. 4. If vocational training, extended employment services, or supportive employment services are used offered, providers shall establish procedures for documenting the decision on employment and training and the methodology for establishing consumer wages. Providers shall give a copy of the procedures and information about possible consequences for violating the procedures to all individuals and their legally authorized representatives.~~

~~6. 5. Providers who employ individuals receiving services shall not deduct the cost of services from an individual's wages unless ordered to do so by a court.~~

~~7. 6. Providers shall not sell to or purchase goods or services from an individual receiving services except through established governing body policy that is consistent with U.S. Department of Labor standards ].~~

~~[ C. Exceptions and conditions on the provider's duties. In residential settings, providers may request that an individual keep his immediate living area clean, but shall not withhold or stop services because an individual refuses to perform personal maintenance or personal housekeeping tasks. ]~~

~~12 VAC 35-115-120~~ **12 VAC 35-115-130. Research.**

A. Each individual has a right to choose to participate or not participate in human research.

B. The provider's duties.

1. Providers shall get prior, written, informed consent of the individual or his legally authorized representative before any individual begins to participate in human research.

2. Providers shall comply with all other applicable state and federal laws and regulations regarding human research, including the provisions under Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia and the regulations promulgated under that statute.

3. Providers shall solicit consultation and review by an institutional review board or research review committee prior to participation in human research.

4. All providers shall inform ~~[ obtain permission from ]~~ the Local Human Rights Committee ~~of a client's participation before an individual receiving services may participate in any human research project and provide periodic updates on the status of the individual's participation to the committee.~~

~~12 VAC 35-115-130~~ **12 VAC 115-140. [ No change from 17:20 VA.R. ]**

PART IV.  
COMPLAINT RESOLUTION, HEARING, AND APPEAL  
PROCEDURES.

~~12 VAC 35-115-140~~ **12 VAC 35-115-150. General provisions.**

A. The parties to any complaint are the individual and the director. Each party can also have ~~someone~~ anyone else to represent him during complaint resolution.

B. Meetings, reviews and hearings will generally be closed to other people unless the individual making the complaint requests that other people attend or if an open meeting is required by the Virginia Freedom of Information Act.

1. The LHRC and SHRC may conduct a closed hearing to protect the confidentiality of persons who are not a party to the complaint, but only if a closed meeting is otherwise allowed under the Virginia Freedom of Information Act (§ [ ~~2-4-340~~ 2.2-3700 ] et seq. of the Code of Virginia).

2. If any person alleges that implementation of an LHRC recommendation would violate the individual's rights or those of other individuals, the person may file a petition for a hearing with the SHRC according to ~~42 VAC 35-115-100~~ 12 VAC 35-115-210.

C. In no event shall a pending hearing, review or appeal prevent a director from taking corrective action based on the advice of the provider's legal counsel that such action is required by law or he otherwise thinks such action is correct and justified.

~~D. Except in the case of emergency proceedings, the LHRC and SHRC may, for good cause, extend any time periods governing their own proceedings, either before or after the time period has ended. The LHRC or SHRC, on the motion of any party or on its own motion, may, for good cause, extend any time periods either before or after the expiration of that time period. No provider or director may extend any time periods for any actions the provider or director he is required to take under these procedures without prior approval of the LHRC or SHRC.~~

E. Except in the case of emergency proceedings, if a time period in which action must be taken under this part is not extended by the LHRC or SHRC, the failure of a ~~person~~ party to act within that time period shall waive that ~~person's~~ party's further rights under these procedures.

~~F. Upon request of the advocate, provider, director, an individual or individuals receiving services, or on its own initiative, an LHRC may review any existing or proposed policies, procedures, or practices that could jeopardize the rights of one or more individuals receiving services from the provider with which the LHRC is affiliated. In conducting this review, the LHRC may consult with any advocate, employee of the director, or anyone else. After this review, the LHRC shall make recommendations to the director concerning changes in these policies, procedures, and practices.~~

~~G. F. In making their recommendations regarding complaint resolution, the LHRC and the SHRC shall identify any rights or regulations that the provider violated and any policies, practices, or conditions that contributed to the violations. They shall also recommend appropriate corrective actions, including changes in policies, practices, or conditions, to prevent further violations of the rights assured under these regulations.~~

~~H. G. If it is impossible to carry out the recommendations of the LHRC or the SHRC within a specified time, the LHRC or the SHRC, as appropriate, shall recommend any necessary interim action that gives appropriate and possible immediate remedies.~~

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~~4.~~ *H. Any action plan submitted by the director or commissioner in the course of these proceedings shall fully address both final and interim recommendations made by the LHRC or the SHRC and identify financial or other constraints, if any, which prevent efforts to fully remedy the violation.*

**12 VAC 35-115-160. [ No change from 17:20 VA.R. ]**

~~12 VAC 35-115-150. Informal complaint resolution.~~ **12 VAC 35-115-170. Formal complaint resolution process.**

[ ~~A.~~ *The following steps apply if:*

- 1. The informal complaint process did not resolve the complaint to the individual's satisfaction within five working days; or*
- 2. The individual chooses to not pursue the informal complaint process. ]*

[ ~~A. B.~~ ] *Step 1: Anyone who believes that a provider has violated an individual's rights under these regulations may report it to the director and the human rights advocate, or either of them, for ~~informal~~ resolution.*

- 1. If the report is made only to the director or his designee, the director shall immediately notify the human rights advocate. If the report is made on a weekend or holiday, then the director or his designee shall notify the human rights advocate on the next business day.*
- 2. If the report is made only to the human rights advocate, the human rights advocate ~~may~~ shall immediately notify the director or his designee. If the report is made on a weekend or holiday, then the human rights advocate shall notify the director or his designee on the next business day. The human rights advocate or the director or his designee shall notify the individual of his right to pursue his complaint through all available means under this part.*
- 3. If the human rights advocate concludes, after an initial investigation, that there is substantial risk that serious and irreparable harm will result if the complaint is not resolved immediately, the human rights advocate shall inform the director, the provider, the provider's governing body, and the LHRC. Steps 2 through 6 below shall not be followed. Instead, the LHRC shall conduct a hearing according to the special procedures for emergency hearings in ~~12 VAC 35-115-170~~ 12 VAC 35-115-190.*

[ ~~B. C.~~ ] *Step 2: The director or his designee shall try to resolve the complaint ~~informally~~ by meeting within 24 hours of receipt of the complaint with the individual, any representative the individual chooses, the human rights advocate, and others as appropriate, and by conducting an investigation if necessary.*

[ ~~C. D.~~ ] *Step 3: The director or his designee shall give the individual and his chosen representative a written decision and an action plan within 10 working days of receiving the complaint.*

[ ~~D. E.~~ ] *Step 4: If the individual is not satisfied at this step, he can respond to the director in writing within 5 working days after receiving the director's or the designee's written decision and action plan.*

[ ~~E. F.~~ ] *Step 5: The director shall investigate further as appropriate and shall make a final decision regarding the complaint. The director shall forward a written copy of his final decision and action plan to the individual, his chosen representative, and the human rights advocate within 10 working days after the director received the individual's written response.*

[ ~~F. G.~~ ] *Step 6: If the individual is not satisfied with the director's final decision or action plan, he may file a petition for a hearing by the LHRC using the procedures prescribed in ~~12 VAC 35-115-160~~ 12 VAC 35-115-180.*

~~12 VAC 35-115-160~~ **12 VAC 35-115-180. [ No change from 17:20 VA.R. ]**

~~12 VAC 35-115-170~~ **12 VAC 35-115-190. [ No change from 17:20 VA.R. ]**

~~12 VAC 35-115-180~~ **12 VAC 35-115-200. [ No change from 17:20 VA.R. ]**

~~12 VAC 35-115-190~~ **12 VAC 35-115-210. State Human Rights Committee appeals procedures.**

*A. Any party may appeal to the State Human Rights Committee if he is not satisfied with any of the following:*

- 1. An LHRC's final findings of fact and recommendations following a hearing.*
- 2. A director's final action plan following an LHRC hearing.*
- 3. An LHRC's final decision regarding the capacity of an individual to consent to treatment, research, or disclosure of confidential information.*
- 4. An LHRC's final decision concerning whether consent is needed for the director to take a certain action.*

*The steps for filing an appeal are provided in subsections B through I of this section.*

*B. Step 1: Appeals shall be filed in writing by a party within 10 working days of receipt of the final action.*

- 1. The appeal shall explain the reasons the final action is not satisfactory.*
- 2. The human rights advocate or any other person may help in filing the appeal. If the individual chooses a person other than the human rights advocate to help him, he and his chosen representative may request the human rights advocate's help in filing the appeal.*
- 3. The party appealing must give a copy of the appeal to the other party, the human rights advocate, and the LHRC.*
- 4. If the director is the party appealing, he shall first request and get written permission to appeal from the commissioner or governing body of the provider, as appropriate. If the director does not get this written permission and note the appeal within 10 working days, his right to appeal is waived.*

*C. Step 2: If the director is appealing, the individual may file a written statement with the SHRC within five working days after receiving a copy of the appeal. If the individual is appealing, the director shall file a written statement with the*

SHRC within five working days after receiving a copy of the appeal.

D. Step 3: Within five working days of noting or being notified of an appeal, the director shall forward a complete record of the LHRC hearing to the SHRC. The record shall include, at a minimum:

1. The original petition or information filed with the LHRC and any statement filed by the director in response.
2. Parts of the individual's services record that the LHRC considered and any other parts of the services record submitted to, but not considered by the LHRC that either party considers relevant, ~~but which the LHRC did not consider.~~
3. All written documents and materials presented to and considered by the LHRC, including any independent evaluations conducted.
4. A tape or word-for-word transcript of the LHRC proceedings.
5. The LHRC's findings of fact and recommendations.
- ~~6.~~ 6. The director's action plan, if any.
- ~~7.~~ 7. Any written objections to the action plan or its implementation.

E. Step 4: The SHRC shall hear the appeal within 20 working days after the chair receives the appeal.

1. The SHRC shall give the parties at least 10 days' notice of the appeal hearing.
2. The following rules govern appeal hearings:
  - a. The SHRC shall not hear any new evidence.
  - b. The SHRC is bound by the LHRC's findings of fact subject to subdivision [ ~~D-2 (Step 3, Part 2)~~ 3 ] of this subsection.
  - c. The SHRC shall limit its review to whether the facts, as found by the LHRC, establish a violation of these regulations and a determination of whether the LHRC's recommendations or the action plan adequately address the alleged violation.
  - d. All parties and their representatives shall have the opportunity to appear before the SHRC to present their position and answer questions the SHRC may have.
  - e. The SHRC will notify the Inspector General of the appeal.
3. If the SHRC decides that the LHRC's findings of fact are clearly wrong or that the hearing procedures employed by the LHRC were inadequate, the SHRC may either:
  - a. Send the case back to the LHRC for another hearing to be completed within a time period specified by the SHRC; or
  - b. Conduct its own fact-finding hearing. If the SHRC chooses to conduct its own fact-finding hearing, it may appoint a subcommittee of at least three of its members as fact finders. The fact-finding hearing shall be

conducted within 30 working days of the SHRC's initial hearing.

In either case, the parties shall have 15 working days' notice of the date of the hearing and the opportunity to be heard and to present witnesses and other evidence.

F. Step 5: Within 20 working days after the SHRC appeal hearing, the SHRC shall submit a report, its findings of fact, if applicable, and recommendations to the commissioner and to the provider's governing body, with copies to the parties, the LHRC, and the human rights advocate.

G. Step 6: Within 10 working days after receiving the SHRC's report, in the case of appeals involving a state facility, the commissioner shall submit an outline of actions to be taken in response to the SHRC's recommendations. In the case of appeals involving CSBs and private providers, both the commissioner and the provider's governing body shall each outline in writing the action or actions they will take in response to the recommendations of the SHRC. They shall also explain any reasons for not carrying out any of the recommended actions. Copies of their responses shall be forwarded to the SHRC, the LHRC, the director, the human rights advocate, and the individual.

H. Step 7: If the SHRC objects in writing to the commissioner's or governing body's proposed actions, or both, their actions shall be postponed. The commissioner or governing body, or both, shall meet with the SHRC at its next regularly scheduled meeting to attempt to arrange a mutually agreeable resolution.

I. Step 8: In the case of services provided directly by the department, the commissioner's action plan shall be final and binding on all parties. However, when the SHRC believes the commissioner's action plan is incompatible with the purpose of these regulations, it shall notify the board ~~and~~, the Virginia protection and advocacy agency, and the Inspector General.

In the case of services delivered by all other providers, the action plan of the provider's governing body shall be reviewed by the commissioner. If the commissioner determines that the provider has failed to develop and carry out an acceptable action plan, the commissioner shall notify the protection and advocacy agency and shall inform the SHRC what sanctions the department will impose against the provider.

## PART V. VARIANCES.

~~12 VAC 35-115-200~~ 12 VAC 35-115-220. [ No change from 17:20 VA.R. ]

## PART VI. REPORTING REQUIREMENTS.

~~12 VAC 35-115-210.~~ 12 VAC 35-115-230. [ No change from 17:20 VA.R. ]

## PART VII. ENFORCEMENT AND SANCTIONS.

~~12 VAC 35-115-220~~ 12 VAC 35-115-240. **Human rights enforcement and sanctions.**

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A. ~~The department commissioner may invoke the sanctions enumerated in § [ 37.1-85.4 37.1-185.1 ] of the Code of Virginia upon receipt of information that a provider licensed or funded by the department is:~~

1. ~~In violation of (i) the provisions of § 37.1-84.1 and §§ 37.1-179 through [ 37.1-189.1 37.1-189.2 ] of the Code of Virginia; (ii) these regulations; or (iii) the provisions of the Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services, 12 VAC 35-102-10 et seq. licensing regulations promulgated pursuant to §§ 37.1-179.1 and 37.1-182 of the Code of Virginia; and~~

2. ~~Such violation adversely impacts the human rights of consumers individuals receiving services or poses an imminent and substantial threat to the health, safety or welfare of consumers individuals receiving services.~~

~~The department commissioner shall notify the provider in writing of the specific violation(s) violation or violations found and of its his intention to convene an informal conference pursuant to [ § 9-6.14:11 § 2.2-4019 ] of the Code of Virginia at which the presiding officer will be asked to recommend issuance of a special order.~~

~~B. If the provider does not provide evidence that the violations have been corrected, an informal conference pursuant to § 9-6.14:11 of the Code of Virginia will be convened within 30 days of the date of the original notification. An individual who does not report to either the director of the Office of Human Rights or the director of the Office of Licensing will be appointed to serve as the presiding officer at the informal conference.~~

~~C. If, at the conclusion of the informal conference, the presiding officer believes that the provider is in violation of applicable statutes or regulations in accordance with subsection A of this section, he shall recommend to the commissioner that a special order, as provided in § 37.1-185.1 of the Code of Virginia, be issued.~~

~~D. If, after considering the recommendation of the presiding officer and reviewing evidence submitted at the informal conference, the commissioner concludes that the requirements of subsection A of this section are satisfied, he shall issue a special order which may include one or more of the sanctions specified in § 37.1-185.1 A of the Code of Virginia.~~

~~1. Any sanction imposed by the commissioner pursuant to a special order shall be designed to reduce existing health and safety risks, address the cause of the violation, and initiate prompt corrective action by the provider.~~

~~2. Imposition of probation or probationary status on a provider shall be for a fixed period of time, not to exceed a 12-month period.~~

~~3. The commissioner shall have the authority to modify the sanctions imposed by the special order as the requirements in the special order are satisfied.~~

~~E. B. The sanctions contained in the special order shall remain in effect during the pendency of any appeal of the special order.~~

PART VIII.  
RESPONSIBILITIES AND DUTIES.

~~12 VAC 35-115-230~~ 12 VAC 35-115-250. **Offices, composition and duties.**

A. ~~Providers and their directors shall:~~

1. ~~Identify a person or persons accountable for helping individuals to exercise their rights and resolve complaints regarding services.~~

2. ~~Comply with all state laws governing the reporting of abuse and neglect and all procedures set forth in these regulations for reporting allegations of abuse, neglect, or exploitation.~~

3. ~~Require competency-based training on these regulations upon employment and at least annually thereafter. Documentation of such competency shall be maintained in the employee's personnel file.~~

~~3.~~ 4. ~~Take all steps necessary to assure compliance with these regulations in all services provided.~~

4. ~~Assure~~ 5. ~~Communicate information about the availability of a department human rights advocate and [ assure ] an LHRC to all individuals receiving services.~~

6. ~~Assure that appropriate staff attend all LHRC meetings to report on human rights activities as directed by the human rights advocate or the LHRC bylaws.~~

5. 7. ~~Cooperate with the human rights advocate and the LHRC to investigate and correct conditions or practices interfering with the free exercise of individuals' rights and make sure that all employees cooperate with the human rights advocate and the LHRC in carrying out their duties under these regulations.~~

6. 8. ~~Provide the advocate unrestricted access to individuals and individual services records whenever the human rights advocate deems access necessary to carry out rights protection, complaint resolution, and advocacy.~~

7. 9. ~~Submit to the human rights advocate for review and comment any proposed policies, procedures, or practices that may affect individual rights.~~

8. 10. ~~Comply with requests by the SHRC, LHRC, and human rights advocate for information, policies, procedures, and written reports regarding compliance with these regulations.~~

9. 11. ~~Name a liaison to the LHRC, who shall give the LHRC suitable meeting accommodations, clerical support and equipment, and assure the availability of records and employee witnesses upon the request of the LHRC. Oversight and assistance with the LHRC's substantive implementation of these regulations shall be provided by the SHRC. See subsection E of this section.~~

10. 12. ~~Submit applications for variances to these regulations only as a last resort.~~

11. 13. ~~Post in program locations information about the existence and purpose of the human rights program.~~

~~42.~~ 14. Not influence or attempt to influence the appointment of any person to an LHRC associated with the provider or director.

~~43.~~ 15. Perform any other duties required under these regulations.

**[ No changes from 17:20 VA.R. in subsections B through D. ]**

E. The State Human Rights Committee (SHRC) shall:

1. Consist of nine members appointed by the board.

a. Members shall be broadly representative of professional and consumer interests and of geographic areas in the Commonwealth. At least two members shall be individuals who are receiving services or have received within five years of their initial appointment public or private mental health, mental retardation, or substance abuse treatment or habilitation services. At least one-third shall be consumers or family members of similar individuals.

b. No member can be an employee or board member of the department or [ CSB ~~provider~~ ].

c. All appointments after the effective date of these regulations shall be for a term of three years.

d. If there is a vacancy, interim appointments may be made for the remainder of the unexpired term.

e. A person may be appointed for no more than two consecutive terms. A person appointed to fill a vacancy may serve out that term, and then be eligible for two additional consecutive terms.

2. Elect a chair from its own members who shall:

a. Coordinate the activities of the SHRC;

b. Preside at regular meetings, hearings and appeals; and

c. Have direct access to the commissioner and the board in carrying out these duties.

3. Upon request of the commissioner, human rights advocate, provider, director, an individual or individuals receiving services, or on its own initiative, a SHRC may review any existing or proposed policies, procedures, or practices that could jeopardize the rights of one or more individuals receiving services from any provider. In conducting this review, the SHRC may consult with any human rights advocate, employee of the director, or anyone else. After this review, the SHRC shall make recommendations to the director or commissioner concerning changes in these policies, procedures, and practices.

~~3.~~ 4. Determine the appropriate number and geographical boundaries of LHRCs and consolidate LHRCs serving only one provider into regional LHRCs whenever consolidation would assure greater protection of rights under these regulations.

~~4.~~ 5. Appoint members of LHRCs with the advice of and consultation with the commissioner and the State Human Rights Director.

~~5.~~ 6. Advise and consult with the commissioner in the employment of the State Human Rights Director and human rights advocates.

~~6.~~ 7. Conduct at least eight regular meetings per year.

~~7.~~ 8. Review decisions of LHRCs and, if appropriate, hold hearings and make recommendations to the commissioner, the board, and providers' governing bodies regarding alleged violations of individuals' rights according to the procedures specified in these regulations.

9. Provide oversight and assistance to LHRCs in the performance of their duties hereunder.

~~8.~~ 10. Notify the commissioner and the State Human Rights Director whenever it determines that its recommendations in a particular case are of general interest and applicability to providers, human rights advocates, or LHRCs and assure the availability of the opinion or report to providers, human rights advocates, and LHRCs as appropriate. No document made available shall identify the name of individuals or employees in a particular case.

~~9.~~ 11. Grant or deny variances according to the procedures specified in Part V (~~42 VAC 35-115-200~~ 12 VAC 35-115-220 et seq.) of this chapter and review approved variances at least once every year.

~~40.~~ 12. Make recommendations to the board concerning proposed revisions to these regulations.

~~44.~~ 13. Make recommendations to the commissioner concerning revisions to any existing or proposed laws, regulations, policies, procedures, and practices to ensure the protection of individuals' rights.

~~42.~~ 14. Review the scope and content of training programs designed by the department to promote responsible performance of the duties assigned under these regulations by providers, employees, human rights advocates, and LHRC members, and, where appropriate, make recommendations to the commissioner.

~~43.~~ 15. Evaluate the implementation of these regulations and make any necessary and appropriate recommendations to the board, the commissioner, and the State Human Rights Director concerning interpretation and enforcement of the regulations.

~~44.~~ 16. Submit a report on its activities to the board each year.

~~45.~~ 17. Adopt written bylaws that address procedures for conducting business; making membership recommendations to the board; electing a chair, vice chair, secretary and other officers; appointing members of LHRCs; designating standing committees and their responsibilities; establishing ad hoc committees; and setting the frequency of meetings.

~~46.~~ 18. Review and approve the bylaws of LHRCs.

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19. Publish an annual report of the status of human rights in the mental health, mental retardation, and substance abuse treatment and services in Virginia and make recommendations for improvement.

20. Require members to recuse themselves from all cases where they have a financial, family or other conflict of interest.

~~47.~~ 21. Perform any other duties required under these regulations.

F. The State Human Rights Director shall:

1. Lead the implementation of the statewide human rights program and make ongoing recommendations to the commissioner, the SHRC, and the LHRCs for continuous improvements in the program.

2. Advise the commissioner concerning the employment and retention of human rights advocates.

3. Advise providers, directors, advocates, LHRCs, the SHRC, and the commissioner concerning their responsibilities under these regulations and other applicable laws, regulations and departmental policies that protect individuals' rights.

4. Organize, coordinate and oversee training programs designed to promote responsible performance of the duties assigned under these regulations.

5. Periodically visit service settings to monitor free exercise of those rights enumerated in these regulations.

6. Supervise human rights advocates in the performance of their duties under these regulations.

7. Support the SHRC and LHRCs in carrying out their duties under these regulations.

~~8. Maintain a current and regularly updated database and perform regular trend analyses to identify the need for corrective action in the areas of abuse, neglect and exploitation; seclusion and restraint; behavioral treatment programs; complaints; deaths and serious incidents; and variance applications. Review LHRC decisions and recommendations for general applicability and provide suggestions for training to appropriate entities.~~

9. Monitor implementation of corrective action plans approved by the SHRC.

10. Perform any other duties required under these regulations.

G. The commissioner shall:

1. Employ the State Human Rights Director after advice and consultation with the SHRC.

2. Employ advocates following consultation with the State Human Rights Director.

3. Provide or arrange for assistance and training necessary to carry out and enforce these regulations.

4. Cooperate with the SHRC and the State Human Rights Director to investigate providers and correct conditions or

practices that interfere with the free exercise of individuals' rights.

5. Advise and consult with the SHRC and the State Human Rights Director concerning the appointment of members of LHRCs.

6. Maintain current and regularly updated data and perform regular trend analyses to identify the need for corrective action in the areas of abuse, neglect, and exploitation; seclusion and restraint; complaints; deaths and serious incidents; and variance applications.

~~6.~~ 7. Assure regular monitoring and enforcement of these regulations, including authorizing unannounced compliance reviews at any time.

~~7.~~ 8. Perform any other duties required under these regulations.

H. The board shall:

1. Promulgate regulations defining the rights of individuals receiving services from providers covered by these regulations.

2. Appoint members of the SHRC.

3. Review and approve the bylaws of the SHRC.

4. Perform any other duties required under these regulations.

VA.R. Doc. No. R00-39; Filed October 2, 2001, 3:40 p.m.

\* \* \* \* \*

**Title of Regulation: 12 VAC 35-120. Rules and Regulations to Assure the Rights of Patients of Psychiatric Hospitals and Other Psychiatric Facilities Licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services (REPEALED).**

**Statutory Authority:** §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

**Effective Date:** November 21, 2001.

**Summary:**

The board is repealing the current Rules and Regulations to Assure the Rights of Patients of Psychiatric Hospitals and Other Psychiatric Facilities Licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. This regulation, along with two other human rights regulations, is being consolidated into a newly proposed regulation (Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services, 12 VAC 35-115.).

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

**Agency Contact:** Margaret Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988.

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**Title of Regulation:** 12 VAC 35-130. Rules and Regulations to Assure the Rights of Clients in Community Programs (REPEALED).

**Statutory Authority:** §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

**Effective Date:** November 21, 2001.

**Summary:**

*The board is repealing the current rules and regulations to assure the rights of clients in community programs. This regulation, along with two other human rights regulations, is being consolidated into a newly proposed regulation (Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services, 12 VAC 35-115).*

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

**Agency Contact:** Margaret Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988.

**TITLE 14. INSURANCE**

**STATE CORPORATION COMMISSION**

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

**Title of Regulation:** 14 VAC 5-330-10. Reporting of Salvage and Subrogation Recoveries (REPEALED).

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

**Effective Date:** December 31, 2001.

**Summary:**

*The Bureau of Insurance is repealing 14 VAC 5-330-10, Reporting of Salvage and Subrogation Recoveries. The Bureau of Insurance will require the reporting of salvage and subrogation to be in accordance with the National Association of Insurance Commissioners Accounting Practices and Procedures Manual (manual). The manual, in the Statement of Statutory Accounting Principles No. 55 and elsewhere, provides guidance for anticipating salvage and subrogation, and for accounting for changes in estimates resulting from differences between estimated and actual payments.*

**Agency Contact:** Raquel Pino-Moreno, Bureau of Insurance, State Corporation Commission, 1300 E. Main Street, 6th Floor, Richmond, VA 23219; mailing address: P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, or e-mail rpino-moreno@scc.state.va.us.

AT RICHMOND, SEPTEMBER 26, 2001

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS010154

**Ex Parte:** In the matter of Repealing the regulation entitled Reporting of Salvage and Subrogation Recoveries

**ORDER REPEALING REGULATION**

WHEREAS, by order entered herein August 2, 2001, all interested persons were ordered to take notice that the Commission would consider the entry of an order subsequent to September 17, 2001, repealing 14 VAC 5-330-10, as proposed by the Bureau of Insurance, unless on or before September 17, 2001, any person objecting to the proposed repeal filed a request for a hearing with the Clerk of the Commission;

WHEREAS, the August 2, 2001, Order also required all interested persons to file their comments in support of or in opposition to the proposed repeal on or before September 17, 2001;

WHEREAS, as of the date of this Order, no request for a hearing has been filed with the Clerk of the Commission;

WHEREAS, as of the date of this Order, no comments have been filed with the Clerk of the Commission;

WHEREAS, the Bureau has recommended that 14 VAC 5-330-10 be repealed; and

THE COMMISSION, having considered 14 VAC 5-330-10 and the Bureau's recommendation, is of the opinion that 14 VAC 5-330-10 should be repealed;

THEREFORE, IT IS ORDERED THAT:

(1) Chapter 330 of Title 14 of the Virginia Administrative Code entitled "Reporting of Salvage and Subrogation Recoveries" and specifically designated as 14 VAC 5-330-10, should be, and it is hereby, REPEALED to be effective December 31, 2001;

(2) AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the repeal of 14 VAC 5-330-10 by mailing a copy of this Order to all insurers licensed to write property and casualty insurance in the Commonwealth of Virginia, including any entity licensed to write policies providing a class of insurance defined in §§ 38.2-110 through 38.134 of the Code of Virginia, or licensed and subject to regulation as an insurer pursuant to Chapters 11, 12, 25, 26, 46 or 51 of Title 38.2 of the Code of Virginia, and interested persons; and by forwarding a copy of this Order to the Virginia Registrar of

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Regulations for appropriate publication in the Virginia Register of Regulations; and

(3) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirement of paragraph

VA.R. Doc. No. R01-266; Filed September 27, 2001, 2:30 p.m.

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### COMMONWEALTH TRANSPORTATION BOARD

Title of Regulation: **24 VAC 30-40. Rules and Regulations Governing Relocation Assistance (REPEALED).**

Title of Regulation: **24 VAC 30-41. Rules and Regulations Governing Relocation Assistance.**

Statutory Authority: §§ 25-253 and 33.1-12 of the Code of Virginia; 42 USC § 4601 et seq.

Effective Date: November 21, 2001.

Summary:

*As a result of a comprehensive review of instructional manuals, memoranda, policies, and procedures used in the Right of Way and Utilities Division, VDOT is replacing the existing regulation with a substantially rewritten regulation that incorporates a number of changes, outlined below.*

*Specific substantive changes in the regulation due to changes in policy, law, etc.: on the advice of the Office of the Attorney General, the policy on Relocation Appeals has been revised to require the presence of a court reporter. The definition of "persons who do not qualify as a displaced person" has been revised due to a change in federal law. "Self-Move" procedures have been added to the section on "Actual, Reasonable Moving Expenses." The process for sending vacating notices to displacees in 24 VAC 30-41-160 has been revised to permit them to be received earlier, thereby providing more timely notification to displacees, and allowing VDOT to maintain more projects in an active status.*

*Other substantive changes not associated with changes in policy, law, etc.: Text has been reformatted and rewritten in a less legalistic way to facilitate understanding of the policies and procedures discussed. Sections have been consolidated, re-ordered, or reduced in size to improve ease of understanding. Likewise, the list of definitions has been revised to omit unnecessary or obsolete terms, add new ones, or re-state meanings. An existing policy concerning "Section 8 Housing" has been added to the regulation. An existing policy regarding displacees' right to judicial review after final appeal determinations is required to be explicitly disclosed to displacees. Examples of payment calculations have been added in sections relating to replacement housing to clarify procedures. Finally, a guidance document has been created to assist VDOT employees in interpreting the regulation.*

*During a final review VDOT made amendments to the definitions section and the section regarding 90-day assurance notices to conform more closely to federal regulations.*

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

Agency Contact: Beverly D. Fulwider, Relocations Program Manager, Department of Transportation, 1401 E. Broad Street, Richmond, VA 23219, telephone (804) 786-4366 or FAX (804) 786-1706.

<p><u>REGISTRAR'S NOTICE:</u> The proposed regulation was adopted as published in 17:20 VA.R. 2849-2879 June 18, 2001, with the additional changes shown below. Therefore, pursuant to § 2.2-4031 of the Code of Virginia, the text of the final regulation is not set out at length; however, the changes from the proposed regulation are printed below.</p>
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CHAPTER 41.  
RULES AND REGULATIONS GOVERNING RELOCATION ASSISTANCE.

PART I.  
GENERAL PROVISIONS AND ADMINISTRATION OF PROGRAM.

**24 VAC 30-41-10. [ No change from proposed. ]**

**24 VAC 30-41-20. [ No change from proposed. ]**

**24 VAC 30-41-30. Definitions.**

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

*"Business" means any lawful activity, except a farm operation, that is conducted:*

- 1. Primarily for the sale of services to the public; [ or ]*
- 2. Primarily for the purchase, sale, lease, rental or any combination of these, of personal or real property, or both, or for the manufacture, processing, or marketing of products, commodities, or any other personal property; [ or ]*
- 3. Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or*
- 4. By a nonprofit organization that has established its nonprofit status under applicable federal or state law.*

*"Comparable replacement housing" means a dwelling that is:*

- 1. Decent, safe and sanitary (defined below).*
- 2. Functionally equivalent to the displacement dwelling in that it performs the same function, provides the same utility and is capable of contributing to a comparable style of living. While every feature of a displacement dwelling need not be present, the principal features must be provided. Functional equivalency reflects the range of purposes for which the various physical features of a building may be used. Special consideration will be given to the number of rooms, and area of living space. VDOT may consider*



reasonable trade offs for specific features when the replacement unit is equal to or better than the displacement dwelling.

3. Adequate in size to accommodate the displacee.
4. In a location generally not less desirable than the displacement dwelling with respect to public utilities, commercial and public facilities, and is reasonably accessible to the displacee's place of employment.
5. On a site typical in size for residential use, with normal site improvements (The site need not include features such as swimming pools or outbuildings).
6. Currently available to the displaced person on the private market. However, a publicly owned or assisted unit may be comparable for a person displaced from the same type of unit.
7. Within financial means of the displaced person.

Comparable replacement housing is the standard for replacement housing that VDOT is obligated to make available to displaced persons. It also is the standard for establishing owner and rental purchase supplement benefits.

"Contributes materially" means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as VDOT determines to be more equitable, a business or farm operation:

1. Had average annual gross receipts of at least \$5,000; [ or ]
2. Had average annual net earnings of at least \$1,000; or
3. Contributed at least 33-1/3% of the owner's or operator's average annual gross income from all sources.

If the application of the above criteria creates an inequity or hardship in any given case, VDOT may approve the use of other criteria as determined appropriate.

[ No change from proposed from here to end of section. ]

**24 VAC 30-41-40. [ No change from proposed. ]**

**24 VAC 30-41-50. [ No change from proposed. ]**

**24 VAC 30-41-60. [ No change from proposed. ]**

**24 VAC 30-41-70. Civil rights and equal opportunity requirements.**

A. All aspects of the relocation assistance program of VDOT shall be conducted without regard to race, color, religious creed, ancestry, national origin, age or sex. VDOT, through its field representatives, should advise all claimants of this policy of nondiscrimination. Displacees who feel that they have been discriminated against because of any of the factors listed shall be advised to write the district right of way and utilities manager (district manager) and explain their situation.

B. Replacement housing listings referred to persons displaced shall be available without regard to race, color, religion, ancestry, national origin, age or sex. Each right of way and utilities office (referred to in this regulation as a district office) shall make parties providing listings aware of this

requirement. If any instance of discrimination against displacees by listing agencies or other parties providing listings is reported, the district shall attempt to ascertain the facts of the case. If the charges of discrimination are valid, the listing agency shall be so notified and the listing will no longer be used.

C. Independent contractors employed by the displacee for the purpose of moving the personal property, or to perform any other services related to the relocation, will be expected to observe [ ~~non-discrimination~~ nondiscrimination ] statutes and policies. If any incidence of discrimination is observed or reported, the contractor involved shall be asked to explain actions taken involving the particular displacee. Appropriate further action will be taken as required by relevant laws and policies.

D. Availability of financing and access to social services, which may be required by the displacee, shall be on a nondiscriminatory basis.

E. Relocation activities will comply with the applicable federal laws and implementing regulations listed in 54 FR 8932, § 24.8.

**24 VAC 30-41-80. [ No change from proposed. ]**

**24 VAC 30-41-90. [ No change from proposed. ]**

## PART II.

### RELOCATION PLANNING AND PUBLIC INFORMATION.

**24 VAC 30-41-100. Relocation planning at conceptual stage.**

A. A project will be considered to be in the conceptual stage from the time preliminary plans are issued by the location and design division showing alternate roadway location alignments, until the final location is approved.

B. Upon receipt of location study plans, the district office will perform a review to compile right of way and relocation costs and estimates for each proposed alignment. The information will be secured from visual observations and secondary sources and compiled into a Relocation Assistance Report. Potential displacees will normally not be contacted at this time.

The Relocation Assistance Report will contain the following information:

1. An estimate of households to be displaced, including the family characteristics (e.g., minorities, approximate income levels, tenure, elderly, large families).
2. Divisive or disruptive effect on the community such as separation of residences from community facilities or separation of neighborhoods.
3. Impact of displacement on housing availability where relocation is likely to take place.
4. The number of businesses, nonprofit organizations and farms that would be acquired and the estimated number of employees affected.

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5. An assessment of the effect the [ ~~non-residential~~ nonresidential ] displacements will have on the economy and stability of the community.

6. Major businesses being displaced that will require advance coordination and planning are to be contacted and advised of the studies being made by VDOT and of the opportunities for their input through public hearings and meetings.

7. A description of available housing in the area that is appropriate to provide housing for the types of families to be displaced. Contact should be made with local real estate firms, listing services, newspapers, housing agencies, local community organizations, etc.

8. A description of special relocation advisory services that will be necessary for identified unusual conditions, such as a concentration of elderly displacees.

9. A description of the actions proposed to remedy insufficient relocation housing, including, if necessary, housing of last resort. In the event it is found that there is an insufficient supply of housing, inquiries should be made of real estate developers, construction firms, public officials and interested parties to determine their willingness to assist in providing the necessary replacement housing and the conditions under which they would be willing to render this service.

10. Outcome of consultation with local officials, service agencies and community groups regarding the impact on the community affected.

11. An estimate of relocation costs, separated as follows:

- a. Cost of moving personal property for residential units, businesses, farm operations and nonprofit organizations;
- b. Cost of replacement housing payments for displaced individuals and families, including typical mortgage interest differentials and closing costs incident to the purchase of replacement facilities;
- c. Cost potentially incurred by businesses, farms and nonprofit organizations in searching for replacement facilities; and
- d. Reestablishment costs for small businesses, farms and nonprofit organizations.

**24 VAC 30-41-110. [ No change from proposed. ]**

**24 VAC 30-41-120. Public meetings and hearings.**

A. General requirements. The district office will present information on real estate acquisition and displacement impacts and relocation services and benefits, at public meetings and hearings. An opportunity will be provided for public comments and questions. Copies of the right of way brochure will be available at all public meetings and hearings and distributed to interested individuals and organizations upon request.

B. Corridor (location) public hearing. The district office will present a summary of relocation program services, benefits and important qualification criteria, and a summary of the

following relocation information compiled for the Relocation Assistance Report:

1. The estimated number of displacements of each classification that would be caused by each of the alignments under consideration;

2. The availability of relocation assistance and services, eligibility requirements and payment procedures.

3. A summary of the process and the methods that will be employed to assure that the housing needs of the displacees will be met.

C. Highway design or combined location and design public hearings. A presentation including the following information will be made at all design or combined location and design public hearings for projects on which the displacement will occur:

1. That no person shall be displaced from a residence unless a comparable replacement dwelling is available.

2. The services available under VDOT's relocation assistance advisory program, the address and telephone number of the local relocation office and the name of the relocation agent in charge.

3. The estimated number of individuals, families, businesses, farms and nonprofit organizations to be displaced.

4. The estimated number of dwelling units presently available that meet replacement housing requirements.

5. An estimate of the time necessary for relocation and the number of dwelling units meeting the replacement housing requirements that will become available during that period.

6. VDOT's replacement housing program need not be recited in detail because the brochure adequately covers these topics and a reference to secure answers to specific questions has been provided. It is important to selectively present items of special importance, such as the need to be in occupancy at initiation of negotiations to be eligible for benefits.

## PART III. WRITTEN NOTICES.

**24 VAC 30-41-130. [ No change from proposed. ]**

**24 VAC 30-41-140. [ No change from proposed. ]**

**24 VAC 30-41-150. [ No change from proposed. ]**

**24 VAC 30-41-160. 90-Day assurance notice.**

A. The construction or development of a highway project must be scheduled so that to the greatest extent practicable assurance will be made that no person lawfully occupying real property will be required to move from a dwelling, business, farm or nonprofit organization for at least 90 days from the date the written offer for the property is made by the department.

B. A 90-day assurance notice will be issued when a written offer for the property is made. In the case of a residential displacee, the 90-day assurance notice [ ~~can~~ will ] be issued

[ ~~only on or~~ ] after the [ date a ] written offer for the property and the replacement housing payment offer have been made. The 90-day assurance notice will state that the displaced person will not be required to move from a dwelling, business, farm or nonprofit organization before 90 days from the date of the notice. The 90-day [ assurance ] notice will further state the displaced person will be given a [ ~~30-day~~ specific date by which the property must be vacated in a final ] written notice [ ~~with to be issued at least 30 days in advance of~~ ] the specific date [ ~~by which the property must be vacated~~ ].

C. The [ ~~30-day final~~ ] written notice may be given to the displaced person at the time the department has legal possession of the property, [ ~~providing the time is at least 60 days after the date of the 90-day notice~~ ] provided the specific vacation date is at least 90 days after the date the written offer for the property was made and at least 30 days in advance of the date the property must be vacated ]. No written [ ~~30-day final~~ ] notice will be required where a displaced person moves prior to the time such notice should be given. The file should indicate that the displaced person moved prior to the [ ~~30-day final~~ ] notice being issued.

PART IV.  
RELOCATION ADVISORY SERVICES.

**24 VAC 30-41-170. [ No change from proposed. ]**

**24 VAC 30-41-180. [ No change from proposed. ]**

**24 VAC 30-41-190. [ No change from proposed. ]**

PART V.  
MOVING COSTS - RESIDENTIAL MOVES.

**24 VAC 30-41-200. [ No change from proposed. ]**

**24 VAC 30-41-210. [ No change from proposed. ]**

**24 VAC 30-41-220. Moving expense schedule.**

A. In lieu of a payment for actual costs, a displaced person or family who occupies the acquired dwelling may choose to be reimbursed for moving costs based on a moving expense schedule established by VDOT based on a room count. The schedule is revised periodically, based on a survey of movers, to reflect current costs. The schedule is used by all acquiring agencies throughout the state by agreement coordinated by the Federal Highway Administration.

The room count used will include occupied rooms within the dwelling unit plus personal property located in attics, unfinished basements, garages and outbuildings, or significant outdoor storage. Spaces included in the count must contain sufficient personal property as to constitute a room.

B. A person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons, or if the move is performed by VDOT at no cost to the person, shall be limited to \$50.

C. The cost to move a retained dwelling, any other structure, or any item determined to be real estate prior to the move, is not a reimbursable moving cost. However, if an owner-occupant retains the dwelling, including a mobile home, and chooses to use it as a means of moving personal belongings

and furnishings, the owner-occupant may receive a moving cost payment based upon the moving expense schedule.

D. A discussion of residential move reimbursement options is contained in the "Guidance Document for Determination of Certain Financial Benefits to Displacees [ . ] " [ ~~(to become effective the same date as this regulation)~~ effective November 21, 2001 ].

PART VI.  
MOVING COSTS - BUSINESSES, FARMS AND  
NONPROFIT ORGANIZATIONS.

**24 VAC 30-41-230. [ No change from proposed. ]**

**24 VAC 30-41-240. [ No change from proposed. ]**

**24 VAC 30-41-250. [ No change from proposed. ]**

**24 VAC 30-41-260. [ No change from proposed. ]**

**24 VAC 30-41-270. Self-moves.**

A. Businesses, farms and nonprofit organizations have the option of performing a self-move. When the district office can obtain two acceptable bids or estimates from qualified moving firms based on the certified inventory, the owner may be paid the actual reasonable moving cost, not to exceed the amount of the low bid.

B. If such bids or estimates cannot be obtained, the business may submit a bid based on the actual, reasonable, and necessary expenses for a self-move. Labor is to be charged at the actual rates paid by the business, but not to exceed the rate charged by local moving firms for the same services. Receipts or other evidence of expenses must be submitted before payment is made to support actual cost.

C [ . ] In the case of a low-cost, uncomplicated move, a moving cost finding, not to exceed \$2,500, may be prepared by qualified district office staff.

D [ . ] It is possible to have a business move in which part of the move is a self-move and another part is a professional move.

**24 VAC 30-41-280. [ No change from proposed. ]**

**24 VAC 30-41-290. Actual direct losses of tangible personal property.**

A. Actual, direct losses of tangible personal property are allowed when a person who is displaced from a business, farm or nonprofit organization is entitled to relocate such property but elects not to do so. This may occur if an item of equipment is bulky and expensive to move, but is obsolete and the owner desires to replace it with a new item that performs the same function. Payments for actual, direct losses can be made only after an effort has been made by the owner to sell the item involved. When the item is sold, payment will be determined in accordance with subsection B or C of this section. If the item cannot be sold, the owner will be compensated in accordance with subsection D of this section. The sales prices and the cost of advertising and conducting the sale, must be supported by copies of bills, receipts, advertisements, offers to sell, auction records and other data supporting the bona fide nature of the sale.

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B. If an item of personal property which is used in connection with the business is not moved but is replaced with a comparable item at the new location, the payment will be the lesser of:

1. The replacement cost minus the net proceeds of the sale. Trade-in value may be substituted for net proceeds of sale where applicable; or
2. The estimated cost of moving the item to the replacement site but not to exceed 50 miles.

C. If the item is not to be replaced in the reestablished business, the payment will be the lesser of:

1. The difference between the market value of the item in place for continued use at its location prior to displacement less its net proceeds of the sale; or
2. The estimated cost of moving the item to the replacement site but not to exceed 50 miles. (See "Guidance Document for Determination of Certain Financial Benefits for Displacees [ , ] " [ ~~(to become effective the same date as this regulation)~~ effective November 21, 2001, ] for example.)

D. If a sale is not effected under subsection B or C of this section because no offer is received for the property and the property is abandoned, payment for the actual direct loss of that item may not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the item 50 miles, whichever is less, plus the cost of the attempted sale, irrespective of the cost to VDOT of removing the item.

E. The owner will not be entitled to moving expenses or losses for the items involved if the property is abandoned with no effort being made to dispose of it by sale, or by removal at no cost. The district manager may allow exceptions to this requirement for good cause.

F. The cost of removal of personal property by VDOT will not be considered as an offsetting charge against other payments to the displaced person.

## **24 VAC 30-41-300. Searching expenses.**

A. A displaced business, farm operation, or nonprofit organization is entitled to reimbursement for actual expenses, not to exceed \$1,000, as VDOT determines to be reasonable, which are incurred in searching for a replacement location, and includes expenses for:

1. Transportation. A mileage rate determined by VDOT will apply to the use of an automobile.
2. Meals and lodging away from home.
3. Time spent searching, based on reasonable salary or earnings.
4. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

B. Documentation for a move search claim will include expense receipts and logs of times, dates and locations related to the search. (See "Guidance Document for

Determination of Certain Financial Benefits for Displacees [ , ] " [ ~~(to become effective the same date as this regulation)~~ effective November 21, 2001, ] for example.)

## **24 VAC 30-41-310. Reestablishment expenses.**

A. A small business, farm or nonprofit organization may be eligible to receive a payment, not to exceed \$25,000, for expenses actually incurred in reestablishing operations at a replacement site. A small business, farm or nonprofit organization that elects a fixed payment in lieu of actual moving expenses is not eligible for a reestablishment expense payment.

B. Eligible expenses. Reestablishment expenses must be reasonable and actually incurred. They may include the following items:

1. Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance;
2. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business;
3. Construction and installation costs for exterior signing to advertise the business;
4. Providing utilities from right-of-way to improvements on the replacement site;
5. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting;
6. Licenses, fees and permits when not paid as part of moving expenses;
7. Feasibility surveys, soil testing and marketing studies;
8. Advertisement of replacement location;
9. Professional services in connection with the purchase or lease of a replacement site;
10. Increased costs of operation during the first two years at the replacement site for such items as:
  - a. Lease or rental charges;
  - b. Personal or real property taxes;
  - c. Insurance premiums; and
  - d. Utility charges, excluding impact fees.
11. Impact fees or one-time assessments for anticipated heavy utility usage.
12. Other items that VDOT considers essential to the reestablishment of the business.

A discussion of business reestablishment costs is contained in the "Guidance Document for the Determination of Certain Financial Benefits to Displacees [ , ] " [ ~~(to become effective the same date as this regulation)~~ effective November 21, 2001. ]

C. Ineligible expenses. The following is a nonexclusive listing of ineligible reestablishment expenditures.

1. Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures;
2. Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation;
3. Interest on money borrowed to make the move or purchase the replacement property; and
4. Payment to a part-time business in the home which does not contribute materially to the household income.

## **24 VAC 30-41-320. Fixed payment in lieu of actual costs.**

A. A displaced business, farm or nonprofit organization, meeting eligibility criteria may receive a fixed payment in lieu of a payment for actual moving and related expenses. The amount of this payment is equal to its average annual net earnings as computed in accordance with subsection E of this section, but not less than \$1,000 nor more than \$50,000.

B. Criteria for eligibility. For an owner of a displaced business to be entitled to a payment in lieu of actual moving expenses, the district office must determine that:

1. The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, it vacates or relocates from its displacement site.
2. The displaced business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless VDOT determines, for a stated reason, that it will not suffer a substantial loss of its existing patronage.
3. The business is not part of a commercial enterprise having more than three other entities which are not being acquired by VDOT and which are under the same ownership and engaged in the same or similar business activities. (For purposes of this rule, any remaining business facility that did not contribute materially to the income of the displaced person during the two taxable years prior to displacement shall not be considered "other entity.")
4. The business is not operated at displacement dwelling or site solely for the purpose of renting such dwelling or site to others.
5. The business contributed materially to the income of the displaced person during the two taxable years prior to displacement. However, VDOT may waive this test for good cause. A part-time individual or family occupation in the home that does not contribute materially to the displaced owner is not eligible.

C. In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;
2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

3. The entities are held out to the public and to those customarily dealing with them, as one business; and
4. The same person, or closely related persons own, control, or manage the affairs of the entities.

The district office will make a decision after consideration of all the above items and so advise the displacee.

D. A displaced farm operation may choose a fixed payment in lieu of the payments for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with subsection E of this section, but not less than \$1,000 nor more than \$50,000. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if VDOT determines that:

1. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
2. The partial acquisition caused a substantial change in the nature of the farm operation.

A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$50,000 in lieu of the payments for actual moving and related expenses if VDOT determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless VDOT demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses.

Gross revenues for a nonprofit organization include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are for administrative support, such as rent, utilities, salaries, advertising and other like items, as well as fund raising expenses. Operating expenses are not included in administrative expenses.

E. Payment determination. The term "average annual net earnings" means one-half of all net earnings of the business or farm before federal, state and local income taxes, during the two tax years immediately preceding the tax year in which the business or farm is relocated. If the two years immediately preceding displacement are not representative, VDOT may use a period that would be more representative. For instance, proposed construction may have caused recent outflow of business customers, resulting in a decline in net income for the business.

The term "average annual net earnings" include any compensation paid by the business to the owner, spouse, or dependents during the two-year period. In the case of a corporate owner of a business, earnings shall include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation. For the purpose of determining majority ownership, stock held by a husband, his wife and their children shall be treated as one unit.

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If the business, farm or nonprofit organization was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate.

F. Information to be provided by owner. For the owner of a business, farm or nonprofit organization to be entitled to this payment, the owner must provide information to support the net earnings of the business, farm or nonprofit organization. State or federal tax returns for the tax years in question are the best source of this information. However, certified financial statements can be accepted as evidence of earnings. The tax returns furnished must either be signed and dated or accompanied by a certification from the business owner that the returns being furnished reflect the actual income of the business as reported to the Internal Revenue Service or the State Department of Taxation for the periods in question. The owner's statement alone would not be sufficient if the amount claimed exceeded the minimum payment of \$1,000.

A more complete discussion of this benefit is contained in the "Guidance Document for Determination of Certain Financial Benefits for Displacees [ , ] " [ ~~(to become effective the same date as this regulation)~~ effective November 21, 2001 ] .

## PART VII.

### GENERAL PROVISIONS FOR REPLACEMENT HOUSING PAYMENTS.

**24 VAC 30-41-330. [ No change from proposed. ]**

**24 VAC 30-41-340. [ No change from proposed. ]**

**24 VAC 30-41-350. [ No change from proposed. ]**

**24 VAC 30-41-360. Requirements to receive payment.**

A. In addition to length of occupancy provisions, the displaced person must occupy a decent, safe and sanitary dwelling, as defined in 24 VAC 30-41-30, within one year, beginning on the following dates:

1. Owner-occupant of 180 days or more. The date on which the owner received payment of the entire consideration for the acquired dwelling in negotiated settlements; or in the case of condemnation, the date on which the certificate was filed and the amount set forth in the certificate was made available for the benefit of the owner.

2. Tenant-occupant of 90 days or more. The date on which the move occurs. An occupancy affidavit (Form RW-62C) shall be secured as evidence of occupancy.

A displaced person who cannot occupy the replacement dwelling within the one-year time period because of construction delays beyond reasonable control, will be considered to have purchased and occupied the dwelling as of the date of the contract to purchase. The replacement housing payment under these conditions may be deferred until replacement housing is actually occupied.

B. Upon relocating, the displacee must properly complete the appropriate application, Library Form RW-65A(1), RW-65B [ (1) ], or RW-65C(1) to receive a replacement housing payment and submit them to the district manager. The

application must be filed no later than six months after the expiration of the one-year period specified in subdivisions A 1 and A 2 of this section. In condemnation cases the one-year period is extended to six months after final adjudication. The district office must stamp the application to show the date of its receipt. Where husband and wife both hold title to the property, or there is more than one owner-occupant, each owner must sign the application for payment. In the case of tenant-occupants, each must sign the application for payment.

C. The payment may be made directly to the displaced persons whose names are on the application for payment. On written instruction from a tenant-displacee, payment may be made to the lessor for rent. For an owner, payment may be made to the seller or lending agency at closing on the replacement property. If payment is made at closing, it will be personally delivered by a district office employee who will remain present to assure that the full purchase supplement amount is credited to the purchase of the replacement dwelling. If this is performed, the occupancy requirement will be considered met at the completion of closing, providing an occupancy agreement has been signed.

**24 VAC 30-41-370. [ No change from proposed. ]**

**24 VAC 30-41-380. [ No change from proposed. ]**

## PART VIII.

### REPLACEMENT HOUSING PAYMENTS FOR OWNER-OCCUPANTS FOR 180 DAYS OR MORE.

**24 VAC 30-41-390. [ No change from proposed. ]**

**24 VAC 30-41-400. [ No change from proposed. ]**

**24 VAC 30-41-410. [ No change from proposed. ]**

**24 VAC 30-41-420. [ No change from proposed. ]**

**24 VAC 30-41-430. Purchase supplement payment computation.**

A. Method.

1. The probable selling price of a comparable dwelling will be determined by the district office by analyzing at least three dwellings from the inventory of available housing, Library Form RW-69B, which are available on the private market and which meet the criteria of a comparable replacement dwelling. Less than three comparables may be used for this determination when fewer comparable dwellings are available. The relocation agent performing the determination must provide a full explanation supporting the determination, including a discussion of efforts to locate more than one comparable. One comparable, from among those evaluated and considered, will be selected as the basis for the purchase supplement determination. The selection will be made by careful consideration of all factors in the dwellings being considered which affect the needs of the displacee with reference to the elements in the definition of comparable replacement housing.

Refer to the "Guidance Document for Determination of Certain Financial Benefits for Displacees [ , ] " [ ~~(to become effective the same date as this regulation)~~ effective

November 21, 2001, ] for a step-by-step summary of the determination process, and an example of the purchase supplement payment computation.

Adjusted displacement property value	\$95,000
Purchase Supplement Amount	\$6,850

2. If comparable decent, safe and sanitary housing cannot be located, after a diligent search of the market, available non-decent, safe and sanitary replacement dwellings may be used as the basis for the maximum amount of the purchase supplement. In these cases, the maximum payment will be established by obtaining cost estimates from persons qualified to correct the decent, safe and sanitary deficiencies and adding this amount to the probable selling price of the available replacement housing.

A displacee will not be required to vacate the displacement dwelling until decent, safe and sanitary housing has been made available.

3. Consideration will be given to adjusting the asking price of the comparable dwelling selected as the basis for the Purchase Supplement Determination. This will be done to the extent that local housing market data reflects a difference between asking or listing prices and sale prices. If the asking price of the selected comparable dwellings is adjusted the agent will advise the displaced person concerning negotiations practices, to enable the displacee to enter the market as a knowledgeable buyer. If a displaced person elects to purchase the comparable, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment up to the offer or listing amount. Where a dwelling is obviously overpriced in relation to other comparables, it may not be used in the replacement housing computation.

B. Major exterior attributes. When the dwelling selected in computing the payment is similar, except it lacks major exterior attributes present at the displacement property such as a garage, outbuilding, swimming pool, etc., the appraised value of such items will be deducted from the acquisition cost of the acquired dwelling for purposes of computing the payment. No exterior attributes are to be added to the comparable. However, the added cost of actually building an exterior attribute at the replacement property occupied, may be added to the acquisition cost provided major exterior attributes having the same function are found in the displacement property and in the comparable used to determine the maximum payment.

The following calculation shows how a purchase supplement is determined when a major exterior attribute is present:

Example Major Exterior Attribute (swimming pool)	
The appraiser assigned \$5,000 contributing value for the pool, and a total property value of \$100,000. A comparable house, not having a pool, is listed for sale at \$105,000. After a 3% adjustment, a probable selling price of \$101,850 is determined for the comparable property. The purchase supplement amount is computed below:	
Comparable Dwelling (adjusted)	\$101,850
Less:	
Displacement property value	\$100,000
Less value of the pool	\$5,000

C. Comparable housing not available.

1. In the absence of available comparable housing upon which to compute the maximum replacement housing payment, the district office may establish the estimated selling price of a new comparable decent, safe and sanitary dwelling on a typical home site. To accomplish this, the district office will contact at least two reputable home builders for the purpose of obtaining firm commitments for the cost of building a comparable dwelling on a typical home site.

2. If the only housing available greatly exceeds comparable standards, a payment determination may be based on estimated construction cost of a new dwelling which meets, but does not exceed, comparable standards.

**24 VAC 30-41-440. [ No change from proposed. ]**

**24 VAC 30-41-450. Mixed-use properties.**

A. When the acquired dwelling unit is part of a structure which also includes space used for nonresidential purposes, the amount of the purchase supplement offer will be determined by using only that part of the fair market value that is attributable to the residential use of the acquired property. The following calculation shows how this amount is determined:

Example Displacement Property in Residential and Commercial Use	
A grocery storeowner lives in a two-bedroom, one-bath apartment above the store. The residential unit has 1,200 sq. ft. of habitable living space. The property is appraised at \$150,000. The appraiser allocated 40% of total property value to the residence.	
There are several two-bedroom, one-bath units available for sale. They are: (i) a duplex with two identical units - \$125,000; (ii) a single-family house - \$75,000; (iii) a condo unit in a sixplex - \$50,000.	
Most comparable property: a) duplex unit.	Value \$62,500
LESS: Displacement dwelling.	Value \$60,000
Maximum Purchase Supplement Amount	\$2,500

When the replacement property is a structure which includes space used for nonresidential purposes, only that part of the total cost that relates to the value of the owner's living unit will be used when determining the purchase supplement payment.

B. When the replacement property contains buildings other than the residence which are used for [ ~~non-residential~~ nonresidential ] purposes, the value of these buildings must be carved out of the entire purchase price of the replacement property in order to determine the residential use value. The residential use value will represent the amount paid for replacement housing when determining the purchase supplement payment amount. The following calculation shows how this amount is determined:

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<p><i>Example</i> Displacee Purchases Mixed Use Replacement Property</p>
<p>A family displaced from a single-family house (acquisition value \$80,000, purchase supplement \$10,000) contracts to purchase an operating chicken farm for \$250,000. They will live in the farmhouse, which has an estimated value separate from the farm of \$85,000. The displaced family submits a claim for the full \$10,000 maximum purchase supplement amount.</p>
<p>The family is eligible to receive \$5,000, not \$10,000, as a Purchase Supplement Payment.</p> <p>Before processing the claim for payment, the district office must determine the value of the farmhouse on a lot normal for residential use in the area. This will determine the payment ceiling. The part of the purchase price attributable to the farm operation (\$165,000) is not to be considered in the claim. This should have been explained to the displaced family members before they search for replacement property.</p>

C. When the acquired property consists of a multi-family structure of which one unit is owner-occupied, the amount of the supplemental offer will be the difference between the value of one unit of a multi-family comparable and the value of the owner occupied residential-use portion of the acquired property. When the replacement property is a multi-family structure, only the value of the owner's living unit can be used to determine the supplemental payment, not the entire purchase price. The purchase supplement amount will be the price of one unit of a multi-family comparable or the price of one unit of a multi-family replacement, whichever is less, minus the residential use portion of the acquired property.

The following calculation shows how this amount is determined:

<p><i>Example</i> Owner Displaced from Condominium Unit</p>
<p>The acquired dwelling is a condominium unit in a building containing three stores and six residential units. The appraised value of the building is \$1 million. The value of the displacee's unit is \$120,000.</p>
<p>The purchase supplement is the cost of a comparable condo unit in a similarly configured building having residential and commercial units, less the \$120,000 attributed to the displacement unit.</p> <p>There may not be a condominium unit on the market in a mixed use, six residential unit building. Look for units in buildings having five, four, three, or two units. Use the "most comparable" unit considering the ownership form and configuration of units, as well as other factors.</p>

**24 VAC 30-41-460. [ No change from proposed. ]**

**24 VAC 30-41-470. [ No change from proposed. ]**

**24 VAC 30-41-480. [ No change from proposed. ]**

**24 VAC 30-41-490. Increased interest payments.**

A. General. Increased interest payments are provided to compensate a displaced person for higher increased interest

costs required for financing a replacement dwelling. The increased interest payment will be allowed only when the dwelling acquired by VDOT was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days before the established eligibility date under Part [ 7 VII (24 VAC 30-41-330 et seq.) of this chapter ] (usually date of initial offer to purchase). All bona fide mortgages on the dwelling acquired by VDOT will be used to compute the increased interest portion of the replacement housing payment. Home equity loans are valid mortgages on residential real property regardless of how the proceeds from the loans are used. Therefore, they must be included in the computation. In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less. When the property is secured with an adjustable rate mortgage, the mortgage interest rate that is current on the property as of the date of acquisition will be used in the computation. The displaced person will be advised of the approximate amount of this payment as soon as the facts relative to the person's current mortgages are known. The payment will be made at the time of closing on the replacement dwelling, so that the new mortgage can be reduced.

B. Payment computation. The computation of the payment for increased interest costs will be the amount which will reduce the mortgage balance on the replacement dwelling to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage or mortgages on the displacement dwelling. The amount of the increased interest payment will be computed by the district office, utilizing Library Form RW-66, based on:

1. The unpaid mortgage balances on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance computed in the buydown determination, the payment will be prorated and reduced accordingly.
2. The remaining term of the mortgage or mortgages on the displacement dwelling or the term of the new mortgage, whichever is shorter.
3. The interest rate on the new mortgage which shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

C. To whom payment is made. The increased interest amount can be paid to the displaced individual or family. On written instruction from the displacee, it can be paid to the mortgagee of the replacement dwelling. Upon specific request, VDOT can make an advance payment into escrow prior to the displacee moving.

The following calculation shows how this increased interest cost is determined:

<p><i>Example</i> Increased Mortgage Interest Payment</p>
<p>FACTS:</p>



1. Outstanding balance – acquired dwelling mortgage	\$43,210
2. Outstanding balance – replacement	\$47,000
3. Remaining term, in months, acquired dwelling mortgage	212
4. Term, in months, replacement dwelling mortgage	360
5. Interest rate – acquired dwelling mortgage	7.5%
6. Interest rate – replacement mortgage	8.0%
<b>DETERMINATION:</b>	
1. Monthly payment required to amortize a loan of \$43,210 in 212 months at an annual rate of 7-1/2%	\$368.38
2. Amount of reduced loan having a monthly payment of \$368.38 for 212 months at interest rate of 8%	\$41,749
3. Increased Mortgage Interest Payment: \$43,210 - \$41,749	\$1,462

**D. Partial acquisition.**

1. When the displacement or the replacement dwelling is located on a tract larger than normal for residential use in the area, the interest payment will be reduced to the percentage ratio that the respective acquisition price bears to the value of the part of the property normal for residential use property, except the reduction will not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

2. Where a dwelling is located on a tract larger than normal for residential use in the area, the total mortgage balance will be reduced to the percentage ratio that the value of the residential portion bears to the before value for computational purposes. This reduction will apply whether or not it is required that the entire mortgage balance be paid.

**E. Multi-use properties.** The interest payment on the multi-use properties will be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.

**F. Other highest and best use.** If the dwelling is located on a tract where the fair market value is established on a higher and better use than residential and if the mortgage is based on residential value, the interest payment will be computed as provided in the appropriate sub-section above. If the mortgage is obviously based on the higher use, however, the interest payment will be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value.

**24 VAC 30-41-500. Incidental expenses (closing costs incurred in purchase of replacement dwelling).**

The incidental expenses payment is the amount necessary to reimburse the homeowner for the reasonable costs actually incurred incidental to the purchase of the replacement

dwelling, but not for prepaid expenses such as prepaid real estate taxes, fire insurance, etc. Such costs include the following items if normally paid by the buyer:

1. Legal, closing and related costs, including those for title search and mortgage insurance, preparing conveyance instruments, notary fees, preparing surveys and plats and recording fees;
2. Lender, Federal Housing Administration (FHA) or Veterans Administration (VA) appraisal fees;
3. FHA or VA application fee;
4. Certification of structural soundness when required by the lender;
5. Credit report;
6. Owner's and mortgagee's evidence of title, e.g., title insurance, (not to exceed the cost for the comparable replacement dwelling);
7. Escrow agent's fee;
8. State and local revenue or documentary stamps, sales or transfer taxes charged to record deed (not to exceed the costs for a comparable replacement dwelling);
9. Loan origination or assumption fees that do not represent prepaid interest;
10. Purchaser's points, but not seller's points, normal to similar real estate transactions; [ and ]
11. Such other costs as VDOT determines to be incidental to the purchase [ ÷ . ]

No fee, cost, charge or expense is reimbursable as an incidental expense when it is determined to be part of the debt service or finance charge under the Truth in Lending Act. Except when the replacement housing amount is paid into escrow, the combined total of the payments under this section will be claimed and paid in a lump sum.

**24 VAC 30-41-510. [ No change from proposed. ]**

**PART IX.  
REPLACEMENT HOUSING BENEFITS FOR TENANTS,  
AND OWNERS WHO CHOOSE TO RENT REPLACEMENT  
HOUSING.**

**24 VAC 30-41-520. General.**

A. A residential tenant who was in occupancy at the displacement dwelling for 90 days or more before the initiation of negotiations for the property is eligible to receive a rent supplement to provide for relocation to comparable replacement housing. An owner-displacee who was in occupancy from 90 - 179 days before the initiation of negotiations is eligible for the same benefits as the tenant-displacee of 90+ days.

B. A displaced owner or tenant eligible under this category can receive a replacement housing payment not to exceed \$5,250 to rent a decent, safe and sanitary replacement dwelling. A tenant may be eligible for a down payment supplement up to \$5,250. The monetary limit of \$5,250 for a rental replacement housing payment, or a down payment

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supplement, does not apply if provisions of Last Resort Housing are applicable (see Part XI (24 VAC 30-41-650 et seq.)).

C. A discussion of rent supplement determination is found in the "Guidance Document for the Determination of Certain Financial Benefits to Displacees [ , ]" [ ~~(to become effective the same date as this regulation)~~ effective November 21, 2001 ].

**24 VAC 30-41-530. [ No change from proposed. ]**

**24 VAC 30-41-540. [ No change from proposed. ]**

**24 VAC 30-41-550. [ No change from proposed. ]**

**24 VAC 30-41-560. Change of occupancy.**

If a tenant, after moving to a decent, safe and sanitary dwelling, relocates within the one-year period specified in [ ~~24 VAC 30-41-340~~ 24 VAC 30-41-360 ] to a higher cost rental unit, another claim may be presented for the amount in excess of that amount which was originally claimed, but not to exceed the total rent supplement originally computed.

**24 VAC 30-41-570. [ No change from proposed. ]**

**24 VAC 30-41-580. [ No change from proposed. ]**

PART X.  
MOBILE HOMES.

**24 VAC 30-41-590. [ No change from proposed. ]**

**24 VAC 30-41-600. [ No change from proposed. ]**

**24 VAC 30-41-610. [ No change from proposed. ]**

**24 VAC 30-41-620. [ No change from proposed. ]**

**24 VAC 30-41-630. Replacement housing payments; 180-day owner-occupant.**

A. General. A displaced owner of a mobile home who has occupied the home and site for at least 180 days is eligible for the following as a replacement housing benefit:

1. The additional cost necessary to purchase replacement housing as specified in [ ~~subdivisions 2, 3, 4, and 5~~ subsections B, C, D, and E ] of this [ ~~subsection~~ section ], and in accordance with the provisions of Part VIII (24 VAC 30-41-390 et seq.) of this chapter;

2. Compensation for the loss of favorable financing on the existing mortgage in the financing of such replacement housing, under the provisions of 24 VAC 30-41-500; and

3. An amount to reimburse the owner for incidental expenses incident to the purchase of such replacement housing in accordance with the provisions of 24 VAC 30-41-510.

A displaced owner-occupant of a mobile home eligible for a replacement housing payment as shown above who elects to rent is eligible for a rental replacement housing payment, not to exceed \$5,250, in accordance with 24 VAC 30-41-510.

B. Acquisition of mobile home and site from owner-occupant.

1. The purchase supplement payment will be an amount, if any, which when added to the amount for which VDOT acquired the mobile home and site equals the lesser of:

a. The amount the owner is required to pay for a decent, safe and sanitary replacement mobile home and site; or

b. The amount determined by the district office as necessary to purchase a comparable mobile home and site in accordance with the provisions of 24 VAC 30-41-430.

2. Rental replacement housing payment. If the owner elects to rent, the rent supplement will be determined by subtracting 42 times the economic rent of the mobile home and site from the lesser of:

a. The amount determined by the district office necessary to rent a comparable mobile home and site for a period of 42 months; or

b. Forty-two times the monthly rent paid for the replacement mobile home and site.

C. Acquisition of site only - owner-occupant retains mobile home.

1. Upon acquisition of the site but not the home situated upon the site and the mobile home is required to be moved, the replacement housing payment will be the amount, if any, which when added to the amount for which VDOT acquired the mobile home site equals the lesser of:

a. The amount the owner is required to pay for a comparable site; or

b. The amount determined by the district office as necessary to purchase a comparable mobile home site.

2. If the owner elects to rent, the rent supplement shall be determined by subtracting 42 times the economic rent of the mobile home site from the lesser of:

a. The amount determined as necessary to rent a comparable mobile home site for 42 months; or

b. Forty-two times the monthly rent paid at the replacement mobile home site.

D. Acquisition of mobile home only - owner-occupant rents site.

1. The replacement housing payment is to be the amount, if any, which when added to the amount for which VDOT acquired the mobile home equals the lesser of:

a. The actual amount the owner is required to pay for a replacement dwelling; or

b. The amount determined as necessary to purchase a comparable mobile home, plus the difference in the amount determined by the district office as necessary to rent a comparable mobile home site for a period of 42 months and 42 times the rent being paid on the site acquired.

The entire computed amount may be applied toward the purchase of a comparable mobile home site, if so desired.

2. If the owner elects to rent a replacement mobile home, the rent supplement payment shall be determined by subtracting 42 times the economic rent of the mobile home and the actual rent of the site from the lesser of:

- a. The amount determined by the district office as necessary to rent a comparable mobile home and site for 42 months; or
- b. Forty-two times the monthly rent paid for the replacement dwelling.

E. Acquisition of rental site only - mobile home not acquired. When the site is acquired but not the mobile home, which must be moved, the owner-occupant of the mobile home is eligible for up to \$5,250 as a rent supplement for a comparable replacement site. This rent supplement payment shall be the difference determined by subtracting 42 times the rent on the site being acquired from the lesser of:

- 1. The amount determined as necessary to rent a comparable home site for 42 months; or
- 2. Forty-two times the monthly rent paid for the replacement site.

The entire computed amount may be applied toward the down payment and incidental expenses on a comparable home site.

**24 VAC 30-41-640. [ No change from proposed. ]**

PART XI.  
LAST RESORT HOUSING.

**24 VAC 30-41-650. General.**

A. No displaced persons will be required to move until a comparable replacement dwelling is made available within their financial means. Comparable replacement housing may not be available on the private market or does not meet specific requirements or special needs of a particular displaced family. Also, housing may be available on the market, but the cost exceeds the benefit limits for tenants and owners of \$5,250 and \$22,500, respectively. If housing is not available to a displacee and the transportation project would thereby be prevented from proceeding in a timely manner, VDOT is authorized to take a broad range of measures to make housing available. These measures, which are outside normal relocation benefit limits, are called collectively last resort housing.

B. It is the responsibility of VDOT to provide a replacement dwelling, which enables the displacee to relocate to the same ownership or tenancy status as prior to displacement. The displacee may voluntarily relocate to a different status. The district office may also provide a dwelling, which changes a status of the displacee with their concurrence, if a comparable replacement dwelling of the same status is not available.

A more complete discussion of last resort housing appears in the "Guidance Document for Determination of Certain Financial Benefits for Displacees [ , ]" [~~to become effective the same date as this regulation~~] effective November 21, 2001].

**24 VAC 30-41-660. [ No change from proposed. ]**

**24 VAC 30-41-670. [ No change from proposed. ]**

**24 VAC 30-41-680. [ No change from proposed. ]**

**24 VAC 30-41-690. [ No change from proposed. ]**

**24 VAC 30-41-700. [ No change from proposed. ]**

**24 VAC 30-41-710. [ No change from proposed. ]**

PART XII.  
RECORDS, REPORTS AND AUDITS.

**24 VAC 30-41-720. [ No change from proposed. ]**

**24 VAC 30-41-730. [ No change from proposed. ]**

**24 VAC 30-41-740. Replacement housing payment records.**

The district office shall maintain records containing the following information regarding replacement-housing payments for each displacee:

- 1. The date of receipt of each application for such payment (Library Forms RW-65A(1), RW-65B [ (1) ] and RW-65C(1));
- 2. The date on which each payment was made or the application rejected (Parcel File);
- 3. Supporting data showing how the amount of the supplemental payment to which the applicant is entitled was calculated (Library Form RW-62A or RW-62B);
- 4. A copy of the closing statement to support when replacement housing is purchased (Parcel File);
- 5. A copy of the Truth in Lending Statement and other data, including computations to support the increased interest payment (Parcel File and Library Form RW-66);
- 6. The individual responsible for determining the amount of the replacement housing payment shall place in the file a signed and dated statement setting forth:
  - a. The amount of the replacement housing payment (Library Forms RW-62A and B);
  - b. An understanding that the determined amount is to be used in connection with a federal-aid highway project (Library Forms RW-62A and B);
  - c. There is no direct or indirect present or contemplated personal interest in this transaction nor will any benefit be derived from the replacement housing payment (Library Forms RW-62A and B); and
- 7. A statement that the relocated person has been relocated into decent, safe and sanitary replacement housing (Library Form RW-69B).

**24 VAC 30-41-750. [ No change from proposed. ]**

**24 VAC 30-41-760. [ No change from proposed. ]**

DOCUMENT INCORPORATED BY REFERENCE

Guidance Document for Determination of Certain Financial Benefits for Displacees, November 21, 2001, Right of Way and Utilities Division, Virginia Department of Transportation.

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# Final Regulations

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**NOTICE:** The forms used in administering 24 VAC 30-41, Rules and Regulations Governing Relocation Assistance, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Commonwealth Transportation Board, 1401 E. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

*RW-59(1) (Form letter for moving families w/certification of citizenship/legal residence) (rev. 11/98).*

*RW-59(2) (Form letter for moving personal property w/certification of citizenship/legal residence) (rev. 8/99).*

*RW-59(3) (Form letter for moving businesses, farms, and nonprofit organizations w/certification of citizenship/legal residence) ([ ~~rev. 8/99~~ rev. 8/00 ] ).*

*Occupancy Agreement (no form number) (rev. 8/99).*

*RW-60A, Moving Cost Application (Families and Individual/Personal Property only) (rev. 10/00).*

*RW-60B, Moving Cost Application (Businesses, Farms, and Nonprofit Organizations) (rev. 8/00).*

*RW-62C, Occupancy Affidavit (Tenants) (rev. 8/99).*

*RW-65A(1), Application for Purchase Replacement Housing Payment (Owner-occupant for 180 days or more) (rev. 4/01).*

*RW-65B(1), Application for Purchase Replacement Housing Payment (Owner-occupant for less than 180 days but not less than 90 days/Tenant-occupant of not less than 90 days) (rev. 4/01).*

*RW-65C(1), Application for Rental Replacement Housing Payment (rev. 11/98).*

*RW-67A, Moving Cost Payment Claim (Families and Individuals/Personal Property only) (rev. 11/98).*

*RW-67B, Moving Cost Payment Claim (Businesses, Farms, and Nonprofit Organizations) (rev. 8/99).*

VA.R. Doc. No. R99-69; Filed October 2, 2001, 1:50 p.m.



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# EMERGENCY REGULATIONS

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHYSICAL THERAPY

Title of Regulation: **18 VAC 112-20. Regulations Governing the Practice of Physical Therapy (amending 18 VAC 112-20-10, 18 VAC 112-20-130, 18 VAC 112-20-135, and 18 VAC 112-20-140; adding 18 VAC 112-20-131 and 18 VAC 112-20-136).**

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

Effective Dates: November 1, 2001, through October 31, 2002.

Agency Contact: Elizabeth Young Tisdale, Executive Director, Board of Physical Therapy, Southern States Building, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9924.

Preamble:

*Emergency regulations are required for compliance with an enactment clause in Chapter 858 of the 2001 Acts of the Assembly requiring the board to promulgate regulations within 280 days of enactment to implement provisions of the act requiring the Board of Physical Therapy to establish requirements to ensure continuing competency of the practitioners it licenses.*

*In promulgating emergency regulations for continued competency of physical therapy licensees, the board considered the mandate of the General Assembly to adopt regulations that would address a) the need to promote ethical practice, b) an appropriate standard of care, c) patient safety, d) application of new medical technology, e) appropriate communication with patients, and f) knowledge of the changing health care system. The amended sections are as follows:*

*18 VAC 112-20-10. Definitions. New definitions are given to provide clarity for terms used in the continuing competency regulations. Terms defined include: "contact hour," "face-to-face," "type 1," and "type 2."*

*18 VAC 112-20-130. Biennial renewal of license. Added to the requirement of hours of practice to renew an active license is the requirement to comply with continuing competency requirements.*

*18 VAC 112-20-131. Continued competency requirements for renewal of an active license. This new section of regulation sets requirement for renewal at 30 contact hours of continuing learning within the two years immediately preceding renewal. The 30-hour requirement is divided between Type 1 hours, which must be offered by an accredited sponsor and which must be face-to-face or interactive hours, and Type 2 hours, which may be selected by the practitioner as valuable to continued learning in his practice.*

*Organizations approved by the board as accredited sponsors or providers for Type 1 courses are listed in*

*subsection B and include physical therapy associations, governmental agencies, accredited colleges and universities, accredited health care entities, the American Medical Association and the national athletic trainers' association. Specialty certification or recertification may suffice as evidence of continued competency for the renewal period in which that occurs.*

*Regulations further provide for an exemption from continued competency requirements in the first renewal cycle following initial licensure, waiver of requirements for certain conditions, or an extension of time for good cause shown and upon request from the licensee. There are requirements for a random audit of licensees and for the retention of documentation for a period of at least four years.*

*18 VAC 112-20-135. Inactive license. An amendment is adopted to add a requirement for evidence of completion of the number of continued competency hours that would have been required for the period the license was inactive, not to exceed four years.*

*18 VAC 112-20-136. Reinstatement requirements. The reinstatement requirement for practice in another jurisdiction or completion of an inactive practice traineeship has been found in subsection A of 18 VAC 112-20-140. The amended regulations place that requirement in 18 VAC 112-20-136 and add the requirement for completion of continued competency hours similar to that required for reactivation of an inactive license.*

*18 VAC 112-20-140. Traineeship required. The subsection related to reinstatement of a lapsed license has been deleted in this section and included in new section 18 VAC 112-20-136.*

*The Continued Competency Activity and Assessment Form provided instructions to the licensees for compliance with regulations and completion of the form on which hours are documented.*

*To develop the emergency regulations, an ad hoc committee comprised of board members, representatives of VPTA, and licensees from various types of practices was appointed. Since the committee represented a good cross-section of licensees who consulted with other physical therapists and physical therapist assistants on the content of the regulations, the issues related to requirements were addressed. Therefore, it is not anticipated that the permanent regulations will differ substantially from the emergency regulations.*

/s/ James S. Gilmore, III  
Governor  
September 20, 2001

#### **18 VAC 112-20-10. Definitions.**

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

"Approved program" means an educational program accredited by the Commission on Accreditation in Physical

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Therapy Education of the American Physical Therapy Association.

"Board" means the Virginia Board of Physical Therapy.

"CLEP" means the College Level Examination Program.

"Contact hour" means 60 minutes of time spent in continuing learning activity exclusive of breaks, meals or vendor exhibits.

"Direct supervision" means a physical therapist is present and is fully responsible for the activities performed by the nonlicensed physical therapy personnel.

"Evaluation" means the carrying out by a physical therapist of the sequential process of assessing a patient, planning the patient's physical therapy treatment program, and recording appropriate documentation.

"Face-to-face" means learning activities or courses obtained in a group setting or through interactive, real-time technology.

"FCCPT" means the Foreign Credentialing Commission on Physical Therapy.

"General supervision" means a physical therapist shall be available for consultation.

"Nonlicensed personnel" means any individual not licensed or certified by a health regulatory board within the Department of Health Professions who is performing patient care functions at the direction of a physical therapist or physical therapist assistant within the scope of this chapter.

"Physical therapist" means a person qualified by education and training to administer a physical therapy program.

"Physical therapist assistant" means a person qualified by education and training to perform physical therapy functions under the supervision of and as directed by a physical therapist.

"TOEFL" means the Test of English as a Foreign Language.

"Trainee" means a person undergoing a traineeship.

1. "Foreign educated trainee" means a physical therapist or physical therapist assistant who graduated from a school not approved by an accrediting agency recognized by the board and who is seeking licensure to practice in Virginia.

2. "Inactive practice trainee" means a physical therapist or physical therapist assistant who has previously been licensed and has not practiced for at least 320 hours within the past four years and who is seeking licensure or relicensure in Virginia.

3. "Unlicensed graduate trainee" means a graduate of an approved physical therapist or physical therapist assistant program who has not taken the state licensure examination or who has taken the examination but not yet received a license from the board.

"Traineeship" means a period of full-time activity during which an unlicensed physical therapist or physical therapist assistant works under the direct supervision of a physical therapist approved by the board.

"Type 1" means face-to-face continuing learning activities offered by an approved organization as specified in 18 VAC 112-20-131.

"Type 2" means continuing learning activities which may or may not be offered by an approved organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning. In Type 2 activities, licensees document their own participation on the Continued Competency Activity and Assessment Form and are considered self-learning activities.

## 18 VAC 112-20-130. Biennial renewal of license.

A. A physical therapist and physical therapist assistant who intends to continue practice shall renew his license biennially during his birth month in each even-numbered year and pay to the board the renewal fee prescribed in 18 VAC 112-20-150.

B. A licensee whose licensure has not been renewed by the first day of the month following the month in which renewal is required shall pay a late fee as prescribed in 18 VAC 112-20-150.

C. In order to renew an active license, a licensee shall be required to:

1. Complete a minimum of 320 hours of practice in the preceding four years ~~shall be required for licensure renewal;~~ and

2. Comply with continuing competency requirements set forth in 18 VAC 112-20-131.

## 18 VAC 112-20-131. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially after December 31, 2003, a physical therapist or a physical therapist assistant shall complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. In choosing continuing learning activities or courses, the licensee shall consider the following: a) the need to promote ethical practice, b) an appropriate standard of care, c) patient safety, d) application of new medical technology, e) appropriate communication with patients, and f) knowledge of the changing health care system.

B. To document the required hours, the licensee shall maintain the Continued Competency Activity and Assessment Form, which is provided by the board and which shall indicate completion of the following:

1. A minimum of 15 of the contact hours required for physical therapists and 10 of the contact hours required for physical therapist assistants shall be in Type 1 face-to-face courses. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the clinical practice of physical therapy and approved or provided by one of the following organizations or any of its components:

a. The Virginia Physical Therapy Association;

b. The American Physical Therapy Association;

- c. Local, state or federal government agencies;
- d. Regionally accredited colleges and universities;
- e. Health care organizations accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO);
- f. The American Medical Association - Category I Continuing Medical Education course; and
- g. The National Athletic Trainers Association.

2. No more than 15 of the contact hours required for physical therapists and 20 of the contact hours required for physical therapist assistants may be Type 2 activities or courses, which may or may not be offered by an approved organization but which shall be related to the clinical practice of physical therapy. Type 2 activities may include but not be limited to: consultation with colleagues, independent study, and research or writing on subjects related to practice.

3. Documentation of specialty certification by the American Physical Therapy Association may be provided as evidence of completion of continuing competency requirements for the biennium in which initial certification or recertification occurs.

C. A licensee shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

D. The licensee shall retain his records on the completed form with all supporting documentation for a period of four years following the renewal of an active license.

E. The licensees selected in a random audit conducted by the board shall provide the completed Continued Competency Activity and Assessment Form and all supporting documentation within 30 days of receiving notification of the audit.

F. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

G. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

H. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

### **18 VAC 112-20-135. Inactive license.**

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required renewal fee of \$70 for a physical therapist and \$35 for a physical therapist assistant, be issued an inactive license.

1. The holder of an inactive license shall not be required to meet active practice requirements.

2. An inactive licensee shall not be entitled to perform any act requiring a license to practice physical therapy in Virginia.

B. A physical therapist or physical therapist assistant who holds an inactive license may reactivate his license by:

1. Paying the difference between the renewal fee for an inactive license and that of an active license for the biennium in which the license is being reactivated; and

2. Providing proof of:

- a. Active practice hours in another jurisdiction equal to those required for renewal of an active license in Virginia for the period in which the license has been inactive. If the inactive licensee does not meet the requirement for active practice, the license may be reactivated by meeting the traineeship requirements prescribed in ~~subsection B of~~ 18 VAC 112-20-140; and

- b. Completion of the number of continuing competency hours required for the period in which the license has been inactive, not to exceed four years.

### **18 VAC 112-20-136. Reinstatement requirements.**

A physical therapist or physical therapist assistant whose Virginia license is lapsed and who is seeking reinstatement shall:

1. Practice physical therapy in another jurisdiction for at least 320 hours within the four years immediately preceding applying for reinstatement or successfully complete 480 hours as an inactive practice trainee as specified in 18 VAC 112-20-140; and

2. Complete the number of continuing competency hours required for the period in which the license has been lapsed, not to exceed four years.

### **18 VAC 112-20-140. Traineeship required.**

~~A. A physical therapist or physical therapist assistant seeking reinstatement who does not hold a license in Virginia and who has not practiced physical therapy in another jurisdiction for at least 320 hours within the four years immediately preceding applying for licensure and who wishes to resume practice shall apply for reinstatement and shall first successfully complete 480 hours as an inactive practice trainee.~~

B. The 480 hours of traineeship shall be in a facility that (i) serves as a clinical education facility for students enrolled in an accredited program educating physical therapists in Virginia, (ii) is approved by the board, and (iii) is under the direction and supervision of a licensed physical therapist.

1. The physical therapist supervising the inactive practice trainee shall submit a report to the board at the end of the 480 hours on forms supplied by the board.

2. If the traineeship is not successfully completed at the end of the 480 hours, as determined by the supervising physical therapist, the president of the board or his designee shall determine if a new traineeship shall commence. If the president of the board determines that a new traineeship shall not commence, then the application for licensure shall be denied.

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3. The second traineeship may be served under a different supervising physical therapist and may be served in a different organization than the initial traineeship. If the second traineeship is not successfully completed, as determined by the supervising physical therapist, then the application for licensure shall be denied.

**NOTICE:** The forms used in administering 18 VAC 112-20, Regulations Governing the Practice of Physical Therapy, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board of Physical Therapy, 6606 W. Broad Street, 4th Floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Application for a License to Practice Physical Therapy (Examination) (rev. 8/00).

Application for a License to Practice Physical Therapy (Endorsement) (rev. 8/00).

Application for Reinstatement of Licensure (rev. 8/00).

Instructions for Licensure by Endorsement to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of an Approved Program) (rev. 8/00).

Instructions for Licensure by Endorsement to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of a Nonapproved Program) (rev. 8/00).

Instructions for Licensure by Examination to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of an Approved Program) (rev. 8/00).

Instructions for Licensure by Examination to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of a Nonapproved Program) (rev. 8/00).

Instructions for Completing Reinstatement of Licensure Application for Physical Therapist/Physical Therapist Assistant (rev. 8/00).

The FSBPT Score Transfer Service, National Physical Therapy Examination (PT/PTA), Score Transfer Request Application (rev. ~~7/00~~ 7/00).

Traineeship Application, Statement of Authorization (rev. 8/00).

Traineeship Application, Statement of Authorization (1,000-hour traineeship) (rev. 8/00).

Traineeship Application, Statement of Authorization, Relicensure (480-hour traineeship) (rev. 8/00).

Relicensure Traineeship Certification (rev. 8/00).

Form #A, Claims History Sheet (rev. 7/00).

Form #B, Employment/Practice Verification of Physical Therapy (rev. 8/00).

Form #C, Verification of State Licensure (rev. 8/00).

Form #L, Certificate of Physical Therapy Education (rev. 7/00).

Renewal Notice and Application (rev. 2/00).

*Continued Competency and Assessment Form (rev. 9/01).*

VA.R. Doc. No. R02-32; Filed September 26, 2001, 1:55 p.m.

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### DEPARTMENT OF MOTOR VEHICLES

**Title of Regulation:** 24 VAC 20-70. **Regulations Governing Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card (amending 24 VAC 20-70-30).**

**Statutory Authority:** §§ 46.2-203, 46.2-323, and 46.2-345 of the Code of Virginia.

**Effective Dates:** September 21, 2001, through September 20, 2002.

**Agency Contact:** Barbara Klotz, Department of Motor Vehicles, 2300 W. Broad Street, Richmond, VA 23220, telephone (804) 367-8171.

#### Preamble:

*The Department of Motor Vehicles (DMV) is proposing an emergency regulation to amend 24 VAC 20-70-30 by repealing section "D" thereby removing the Residency Certification (DL-51) as a document that may be utilized for providing proof of residency in the Commonwealth for the driver's license and identification card application process.*

*Pursuant to Va. Code §§ 46.2-203, 46.2-323 and 46.2-345, the Department of Motor Vehicles is authorized to adopt regulations to determine the means by which applicants prove that they are residents of the Commonwealth.*

*The subject regulations were implemented in 1994 in response to legislation which created a new residency requirement for obtaining a Virginia driver's license or identification card and which permitted, but did not require, the agency to promulgate regulations pertaining to proof of residency. The DL-51 was included as an acceptable means for proving residency in order to enable immigrants, who may have left their native country under extreme circumstances and without identification, to legitimately apply for and receive driver's licenses and identification cards.*

*Over the last few years the DL-51 has been subject to widespread abuse and fraud, primarily by an industry consisting of criminal organizations and facilitators who assist immigrants in obtaining Virginia driver's licenses and/or identification cards by fraudulent means. These organizations and facilitators victimize immigrants by charging them large sums for assistance in obtaining driver's licenses and identification cards and by*



encouraging the immigrants to, in the application process, submit falsified DL-51s which have been executed by facilitators or their agents who attest to the false information contained therein. The magnitude of this abuse is evidenced by the recent trial and conviction of Jennifer Wrenn in U.S. District Court. Wrenn had established a lucrative business, in which thousands of victims were brought to Virginia from New Jersey, New York and Maryland on a routine basis in order to obtain a Virginia driver's license or identification card by fraudulent means. The primary defense put forth by Wrenn was the assertion that DMV promoted or encouraged this activity by virtue of the fact that the agency had created and permitted the use of the DL-51. Federal prosecutors in the Wrenn case strongly encourage elimination of the DL-51.

Emergency amendment of 24 VAC 20-70-30 is necessary to address an imminent threat to public health and safety. The abuse and misuse of the DL-51 by criminal organizations, facilitators and their agents results in the issuance of driver's licenses and identification cards based upon false identity and/or address information and poses a threat to public health and safety by hindering the ability of DMV and law enforcement to accurately identify and locate individuals. In addition, as long as the DL-51 is utilized in the driver's license and identification card application process, criminal organizations, facilitators and their agents will continue to utilize the process to victimize immigrants seeking such documentation. Abuse of the DL-51 is potentially widespread and is increasing at such an alarming rate that the only feasible means of eliminating abuse is to terminate use of the form immediately. Because of the large numbers of DL-51s which are submitted to DMV, the alternative of implementing detection and enforcement procedures is not feasible.

This emergency regulation shall become effective on 9/21/01.

**24 VAC 20-70-30. Acceptable documentation for providing proof of residency in the Commonwealth of Virginia.**

A. The applicant shall be required to furnish, as proof of residency in the Commonwealth of Virginia, one valid original or duplicate original document that contains the address of his principal residence. This address must be within the Commonwealth of Virginia.

B. This document must be written in English, and must contain the name and principal residence address of the applicant as it appears on the application for the driver's license, commercial driver's license, photo identification card, learner's permit or temporary driver's permit.

C. The following documents may be accepted as proof of residency, provided that they show the applicant's principal residence as an integral part of the document:

1. A payroll check or payroll check stub issued by an employer within two months of the application;
2. A voter registration card;

3. A W-2 tax form used for reporting purposes to the United States Internal Revenue Service which is not more than 18 months old;
4. A bank statement (not checks) that is not more than two months old;
5. A United States passport;
6. A United States income tax return from the previous year;
7. A Commonwealth of Virginia income tax return for the previous year;
8. Utility bills issued to the applicant;
9. A receipt for personal property taxes or real estate taxes paid to the Commonwealth of Virginia or a city, county, town, or locality within the Commonwealth of Virginia within the last year;
10. An automobile or life insurance policy which is currently in force;
11. A transcript from a school, college or university in which the applicant is currently enrolled;
12. A Virginia driver's license or identification card or permit issued on or after July 1, 1994;
13. A Virginia motor vehicle registration or a Virginia title for a vehicle owned by the applicant.

~~D. If the applicant does not have access to any of the documents listed in subsection C of this section, he may obtain from the department a "Residency Certification" form (form DL 51) and have it completed by an individual who possesses a Virginia driver's license, commercial driver's license, or photo identification card, and who is willing to certify that the applicant is also a Virginia resident. In the case of military personnel, the form may be completed by the applicant's commanding officer certifying that the applicant is a Virginia resident; the commanding officer is not required to possess a Virginia driver's license, commercial driver's license, or photo identification card. This document must be signed and sworn to before a Notary Public or before a department employee.~~

~~E. D.~~ If any document presented to the Department of Motor Vehicles (including a Virginia driver's license) pursuant to this chapter was issued more than three months prior to the date of the application, then the applicant must certify that his principal residence remains as shown on the document.

/s/ James S. Gilmore, III  
Governor  
September 20, 2001

VA.R. Doc. No. R02-26; Filed September 20, 2001, 1:56 p.m.



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# GOVERNOR

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## EXECUTIVE ORDER NUMBER EIGHTY-TWO (01)

### **DECLARATION OF A STATE OF EMERGENCY FOR CERTAIN LOCALITIES IN THE COMMONWEALTH OF VIRGINIA DUE TO SIGNIFICANT RAINS AND FLOODING IN SOUTHWEST VIRGINIA**

On July 29, 2001, I verbally declared a state of emergency to exist within the Commonwealth of Virginia due to damaging flash flooding beginning on July 26, 2001, resulting from heavy rainfall in the western portion of the state. This flooding resulted from rainfall originating as part of a weather pattern that caused earlier flash flooding on July 8, 2001. Areas affected are within the Counties of Bath, Buchanan, Dickenson, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wise.

The health and general welfare of the citizens of the localities that are affected required that state action be taken to help alleviate the conditions resulting from this situation. I feel that the effects of this significant flooding constitute a natural disaster wherein human life and public and private property were imperiled, as described in § 44-75.1 A 4 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued July 29, 2001, wherein I proclaimed that a state of emergency exists and directed that appropriate assistance be rendered by agencies of both state and local governments to alleviate any conditions resulting from significant flooding, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions insofar as possible. Pursuant to § 44-75.1 A 3 and A 4 of the Code of Virginia, I also directed that the Virginia National Guard and the Virginia Defense Force be called forth to state duty to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State Coordinator of Emergency Management and the Adjutant General, and with the approval of the Secretary of Public Safety, may find necessary.

In order to marshal all public resources and appropriate preparedness, response and recovery measures to meet this potential threat and recovery from its effects, and in accordance with my authority contained in § 44-146.17 of the Emergency Services and Disaster Laws, I hereby order the following protective and restoration measures:

A. The full implementation by agencies of the state and local governments of Volumes 1 (Basic Plan) and Volume 2 (Disaster Recovery Plan) of the Virginia Emergency Operations Plan, as amended, along with other appropriate state agency plans.

B. Full activation of the Virginia Emergency Operations Center (VEOC) and State Emergency Response Team (SERT). Furthermore, I am directing that the VEOC and SERT coordinate state operations in support of affected localities and the Commonwealth, to include issuing mission assignments to agencies designated in the COVEOP and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property and implementation of recovery activities.

C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Department of Information Technology, and with the prior consent of the Secretary of Public Safety, making all systems assets available for use in providing adequate communications, intelligence and warning capabilities for the event, pursuant to § 44-146.18 of the Code of Virginia.

D. I hereby direct evacuation of areas threatened or stricken by this flooding. Following a declaration of a local emergency pursuant to § 44-146.21 of the Code of Virginia, if a governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response or recovery, pursuant to § 44-146.17 (1) of the Code of Virginia, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the Virginia Emergency Operations Center (VEOC), acting on behalf of the State Coordinator of Emergency Management, shall determine. Notwithstanding the foregoing, I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both where local governing bodies have made such a determination and where local governing bodies have not made such a determination. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

E. The activation, implementation and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact, and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to § 44-146.17(5) and § 44-146.28:1 of the Code of Virginia, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. The authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight/overwidth/registration/license exemptions to

carriers transporting essential emergency relief supplies into and through the Commonwealth in order to support the disaster response and recovery.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	54,500 Pounds
Tractor-Semitrailer (4 Axles)	64,500 Pounds
Tractor-Semitrailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

All overweight loads, up to a maximum of 16 feet, must follow VDOT hauling permit and safety guidelines.

In addition to described overweight/overwidth transportation privileges, carriers are also exempt from registration with Department of Motor Vehicles. This includes the vehicles en route and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials and other critical supplies to or from any portion of the Commonwealth for purpose of providing relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia.

The foregoing overweight/overwidth transportation privileges as well as the regulatory exemption provided by § 52-8.4 A of the Code of Virginia, and implemented in § 19 VAC 30-20-40 B of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

G. The discontinuance of provisions authorized in paragraph F above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

H. The authorization of appropriate oversight boards, commissions and agencies to ease building code restrictions, and to permit emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting and operations and other activities necessary

to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties. This state of emergency constitutes a major medical emergency under the Rules and Regulations of the Board of Health Governing Emergency Medical Services, pursuant to Article 3.01 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1, of the Code of Virginia, Statewide Emergency Medical Services System and Services, and exemptions specified in the Rules and Regulations regarding patient transport and provider certification in disasters apply.

I. Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in paragraph N below, in performing these missions shall be paid out of the sum sufficient appropriation for Disaster Planning and Operations contained in Item 45 of Chapter 1073, 2000 Virginia Acts of Assembly.

J. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations, or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28 (b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

K. Members and personnel of volunteer, auxiliary and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters and others identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments are, in the performance of those assignments, designated as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23 (a) of the Code of Virginia.

L. The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in pre-storm preparations and in alleviating the human suffering and damage to property.
2. Pursuant to § 52-6 of the Code of Virginia, I authorize and direct the Superintendent of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers. These police officers shall have the same powers and perform the same duties as the regular State Police officers appointed by the Superintendent.

However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the concurrence of the Board of Military Affairs, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

M. The following conditions apply to service by the Virginia Defense Force:

1. Compensation shall be at a daily rate that is equivalent of base pay only for a National Guard Unit Training Assembly, commensurate with the grade and years of service of the member, not to exceed 20 years of service;
2. Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;

3. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the Code of Virginia; and

4. In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof.

N. The costs incurred by the Department of Military Affairs and Virginia Defense Force in performing these missions shall be paid out of the sum sufficient appropriation for Disaster Planning and Operations contained in Item 488 of Chapter 1073, 2000 Virginia Acts of Assembly.

This Executive Order shall be effective retroactive to July 29, 2001, and shall remain in full force and effect until June 30, 2002, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any Federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 18th day of September 2001.

/s/ James S. Gilmore, III, Governor

## EXECUTIVE ORDER NUMBER EIGHTY-THREE (01)

### **DECLARATION OF A STATE OF EMERGENCY DUE TO TERRORIST ATTACK ON THE PENTAGON IN ARLINGTON COUNTY, VIRGINIA**

On September 11, 2001, at 12 noon, I verbally declared a state of emergency to exist within the Commonwealth of Virginia due to a terrorist attack on the Pentagon, a federal facility located in Arlington County, Virginia.

The health and general welfare of the citizens of the affected areas required that state action be taken to help alleviate the conditions resulting from this situation. I also find that the effects of this event constitute a man-made disaster imperiling human life and public and private property, pursuant to § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued September 11, 2001, wherein I proclaimed that a state of emergency exists and directed that appropriate assistance be rendered by agencies of both state and local governments to alleviate any conditions resulting from a significant terrorist attack, and to implement recovery and mitigation operations and activities so as to return impacted

areas to pre-event conditions insofar as possible. Pursuant to §§ 44-75.1 A 3 and A 4 of the Code of Virginia, I also directed that the Virginia National Guard and the Virginia Defense Force be called forth to state duty to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia State Police to direct traffic and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State Coordinator of Emergency Management and the Adjutant General, and with the approval of the Secretary of Public Safety, may find necessary. The Virginia National Guard and the Virginia Defense Force are also authorized to assist with search and rescue, medical response, and other functions as deemed necessary.

In order to marshal all public resources and appropriate preparedness, response and recovery measures to meet this potential threat and recovery from its effects, and in accordance with my authority contained in § 44-146.17 of the Emergency Services and Disaster Laws, I hereby order the following protective and restoration measures:

A. Full implementation by agencies of the state and local governments of Volumes 1 (Basic Plan), Volume 2 (Disaster Recovery Plan) and Volume 8 (Terrorism Consequence Management) of the Virginia Emergency Operations Plan, as amended, along with other appropriate state agency plans.

B. Full activation of the Virginia Emergency Operations Center (VEOC) and State Emergency Response Team (SERT). Furthermore, I am directing that the VEOC and SERT coordinate state operations in support of affected localities and the Commonwealth, to include issuing mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP) and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.

C. Authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Department of Information Technology, and with the prior consent of the Secretary of Public Safety, making all systems assets available for use in providing adequate communications, intelligence and warning capabilities for the event, pursuant to § 44-146.18 of the Code of Virginia.

D. Activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact, and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to §§ 44-146.17(5) and 44-146.28:1 of the Code of Virginia, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. The State Coordinator of

Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

E. Authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight/overwidth/registration/license exemptions to carriers transporting essential emergency relief supplies into and through the Commonwealth in order to support the disaster response and recovery.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	54,500 Pounds
Tractor-Semitrailer (4 Axles)	64,500 Pounds
Tractor-Semitrailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

All overwidth loads, up to a maximum of 16 feet, must follow VDOT hauling permit and safety guidelines.

In addition to described overweight/overwidth transportation privileges, carriers are also exempt from registration with Department of Motor Vehicles. This includes the vehicles enroute and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials and other critical supplies to or from any portion of the Commonwealth for purpose of providing relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia.

The foregoing overweight/overwidth transportation privileges as well as the regulatory exemption provided by § 52-8.4 A of the Code of Virginia, and implemented in § 19 VAC 30-20-40 B of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

F. Discontinuance of provisions authorized in paragraph E above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the

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# Governor

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Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

G. Authorization of appropriate oversight boards, commissions and agencies to ease building code restrictions, and to permit emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties.

H. This state of emergency constitutes a major medical emergency under the Rules and Regulations of the Board of Health Governing Emergency Medical Services, pursuant to Article 3.01 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1, of the Code of Virginia, Statewide Emergency Medical Services System and Services, and exemptions specified in the Rules and Regulations regarding patient transport and provider certification in disasters apply.

I. Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in paragraph N below, in performing these missions shall be paid out of the sum sufficient appropriation for Disaster Planning and Operations contained in Item 45 of Chapter 1073, 2000 Virginia Acts of Assembly.

J. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations, or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28 (b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

K. Members and personnel of volunteer, auxiliary and reserve groups, including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, and others identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments, are in the performance of those assignments, designated as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23 (a) of the Code of Virginia.

L. The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in implementing recovery

and mitigation operations and in alleviating the human suffering and damage to property.

2. Pursuant to § 52-6 of the Code of Virginia, I authorize and direct the Superintendent of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers. These police officers shall have the same powers and perform the same duties as the regular State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the concurrence of the Board of Military Affairs, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

M. The following conditions apply to service by the Virginia Defense Force:

- 1. Compensation shall be at a daily rate that is the equivalent of base pay only for a National Guard Unit Training Assembly, commensurate with the grade and years of service of the member, not to exceed 20 years of service;
- 2. Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;
- 3. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the Code of Virginia; and
- 4. In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof.

N. Upon my approval, the costs incurred by the Department of Military Affairs and Virginia Defense Force in performing these missions shall be paid out of the sum sufficient appropriation for Disaster Planning and Operations contained in Item 488 of Chapter 1073, 2000 Virginia Acts of Assembly.

This Executive Order shall be effective September 11, 2001, and shall remain in full force and effect until June 30, 2002, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 14<sup>th</sup> day of September 2001.

/s/ James S. Gilmore, III, Governor

**GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS**

**TITLE 8. EDUCATION**

**DEPARTMENT OF EDUCATION**

**Title of Regulation: 8 VAC 20-21. Licensure Regulations for School Personnel.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III

Governor  
Date: September 18, 2001

VA.R. Doc. No. R01-36; Filed September 21, 2001, 2:54 p.m.

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**Title of Regulation: 8 VAC 20-120. Vocational Education.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III  
Governor  
Date: September 6, 2001

VA.R. Doc. No. R00-162; Filed September 21, 2001, 2:55 p.m.

**TITLE 12. HEALTH**

**STATE BOARD OF HEALTH**

**Title of Regulation: 12 VAC 5-371. Regulations for the Licensure of Nursing Facilities and Hospitals.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III  
Governor  
Date: September 18, 2001

VA.R. Doc. No. R00-226; Filed September 21, 2001, 2:55 p.m.

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**Title of Regulation: 12 VAC 5-408. Certificate of Quality Assurance of Managed Care Health Insurance Plan (MCHIP) Licenses.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III  
Governor  
Date: September 6, 2001

VA.R. Doc. No. R01-77; Filed September 21, 2001, 2:55 p.m.

**TITLE 18. PROFESSIONAL AND  
OCCUPATIONAL LICENSING**

Governor  
Date: July 6, 2001

VA.R. Doc. No. R99-146; Filed September 21, 2001, 2:55 p.m.

**BOARD FOR PROFESSIONAL SOIL SCIENTISTS**

Title of Regulation: **18 VAC 145-20. Board for Professional Soil Scientists Regulations.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III  
Governor  
Date: September 6, 2001

VA.R. Doc. No. R00-71; Filed September 21, 2001, 2:55 p.m.

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**TITLE 22. SOCIAL SERVICES**

**DEPARTMENT FOR THE BLIND AND VISION  
IMPAIRED**

Title of Regulation: **22 VAC 45-60. Provision of Services for Infants, Children, and Youth Program (REPEALING).**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to the repeal of this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III  
Governor  
Date: September 6, 2001

VA.R. Doc. No. R97-139; Filed September 21, 2001, 2:55 p.m.

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**TITLE 23. TAXATION**

**DEPARTMENT OF TAXATION**

Title of Regulation: **23 VAC 10-110. Individual Income Tax.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III



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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### **Total Maximum Daily Load (TMDL) for Fecal Coliform Bacteria on an Approximate 7.4-Mile Segment of Thumb Run**

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for fecal coliform bacteria on an approximate 7.4-mile segment of Thumb Run. The Thumb Run impaired segment is located in Fauquier County. It begins at the confluence of West Branch Thumb Run and East Branch Thumb Run downstream to its confluence with the Rappahannock River. Thumb Run is identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

The second public meeting on the development of the Thumb Run fecal coliform TMDL will be held on Thursday, November 8, 2001, at 7 p.m. at the Orlean Volunteer Fire Department located at 6838 Leeds Manor Road (State Route 688), Orlean, Virginia.

The public comment period will begin on October 23, 2001, and end on November 21, 2001. A fact sheet on the development of the TMDL for fecal coliform bacteria on Thumb Run is available upon request. Questions or information requests should be addressed to Bryant Thomas. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Mr. Bryant H. Thomas, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193, telephone (703) 583-3843, FAX (703) 583-3841 or e-mail [bhthomas@deq.state.va.us](mailto:bhthomas@deq.state.va.us).

## **SECRETARY OF HEALTH AND HUMAN RESOURCES**

### **Public Comment Period – Child Support Guideline**

The Secretary of Health and Human Resources' Child Support Guideline Review Panel invites written public comment from citizens on Virginia's Child Support Guideline. The Guideline is comprised of §§ 20-108.1 and 20-108.2 of the Code of Virginia and is limited to the method by which monthly child support obligations are determined.

Written public comments will be accepted from November 1, 2001, through March 1, 2002. Comments are limited to Guideline issues as included in the two sections of the Code of Virginia. A limit of five pages per issue may be submitted, with citizens commenting on as many different issues as they

wish. Each issue must be addressed in a separate submission.

Examples of subjects that do not fall under the purview of the panel and for which comments are not appropriate include, but are not limited to, custody issues, visitation and access issues, child support enforcement issues, including incarceration, seizure and sale of property, suspension of drivers licenses, etc.

Citizens may locate the two Guideline Sections in the Code of Virginia via the Internet at <http://leg1.state.va.us/>

Written comments should be mailed or delivered to: Guideline Review Panel, Mr. Bill Brownfield, Staff Director, 730 East Broad Street, 4th Floor, Richmond, VA 23219.

Comments will also be accepted via e-mail at [whb900@dcse.dss.state.va.us](mailto:whb900@dcse.dss.state.va.us) or by facsimile transmission at (804) 692-2410.

Written comments will be accepted between November 1, 2001, and March 1, 2002. The panel will also be holding public hearings at a later date to be announced.

Contact person: Bill Brownfield, Staff Director, Guideline Review Panel, 730 East Broad Street, 4th Floor, Richmond, VA 23219, telephone (804) 692-2403.

## **DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

### **Chapter 175 - Rules and Regulations for the Virginia Low-Income Housing Tax Credit Calendar Year 2001 Procedure**

The Department of Housing and Community Development will accept applications for the state Low-Income Housing Tax Credit Program during the 2001 calendar year through November 30, 2001.

A single award round will be used to assure that the department does not exceed the new statutory cap on allocations. The department will mail certifications for the allocations of state low-income housing tax credit authority for calendar year 2001 during the second week of December 2001 (December 10 through December 14).

## **STATE WATER CONTROL BOARD**

### **Proposed Consent Special Order Amendment Alleghany County Town of Clifton Forge Town of Iron Gate**

The State Water Control Board (SWCB) proposes to issue a Consent Special Order Amendment (CSO-A) to Alleghany County, the Town of Clifton Forge, and the Town of Iron Gate regarding modification of a previously issued Consent Special Order related to compliance with the Permit Regulation, 9 VAC 25-31-10 et seq. On behalf of the SWCB, the

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## General Notices/Errata

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Department will consider written comments relating to this amendment for 30 days after the date of publication of this notice. Comments should be addressed to Robert Steele, DEQ West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA 24019.

The final CSO-A may be examined at the department during regular business hours. Copies are available from Mr. Steele at the address above or by calling him at (540) 562-6777.

### **Proposed Consent Special Order Chubby's L.L.C.**

The State Water Control Board proposes to issue a consent special order to Chubby's L.L.C. to resolve certain alleged violations of environmental laws and regulations occurring at their facility in Blackstone, Virginia. The proposed order requires Chubby's L.L.C. to pay a \$1,400 civil charge.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive for 30 days from the date of publication of this notice written comments relating to the proposed consent special order. Comments should be addressed to Vernon Williams, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia 23060-6295. A copy of the order may be obtained in person or by mail from the above office.

### **Proposed Consent Special Order Town of Keysville**

The State Water Control Board (SWCB) proposes to issue a Consent Special Order (CSO) to the Town of Keysville in Charlotte County related to compliance with the Permit Regulation, 9 VAC 25-31-10 et seq. On behalf of the SWCB, the Department of Environmental Quality (DEQ) will consider written comments relating to this order for 30 days after the date of publication of this notice. Comments are to be addressed to Harry F. Waggoner, DEQ South Central Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502.

The final CSO may be examined at the department during regular business hours. Copies are available from Mr. Waggoner at the address above or by calling (434) 582-5120.

### **Proposed Consent Special Order ISE America, Inc. Seaboard Farms, Inc.**

The State Water Control Board (SWCB) proposes to issue a Consent Special Order (CSO) to ISE America, Inc. for Seaboard Farms, Inc. regarding settlement of a civil enforcement action related to compliance with the Virginia Pollution Abatement Permit Regulation, 9 VAC 25-32-10 et seq. On behalf of the SWCB, the department will consider written comments relating to this settlement for 30 days after the date of publication of this notice. Comments should be addressed to Robert Steele, DEQ West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA 24019.

The final CSO may be examined at the department during regular business hours. Copies are available from Mr. Steele at the address above or by calling him at (540) 562-6777.

## **VIRGINIA CODE COMMISSION**

### **Notice Regarding The Legislative Record**

The Legislative Record will no longer be published in the Virginia Register of Regulations beginning with Volume 18 of the Register. For information regarding subscriptions to The Legislative Record, please contact Special Projects, Division of Legislative Services, 910 Capitol Street, 2nd Floor, Richmond, VA 23219. The Legislative Record is also available on-line at <http://dls.state.va.us/pubs/legisrec/2001/>.

### **Notice to State Agencies**

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, FAX (804) 692-0625.

### **Forms for Filing Material for Publication in *The Virginia Register of Regulations***

All agencies are required to use the appropriate forms when furnishing material for publication in The Virginia Register of Regulations. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

**Internet:** Forms and other Virginia Register resources may be printed or downloaded from the Virginia Register web page: <http://legis.state.va.us/codecomm/register/regindex.htm>

#### **FORMS:**

NOTICE of INTENDED REGULATORY ACTION - RR01  
NOTICE of COMMENT PERIOD - RR02  
PROPOSED (Transmittal Sheet) - RR03  
FINAL (Transmittal Sheet) - RR04  
EMERGENCY (Transmittal Sheet) - RR05  
NOTICE of MEETING - RR06  
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS - RR08

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# General Notices/Errata

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I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).			

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- Complete and file one copy of this form with your postmaster annually on or before October 1. Keep a copy of the completed form for your records.
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- Be sure to furnish all circulation information called for in item 15. Free circulation must be shown in items 15d, e, and f.
- Item 15h., Copies not Distributed, must include (1) newsstand copies originally stated on Form 3541, and returned to the publisher, (2) estimated returns from news agents, and (3), copies for office use, leftovers, spoiled, and all other copies not distributed.
- If the publication had Periodicals authorization as a general or requester publication, this Statement of Ownership, Management, and Circulation must be published; it must be printed in any issue in October or, if the publication is not published during October, the first issue printed after October.
- In item 16, indicate the date of the issue in which this Statement of Ownership will be published.
- Item 17 must be signed.

*Failure to file or publish a statement of ownership may lead to suspension of Periodicals authorization.*

PS Form 3526, October 1999 (Reverse)


# CALENDAR OF EVENTS

## Symbol Key

-  Location accessible to persons with disabilities  
 Teletype (TTY)/Voice Designation

## NOTICE


Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at [www.vipnet.org](http://www.vipnet.org) or contact the organization directly.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY , or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

## EXECUTIVE

### BOARD OF ACCOUNTANCY

**October 24, 2001 - 10 a.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street,  
Executive Conference Room, 7th Floor, Richmond, Virginia   
(Interpreter for the deaf provided upon request)

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.

**Contact:** Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 696, Richmond, VA 23230-4916, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY , e-mail [accountancy@dpor.state.va.us](mailto:accountancy@dpor.state.va.us).

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

**† March 14, 2002 - 10 a.m.** -- Public Hearing  
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia.

**† February 8, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-400. Rules and Regulations for the Enforcement of the Virginia Fertilizer Law.** The purpose of the proposed amendments is to ensure that: (i) regulated products are properly formulated and labeled; (ii) the manufacturer's recommendations for use of these regulated products are in accordance with methods and procedures that enhance the safety, quality and quantity of the food supply for both humans and animals; (iii) guidelines are established for the methods used to provide verification of labeling claims for regulated products; and (iv) assessments against the manufacturer of a product is deficient when compared to its guarantee, or that is not

properly labeled and thus has caused a negative economic impact on a consumer, are paid to the consumer when he may be identified. The amendments also include changes needed to make the regulation compatible with the 1994 changes to the Virginia Fertilizer Act.

Statutory Authority: § 3.1-106.4 of the Code of Virginia.

**Contact:** J. Alan Rogers, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2476, FAX (804) 786-1571 or (804) 828-1120/TTY 


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**† March 14, 2002 - 10 a.m.** -- Public Hearing  
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

**† February 8, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 that the State Board of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-610. Rules Governing the Solicitation of Contributions.** The purpose of the proposed regulatory action is to amend the regulation to conform with amendments to the Virginia Solicitation of Contributions Law relating to (i) the annual registration process and exemption to such registration, (ii) rules governing a professional solicitor, and (iii) general provisions relating to disclosure requirements by for-profit organizations and the use of private mailboxes by the regulated entities.

Statutory Authority: § 57-66 of the Code of Virginia.

**Contact:** Andy Alvarez, Program Manager, Office of Consumer Affairs, Department of Agriculture and Consumer Services, 1100 Bank St., Suite 1101, Richmond, VA 23219, telephone (804) 786-1381, FAX (804) 786-5112, toll-free 1-800-9963 or 1-800-828-1120/TTY 

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# Calendar of Events

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## Virginia State Apple Board

\* \* \* \* \*

† **November 13, 2001 - 9:30 a.m.** -- Open Meeting  
Rowe's Restaurant, 74 Rowe Road (Intersection of I-81 and Rte 250), Staunton, Virginia. ☎

A meeting to approve the minutes of the last meeting, discuss business arising from the board meeting of July 17, 2001, and discuss new business brought before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact David Robishaw at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** David Robishaw, Regional Marketing Development Manager, Department of Agriculture and Consumer Services, 900 Natural Resources Dr., Suite 300, Charlottesville, VA 22903, telephone (804) 984-0573, FAX (804) 984-4156.

## Virginia Winegrowers Advisory Board

† **November 7, 2001 - 10 a.m.** -- Open Meeting  
Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia. ☎

This is the first general business meeting of the Virginia Winegrowers Advisory Board for fiscal year 2002. The board will elect officers, and review and approve the board's financial report and the minutes from the last meeting. In addition, viticulture, enology, and marketing reports will be heard. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Mary Davis-Barton at least two days before the meeting date so that suitable arrangements can be made.

**Contact:** Mary Davis-Barton, Board Secretary, Department of Agriculture and Consumer Services, 1100 Bank Street, Suite 1010, Richmond, VA 23219, telephone (804) 371-7685, FAX (804) 786-3122.

## STATE AIR POLLUTION CONTROL BOARD

**November 7, 2001 - 9:30 a.m.** -- Open Meeting  
Wyndham Garden, 4600 South Laburnum Avenue, Richmond, Virginia. ☎

A regular meeting of the board and joint meeting with the State Advisory Board on Air Pollution.

**Contact:** Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail [cmberndt@deq.state.va.us](mailto:cmberndt@deq.state.va.us).

**November 13, 2001 - 10 a.m.** -- Public Hearing  
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Conference Room, Woodbridge, Virginia.

**January 7, 2002** - Public comments may be submitted this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-91. Regulation for the Control of Motor Vehicle Emissions in Northern Virginia (Rev. MG)**. The purpose of the proposed amendments is to conform the regulation to state law and federal Clean Air Act requirements for the testing of emissions from motor vehicles located or primarily operated in Northern Virginia.

Statutory Authority: § 46.2-1180 of the Code of Virginia.

Public comments may be submitted until November 13, 2001, to Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

**Contact:** Mary E. Major, Environmental Program Manager, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, toll-free 1-800-592-5482 or (804) 698-4021/TTY ☎

\* \* \* \* \*

† **December 7, 2001 - 9 a.m.** -- Public Hearing  
Department of Environmental Quality, 600 East Main Street, Lower Level, Conference Room, Richmond, Virginia.

† **December 24, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **Regulations for the Control and Abatement of Air Pollution (Rev. G00)**.

**9 VAC 5-40. Existing Stationary Sources (repealing 9 VAC 5-40-160 through 9 VAC 5-40-230).**

**9 VAC 5-50. New and Modified Stationary Sources (repealing 9 VAC 5-50-160 through 9 VAC 5-50-230).**

**9 VAC 5-60. Hazardous Air Pollutants (adding 9 VAC 5-60-200 through 9 VAC 5-60-270 and 9 VAC 5-60-300 through 9 VAC 5-60-370).**

The purpose of the proposed amendments is to (i) reduce the number of regulated pollutants to those regulated under the federal program, and (ii) exempt from applicability those sources that are subject to a federal hazardous air pollutant standard. This action will integrate the state's program more logically with the federal Clean Air Act and transfers the standards from 9 VAC 5-40 and 9 VAC 5-50 into 9 VAC 5-60.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

**Contact:** Dr. Kathleen Sands, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, toll-free 1-800-592-5482 or (804) 698-4021/TTY ☎

\* \* \* \* \*

† **November 27, 2001 - 9 a.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street,  
1st Floor, Conference Room, Richmond, Virginia.

† **December 21, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-80. Permits for Stationary Sources (Rev. D00)**. The purpose of the proposed amendments is to (i) revise the emission reduction offset ratio, (ii) provide for state-only permit terms and conditions, (iii) clarify the regulation's applicability, and (iv) make the regulation consistent with the other new source review regulations.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

**Contact:** Karen G. Sabasteanski, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482 or (804) 698-4021/TTY ☎

## BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

† **October 31, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

A meeting of the Architects Section. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail [apelsla@dpor.state.va.us](mailto:apelsla@dpor.state.va.us).

† **November 8, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

A meeting of the Professional Engineers Section. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact

the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail [apelsla@dpor.state.va.us](mailto:apelsla@dpor.state.va.us).

† **November 14, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

A meeting of the Land Surveyors Section. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail [apelsla@dpor.state.va.us](mailto:apelsla@dpor.state.va.us).

† **November 28, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

A meeting of the Landscape Architects Section. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail [apelsla@dpor.state.va.us](mailto:apelsla@dpor.state.va.us).

† **December 5, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

A meeting of the Certified Interior Designers Section. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail [apelsla@dpor.state.va.us](mailto:apelsla@dpor.state.va.us).

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# Calendar of Events

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† **December 13, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY, e-mail [apelsla@dpor.state.va.us](mailto:apelsla@dpor.state.va.us).

## ART AND ARCHITECTURAL REVIEW BOARD

**November 2, 2001 - 10 a.m.** -- Open Meeting  
**December 7, 2001 - 10 a.m.** -- Open Meeting  
Science Museum of Virginia, 2500 West Broad Street, Forum Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies.

**Contact:** Richard L. Ford, AIA, Chairman, Art and Architectural Review Board, 1011 E. Main St., Room 221, Richmond, VA 23219, telephone (804) 643-1977, FAX (804) 643-1981, (804) 786-6152/TTY

## VIRGINIA BOARD FOR ASBESTOS, LEAD AND HOME INSPECTORS

**October 30, 2001 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia.

A routine business meeting. A public comment period will be held at the beginning of the meeting.

**Contact:** Christine Martine, Acting Assistant Director, Virginia Board for Asbestos, Lead and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY, e-mail [asbestos@dpor.state.va.us](mailto:asbestos@dpor.state.va.us).

## COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND FAMILIES

### State Executive Council

**October 31, 2001 - 9 a.m.** -- Open Meeting  
**November 28, 2001 - 9 a.m.** -- Open Meeting  
**December 19, 2001 - 9 a.m.** -- Open Meeting  
Department of Social Services, 730 East Broad Street, Lower Level, Training Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. An agenda will be posted on the web (<http://www.csa.state.va.us>) a week prior to the meeting.

**Contact:** Alan G. Saunders, Director, Comprehensive Services for At-Risk Youth and Families, 1604 Santa Rosa Rd., Suite 137, Richmond, VA 23229, telephone (804) 662-9815, FAX (804) 662-9831, e-mail [AGS992@central.dss.state.va.us](mailto:AGS992@central.dss.state.va.us).

## BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† **November 8, 2001 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 3, Richmond, Virginia.

A meeting to conduct regular business. Public comments will be heard for 15 minutes prior to the start of the meeting.

**Contact:** Senita Booker, Administrative Staff Assistant, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St, 4th Floor, Richmond, VA 23230, telephone (804) 662-7390, FAX (804) 662-9523, (804) 662-7197/TTY, e-mail [Senita.Booker@dhp.state.va.us](mailto:Senita.Booker@dhp.state.va.us), homepage <http://www.dhp.state.va.us>.

## BOARD FOR BARBERS AND COSMETOLOGY

**October 22, 2001 - 10:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Regulatory Review Committee to complete work on the board's proposed regulations.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY, e-mail [barbercosmo@dpor.state.va.us](mailto:barbercosmo@dpor.state.va.us).

## DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

**October 24, 2001 - 3:30 p.m.** -- Open Meeting  
Department for the Blind and Vision Impaired, 620 Beverly Street, Staunton, Virginia. (Interpreter for the deaf provided upon request)

**October 27, 2001 - 2 p.m.** -- Open Meeting  
Radisson Hotel, 700 Monticello Avenue, Norfolk, Virginia. (Interpreter for the deaf provided upon request)

**November 1, 2001 - 7 p.m.** -- Open Meeting  
Summer's Restaurant, 1520 North Courthouse Road, Arlington, Virginia. (Interpreter for the deaf provided upon request)

A meeting to invite comments from the public regarding vocational rehabilitation services for people with visual disabilities. All comments will be considered in developing the state plan for this program.



**Contact:** James G. Taylor, Vocational Rehabilitation Program Director, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3111, FAX (804) 371-3190, toll-free (800) 622-2155, (804) 371-3140/TTY ☎, e-mail taylorjg@dbvi.state.va.us.

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**October 26, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department for the Blind and Vision Impaired intends to repeal regulations entitled: **22 VAC 45-60. Regulations Governing Provision of Services for the Infants, Children, and Youth Program.** The purpose of the proposed action is to repeal the regulations because the Office of the Attorney General has advised the Department for the Blind and Vision Impaired that it lacks the authority to promulgate this regulation.

Statutory Authority: § 22.1-217 of the Code of Virginia.

**Contact:** Glen R. Slonneger, Program Director, Education Services, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3113, FAX (804) 371-3351, toll-free 1-800-622-2155 or (804) 371-3140/TTY ☎

## BOARD FOR BRANCH PILOTS

† **November 1, 2001 - 9:30 a.m.** -- Open Meeting  
† **December 11, 2001 - 9:30 a.m.** -- Open Meeting  
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

## CEMETERY BOARD

**November 14, 2001 - 8:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general meeting of the Regulatory Review Committee at 8:30 a.m. and the full board at 9:30 a.m.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA, telephone (804) 367-2039, FAX (804) 367-2475.

## CHARITABLE GAMING COMMISSION

† **October 29, 2001 - 10 a.m.** -- Open Meeting  
† **December 18, 2001 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. ♿

A commission meeting; agenda to be announced.

**Contact:** Frances C. Jones, Administrative Staff Assistant, Charitable Gaming Commission, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-3014, FAX (804) 786-1079, e-mail jones@cgc.state.va.us.

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **October 31, 2001 - 11 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A work session to discuss public comments received from the second public comment period pertaining to proposed amendments of the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20). The meeting will begin at 11 a.m. and will continue through a working lunch. There will be a public comment period.

**Contact:** Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Board, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7503, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY ☎, e-mail scrafton@cblad.state.va.us.

## Northern Area Review Committee

† **October 31, 2001 - 9 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee will conduct general business, including review of local Chesapeake Bay Preservation Area programs for the Northern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time and location. No comments from the public will be entertained during the Review Committee Meeting; however, written comments are welcome.

**Contact:** Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Board, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (804) 243-7229/TTY ☎, e-mail celliott@cblad.state.va.us.

## Southern Area Review Committee

† **October 31, 2001 - 10 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

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# Calendar of Events

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The committee will conduct general business, including review of local Chesapeake Bay Preservation Area programs for the Southern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time and location. No comments from the public will be entertained during the Review Committee meeting; however, written comments are welcome.

**Contact:** Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Board, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (804) 243-7229/TTY ☎, e-mail celliott@cblad.state.va.us.

## CHILD DAY-CARE COUNCIL

**December 7, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Child Day-Care Council intends to amend regulations entitled: **22 VAC 15-10. Public Participation Guidelines**. The purpose of the proposed amendments is to provide for electronic transmission of information and make changes for clarity, especially regarding the responsibilities of the Child Day-Care Council and Department of Social Services.

Statutory Authority: § 63.1-202.1 of the Code of Virginia.

**Contact:** Arlene Kasper, Program Development Consultant, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1791 or FAX (804) 692-2370.

## COMPENSATION BOARD

**October 23, 2001 - 11 a.m.** -- Open Meeting  
† **November 27, 2001 - 11 a.m.** -- Open Meeting  
Compensation Board, 9th Street Office Building, 202 North 9th Street, 10th Floor, Richmond, Virginia. ♿

A monthly board meeting.

**Contact:** Cindy Waddell, Administrative Assistant, Compensation Board, P.O. Box 710, Richmond, VA 23219, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cwaddell@scb.state.va.us.

## DEPARTMENT OF CONSERVATION AND RECREATION

### Falls of the James Scenic River Advisory Board

† **November 1, 2001 - Noon** -- Open Meeting  
† **December 6, 2001 - Noon** -- Open Meeting  
Richmond City Hall, 900 East Broad Street, 5th Floor, Planning Commission Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Discussion of river issues. Requests for an interpreter for the deaf should be made two weeks prior to the meeting date.

**Contact:** Richard Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 756-4132, FAX (804) 371-7899, e-mail rgibbons@dcr.state.va.us.

### First Landing State Park Master Plan Committee

† **October 30, 2001 - 3 p.m.** -- Open Meeting  
First Landing State Park, Environmental Education Center, 2500 Shore Drive, Virginia Beach, Virginia. ♿ (Interpreter for the deaf provided upon request)

Discussion of a proposed amendment to the park's master plan. Requests for an interpreter for the deaf should be made two weeks prior to the meeting.

**Contact:** Derral Jones, Planning Bureau Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326 Richmond, VA 23219, telephone (804) 786-9042, FAX (804) 371-7899, e-mail djones@dcr.state.va.us.

### Virginia Soil and Water Conservation Board

† **December 12, 2001 - 9 a.m.** -- Open Meeting  
Sheraton Norfolk Waterside, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting to include a joint meeting with the Virginia Association of Soil and Water Conservation Districts Board of Directors. Requests for an interpreter for the deaf should be made two weeks prior to the meeting.

**Contact:** Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.

### Virginia State Parks Foundation

† **December 3, 2001 - 10 a.m.** -- Open Meeting  
Twin Lakes State Park, Cedar Crest Conference Center, Route 2, Green Bay, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting. Requests for an interpreter for the deaf should be made two weeks prior to the meeting.

**Contact:** Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.

### BOARD OF COUNSELING

**October 26, 2001 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A meeting to begin the development of regulations for certification of substance abuse assistants and modification

to regulation for substance abuse counselors. Public comment will be received at the beginning of the meeting.

**Contact:** Evelyn B. Brown, Executive Director, Board of Counseling, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail ebrown@dhp.state.va.us.

## CRIMINAL JUSTICE SERVICES BOARD

**December 13, 2001 - 9 a.m.** -- Public Hearing  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

**November 23, 2001** - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board intends to amend regulations entitled: **6 VAC 20-60. Rules Relating to Compulsory Minimum Training Standards for Dispatchers.** Current minimum training standards were not developed with data from a job task analysis. In November 1998 a job task analysis was conducted statewide to gather data relevant to the job of dispatcher. Minimum training standards were revised based on this data and advisory input.

Statutory Authority: § 9.1-102 of the Code of Virginia.

**Contact:** Judith Kirkendall, Job Task Analysis Administrator, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8003 or FAX (804) 786-0410.

## BOARD OF EDUCATION

**October 22, 2001 - 9 a.m.** -- Open Meeting  
Virginia School For the Deaf and Blind, East Beverley Street, Staunton, Virginia. ♿ (Interpreter for the deaf provided upon request)

**November 28, 2001 - 9 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.

† **January 10, 2002 - 9 a.m.** -- Open Meeting  
Location to be announced.

A regular business meeting. Public comment will be received. Persons requesting the services of an interpreter for the deaf should do so in advance.

**Contact:** Dr. Margaret N. Roberts, Office of Policy, Board of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

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**October 22, 2001 - 2:30 p.m.** -- Public Hearing  
Virginia School For the Deaf and Blind, East Beverley Street, Staunton, Virginia. ♿ (Interpreter for the deaf provided upon request)

**December 7, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: **8 VAC 20-21. Licensure Regulations for School Personnel.** The purpose of the proposed amendments is to conform the regulations to several recent changes in the Code of Virginia, to add a fourth option for obtaining a division superintendent license, and to expand the licensure and license renewal requirements.

Statutory Authority: § 22.1-298 of the Code of Virginia.

**Contact:** Dr. Thomas Elliott, Assistant Superintendent, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-2522 or FAX (804) 225-2524.

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**November 9, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: **8 VAC 20-21. Licensure Regulations for School Personnel.** The purpose of the amendments is to expand the teacher licensure provisions to persons from other professions, including military personnel, who wish to be licensed as a teacher in Virginia.

Statutory Authority: §§ 22-1-298 of the Code of Virginia.

**Contact:** Dr. Thomas Elliott, Assistant Superintendent of Teacher Education, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-2522 or FAX (804) 225-2524.

**November 19, 2001 - 9:30 a.m.** -- Open Meeting  
Glen Allen Arts Center, 2880 Mountain Road, Glen Allen, Virginia. ♿ (Interpreter for the deaf provided upon request)

A work session of the Advisory Board for Teacher Education and Licensure. No public comment will be received. Persons requesting the services of an interpreter for the deaf should do so in advance.

**Contact:** Dr. Margaret N. Roberts, Office of Policy, Board of Education, P. O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

**December 4, 2001 - 9:30 a.m.** -- Open Meeting  
Henrico County School Board Office, 3820 Nine Mile Road, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

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# Calendar of Events

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A working session of the Accountability Advisory Committee. Public comment will not be received. Persons requesting the services of an interpreter for the deaf should do so in advance.

**Contact:** Ms. Cam Harris, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2102, FAX (804) 225-2524.


## STATE BOARD OF ELECTIONS

**November 26, 2001 - 1 p.m.** -- Open Meeting  
State Capitol, House Room 1, Richmond, Virginia. 

Certification of November 6, 2001, election results.


**Contact:** Vanessa E. Archie, Executive Secretary Senior, State Board of Elections, 200 N. 9th St., Room 101, Richmond, VA 23219, telephone (804) 786-6551, FAX (804) 371-0194, toll-free (800) 552-9745, (804) 260-3466/TTY , e-mail varchie@sbe.state.va.us.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

**October 29, 2001 - 7 p.m.** -- Public Hearing  
Massanutten Regional Library, 174 South Main Street, Harrisonburg, Virginia. 


A public hearing to receive comments on the draft permit for operating a hazardous waste storage area at Merck and Co., Stonewall Plant in Elkton.

**Contact:** Dinesh Vithani, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4204, e-mail dkvithani@deq.state.va.us.

**† October 30, 2001 - 7 p.m.** -- Open Meeting  
Carysbrook Performing Arts Center, Highway 15, Carysbrook, Virginia. 


An informational briefing to describe the proposed facility and the Department of Environmental Quality's rationale for permitting determinations for a proposal by Tenaska Virginia Partners, L.P. to construct and operate a combined cycle power plant 1.0 mile southeast of the intersection of Route 619 and Route 680 in Fluvanna County.


**Contact:** Kevin D. Gossett, Department of Environmental Quality, 806 Westwood Office Park, Fredericksburg, VA 22401, telephone (540) 899-4600, FAX (540) 899-4647, e-mail kdgossett@deq.state.va.us.

**† November 7, 2001 - 7 p.m.** -- Public Hearing  
Cumberland County Public Library Building, 1539 Anderson Highway, Meeting Room, Cumberland, Virginia.  (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the draft permit amendment to incorporate a ground water monitoring plan for the Randolph Sanitary Landfill located in Cumberland County.


**Contact:** James Bernard, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone

(804) 698-4222, FAX (804) 698-4327, (804) 698-4021/TTY , e-mail jfbernard@deq.state.va.us.

**† November 29, 2001 - 7 p.m.** -- Public Hearing  
Central Elementary School, Palmyra, Virginia.  (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the proposed air permit for Tenaska Virginia Partners, L.P. to construct and operate a combined cycle power plant 1.0 mile southeast of the intersection of Route 619 and Route 680 in Fluvanna County. The official public comment period on this permit begins on October 30, 2001, and ends on December 14, 2001.


**Contact:** Kevin D. Gossett, Department of Environmental Quality, 806 Westwood Office Park, Fredericksburg, VA 22401, telephone (540) 899-4600, FAX (540) 899-4647, e-mail kdgossett@deq.state.va.us.

**† November 8, 2001 - 7 p.m.** -- Open Meeting  
Orlean Volunteer Fire Department, 6838 Leeds Manor Road, Orlean, Virginia. 


A public meeting to receive comments on the development of a Total Maximum Daily Load for fecal coliform bacteria on an approximate 7.4-mile segment of Thumb Run located in Fauquier County.

**Contact:** Bryant H. Thomas, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3843, FAX (703) 583-3841, e-mail bhthomas@deq.state.va.us.


## BOARD OF FORESTRY

**† October 30, 2001 - 8:30 a.m.** -- Open Meeting  
Holiday Inn, 551 Highway 58, Norton, Virginia.  (Interpreter for the deaf provided upon request)

A general business meeting.


**Contact:** Donna S. Hoy, Administrative Staff Specialist, Board of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (804) 977-6555, FAX (804) 977-7749, (804) 977-6555/TTY , e-mail hoyd@dof.state.va.us.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

**October 30, 2001 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

A meeting of the Special Conference Committee to hold informal hearings. There will not be a public comment period.

**Contact:** Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9907, FAX (804) 662-9523, e-mail CEmma-Leigh@dhp.state.va.us.

† **November 14, 2001 - 9 a.m.** -- Open Meeting  
† **November 15, 2001 - 9 a.m.** -- Open Meeting  
Exporior, Inc., 3813 Gaskins Road, Richmond, Virginia 


A meeting to review and develop new questions for the state board examination data bank. The meeting will begin with a 15-minute public hearing.

**Contact:** Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad Street, 4th Floor, Richmond, VA, telephone (804) 662-9907, FAX (804) 662-9523, e-mail CEmma-Leigh@dhp.state.va.us.


## BOARD FOR GEOLOGY

**October 25, 2001 - 9 a.m.** -- Open Meeting  
Department for Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting; regulatory review will be discussed.

**Contact:** William H. Ferguson, II, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2406, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail geology@dpor.state.va.us.

## GEORGE MASON UNIVERSITY

**October 24, 2001 - 9:30 a.m.** -- Open Meeting  
**November 28, 2001 - 3 p.m.** -- Open Meeting  
George Mason University, Mason Hall, Room D23, Fairfax, Virginia. 

A meeting of the Board of Visitors to hear reports of the standing committees and to act on recommendations presented by the committees. An agenda will be available seven days prior to the meeting.

**Contact:** Mary Roper, Administrative Staff Assistant, Office of the President, 4400 University Dr., Fairfax, VA 22030, telephone (703) 993-8703 or FAX (703) 993-8707.

## STATE BOARD OF HEALTH

† **October 24, 2001 - 10 a.m.** -- Public Hearing  
Department of Health, 1500 East Main Street, Conference Room 105, Richmond, Virginia.

† **December 21, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled: **12 VAC 5-120. Regulations for Testing Children for Elevated Blood-Lead Levels.** The purpose of the proposed regulations is to establish a protocol, based on 1997 guidelines from the federal Centers for Disease Control and Prevention, for testing children for elevated blood-lead levels and reporting laboratory results to the department.

Statutory Authority: § 32.1-46.1 of the Code of Virginia.

**Contact:** Clayton Pape, Director, Lead Safe Program, Department of Health, 1500 E. Main St., Richmond, VA 23219, telephone (804) 225-4463, FAX (804) 371-6031 or toll-free 1-800-668-7987.

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† **October 30, 2001 - 10 a.m.** -- Public Hearing  
Department of Health, 1500 East Main Street, 3rd Floor, Conference Room, Richmond, Virginia.

† **December 21, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled: **12 VAC 5-475. Regulations Implementing the Virginia Organ and Tissue Donor Registry.** These regulations will create a statewide organ and tissue donor registry that will maintain limited information on Virginians who are willing to donate their organs, eyes and tissues for transplantation or research.

Statutory Authority: § 32.1-292.2 of the Code of Virginia.

**Contact:** Eileen Guertler, Director, Virginia Transplant Council, Department of Health, 1500 E. Main St., Richmond, VA 23219, telephone (804) 786-5589 or FAX (804) 786-0892.

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† **October 24, 2001 - 10 a.m.** -- Public Hearing  
Department of Health, 1500 East Main Street, Conference Room 105, Richmond, Virginia.

† **December 21, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-520. Regulations Governing the Dental Scholarship and Loan Repayment Program.** The purpose of the proposed action is to provide for administration of the dentist loan repayment program, which was recently established as a complement to the existing scholarship program. The repayment program will provide incentives for dentists to practice in underserved areas of Virginia.

Statutory Authority: §§ 32.1-122.9 and 32.1-122.9:1 of the Code of Virginia.

**Contact:** Karen Day, Department of Health, 1500 E. Main St., Richmond, VA 23219, telephone (804) 371-4000 or (804) 371-4004.

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**November 9, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-408. Certificate of Quality Assurance of Managed Care Health Insurance Plan Licensees.** The purpose of the proposed

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amendments is to (i) continue meeting the agency's responsibility to protect public health by ensuring the quality of MCHIPs, and (ii) promote fairness by recognizing distinctions among MCHIPs and avoiding regulating MCHIPs in a homogenous manner.

Statutory Authority: § 32.1-137.3 of the Code of Virginia.

**Contact:** Rene Cabral-Daniels, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2100 or FAX (804) 367-2149.

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**October 25, 2001 - 7 p.m.** -- Public Hearing  
Lord Fairfax Community College, 173 Skirmisher Lane, Middletown, Virginia.

**November 7, 2001 - 7 p.m.** -- Public Hearing  
Roanoke County Administration Building, 5204 Bernard Drive, Roanoke, Virginia.

**November 29, 2001 - 10 a.m.** -- Public Hearing  
Henrico County Government Center, 4301 East Parham Road, Henrico County Complex, Richmond, Virginia.

**December 7, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled: **12 VAC 5-615. Authorized Onsite Soil Evaluator Regulations.** These regulations will set forth a program by which the agency may accept private site evaluations and designs, in compliance with the board's regulations for onsite sewage systems, designed and certified by an authorized onsite soil evaluator (AOSE) or a licensed professional engineer (PE) in consultation with an AOSE.

Statutory Authority: §§ 32.1-163.5 and 32.1-164 of the Code of Virginia.

**Contact:** Donald J. Alexander, Director, Division Onsite Sewage Water Services, Department of Health, Office of Environmental Health Services, P.O. Box 2448, Room 115, Richmond, VA 23218, telephone (804) 786-1620 or FAX (804) 225-4003.

## DEPARTMENT OF HEALTH PROFESSIONS

### Health Practitioners' Intervention Program Committee

**October 26, 2001 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review reports, policies, and procedures. The committee will meet in open session for general discussion of the program, and may meet in executive session to consider specific requests from applicants or participants in the program.

**Contact:** John W. Hasty, Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9424, FAX (804) 662-9114, (804) 662-9197/TTY

## JAMESTOWN-YORKTOWN FOUNDATION

**November 8, 2001 - 10 a.m.** -- Open Meeting

**November 9, 2001 - 8 a.m.** -- Open Meeting  
Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia. (Interpreter for the deaf provided upon request)

A semi-annual meeting of the Board of Trustees. Specific schedules to be confirmed. Public comment will not be heard.

**Contact:** Laura W. Bailey, Executive Assistant to the Board, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4840, FAX (757) 253-5299, (757) 253-7236/TTY, e-mail lwbailey@jyf.state.va.us.

## STATE BOARD OF JUVENILE JUSTICE

**October 24, 2001 - 9 a.m.** -- Open Meeting

Department of Juvenile Justice, 700 Centre Building, 700 East Franklin Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Committees of the board will meet to receive certification of audit reports concerning residential and nonresidential programs. The full board will meet at 10 a.m. to take certification action on the reports and to receive comments from the public on proposed changes to "Length of Stay Guidelines" governing juveniles who are indeterminately committed to the Department of Juvenile Justice.

**Contact:** Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre Bldg., 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0743 or FAX (804) 371-0773, e-mail carigndr@djj.state.va.us.

## DEPARTMENT OF LABOR AND INDUSTRY

### Virginia Migrant and Seasonal Farmworkers Board


**October 24, 2001 - 10 a.m.** -- Open Meeting

State Capitol, House Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular quarterly meeting.

**Contact:** Betty B. Jenkins, Board Administrator, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 782-2391, FAX (804) 371-6524, (804) 786-2376/TTY, e-mail bbj@doli.state.va.us.

## THE LIBRARY OF VIRGINIA

**November 19, 2001 - 7:30 a.m.** -- Open Meeting  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. 


A meeting of the board to discuss matters pertaining to the Library of Virginia and the board. Committees of the board will meet as follows:

7:30 a.m. - Executive Committee, Conference Room B.


8:15 a.m. - Public Library Development Committee, Orientation Room;  
Publications and Educational Services Committee, Conference Room B;  
Records Management Committee, Conference Room C.

9:30 a.m. - Archival and Information Services Committee, Orientation Room;  
Collection Management Services Committee, Conference Room B;  
Legislative and Finance Committee, Conference Room C.


10:30 a.m. - Library Board, Conference Room 2M.

**Contact:** Jean H. Taylor, Executive Secretary to the Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-2000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY , e-mail jtaylor@lva.lib.va.us.


## COMMISSION ON LOCAL GOVERNMENT

**November 14, 2001 - 10 a.m.** -- Open Meeting  
Pocahontas Building, 900 East Main Street, Suite 103, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting to consider matters that may be presented.

**Contact:** Barbara Bingham, Administrative Assistant, Commission on Local Government, Pocahontas Building, 900 E. Main St., Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY , e-mail bbingham@clg.state.va.us.


## LONGWOOD COLLEGE

† **October 25, 2001 - 4 p.m.** -- Open Meeting  
Omni Hotel, Barlowe's Terrace, 100 South 12th Street, Richmond, Virginia. 

A meeting to conduct routine business of the Executive Committee.

**Contact:** Jeanne Hayden, Administrative Staff Assistant, Longwood College, Office of the President, 201 High St., Farmville, VA 23909, telephone (804) 395-2004.


## VIRGINIA MANUFACTURED HOUSING BOARD

† **November 1, 2001 - 10 a.m.** -- Open Meeting  
Department of Housing and Community Development, The Jackson Center, 501 North 2nd Street, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)


A regular meeting to address complaints and claims related to manufactured housing licensees and to carry out administrative actions under the Manufactured Housing Licensing and Transaction Recovery Fund Regulations

**Contact:** Curtis L. McIver, Secretary, State Building Code Administrator, Virginia Manufactured Housing Board, State Building Code Admin. Office, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160, FAX (804) 371-7092, (804) 371-7089/TTY , e-mail cmciver@dhcd.state.va.us.

## MARINE RESOURCES COMMISSION

**October 23, 2001 - 9:30 a.m.** -- Open Meeting  
**November 27, 2001 - 9:30 a.m.** -- Open Meeting  
**December 18, 2001 - 9:30 a.m.** -- Open Meeting  
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia. 

A monthly meeting.

**Contact:** Ginny Chappell, Commission Secretary, Marine Resources Commission, 2600 Washington Ave., Newport News, VA 23607, telephone (757) 247-2206, FAX (757) 247-2020, toll-free (800) 541-4646, (757) 247-2292/TTY , e-mail gchappell@mrc.state.va.us.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**December 7, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-110. Eligibility and Appeals (Married and Institutionalized Individuals Eligibility and Patient Pay)**. The purpose of the proposed amendments is to amend the hardship rule definition used to determine Medicaid eligibility for institutionalized individuals who have spouses living in the community.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until December 7, 2001, to Pat Sykes, Manager, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

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# Calendar of Events

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**December 7, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to adopt regulations entitled: **12 VAC 30-150. Uninsured Medical Catastrophe Fund**. The purpose of the proposed regulation is to establish the requirements and criteria by which DMAS will administer the Uninsured Medical Catastrophe Fund.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until December 7, 2001, to Jack Quigley, Division of Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

## BOARD OF MEDICINE

**October 24, 2001 - 8:30 a.m.** -- Open Meeting  
Wyndham Hotel, 2801 Hershberger Road, Roanoke, Virginia.

A panel of the board will hold a formal hearing to inquire into allegations that a practitioner may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The panel will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

**Contact:** Peggy Sadler or Renee Dixon, Staff, Board of Medicine, 6606 W. Broad St., Richmond VA, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail psadler@dhp.state.va.us.

† **December 7, 2001 - 8 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A meeting of the Executive Committee will be held in open and closed session to review disciplinary files requiring administrative action, adopt amendments or take regulatory action as presented, and act on other issues that may come before the board. Public comment will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

## Informal Conference Committee

**October 31, 2001 - 9:30 a.m.** -- Open Meeting  
Wyndham Hotel, 2801 Hershberger Road, Roanoke, Virginia.

**November 8, 2001 - 9:30 a.m.**-- Open Meeting  
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

**November 14, 2001 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

An informal conference committee composed of three members of the board will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

**Contact:** Peggy Sadler/Renee Dixon, Staff, Board of Medicine, 6606 W. Broad St., Richmond, VA, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail PSadler@dhp.state.va.us.

## STATE BOARD OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

† **December 5, 2001 - 6 p.m.** -- Public Hearing  
J. Sargent Reynolds Community College, Corporate Center, North Run Business Park, 1630 East Parham Road, Richmond, Virginia.

† **December 24, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Mental Health, Mental Retardation and Substance Abuse Services intends to amend regulations entitled: **12 VAC 35-200. Regulations for Respite and Emergency Care Admission to Mental Retardation Facilities**. The purpose of the proposed action is to revise the maximum length of stay for respite and emergency care admissions, clarify the case management community services board's responsibility for assuring discharges, and update provisions consistent with current practice and statutory requirements.

Statutory Authority: §§ 37.1-10 and 37.1-65.2 of the Code of Virginia.

**Contact:** Cynthia Smith, Office of Mental Retardation Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0946 or FAX (804) 692-0077

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† **December 24, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Mental Health, Mental Retardation and Substance Abuse Services intends to repeal regulations entitled:



**24 VAC 35-20. Mandatory Standards for the Certification of First Offender Drug Abuse Diversion and Education Program.**

**12 VAC 35-140. Mandatory Standards for Community Mental Health Programs.**

**12 VAC 35-150. Mandatory Standards for Community Mental Retardation Programs.**


**12 VAC 35-160. Mandatory Standards for Community Substance Abuse Programs.**

The purpose of the proposed action is to repeal regulations that are outdated and duplicate the function and intent of the existing licensing regulations.


Statutory Authority: § 37.1-10 of the Code of Virginia.

**Contact:** Wendy V. Brown, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 225-2252 or FAX (804) 371-0092.


## STATE MILK COMMISSION

**December 12, 2001 - 10:30 a.m.** -- Open Meeting  
Department of Forestry, 900 Natural Resources Drive, Room 3301, Charlottesville, Virginia. 

A regular meeting to consider industry issues, distributor licensing, base transfers, and reports from staff. The commission will also review a request to repeal subdivisions b, c, and d of subsection 6 of 2 VAC 15-20-100, Regulations for the Control and Supervision of Virginia's Milk Industry.

**Contact:** Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Ninth St. Office Bldg., 202 N. Ninth St., Room 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, (804) 786-2013/TTY , e-mail ewilson@smc.state.va.us.

## MOTOR VEHICLE DEALER BOARD

**November 5, 2001 - 8:30 a.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Committees will meet as follows:

- Dealer Practices Committee - 8:30 a.m.
- Franchise Law Committee - Five minutes after Dealer Practices Committee
- Licensing Committee - 9:30 a.m. or five minutes after Franchise Law
- Advertising Committee - 10 a.m. or five minutes after Licensing Committee
- Finance Committee - 10:30 a.m. or five to 45 minutes after Personnel Committee
- Personnel Committee - Five minutes after Advertising Committee
- Transaction Recovery Fund Committee - 11 a.m. or five to 45 minutes after Finance


The full board will meet at 1 p.m. Meetings may begin later but not earlier than scheduled. Meeting end times are approximate. Any person who needs any accommodation in order to participate in the meeting should contact the board at least 10 days before the meeting so that suitable arrangements can be made.


**Contact:** Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, toll-free (877) 270-0203, e-mail dboard@mvb.state.va.us.

## VIRGINIA MUSEUM OF FINE ARTS


**† October 25, 2001 - 9 a.m.** -- Open Meeting  
Lewis Ginter Botanical Garden, Robins Room, 1800 Lakeside Avenue, Richmond, Virginia. 


A gathering of trustees to discuss museum issues. Public comment will not be received.

**Contact:** Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.

**† November 6, 2001 - 8 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Main Lobby Conference Room, Richmond, Virginia. 


A monthly meeting held for staff to brief the Executive Committee.

**Contact:** Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, Virginia 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.

**† November 14, 2001 - 10 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. 

Committee meetings as follows:

- Program Review Committee - 10 a.m. - Main Lobby Conference Room
- Architect Search Committee - 11 a.m. - CEO 2nd Floor Meeting Room
- Legislative Committee - 12:30 p.m. - Auditorium
- Planning Committee - 12:30 p.m. - Auditorium
- Education and Programs Committee - 2 p.m. - CEO 1st Floor Meeting Room
- Communications and Marketing Committee - 3:15 p.m. - CEO 2nd Floor Meeting Room
- Exhibitions Committee - 4:30 p.m. - CEO 1st Floor Meeting Room

**Contact:** Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, Virginia 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.

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# Calendar of Events

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† **November 15, 2001 - 8:30 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue,  
Richmond, Virginia. ♿

Committee meetings as follows:

Buildings and Grounds Committee - 8:30 a.m. - CEO 2nd  
Floor Meeting Room  
Collections Committee - 9:30 a.m. - Auditorium  
Finance Committee 11 a.m. - Auditorium  
Board of Trustees - 12:30 p.m. - Auditorium

**Contact:** Suzanne Broyles, Secretary of the Museum,  
Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond,  
Virginia 23221, telephone (804) 340-1503, FAX (804) 340-  
1502, (804) 340-1401/TTY ☎, e-mail  
sbroyles@vmfa.state.va.us.

## BOARD OF NURSING

**November 26, 2001 - 8:30 a.m.** -- Open Meeting  
**November 28, 2001 - 8:30 a.m.** -- Open Meeting  
**November 29, 2001 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 2, Richmond, Virginia. ♿

A panel of the board will conduct formal hearings with  
licensees and certificate holders. Public comment will not  
be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of  
Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230,  
telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-  
7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

## Special Conference Committee

**October 22, 2001 - 8:30 a.m.** -- Open Meeting  
**October 23, 2001 - 8:30 a.m.** -- Open Meeting  
**December 4, 2001 - 8:30 a.m.** -- Open Meeting  
**December 5, 2001 - 8:30 a.m.** -- Open Meeting  
**December 6, 2001 - 8:30 a.m.** -- Open Meeting  
**December 10, 2001 - 8:30 a.m.** -- Open Meeting  
**December 11, 2001 - 8:30 a.m.** -- Open Meeting  
**December 18, 2001 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Rooms 3 and 4, Richmond, Virginia. ♿

A Special Conference Committee, comprised of two or  
three members of the Virginia Board of Nursing, will  
conduct informal conferences with licensees or certificate  
holders. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of  
Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230,  
telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-  
7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

## VIRGINIA OUTDOORS FOUNDATION

**December 4, 2001 - 10 a.m.** -- Open Meeting  
**December 5, 2001 - 9 a.m.** -- Open Meeting  
State Capitol, House Room 2, Richmond, Virginia. ♿

A regularly scheduled meeting of the Board of Trustees to  
discuss the business of the foundation and accept  
conservation easements. Public input will be accepted after  
the regular business meeting.

**Contact:** Tamara A. Vance, Executive Director, Virginia  
Outdoors Foundation, 203 Governor Street, Richmond, VA  
23219, telephone (804) 225-2147.

## BOARD OF PHARMACY

**October 25, 2001 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 4, Richmond, Virginia. ♿

The Special Conference Committee will discuss disciplinary  
matters. Public comments will not be received.

**Contact:** Elizabeth Scott Russell, Executive Director, Board  
of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA  
23230, telephone (804) 662-9911, FAX (804) 662-9313.

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† **November 8, 2001 - 9 a.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 2, Richmond, Virginia. ♿

† **December 21, 2001** - Public comments may be submitted  
until this date.

Notice is hereby given in accordance with § 2.2-4007 of the  
Code of Virginia that the Board of Pharmacy intends to  
amend regulations entitled: **18 VAC 110-20. Regulations  
Governing the Practice of Pharmacy.** The amendments  
are required in order to comply with Chapter 876 of the  
2000 Acts of Assembly requiring the board to promulgate  
regulations for approval of innovative programs (pilot  
projects) in pharmacy for which some waiver of law or  
regulation would be necessary. The proposed regulations  
replace emergency regulations that became effective on  
January 10, 2000, and are identical to those regulations.

Statutory Authority: §§ 54.1-2400 and 54.1-3307.2 of the  
Code of Virginia.


**Contact:** Elizabeth Scott Russell, Executive Director, Board  
of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA  
23230, telephone (804) 662-9911, FAX (804) 662-9313.

**November 8, 2001 - 9:15 a.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 2, Richmond, Virginia. ♿


The board will receive comment on a draft proposal to  
increase fees and on a draft proposal for registration of  
pharmacy technicians.

**Contact:** Elizabeth Scott Russell, RPh, Executive Director,  
Board of Pharmacy, Southern States Bldg., 6606 W. Broad  
St., 4th Floor, Richmond, VA 23230-1717, telephone (804)  
662-9911, FAX (804) 662-9313, (804) 662-7197/TTY ☎, e-  
mail erussell@dhp.state.va.us.


## POLYGRAPH EXAMINERS ADVISORY BOARD

† **December 12, 2001 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail polygraph@dpor.state.va.us.


## BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

† **November 13, 2001 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Conference Room 4W,  
Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular board meeting.

**Contact:** Judy Spiller, Executive Secretary, Board for Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519, FAX (804) 367-9537, (804) 367-9753/TTY , e-mail spiller@dpor.state.va.us.

## BOARD OF PSYCHOLOGY

† **October 26, 2001 - 4 p.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 2, Richmond, Virginia. 

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Psychology intends to amend regulations entitled: **18 VAC 125-30. Regulations Governing the Certification of Sex Offender Treatment Providers.** The amendments are proposed as a result of the board's review of regulations pursuant to Executive Order 25. The amendments make the miscellaneous fees consistent with other professions regulated by the board, provide clarification about supervised experience required prior to certification, and review reinstatement requirements. The number of clock hours of required training remains at 50, but more of those hours must be in subjects specific to sex offender assessment and treatment interventions.

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

**Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA

23230-1717, telephone (804) 662-9913 or FAX (804) 662-9943.

## VIRGINIA RACING COMMISSION

**November 14, 2001 - 9:30 a.m.** -- Open Meeting  
**December 19, 2001 - 9:30 a.m.** -- Open Meeting  
Tyler Building, 1300 East Main Street, Richmond, Virginia.  
(Interpreter for the deaf provided upon request)

A monthly meeting with a segment for public participation. The commission will hear a report from Colonial Downs.

**Contact:** William H. Anderson, Policy Analyst Senior, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23214, telephone (804) 966-7404, FAX (804) 966-7418, e-mail Anderson@vrc.state.va.us

## REAL ESTATE APPRAISER BOARD

**October 23, 2001 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.

A general business meeting.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, e-mail reboard@dpor.state.va.us.

## REAL ESTATE BOARD

**October 24, 2001 - 4 p.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.

A general business meeting of the Real Estate Education Committee.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, e-mail reboard@dpor.state.va.us.

**October 25, 2001 - 8 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.

A general meeting of the Fair Housing Committee.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA, telephone (804) 367-8552, FAX (804) 367-2475, e-mail reboard@dpor.state.va.us.

**October 25, 2001 - 9 a.m.** -- Open Meeting  
**December 6, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.

A general business meeting. At the December 6 meeting the board will consider the adoption of proposed regulations.

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# Calendar of Events

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**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, e-mail reboard@dpor.state.va.us.

## BOARD OF REHABILITATIVE SERVICES

† **November 15, 2001 - 10 a.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct quarterly business. Public comments will be received during the morning session.

**Contact:** Barbara Tyson, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23288-0300, telephone (804) 662-7010, toll-free (800) 552-5019, (804) 662-9040/TTY, e-mail DRS@DRS.state.va.us.

## DEPARTMENT OF REHABILITATIVE SERVICES

**October 22, 2001 - 4 p.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Lee Building, 1st Floor, Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

**November 19, 2001 - 4 p.m.** -- Open Meeting  
Woodrow Wilson Rehabilitation Center, The William Caschette Chapel, Fishersville, Virginia. (Interpreter for the deaf provided upon request)

**November 27, 2001 - 4 p.m.** -- Open Meeting  
Higher Education Center, Grand Hall Left, 1 Partnership Circle, Abingdon, Virginia. (Interpreter for the deaf provided upon request)

A public forum for Virginians to discuss vocational rehabilitation and supported employment planning.

**Contact:** Katherine Lawson, Planner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23288-0300, telephone (804) 662-7255, FAX (804) 662-7696, toll-free (800) 552-5019, (804) 662-9040/TTY, e-mail lawsonkw@drs.state.va.us.

## VIRGINIA RESOURCES AUTHORITY

**November 13, 2001 - 9 a.m.** -- Open Meeting  
**December 11, 2001 - 9 a.m.** -- Open Meeting  
Virginia Resources Authority, 707 East Main Street, 2nd Floor Conference Room, Richmond, Virginia.

A regular meeting of the Board of Directors to (i) review and, if appropriate, approve the minutes from the most recent monthly meeting; (ii) review the authority's operations for the prior month; (iii) review applications for loans submitted to the authority for approval; (iv) consider loan commitments for approval and ratification under its various programs; (v) approve the issuance of any bonds; (vi) review the results of any bond sales; and (vii) consider such other matters and take such other actions as it may

deem appropriate. Various committees of the Board of Directors may also meet immediately before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting and any committee meetings will be available at the offices of the authority one week prior to the date of the meeting. Any person who needs any accommodation in order to participate in the meeting should contact the authority at least 10 days before the meeting so that suitable arrangements can be made.

**Contact:** Benjamin Hoyle, Executive Assistant, Virginia Resources Authority, 707 E. Main St., Suite 1350, Richmond, VA 23219, telephone (804) 644-3100, FAX (804) 644-3109, e-mail bhoyle@vra.state.va.us.

## DEPARTMENT FOR RIGHTS OF VIRGINIANS WITH DISABILITIES

### Developmental Disabilities (DD) Advisory Council

† **October 25, 2001 - 10 a.m.** -- Open Meeting  
Hampton Inn, 900 West Main Street, Charlottesville, Virginia. (Interpreter for the deaf provided upon request)

A full council meeting. Public comment is welcome and will be received at approximately 10 a.m.

**Contact:** Kim Ware, Program Operations Coordinator, Department for Rights of Virginians with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2061, FAX (804) 225-3221, toll-free (800) 552-3962, (804) 225-2042/TTY, e-mail wareka@drvd.state.va.us.

## SCIENCE MUSEUM OF VIRGINIA

**October 25, 2001 - 3 p.m.** -- Open Meeting  
Science Museum of Virginia, 2500 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting of the Board of Trustees.

**Contact:** Karen Raham, Administrative Assistant, Science Museum of Virginia, 2500 W. Broad St., Richmond, VA telephone (804) 864-1499, FAX (804) 864-1560, toll-free (800) 659-1727, e-mail kraham@smv.org.

## SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

**October 24, 2001 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.

A meeting to hear appeals of health department denials of septic tank permits.

**Contact:** Susan C. Sherertz, Secretary to the Appeals Board, Sewage Handling and Disposal Appeal Review Board, 1500 E. Main St., Richmond, VA, telephone (804) 371-4236, FAX (804) 225-4003, e-mail ssherertz@vdh.state.va.us.

**VIRGINIA SMALL BUSINESS FINANCING  
AUTHORITY**

**October 23, 2001 - 10 a.m.** -- Open Meeting  
Virginia Crossings Conference Center, 1000 Virginia Center  
Parkway, Glen Allen, Virginia. ☎

A meeting to review applications for loans submitted to the authority for approval and general business of the board. Time is subject to change depending upon the agenda of the board.

**Contact:** Scott E. Parsons, Executive Director, Department of Business Assistance, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8254, FAX (804) 225-3384, e-mail sparsons@dba.state.va.us.

**DEPARTMENT OF SOCIAL SERVICES**

**November 23, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **22 VAC 40-41. Neighborhood Assistance Tax Credit Program.** The purpose of the proposed action is to amend the regulation to reflect changes to the controlling statute. Changes include adding additional health professionals and building contractors to those able to donate services and allowing individuals to receive tax credits for cash donations to approved projects.

Statutory Authority: § 63.1-323 of the Code of Virginia.

**Contact:** Phyl Parrish, Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1895 or FAX (804) 692-1869.

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**December 7, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled:

**22 VAC 40-32. Aid to Families with Dependent Children (AFDC) Program - Determining AFDC Eligibility When Only Dependent Child Receives Foster Care Benefits.**

**22 VAC 40-290. Earned Income Disregards/Student Earnings in the Aid to Families with Dependent Children (AFDC) Program.**

**22 VAC 40-300. Lump Sum Ineligibility Period in the Aid to Families with Dependent Children (AFDC) Program.**

**22 VAC 40-310. Maximum Resource Limit in the Aid to Families with Dependent Children (AFDC) Program.**

**22 VAC 40-320. Disclosure of Information to Law-Enforcement Officers in the Aid to Families with Dependent Children (AFDC) Program.**

**22 VAC 40-350. Real Property Disposition Period in the Aid to Families with Dependent Children (AFDC) Program.**

**22 VAC 40-360. Definition of a Home in the Aid to Families with Dependent Children (AFDC) and General Relief (GR) Programs.**

**22 VAC 40-370. Job Training Partnership Act (JTPA) Income Disregards in the Aid to Families with Dependent Children (AFDC) Program.**

**22 VAC 40-380. Disregard of Certain Income Received by Indian Tribes in the Aid to Families with Dependent Children (AFDC) Program.**

**22 VAC 40-390. Persons and Income Required to be Considered When Evaluating Eligibility for Assistance in the Aid to Families with Dependent Children (AFDC) Program.**

**22 VAC 40-420. Aid to Families with Dependent Children: Unemployed Parent Demonstration (AFDC-UPDEMO) Project.**

**22 VAC 40-430. Treatment of Casual and Inconsequential Income in the Aid to Families with Dependent Children (AFDC) Program.**

**22 VAC 40-440. Aid to Families with Dependent Children (AFDC) Program Allocation of Income.**

**22 VAC 40-450. Lump Sum Payments in the Aid to Families with Dependent Children (AFDC) Program.**

**22 VAC 40-460. Deeming of Stepparent Income in the Aid to Families with Dependent Children (AFDC) Program.**

**22 VAC 40-490. Aid to Families with Dependent Children (AFDC) Program - Deprivation Due to the Incapacity of a Parent.**

**22 VAC 40-500. Work-Related Child Care Expenses Disregarded in the Aid to Families with Dependent Children (AFDC) Program.**

**22 VAC 40-510. Aid to Families with Dependent Children (AFDC) Program - Entitlement Date.**

**22 VAC 40-520. Aid to Families with Dependent Children (AFDC) Program – Disregarded Income and Resources.**

**22 VAC 40-530. Aid to Families with Dependent Children (AFDC) Program - Deprivation Due to Continued Absence.**

**22 VAC 40-550. Aid to Families with Dependent Children Program - Unemployed Parent (AFDC-UP) Program.**

**22 VAC 40-580. Aid to Families with Dependent Children (AFDC) – Elimination of Monthly Reporting.**

**22 VAC 40-590. Aid to Families with Dependent Children - Earned Income Tax Credit (EITC) Disregard.**

**22 VAC 40-610. Aid to Families with Dependent Children (AFDC) Program - Exclusion of Children Receiving Adoption Assistance and Foster Care Maintenance Payment.**

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# Calendar of Events

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**22 VAC 40-620. Aid to Families with Dependent Children (AFDC) Program - Fifth Degree Specified Relative.**

**22 VAC 40-650. Aid to Families with Dependent Children (AFDC) Program - Disqualification for Intentional Program Violation.**

**22 VAC 40-750. Grant Diversion.**

**22 VAC 40-760. Employment Services Program Policy.**

The Board of Social Services proposes to repeal 28 regulations that apply to the now obsolete Aid to Families with Dependent Children (AFDC) program. The Temporary Assistance for Needy Families (TANF) program has replaced the AFDC program and all rules regarding this program have been consolidated into one regulation, 22 VAC 40-295, Temporary Assistance for Needy Families, which is currently in the promulgation process.

Statutory Authority: § 63.1-25 of the Code of Virginia.

**Contact:** Mark L. Golden, TANF Program Consultant, 730 E. Broad St, Richmond, VA 23219, telephone (804) 692-1735 or FAX (804) 692-1704.

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**December 7, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **22 VAC 40-330. Collection of Overpayments in the Refugee Other Assistance Programs.** This regulation provides rules for collecting payment of funds erroneously paid to recipients of AFDC and Refugee Other Assistance Programs. The regulation is being amended so that the regulation only applies to Refugee Other Assistance Programs and not AFDC.

Statutory Authority: § 63.1-25 of the Code of Virginia.

**Contact:** Mark L. Golden, TANF Program Consultant, 730 E. Broad St, Richmond, VA 23219, telephone (804) 692-1735 or FAX (804) 692-1704.

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**December 7, 2001** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **22 VAC 40-340. Protective Payments in the Refugee Other Assistance Programs.** This regulation is being amended by removing references to AFDC. Provisions regarding protective payments will be included in the comprehensive regulation, Temporary Assistance for Needy Families, 22 VAC 40-295.

Statutory Authority: § 63.1-25 of the Code of Virginia.

**Contact:** Mark L. Golden, TANF Program Consultant, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1735 or FAX (804) 692-1704.

## BOARD OF SOCIAL WORK

**November 9, 2001 - 9 a.m.** -- Open Meeting  
Sheraton Oceanfront Hotel, 36th and Atlantic Avenue, Virginia Beach, Virginia. ☎

A general business meeting with such regulatory and disciplinary items as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** Evelyn B. Brown, Executive Director, Board of Social Work, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9914, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail ebrown@dhp.state.va.us.

## BOARD FOR PROFESSIONAL SOIL SCIENTISTS

**November 13, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A regular business meeting to consider the adoption of final regulations.

**Contact:** Karen W. O'Neal, Regulatory Programs Coordinator, Board for Professional Soil Scientists, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail oneal@dpor.state.va.us.

## COUNCIL ON TECHNOLOGY SERVICES

**November 8, 2001 - 9 a.m.** -- Open Meeting  
VDOT Auditorium, 1221 East Broad Street, Richmond, Virginia. ☎

A full COTS meeting.

**Contact:** Jenny Wootton, Council on Technology Services, Washington Bldg., 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 786-0744, FAX (804) 371-7952, e-mail jwootton@egov.state.va.us.

† **November 8, 2001 - 1:30 p.m.** -- Open Meeting

† **December 6, 2001 - 1:30 p.m.** -- Open Meeting

110 South 7th Street, 3rd Floor, Executive Conference Room, Richmond, Virginia. ☎

A regular monthly meeting of the Enterprise Architecture Workgroup.

**Contact:** Paul Lubic, Information Technology Manager, Council on Technology Services, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 371-0004, FAX (804) 371-2795, e-mail plubic@ntp.state.va.us.

## COMMONWEALTH TRANSPORTATION BOARD

† **November 14, 2001 - 2 p.m.** -- Open Meeting  
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. ☎

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

**Contact:** Cathy M. Ghidotti, Assistant Secretary to the Board, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675, FAX (804) 786-6683, e-mail ghidotti\_cm@vdot.state.va.us.


† **November 15, 2001 - 10 a.m.** -- Open Meeting  
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A monthly meeting to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.

**Contact:** Cathy M. Ghidotti, Assistant Secretary to the Board, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675, FAX (804) 786-6683, e-mail ghidotti\_cm@vdot.state.va.us.

## DEPARTMENT OF THE TREASURY


### Debt Capacity Advisory Committee

† **October 30, 2001 - 1:30 p.m.** -- Open Meeting  
Department of the Treasury, James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Room, Richmond, Virginia. 

Preliminary Model Update (FY 2001 Actual Revenue) Plans regarding the December meeting and the Governor's report.

**Contact:** Tracy Clemons, Public Finance Manager, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 225-4929, FAX (804) 225-3187, e-mail tracy.clemons@trs.state.us.va.

## VIRGINIA WASTE MANAGEMENT BOARD

**November 7, 2001 - 9 a.m.** -- Open Meeting  
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

Tentatively scheduled meeting of the advisory committee assisting in the development of amendments to the solid waste management regulations. Persons interested in attending should confirm that the meeting will be held by contacting the person listed below prior to the meeting.

**Contact:** Michael J. Dieter, Virginia Waste Management Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146, e-mail mjdieter@deq.state.va.us.

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† **November 26, 2001 - 1:00 p.m.** -- Public Hearing  
The Salem Church Library, 2607 Salem Church Road, Library Room A, Fredericksburg, Virginia.

† **November 27, 2001 - 1:00 p.m.** -- Public Hearing  
Department of Environmental Quality, West, Central Regional Office, 3019 Peter's Creek Road, Roanoke, Virginia.

† **November 29, 2001 - 10:30 a.m.** -- Public Hearing  
Department of Environmental Quality, Tidewater Regional Office, 5635 Southern Blvd, Virginia Beach, Virginia.

**December 27, 2001** - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-160, Voluntary Remediation Regulations**. The purpose of the proposed action is the amendment of the Voluntary Remediation Regulations. Review of the regulations has indicated a need for updating to include current sampling and analysis methods and deletion of obsolete language.

Statutory Authority: § 10.1-1429.1 of the Code of Virginia


Public comments may be submitted until 5 p.m. on December 27, 2001.

**Contact:** Melissa Porterfield, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone: 804-698-4238, or e-mail: mporterfi@deq.state.va.us.


## VIRGINIA BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

**October 22, 2001 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. 

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.

**Contact:** Christine Martine, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail wastemgt@dpor.state.va.us.

## STATE WATER CONTROL BOARD

† **October 23, 2001 - 1 p.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street, 10th Floor Conference Room, Richmond, Virginia. 

A meeting of the advisory committee assisting the department in the development of a proposed general permit for small municipal separate storm sewer systems.

**Contact:** Burton Tuxford, State Water Control Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4086, FAX (804)

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## Calendar of Events

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698-4032, (804) 698-4021/TTY ☎, e-mail  
brtusford@deq.state.va.us.

† **October 23, 2001 - 1:30 p.m.** -- Open Meeting  
Department of Environmental Quality, Piedmont Regional  
Office, 4949-A Cox Road, Glen Allen, Virginia. ♿

A meeting of the advisory committee assisting in the  
development of a regulation governing the discharge of  
sewage and other wastes from boats.

**Contact:** Michael B. Gregory, State Water Control Board,  
Department of Environmental Quality, P.O. Box 10009,  
Richmond, VA 23240, telephone (804) 698-4065, FAX (804)  
698-4032, e-mail mbgregory@deq.state.va.us.

† **October 24, 2001 - 9 a.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street,  
5th Floor Conference Room, Richmond, Virginia. ♿

A meeting of the advisory committee assisting in the  
development of proposed amendments to the water quality  
standards as part of the triennial review of the standards.

**Contact:** Eleanore Daub, State Water Control Board,  
Department of Environmental Quality, P.O. Box 10009,  
Richmond, VA 23240, telephone (804) 698-4111, FAX (804)  
698-4522, e-mail emdaub@deq.state.va.us.

**November 5, 2001 - 9:30 a.m.** -- Open Meeting  
Department of Environmental Quality, Piedmont Regional  
Office, 4949-A Cox Road, Glen Allen, Virginia. ♿

A meeting of the technical advisory committee assisting in  
the development of the draft regulation for wastewater  
reclamation and reuse.

**Contact:** Lily Choi, State Water Control Board, Department of  
Environmental Quality, P.O. Box 10009, Richmond, VA  
23240, telephone (804) 698-4054, e-mail  
ychoi@deq.state.va.us.

**November 13, 2001 - 10 a.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street,  
10th Floor Conference Room, Richmond, Virginia. ♿

A meeting of the advisory committee assisting the  
department in the development of amendments to the  
storm water general VPDES permit for construction  
activities.

**Contact:** Burton Tuxford, State Water Control Board,  
Department of Environmental Quality, P.O. Box 10009,  
Richmond, VA 23240, telephone (804) 698-4086, FAX (804)  
698-4032, e-mail brtuxford@deq.state.va.us.

† **November 28, 2001 - 2 p.m.** -- Open Meeting  
Department of Environmental Quality, 4949-A Cox Road,  
Glen Allen, Virginia. ♿

A public meeting to receive comments on the notice of  
intent to adopt a regulation for the James River (Richmond  
Regional West) Surface Water Management Area.

**Contact:** Erlinda Patron, State Water Control Board,  
Department of Environmental Quality, P.O. Box 10009,  
Richmond, VA 23240, telephone (804) 698-4047, FAX (804)  
698-4136, e-mail elpatron@deq.state.va.us.

## VIRGINIA BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

**December 13, 2001 - 8:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Conference Room 5W, Richmond,  
Virginia. ♿

A meeting to conduct routine business. A public comment  
period will be held at the beginning of the meeting.

**Contact:** Christine Martine, Acting Assistant Director,  
Department of Professional and Occupational Regulation,  
3600 W. Broad St., Richmond, VA 23230, telephone (804)  
367-2648, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-  
mail waterwasteoper@dpor.state.va.us.

## INDEPENDENT

### VIRGINIA RETIREMENT SYSTEM

**November 14, 2001 - Noon** -- Open Meeting  
VRS Headquarters, 1200 East Main Street, Richmond,  
Virginia. ♿

A regular meeting of the Audit and Compliance Committee.

**Contact:** Darla K. Glazier, Office Manager, Virginia  
Retirement System, P.O. Box 2500, Richmond, VA 23218,  
telephone (804) 649-8059, FAX (804) 786-1541, toll-free  
(888) 827-3847, (804) 344-3190/TTY ☎, e-mail  
dkestner@vrs.state.va.us.

**November 14, 2001 - 1 p.m.** -- Open Meeting  
VRS Headquarters, 1200 East Main Street, Richmond,  
Virginia. ♿

The regular meeting of the Benefits and Actuarial  
Committee.

**Contact:** Darla K. Glazier, Office Manager, Virginia  
Retirement System, VRS, P.O. Box 2500, Richmond, VA  
23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-  
free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail  
dglazier@vrs.state.va.us.

NOTE: CHANGE IN MEETING DATE

**November 14, 2001 - 2:30 p.m.** -- Open Meeting  
VRS Headquarters, 1200 East Main Street, Richmond,  
Virginia. ♿

The regular meeting of the Administration and Personnel  
Committee.

**Contact:** Darla K. Glazier, Office Manager, Virginia  
Retirement System, P.O. Box 2500, Richmond, VA 23218,  
telephone (804) 649-8059, FAX (804) 786-1541, toll-free  
(888) 827-3847, (804) 344-3190/TTY ☎, e-mail  
dkestner@vrs.state.va.us.

**November 14, 2001 - 3 p.m.** -- Open Meeting

**December 19, 2001 - 3 p.m.** -- Open Meeting  
VRS Headquarters, 1200 East Main Street, Richmond,  
Virginia. ♿

A regular meeting of the Investment Advisory Committee.



**Contact:** Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dglazier@vrs.state.va.us.

**November 15, 2001 - 9 a.m.** -- Open Meeting

**December 20, 2001 - 9 a.m.** -- Open Meeting  
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Board of Trustees.

**Contact:** Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dkestner@vrs.state.va.us.

## LEGISLATIVE

### ADMINISTRATIVE LAW ADVISORY COMMITTEE

† **November 8, 2001 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Speaker's Conference Room, Sixth Floor, Richmond, Virginia. ♿

The Administrative Law Advisory Committee (ALAC), an advisory committee to the Virginia Code Commission, will meet to receive and act upon the reports of study subcommittees appointed in accordance with the ALAC 2001 Work Plan.

**Contact:** Bess Hodges, Program Director, Administrative Law Advisory Committee, Division of Legislative Services, 2nd Floor, General Assembly Building, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail bhodges@leg.state.va.us.

### VIRGINIA CODE COMMISSION

**November 15, 2001 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿

A meeting to continue with the recodification of Title 63.1 of the Code of Virginia and to conduct any other business that may come before the commission. Public comment will be received at the end of the meeting.

**Contact:** Jane Chaffin, Registrar of Regulations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

### JOINT COMMISSION ON PRESCRIPTION DRUG ASSISTANCE (HJR 810)

**October 24, 2001 - 10 a.m.** -- Open Meeting  
**November 13, 2001 - 2 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A meeting of the joint commission to develop ways and means to provide prescription drug assistance to needy senior citizens and to coordinate state and federal programs providing such assistance. Questions about the agenda should be addressed to Gayle Vergara, Division of Legislative Services, (804) 786-3591.

**Contact:** Lois V. Johnson, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

### JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

**October 24, 2001 - 1 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Discussion of electronic government issues. Agenda will be posted on JCOTS website.

**Contact:** Mitchell Goldstein, Director, Joint Commission on Technology and Science, 910 Capitol St., Second Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail MGoldstein@leg.state.va.us.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### October 22

Barbers and Cosmetology, Board for  
Education, Board of  
Nursing, Board of  
- Special Conference Committee  
Rehabilitative Services, Department of  
Waste Management Facility Operators, Virginia Board for

#### October 23

Compensation Board  
Marine Resources Commission  
Nursing, Board of  
- Special Conference Committee  
Real Estate Appraiser Board  
Small Business Financing Authority, Virginia  
† Water Control Board, State

#### October 24

Accountancy, Board of  
Blind and Vision Impaired, Department for the  
George Mason University  
- Board of Visitors  
Juvenile Justice, Board of  
Labor and Industry, Department of  
- Migrant and Seasonal Farmworkers Board  
Medicine, Board of  
Prescription Drug Assistance, Joint Commission on (HJR 810)  
Real Estate Board  
- Real Estate Education Committee  
Sewage Handling and Disposal Appeal Review Board  
Technology and Science, Joint Commission on  
- E-Government Advisory Committee  
† Water Control Board, State

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# Calendar of Events

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**October 25**

Geology, Board for  
† Longwood College  
- Executive Committee  
† Museum of Fine Arts, Virginia  
Pharmacy, Board of  
- Special Conference Committee  
Real Estate Board  
- Fair Housing Committee  
† Rights of Virginians with Disabilities, Department for  
- Developmental Disabilities Advisory Council  
Science Museum of Virginia  
- Board of Trustees

**October 26**

Counseling, Board of  
- Ad Hoc Committee on Substance Abuse Assistants and Counselors  
Health Professions, Department of  
- Health Practitioners' Intervention Program Committee

**October 27**

Blind and Vision Impaired, Department for the  
- Vocational Rehabilitation Services

**October 29**

† Charitable Gaming Commission

**October 30**

Asbestos, Lead and Home Inspectors, Virginia Board for  
† Conservation and Recreation, Department of  
- First Landing State Park Master Plan Committee  
† Environmental Quality, Department of  
† Forestry, Board of  
Funeral Directors and Embalmers, Board of  
- Special Conference Committee  
† Treasury, Department of the  
- Debt Capacity Advisory Committee

**October 31**

† Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for  
- Architects Section  
At-Risk Youth and Families, Comprehensive Services for  
- State Executive Council  
† Chesapeake Bay Local Assistance Board  
- Northern Area Review Committee  
- Southern Area Review Committee  
Medicine, Board of  
- Informal Conference Committee

**November 1**

Blind and Vision Impaired, Department for the  
- Vocational Rehabilitation Services  
† Branch Pilots, Board for  
† Conservation and Recreation, Department of  
- Falls of the James Scenic River Advisory Board  
† Manufactured Housing Board, Virginia

**November 2**

Art and Architectural Review Board

**November 5**

Motor Vehicle Dealer Board  
- Advertising Committee  
- Dealer Practices Committee  
- Finance Committee  
- Franchise Law Committee  
- Licensing Committee

- Personnel Committee  
- Transaction Recovery Fund Committee  
Water Control Board, State  
- Advisory Committee on Wastewater Reclamation and Reuse

**November 6**

† Museum of Fine Arts, Virginia  
- Executive Committee

**November 7**

† Agriculture and Consumer Services, Department of  
- Virginia Winegrowers Advisory Board  
Air Pollution Control Board, State  
Waste Management Board, Virginia  
- Advisory Committee on Solid Waste Management Regulations

**November 8**

† Administrative Law Advisory Committee  
† Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for  
- Professional Engineers Section  
† Audiology and Speech-Language Pathology, Board of  
† Environmental Quality, Department of  
Jamestown-Yorktown Foundation  
- Board of Trustees  
Medicine, Board of  
- Informal Conference Committee  
† Technology Services, Council on  
- Enterprise Architecture Workgroup

**November 9**

Jamestown-Yorktown Foundation  
- Board of Trustees  
Social Work, Board of

**November 13**

† Agriculture and Consumer Services, Department of  
- Virginia State Apple Board  
Prescription Drug Assistance, Joint Commission on (HJR 810)  
† Professional and Occupational Regulation, Board for Resources Authority, Virginia  
- Board of Directors  
Soil Scientists, Board for Professional  
Water Control Board, State

**November 14**

† Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for  
- Land Surveyors Section  
Cemetery Board  
- Regulatory Review Committee  
† Funeral Directors and Embalmers, Board of  
- Examination Committee  
Local Government, Commission on  
Medicine, Board of  
- Informal Conference Committee  
† Museum of Fine Arts, Virginia  
- Architect Search Committee  
† Communications and Marketing Committee  
- Education and Programs Committee  
† Exhibitions Committee  
- Legislative Committee  
- Program Review Committee

Racing Commission, Virginia  
Retirement System, Virginia  
- Administration and Personnel Committee  
- Audit and Compliance Committee  
- Benefits and Actuarial Committee  
- Investment Advisory Committee  
† Transportation Board, Commonwealth

## November 15

Code Commission, Virginia  
† Funeral Directors and Embalmers, Board of  
- Examination Committee  
† Museum of Fine Arts, Virginia  
- Buildings and Grounds Committee  
- Collections Committee  
- Finance Committee  
† Rehabilitative Services, Board of  
Retirement System, Virginia  
- Board of Trustees  
† Transportation Board, Commonwealth

## November 19

Education, Board of  
- Advisory Board for Teacher Education and Licensure  
The Library of Virginia  
- Archival and Information Services Committee  
- Collection Management Services Committee  
- Executive Committee  
- Legislative and Finance Committee  
- Publications and Educational Services Committee  
- Public Library Development Committee  
- Records Management Committee  
Rehabilitative Services, Department of

## November 26

Elections, State Board of  
Nursing, Board of

## November 27

† Compensation Board  
Marine Resources Commission  
Rehabilitative Services, Department of

## November 28

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
- Landscape Architects Section  
At-Risk Youth and Families, Comprehensive Services for  
- State Executive Council  
Education, Board of  
George Mason University  
- Board of Visitors  
Nursing, Board of  
† Water Control Board, State

## November 29

Nursing, Board of

## December 3

† Conservation and Recreation, Department of  
- Virginia State Parks Foundation

## December 4

Education, Board of  
- Accountability Advisory Committee  
Nursing, Board of  
- Special Conference Committee  
Outdoors Foundation, Virginia

## December 5

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
- Certified Interior Designers Section  
Nursing, Board of  
- Special Conference Committee  
Outdoors Foundation, Virginia

## December 6

† Conservation and Recreation, Department of  
- Falls of the James Scenic River Advisory Board  
Nursing, Board of  
- Special Conference Committee  
Real Estate Board  
† Technology Services, Council on  
- Enterprise Architecture Workgroup

## December 7

Art and Architectural Review Board  
† Medicine, Board of  
- Executive Committee

## December 10

Nursing, Board of  
- Special Conference Committee

## December 11

† Branch Pilots, Board for  
Nursing, Board of  
- Special Conference Committee  
Resources Authority, Virginia

## December 12

† Conservation and Recreation, Department of  
- Virginia Soil and Water Conservation Board  
Milk Commission, State  
† Polygraph Examiners Advisory Board

## December 13

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
Waterworks and Wastewater Works Operators, Virginia  
Board for

## December 18

† Charitable Gaming Commission  
Marine Resources Commission  
Nursing, Board of  
- Special Conference Committee

## December 19

At-Risk Youth and Families, Comprehensive Services for  
- State Executive Council  
Racing Commission, Virginia  
Retirement System, Virginia  
- Investment Advisory Committee

## December 20

Retirement System, Virginia  
- Board of Trustees

## January 10, 2002

† Education, Board of

## PUBLIC HEARINGS

### October 22

Education, Board of

### October 24

† Health, State Board of

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## Calendar of Events

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**October 25**

Health, State Board of

**October 26**

† Psychology, Board of

**October 29**

Environmental Quality, Department of

**October 30**

† Health, State Board of

**November 7**

† Environmental Quality, Department of  
Health, State Board of

**November 8**

Pharmacy, Board of

**November 13**

Air Pollution Control Board

**November 26**

† Waste Management Board, Virginia

**November 27**

† Air Pollution Control Board, State  
† Waste Management Board, Virginia

**November 29**

† Environmental Quality, Department of  
Health, State Board of  
† Waste Management Board, Virginia

**December 5**

† Mental Health, Mental Retardation and Substance Abuse  
Services, State Board of

**December 7**

† Air Pollution Control Board, State

**December 13**

Criminal Justice Services Board

**March 14**

† Agriculture and Consumer Services, Department of