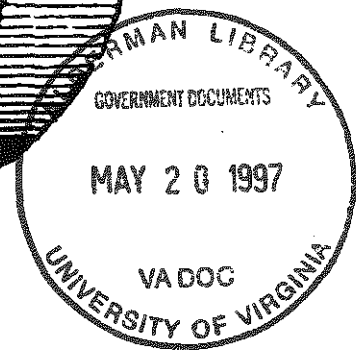
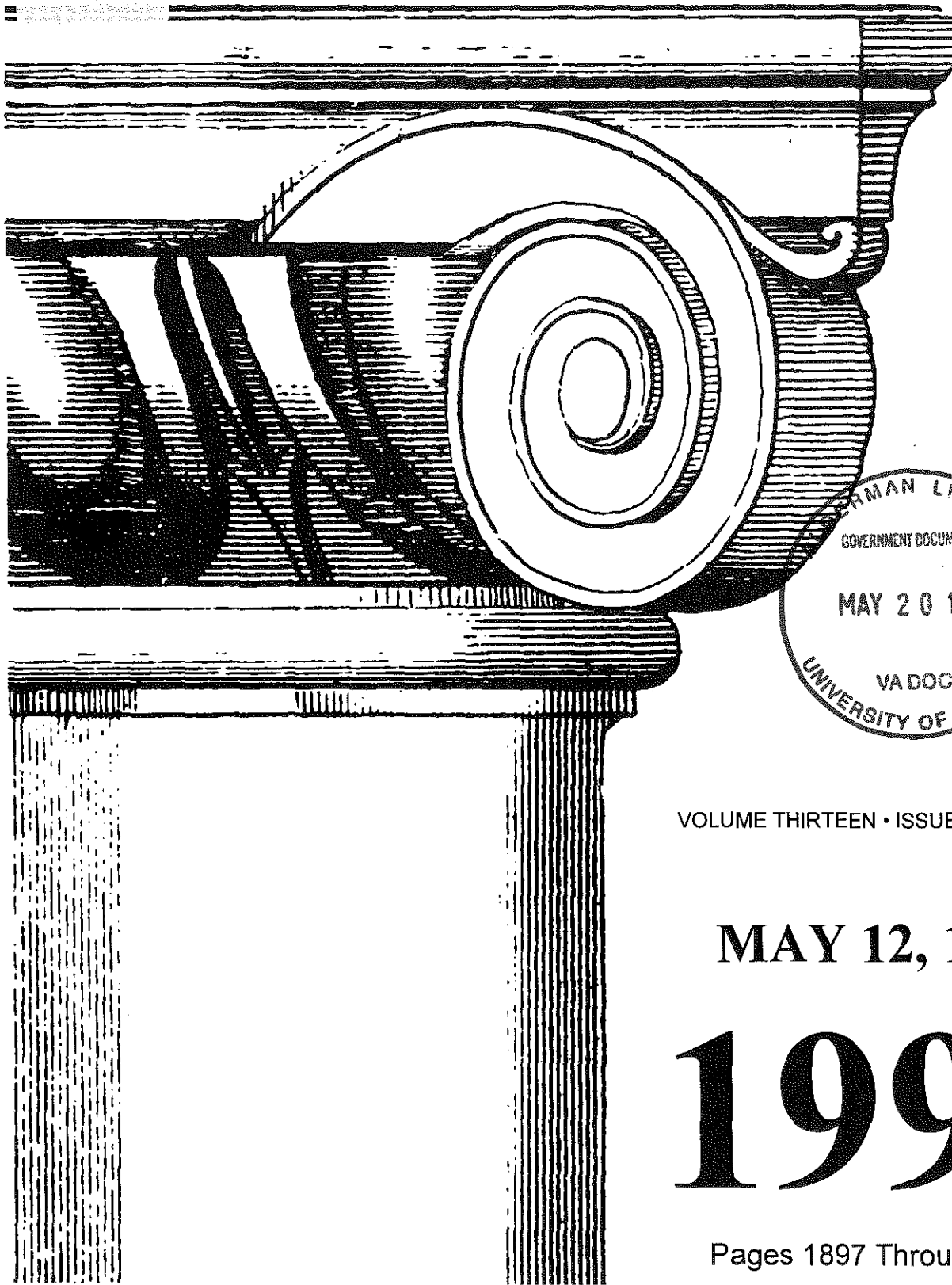


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S/R 26/13-17 c.2

# THE VIRGINIA REGISTER

OF REGULATIONS

VA  
DOC



VOLUME THIRTEEN • ISSUE SEVENTEEN

MAY 12, 1997

# 1997

Pages 1897 Through 2080

# THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative. THE VIRGINIA REGISTER has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in THE VIRGINIA REGISTER OF REGULATIONS. In addition, THE VIRGINIA REGISTER is a source of other information about state government, including all emergency regulations and executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

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

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

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

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate standing committees and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day extension period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event

the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period.

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

## EMERGENCY REGULATIONS

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

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

## STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 of the Code of Virginia be examined carefully.

## CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. 12:8 VA.R. 1096-1106 January 8, 1996, refers to Volume 12, Issue 8, pages 1096 through 1106 of the *Virginia Register* issued on January 8, 1996.

"THE VIRGINIA REGISTER OF REGULATIONS" (USPS-001831) is published bi-weekly, with quarterly cumulative indices published in January, April, July and October, for \$100 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Periodical Postage Rates Paid at Richmond, Virginia. POSTMASTER: Send address changes to THE VIRGINIA REGISTER OF REGULATIONS, 910 CAPITOL STREET, 2ND FLOOR, RICHMOND, VIRGINIA 23219.

The *Virginia Register of Regulations* is published pursuant to Article 7 (§ 9-6.14:22 et seq.) of Chapter 1.1:1 of the Code of Virginia. Individual copies, if available, may be purchased for \$4.00 each from the Registrar of Regulations.

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Staff of the Virginia Register: E. M. Miller, Jr., Acting Registrar of Regulations; Jane D. Chaffin, Deputy Registrar of Regulations.

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## May 1997 through March 1998

**Material Submitted  
By Noon Wednesday**

**Will Be Published On**

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May 7, 1997  
May 21, 1997  
June 4, 1997

May 12, 1997  
May 26, 1997  
June 9, 1997  
June 23, 1997

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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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## STATE AIR POLLUTION CONTROL BOARD

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-30-10 et seq. and 9 VAC 5-70-10 et seq. Regulations for the Control and Abatement of Air Pollution (Rev. A97).** The purpose of the proposed action is to repeal regulatory provisions regarding total suspended particulate (TSP) ambient air quality standards (9 VAC 5-30-20) and significant harm levels for TSP for air pollution episodes (9 VAC 5-70-40) that have been determined to be no longer required by federal mandate pursuant to the review of existing regulations mandated by Executive Order 15(94).

**Public Meeting:** A public meeting will be held by the department in the Training Room, First Floor, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, at 9 a.m. on June 11, 1997, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

**Ad Hoc Advisory Group:** The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be utilized is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue may be submitted until 4:30 p.m., on June 12, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

**Public Hearing Plans:** After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

**Need:** The contemplated regulations are not essential (i) to protect the health, safety or welfare of citizens or (ii) for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

The agency performed an analysis to determine if statutory mandates justify continuation of the regulations. The analysis revealed that statutory justification does exist for the regulations with the one exception noted below. The regulations were adopted in order to implement the policy set forth in the Virginia Air Pollution Control Law and to fulfill the

Commonwealth's responsibilities under the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the control of criteria pollutants. These statutes still remain in force with the provisions that initiated adoption of the regulation still intact.

Analysis reveals that the regulations, with the one exception noted below, are consistent with applicable state and federal regulations, statutory provisions, and judicial decisions. Factors and circumstances (federal statutes, original intent, state air quality program and air pollution control methodology and technology) which justified the initial issuance of the regulations have changed to a degree that would justify a change to the basic requirements of the regulation, as explained below.

The one provision of the regulations that exceeds the specific minimum requirements of a legally binding state or federal mandate has been identified. In addition to establishing primary and secondary standards for the criteria pollutants specified in federal law, as well as significant harm levels for air pollution episodes, the state regulations also establish standards and significant harm levels for TSP. At the time of the state regulations' initial promulgation in 1972, federal regulation (40 CFR Part 50) mandated standards for this pollutant. In 1987, however, federal standards for particulate matter (PM<sub>10</sub>) were promulgated and the standards for TSP rescinded, the former superseding the latter. Virginia has not yet followed the lead of the federal government in this regard, retaining both sets of standards in regulations. Therefore, the state regulations now exceed the federal mandate in this one provision.

Executive Order 15(94) states, "Unless otherwise mandated by statute, the only regulations that should remain in effect are those that are essential to protect the health, safety and welfare of citizens or for the efficient and economical performance of an important governmental function." The new PM<sub>10</sub> standards are more protective of public health and equally protective of public welfare than the old TSP standards. Rescission of the state TSP standards would contribute to the efficient and economical performance of government because it would eliminate outdated, duplicative, and insufficiently protective regulatory provisions.

**Alternatives:** Alternatives to the proposed regulation amendments being considered by the department are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulation amendments: to achieve consistency with federal requirements by repealing an outdated standard.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because it will not ensure consistency with federal requirements.



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## Notices of Intended Regulatory Action

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3. Take no action to amend the regulations and continue to enforce an outdated standard. This option is not being selected because it will ensure the continuance of an outdated standard.

**Costs and Benefits:** The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

**Applicable Statutory Requirements:** The regulations (9 VAC 5 Chapters 30 and 70) are mandated by federal law or regulation. However, certain provisions in these regulations related to TSP are not mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate may be found below.

Sections 109 (a) and (b) of the Clean Air Act require EPA to prescribe national primary air quality standards (to protect public health) and national secondary air quality standards (to protect public welfare) for each air pollutant for which air quality criteria were issued before the enactment of the 1970 Clean Air Act. The primary and secondary air quality criteria are authorized for promulgation under § 108 of the Clean Air Act. The criteria for each pollutant shall include, to the extent practicable, information on the following: (i) variables which may adversely affect the impact of an air pollutant on public health or welfare; (ii) pollutants which may interact with other pollutants to produce an adverse effect on public health or welfare; and (iii) any known or anticipated adverse effects on public health or welfare.

Section 302 (h) defines effects on public welfare as including, but not limited to, effects on soils, water, vegetation, man-made materials, animals, weather, visibility. Also included are damage to and deterioration of property, hazards to transportation, and adverse effects on economic values, personal comfort, and well-being.

40 CFR Part 50 specifies the national primary and secondary ambient air quality standards for the following criteria air pollutants: sulfur dioxide, particulate matter (PM<sub>10</sub>), carbon monoxide, ozone, nitrogen dioxide, and lead. In addition, since § 302 (g) of the Clean Air Act specifies that the term "air pollutant" includes precursors to the formation of any air pollutant, volatile organic compounds (hydrocarbons) are generically classed as a criteria air pollutant because of their function as a precursor in ozone formation.

Appendices A through J to 40 CFR Part 50 specify reference methods for measuring the following criteria air pollutants in the atmosphere or in the ambient air: sulfur dioxide, suspended particulate matter, carbon monoxide, ozone, hydrocarbons corrected for methane, nitrogen dioxide, lead in suspended particulate matter, and particulate matter (PM<sub>10</sub>).

Appendices H and K to 40 CFR Part 50 interpret the National Ambient Air Quality Standards for two criteria air pollutants: ozone and particulate matter.

Subparts A through D of 40 CFR Part 53 specify ambient air monitoring reference and equivalent methods, specifically procedures for testing performance characteristics of automated methods for sulfur dioxide, carbon monoxide, ozone, particulate matter (PM<sub>10</sub>), and nitrogen dioxide; and procedures for determining comparability between candidate methods and reference methods.

40 CFR Part 58 specifies procedures for ambient air quality surveillance, specifically monitoring criteria; state and local air monitoring stations (SLAMS); national air monitoring stations (NAMS); photochemical assessment monitoring stations (PAMS); air quality index reporting; and federal monitoring.

In addition to establishing primary and secondary standards for the criteria pollutants specified in federal law, 9 VAC 5-30-20 of the state regulation also establishes standards for TSP. At the time of the state regulation's initial promulgation in 1972, federal regulation (40 CFR Part 50) mandated standards for this pollutant. In 1987, however, federal standards for particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (PM<sub>10</sub>) were promulgated and the standards for TSP rescinded. Virginia's regulations still contain provisions related to TSP in regulations regarding ambient air quality standards (9 VAC 5-30-20) and significant harm levels for TSP for air pollution episodes (9 VAC 5-70-40). Therefore, the state regulation now exceeds the federal mandate in this one provision.

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

Public comments may be submitted until 4:30 p.m. on June 12, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Karen G. Sabasteanski, Policy Analyst, Office of Air Program 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/TDD ☎

VA.R. Doc. No. R97-393; Filed April 15, 1997, 8:27 a.m.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-40-10 et seq. Regulations for the Control and Abatement of Air Pollution (Rev. E97)**. The regulation amendments are being proposed to address problems concerning the clarity of the regulation identified pursuant to the review of existing regulations mandated by Executive Order 15(94).

**Public Meeting:** A public meeting will be held by the department in the Training Room, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, at 9 a.m. on June 11, 1997, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

**Ad Hoc Advisory Group:** The department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be on the group, notify the agency contact in writing by 4:30 p.m. on June 12, 1997, and provide your name, address, phone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants. If you wish

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## Notices of Intended Regulatory Action

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to be on the group, you are encouraged to attend the public meeting mentioned above. The primary function of the group is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus.

Public Hearing Plans: After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: The contemplated regulation is essential (i) to protect the health, safety or welfare of citizens or (ii) for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

The agency performed an analysis to determine if statutory mandates justify continuation of the regulation. The analysis revealed that statutory justification does exist for the regulation. The regulation was adopted in order to implement the policy set forth in the Virginia Air Pollution Control Law and to fulfill the Commonwealth's responsibilities under the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the control of criteria pollutants. These statutes still remain in force with the provisions that initiated adoption of the regulation still intact.

Analysis reveals that the regulation is consistent with applicable state and federal regulations, statutory provisions, and judicial decisions. Factors and circumstances (federal statutes, original intent, state air quality program, and air pollution control methodology and technology) which justified the original issuance of the regulation have not changed to a degree that would justify a change to the basic requirements of the regulation.

Federal guidance on states' approaches to air pollution control has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. This regulation, Rule 4-8, was adopted in 1972, when no detailed guidance existed. Therefore, the legally binding federal mandate for this regulation is general, not specific, consisting of the Clean Air Act's broad-based directive to states to meet the air quality standards for particulate matter and sulfur dioxide, which are emitted by fuel burning equipment.

While the regulation meets federal requirements, the definition of fuel burning equipment should be revised to make it clear that it includes stationary internal combustion engines such as diesel generators and combustion turbines. Current DEQ interpretation of this regulation excludes these types of internal combustion engines. Consequently, stationary internal combustion engines are covered by the provisions of Rule 4-4 (General Process Operations). However, that rule excludes liquid and gaseous fuels from the definition of "process weight," so internal combustion engines have no process weight upon which to base a determination of allowable emissions. In addition, the exclusion of internal combustion engines from the definition of fuel burning equipment in Rule 4-8 makes it impossible for these engines to be included with boilers at the same source for determination of allowable emissions or to participate in an emission allocation system under Rule 4-8. Therefore, the

definition of an affected entity needs to reflect that this type of source is in fact affected by this rule.

Alternatives: Alternatives to the proposed regulation amendments are being considered by the department. The department has tentatively determined that the third alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation amendments. The alternatives considered by the department are as follows:

1. Take no action to amend the regulation. This option is not being selected because the current regulation does not adequately identify the entity to which the provisions of the regulation apply.
2. Make alternative regulatory changes to those required by the provisions of the legally binding state or federal mandates. This option is not being selected because it could result in the imposition of requirements that place unreasonable hardships on the regulated community.
3. Amend the regulation to adequately identify the regulated entity to which the provisions of the regulation apply. This option has been selected in order to improve understanding and clarity of the regulation.

As provided in the public participation procedures of the State Air Pollution Control Board, the department will include, in the subsequent Notice of Intended Regulatory Action, a description of the above alternatives and a request for comments on other alternatives and the costs and benefits of the above alternatives or the other alternatives that the commenters may provide.

Costs and Benefits: The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

Applicable Statutory Requirements: The contemplated regulation amendments are mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate are as follows:

Section 110(a) of the Clean Air Act mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

- (1) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the Clean Air Act, including economic incentives such as fees, marketable permits, and auctions of emissions rights;
- (2) establish schedules for compliance;
- (3) prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and
- (4) require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

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## Notices of Intended Regulatory Action

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40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and recordkeeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Section 51.214(c) under Subpart K specifies that the state implementation plan must contain procedures which require the types of sources set forth in Appendix P to meet the applicable requirements. Appendix P sets forth the minimum requirements for continuous emission monitoring and recording that each state implementation plan must include in order to be approved. The following source types specifically require monitoring: (i) fossil fuel-fired steam generators, monitored for opacity, nitrogen oxides emissions, sulfur dioxide emissions, and oxygen or carbon dioxide; (ii) fluid bed catalytic cracking unit catalyst regenerators, monitored for opacity; (iii) sulfuric acid plants, monitored for sulfur dioxide emissions; and (iv) nitric acid plants, monitored for nitrogen oxides emissions.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans.

Section 51.230 under Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

- (1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;
- (2) enforce applicable laws, regulations, and standards, and seek injunctive relief;
- (3) abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;
- (4) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;
- (5) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources;

(6) require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and

(7) make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority as follows:

(1) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and

(2) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

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

Public comments may be submitted until 4:30 p.m. on June 12, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Karen G. Sabasteanski, Policy Analyst, Office of Air Program 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/TDD ☎

VA.R. Doc. No. R97-411; Filed April 15, 1997, 8:26 a.m.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-40-10 et seq. Regulations for the Control and Abatement of Air Pollution (Rev. C97)**. The purpose of the proposed action is to repeal Emission Standards for Mobile Sources (Article 41; 9 VAC 5-40-5650) because they have been determined to be no longer required by federal mandate pursuant to the review of existing regulations mandated by Executive Order 15(94).

**Public Meeting:** A public meeting will be held by the department in the Training Room, First Floor, Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia, at 9 a.m. on Wednesday, June 11, 1997, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

## Notices of Intended Regulatory Action

**Ad Hoc Advisory Group:** The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be utilized is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue may be submitted until 4:30 p.m. on Thursday, June 12, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Public Hearing Plans:** After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

**Need:** The regulation is no longer essential (i) to protect the health, safety or welfare of citizens or (ii) for the efficient and economical performance of an important governmental function. It now exceeds the specific minimum requirements of legally binding state and federal mandates. An explanation as to how this conclusion was reached is set forth below.

The regulation is no longer needed for air pollution planning purposes. The regulation was adopted in order to implement the policy set forth in the Virginia Air Pollution Control Law and to fulfill the Commonwealth's responsibilities under the Federal Clean Air Act to provide a legally enforceable State Implementation Plan for the control of criteria pollutants. These statutes still remain in force, but the provisions that initiated adoption of the regulation have changed.

Analysis reveals that the regulation is not consistent with applicable state and federal regulations, statutory provisions, and judicial decisions. Factors and circumstances (federal statutes, original intent, state air quality program and air pollution control methodology and technology) which justified the initial issuance of the regulation have changed to a degree that would justify a change to the basic requirements of the regulation.

Federal guidance on states' approaches to air pollution control has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. This regulation, Rule 4-41, was adopted in 1972, when no detailed guidance existed. Therefore, the legally binding federal mandate for this regulation is general, not specific, consisting of the Clean Air Act's broad-based directive to states to meet the air quality standard for particulate matter, which is emitted by mobile sources.

Since Rule 4-41 was adopted in 1972, important changes have been made to the State Implementation Plan which have resulted in significantly better control of the emissions this regulation was designed to limit. For instance, under the 1990 amendments of the Clean Air Act, all motor vehicles in Virginia's metropolitan urban areas (two million vehicles out of the statewide total of five million) are now or will soon be subject to inspection and maintenance (I/M) programs, which will provide for a higher level of stringency for control of

visible emissions and other pollutants than the level provided for by Rule 4-41. In addition, the enforcement of antitampering prohibitions is accomplished through statewide safety inspections carried out by the state police. (The antitampering provisions of Rule 4-41 merely duplicate those of § 46.2-1048 of the Code of Virginia.) In light of these newer and more effective controls, the regulation should be rescinded.

**Alternatives:** Alternatives to the proposed regulation amendments being considered by the department are as follows:

1. Take no action to amend the regulation. This option is not being selected for the reason specified below in 3.
2. Make alternative regulatory changes to those required by the provisions of the legally binding state or federal mandates. This option is not being selected because no such changes are warranted.
3. Amend the regulation to satisfy the provisions of the legally binding state or federal mandates. This option is being selected because statutory justification no longer exists for the regulation. Since the adoption of this rule, changes to the State Implementation Plan have resulted in more effective methods to control the emissions this regulation was designed to limit. The inspection and maintenance programs mandated by the 1990 Clean Air Act for Virginia's metropolitan urban areas will provide for a higher level of stringency for control of visible emissions and other pollutants than the level provided for by Rule 4-41. In addition, the enforcement of antitampering prohibitions is accomplished through statewide safety inspections carried out by the state police.

**Costs and Benefits:** The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

**Applicable Statutory Requirements:** The regulation was originally mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate are as follows:

Section 110(a) of the Clean Air Act mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

- (1) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the Clean Air Act, including economic incentives such as fees, marketable permits, and auctions of emissions rights;
- (2) establish schedules for compliance; and
- (3) prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state.

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## Notices of Intended Regulatory Action

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40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and recordkeeping, procedures for testing, inspection, enforcement, complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans.

Section 51.230 under Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

- (1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;
- (2) enforce applicable laws, regulations, and standards, and seek injunctive relief;
- (3) abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;
- (4) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;
- (5) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources;
- (6) require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and
- (7) make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority as follows:

- (1) the provisions of law or regulation which the state determines provide the authorities required under this

section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and

- (2) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

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

Public comments may be submitted until 4:30 p.m. on Thursday, June 12, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Karen G. Sabasteanski, Policy Analyst, Office of Air Program 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/TDD ☎

VA.R. Doc. No. R97-412; Filed April 15, 1997, 8:27 a.m.

## STATE BOARD OF EDUCATION

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to consider repealing regulations entitled: **8 VAC 20-20-10 et seq. Regulations Governing the Licensure of School Personnel and promulgating** regulations entitled: **8 VAC 20-21-10 et seq. Regulations Governing the Licensure of School Personnel**. The purpose of this action is to repeal the Licensure Regulations for School Personnel and promulgate new regulations. The need to repeal the old regulations and establish new ones is based on the need to (i) align the licensure requirements for school personnel with the requirements of the Standards of Learning objectives for students; (ii) establish a statewide licensure system for all teacher education approved programs and continue to provide some flexibility for institutions with approved programs; and (iii) reduce the number of endorsements from the current 104. The proposal establishing new regulations accomplishes all three objectives, including recommending a reduction of 47% (from the current 104 to 49) in current endorsement areas. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 22.1-298 of the Code of Virginia.

Public comments may be submitted until June 13, 1997.

**Contact:** Dr. Thomas A. Elliott, Assistant Superintendent for Compliance, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-2522.

VA.R. Doc. No. R97-416; Filed April 15, 1997, 2:29 p.m.

# Notices of Intended Regulatory Action

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled: **18 VAC 65-20-10 et seq. Regulations of the Board of Funeral Directors and Embalmers.** The purpose of the proposed action is to reorganize, simplify, and clarify regulations according to the recommendations of the review conducted pursuant to Executive Order 15(94). The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until May 14, 1997.

**Contact:** Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9943.

VA.R. Doc. No. R97-356; Filed March 25, 1997, 12:20 p.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled: **18 VAC 65-30-10 et seq. Regulations for Preneed Funeral Planning.** The purpose of the proposed action is to simplify and clarify regulations according to the recommendations of the review conducted pursuant to Executive Order 15(94). The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until May 14, 1997.

**Contact:** Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9943.

VA.R. Doc. No. R97-355; Filed March 25, 1997, 12:20 p.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled: **18 VAC 65-40-10 et seq. Resident Trainee Program for Funeral Service.** The purpose of the proposed action is to reorganize, simplify, and clarify regulations according to the recommendations of the review conducted pursuant to Executive Order 15(94). The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until May 14, 1997.

**Contact:** Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9943.

VA.R. Doc. No. R97-354; Filed March 25, 1997, 12:20 p.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider promulgating regulations entitled: **Conduct of Informal Appeals; Conduct of Formal Appeals.** The purpose of the proposed action is to provide a basic framework for the orderly and timely conduct of informal and formal appeals brought pursuant to the Administrative Process Act (§ 9-6.14.1 et seq. of the Code of Virginia). The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until June 11, 1997.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850 or FAX (804) 371-4981.

VA.R. Doc. No. R97-429; Filed April 23, 1997, 10:40 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-30-20 and 12 VAC 30-120-400. Medallion II: Quality Control and Utilization Review; Coverage and Conditions of Eligibility.** The purpose of the proposed action is to promulgate federal requirements regarding monitoring HMOs under contract to Medicaid and conform federal preprinted pages to policies already promulgated. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until May 28, 1997.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850 or FAX (804) 371-4981.

VA.R. Doc. No. R97-395; Filed April 9, 1997, 9:25 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 § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-130-800 et seq. Amount, Duration and Scope of Selected Services: Client Medical Management.** The purpose of the proposed action is to extend restriction periods because recipients have been found to need more time to change their medical utilization habits, list services which are excluded from the restrictions of client medical management, and add new criteria for restriction. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until May 14, 1997, to Sharon Long, Division of Program Delivery Systems, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850 or FAX (804) 371-4981.

VA.R. Doc. No. R97-359; Filed March 26, 1997, 11:14 a.m.

## BOARD OF MEDICINE

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-110-10 et seq. Licensed Acupuncturists.** The purpose of the proposed action is to simplify and clarify regulations according to the recommendations of Executive Order 15(94). The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until May 14, 1997.

**Contact:** Warren K. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or FAX (804) 662-9943.

VA.R. Doc. No. R97-357; Filed March 25, 1997, 12:20 p.m.

## BOARD OF NURSING

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to consider amending regulations entitled: **18 VAC 90-20-10 et seq. Regulations Governing the Practice of Nursing.** The

Board of Nursing proposes action on the recommendations of its Executive Order 15(94) report as follows:

1. In the initial approval of nursing education programs, the board intends to eliminate several burdensome requirements such as submission of a study documenting need and a current catalog and reduce the time required for submission of information prior to the expected opening date from 15 to 12 months. The board also recommends moving the requirement for the institution to graduate its first class prior to final approval from Phase II to Phase III of the process.

2. In requirements for organization and administration, the board recommends elimination of the requirement for authorization by the charter of the controlling institution as unnecessary or redundant of other regulations. It also intends to provide more flexibility by specifying that the governing institution be accredited by a "state agency or by a certifying body recognized by the U. S. Department of Education" and to clarify that the agency or institution is one utilized "as a clinical experience facility" and that it shall be in good standing with the appropriate licensing body.

3. In an effort to clarify the role of the director of the nursing education program, the board recommends model language from the National Council of State Boards of Nursing. An amendment is recommended to clarify that there must be evidence of financial support and resources to meet the goals of the program in order to address a problem for students who are harmed by programs being abruptly terminated.

4. The board recommends amendments to eliminate program objectives that are difficult to measure and to clarify the requirements.

5. The board recommends continuing review and clarification of its requirements for faculty qualifications and reorganization and rewording to streamline the content of the regulations.

6. The board will consider amendments which will provide for a broader regulation on the proportional number of faculty to students. In its consideration, the board will consult with educators and clinical supervisors to determine a proportion that is sufficient to promote safety for patients to whom students provide care. It will also consider amendments to make the ratio requirement of faculty to students in a clinical setting less restrictive when preceptors are being utilized.

7. The board intends to promulgate other amendments which will eliminate unnecessary requirements such as the conditions of employment for faculty and the organizational requirements for the nursing faculty and will revise regulations on the principal functions of the faculty for clarification.

8. The board recommends a less restrictive and costly requirement which permits clinical supervision of students in a nursing program by preceptors rather by faculty in written agreements with cooperating agencies.

## Notices of Intended Regulatory Action

9. The board recommends amendments to permit the schools more flexibility and autonomy in revising curriculum.

10. The board recommends elimination of the burdensome and expensive reporting to the board when a school intends to make changes in its nursing education program.

11. To conform to changes in the Code of Virginia regarding the Education Special Conference Committee, the board intends to reduce the number of persons required to serve from three to two and to clarify other references in regulation to the committee.

12. In its regulations on the closing of an approved nursing education program, the board recommends elimination of the specific procedures which a school must follow.

13. The board recommends consideration of amendments to Part III on Licensure and Practice which organize the requirements for greater clarity but which do not change the substance of the regulations, which the board finds to be necessary and reasonable.

14. In the requirements for approval of a nurse aide education program, the board recommends the addition of evidence of financial support and resources sufficient to meet the minimal requirements of these regulations to address a problem of nurse aide students who have lost tuition payments amounting to several thousand dollars.

15. In the section which sets forth qualifications for instructors in a nurse aide education program, the board will consider an amendment to the current requirement for the primary instructor to have experience as a RN for two years within the previous five years with at least one year in a long-term care facility.

16. The board will also consider other modifications to the requirements for nurse aide education to make some regulations less restrictive and eliminate some requirements which are no longer necessary.

17. The board recommends an amendment in Part VI on the Medication Administration Training Program to require a test at the conclusion of the program to provide some measure of assurance for the safety of the public that the person has minimum competency.

In addition to the recommended changes resulting from the review of regulations, the Board of Nursing has identified two issues which it seeks to address through promulgation of proposed regulations.

### A. Identification of Category of Licensure for Patient Protection

In order for the public to be informed about the health care they are receiving, the board intends to consider amending its regulation to require registered nurses, licensed practical nurses, certified nurse aides, and clinical nurse specialists to identify themselves by name and appropriate title to their patients.

B. Establishment of protocol for administration of adult vaccines by certain practitioners.

In the 1996 General Assembly, the Drug Control Act was amended to permit the administration of adult vaccines by registered nurses when a person when prescriptive authority was not present under a protocol approved by the Board of Nursing. For consistency and ease of administration, the board has determined that development of a regulation for such a protocol would be in the best interest of public safety. Through the establishment of a standard protocol, the groups seeking to operate "flu vaccine clinics" would have guidelines to follow.

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

Statutory Authority: § 54.1-2400 and Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until June 11, 1997.

**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, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

VA.R. Doc. No. R97-420; Filed April 22, 1997, 12:59 p.m.

## BOARD OF OPTOMETRY

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to consider amending regulations entitled: **18 VAC 105-30-10 et seq. Regulations Governing the Certification of Optometrists to Use Therapeutic Pharmaceutical Agents.** The purpose of the proposed action is to clarify regulations, to eliminate unnecessary regulations, and to conform regulations to current regulations for the licensure of optometrists as follows:

1. Amendments to the definition of "postgraduate clinical training" to track the language of the statute. Definitions for terms such as "invasive modality" and "protocol," which are not used in the regulations, may be eliminated.

2. Since the certification of optometrists to administer Therapeutic Pharmaceutical Agents is now provided by the Board of Optometry, requirements for submission of certain documents and verification from the Board of Optometry (to the Board of Medicine) are no longer needed in regulation and may be deleted.

3. In the section setting forth the examination for certification, the board needs to identify that examination as the National Board of Optometry's examination in the Treatment and Management of Ocular Diseases known as TMOD, which is now being given as a part of the national examination in optometry. The board intends to also include the option of "an examination acceptable to the board" to allow for another examination which will be subsequently developed.

4. For consistency with the amended Code of Virginia section, the listing of Therapeutic Pharmaceutical Agents in this section should include a regulation permitting the



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## Notices of Intended Regulatory Action

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use of epinephrine administered intramuscular for anaphylactic shock. Likewise, the board will consider an amendment to use Therapeutic Pharmaceutical Agents appropriate to the initiation of emergency treatment of acute angle closure glaucoma.

5. In order to provide consistency in the renewal cycle for the optometrist license and the Therapeutic Pharmaceutical Agent certification, the board intends to amend this section to have the two renewed at the same time.

6. The board intends to clarify that in addition to the one postgraduate program approved for Therapeutic Pharmaceutical Agent certification, other programs which provide the minimum number of clinical hours of education may be acceptable.

7. Amendments are necessary for consistency or to eliminate redundancy.

8. The board intends to consider a reduction in the application fee from \$300 to \$200 since that fee no longer includes administration of an examination and an adjustment in the renewal fee for certification from a biennial to an annual fee of approximately one half the current amount.

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

Statutory Authority: § 54.1-2400 and Chapter 32 of Title 54.1 of the Code of Virginia.

Public comments may be submitted until June 11, 1997.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910, FAX (804) 662-9943, or (804) 662-7197/TDD☎

VA.R. Doc. No. R97-421; Filed April 22, 1997, 12:59 p.m.

### PESTICIDE CONTROL BOARD

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Pesticide Control Board intends to consider amending regulations entitled: **2 VAC 20-50-10 et seq. Requirements Governing Pesticide Applicator Certification Under Authority of the Virginia Pesticide Control Act.** The purpose of the proposed action is to amend the current regulation to clarify requirements for certification of applicators of pesticides in accordance with statutory changes effective July 1, 1995, in §§ 3.1-249.27, 3.1-249.51, and 3.1-249.53 of the Code of Virginia. In addition, several amendments to be considered by the Pesticide Control Board include but are not limited to: categories of pesticide applicators, certification Requirements for pesticide applicators, certification standards for pesticide applicators, suspension and revocation of certificates, denial of certification, reciprocal certification, recordkeeping requirements, evidence of financial responsibility, and general housekeeping changes to make the regulation

clearer. In addition, as a part of this regulatory action, the agency intends to review the regulation for effectiveness and continued need and to eliminate unnecessary duplication of language. In addition to receiving comments about the regulation itself and contemplated amendments related thereto, the agency also invites comment on whether there should be an advisor for the purpose of this regulatory action. An advisor is (i) a standing advisory panel; (ii) an ad hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; and (v) any combination thereof. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Public comments may be submitted until noon on June 15, 1997.

**Contact:** Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Room 401, 1100 Bank St., Richmond, VA 23218, telephone (804) 371-6558, FAX (804) 371-8598, toll-free 1-800-552-9963, or (804) 371-6344/TDD ☎

VA.R. Doc. No. R97-428; Filed April 23, 1997, 9:24 a.m.

### BOARD OF PSYCHOLOGY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to consider amending regulations entitled: **18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology.** The purpose of the proposed action is to clarify and simplify the regulations, eliminate duplication, improve the format, simplify the late reinstatement procedure, establish an endorsement/reciprocity procedure for applicants with lengthy experience licensed in other states, update the education requirement for all categories of licensure, consider including temporary licensure provisions as authorized by statute, consider reducing the face-to-face supervision requirement, update diplomate titles for examination waiver, simplify the reexamination requirement, include a requirement for notifying the board of a name or address change, and consider incorporating some of the ethical standards of the American Psychological Association. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3600 et seq. of the Code of Virginia.

Public comments may be submitted until May 14, 1997.

**Contact:** Janet D. Delorme, Deputy Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9575 or FAX (804) 662-9943.

VA.R. Doc. No. R97-358; Filed March 25, 1997, 12:20 p.m.

# Notices of Intended Regulatory Action

## SOIL AND WATER CONSERVATION BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Soil and Water Conservation Board intends to consider promulgating regulations entitled: **4 VAC 50-60-10 et seq. Watershed Improvement District Referenda Regulations.** The purpose of the proposed action is to develop regulations which will specify arrangement for the conduct of referenda associated with the formation and operation of a watershed improvement district (WID).

**Need:** The proposed regulation is needed to make an electoral process efficient, complete, and consistent. Promulgation should make it possible to carry out existing law for the establishment of a watershed improvement district (WID). Unfortunately, the completion of the regulations may automatically make other required resources and expertise unavailable from the State Board of Elections, local boards of elections, and registrars. A WID is a means for local citizens to organize themselves into a self-governing unit capable of accepting moneys and financing needed environmental structures. This enables community determination of needs, which may serve to prevent state or federal imposition of natural resource requirements.

This is not a new intent of state law. The change merely designates different responsibility for setting referenda procedures. Formerly the responsible entity was the local Soil and Water Conservation District; now it is the Virginia Soil and Water Conservation Board, which already is accountable for land and water management and oversight of Virginia's 46 soil and water conservation districts.

**Substance and Purpose:** The referendum is the means by which landowners in a particularly defined area can vote to determine if a watershed improvement district should be created, and to determine if taxes and service charges should be levied to support the financial commitments of that WID to make improvements. Through these regulations, citizens will have an ability to address unique natural resource issues in conjunction with their locally elected soil and water conservation district (SWCD).

State law authorizes establishment of a WID within a soil and water conservation district or districts. A referendum that must pass both among the resident landowners and among all the qualified voters has been the mechanism for determining the WID's existence. The passage limit on the landowner portion of the referendum must be by two-thirds in favor who also must own two-thirds of the land. Passage of the referendum portion by all qualified voters is by simple majority.

Recodification of the election laws several years ago inadvertently affected the WID formation process by not addressing the WID references to the election laws. In response, the 1995 General Assembly mandated that the referenda authorized under the WID law be governed by regulations developed by the Virginia Soil and Water Conservation Board. This will ensure that SWCD's across the state employ a consistent process, rather than each

SWCD individually having to establish procedures for elections.

**Estimated Impact:** The regulations enable citizens to form a special assessment district, allowing the natural resource needs of a particular locale to be addressed and treated according to the wishes of the residents. Additional taxes and charges may be approved by referenda and collected to finance needed functions and structures within the district. A WID may incur indebtedness, borrow funds and issue bonds, subject to voter approval and landowner approval by referenda. The economic impact of this regulatory proposal will depend on the needs of each area, and only if the qualified voters and the landowners themselves wish for it to occur.

The regulations will name persons to conduct a referendum and describe associated administrative systems. The placement of perfunctory duties will be determined through expert advice and suggestions received during the public processes of the Administrative Process Act and the board's Regulatory Public Participation Procedures. While many details cannot be predicted at this preliminary stage, the least burdensome option will be selected so as to minimize the procedural steps associated with a referendum. The Department of Conservation and Recreation and the Virginia Soil and Water Conservation Board are very mindful of the limitation of resources and do not want to afflict themselves, soil and water conservation districts or citizens with minutia and technicalities that go beyond the minimum legal and effective requirements for a secure election.

**Alternatives:** The agency is not aware of any less burdensome or less intrusive alternatives for achieving the intent of the statute, aside from promulgating a set of uniform regulations for use throughout the Commonwealth. These regulations are not intended to be burdensome, nor intrusive, but, rather to promote essential American freedoms, including that of voting, expressing individual views, and helping to shape the character of one's local community. Electoral processes are a necessary function of government. Taxation is also an essential function of government. In this case, these functions are placed at the local level closest to the people. All alternatives considered are outside the scope of the regulatory process and would require legislative action.

Alternatives considered involve:

1. Rewrite of the Watershed Improvement District Act to require the joint responsibility of the State Board of Elections, local boards of elections, and local registrars; the Virginia Soil and Water Conservation Board, the Director of the Department of Conservation and Recreation, and the local soil and conservation districts. Current law fractures these resources and appears to make the actual functioning of referenda unworkable due to the absence of one or more of the above required parties to carry out the process. Currently either the expertise and support of the State Board of Elections is missing or the specific methodology required by §§ 10.1-617, 10.1-625, 10.1-628, and 10.1-634 of the Code of Virginia to hold referenda is missing. This alternative should be explored, but is beyond the current requirement to produce a set of regulations. Such an

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## Notices of Intended Regulatory Action

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alternative would require major statutory changes and is outside of this regulatory process.

2. Amendments to the basic law to ensure the continued involvement of the State Board of Elections, local boards of elections, and local registrars. Under current law, the responsibilities of the State Board of Elections for such WID referenda will end with the effective date of the proposed regulations. The Department of Conservation and Recreation cannot understand how the referenda process would function without these resources. The Virginia Soil and Water Conservation Board and the department would have to duplicate the processes and resources of the state and local boards of elections and local registrars. Such an alternative would require major statutory and budget changes and is outside of this regulatory process.

3. Amendment of the existing law to require the 46 local soil and water conservation districts individually to promulgate regulations. First, they probably would be required to promulgate individual sets of public participation procedures. Second, they would be required to promulgate individual sets of Watershed Improvement District Referenda Regulations. Thus there would be an additional 92 sets of regulations in the Commonwealth, which would surely differ and cause confusion to the public, particularly when WID proposals overlap jurisdictional boundaries. Further, this scenario would require districts to duplicate, on an individual district basis, the processes and resources of the state and local boards of elections and local registrars. Such an alternative would require major statutory changes and is outside of this regulatory process.

4. Amendment of the existing law to centralize the local soil and water conservation districts' authority under § 10.1-617 of the Code of Virginia to develop individual and separate regulations to conduct a public hearing as permitted by § 10.1-616 of the Code of Virginia under the authority of the Virginia Soil and Water Conservation Board. Current wording is permissive, not mandatory, for the local soil and water conservation districts to develop such regulations. If centralized, the Virginia Soil and Water Conservation Board could be directed to incorporate such requirements into these Watershed Improvement District Referenda Regulations to provide one uniform set of requirements statewide to cover this entire process. Such an alternative would require major statutory changes and is outside of this regulatory process.

5. Amendment to simply repeal the local soil and water conservation districts' authority under § 10.1-617 of the Code of Virginia to develop individual and separate regulations to conduct a public hearing as permitted by § 10.1-616 of the Code of Virginia. If repealed, the local soil and water conservation districts would rely upon the Virginia Freedom of Information Act and any other pertinent laws to conduct the public meeting. Such an alternative would require major statutory changes and is outside of this regulatory process.

Ad hoc Committee: The director intends to form an ad hoc committee to assist the board and department in gathering

data and issues and in developing draft, proposed regulations. Meetings of the ad hoc committee will be public and published in The Virginia Register of Regulations.

The department requests comments on the costs and benefits of the stated alternatives or other alternatives.

The director intends to hold at least one public hearing on the proposed regulation after it is formally adopted by the board as a proposed regulation and it is published in The Virginia Register of Regulations.

To be considered, written comments should be directed to Mr. Leon E. App at the address below and must be received by 4 p.m. on Tuesday, July 29, 1997. In addition, the department's staff will hold a public hearing on Thursday, May 15, 1997, at 7 p.m. in House Room C of the Virginia General Assembly Building located at 910 Capitol Street, Richmond, Virginia 23219, to receive views and comments and to receive questions of the public.

Accessibility to Persons with Disabilities: The May 15, 1997, a public meeting is being held at a public facility accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mr. Leon E. App at the address below or by telephone at 804/786-4570. Persons needing interpreter services for the deaf must notify Mr. App no later than Thursday, May 8, 1997, at 4 p.m.

Applicable Laws and Regulations: Chapter 6 (§ 10.1-614 et seq.) of Title 10.1 of the Code of Virginia, especially §§ 10.1-634.1, 10.1-617, 10.1-624, 10.1-628 and 10.1-634.

Chapters 1.1:1 (§ 9-6.14:4.1 et seq.) and 1.2 (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia.

The Virginia Soil and Water Conservation Board's Regulatory Public Participation Procedures found at 4 VAC 50-10-10 et seq. and formerly VR 625-00-00:1 apply.

Governor Allen's Executive Order 13 (94), Review of Regulations Proposed by State Agencies.

Note: It must be assumed at this time that the federal voting rights laws apply to this action. Advice from the Attorney General's Office is to complete the Virginia regulatory actions and then submit the final regulation product to the Attorney General who will forward it to the U. S. Department of Justice for their review and determination of coverage.

Public Hearing Plans: On behalf of the board, the department seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternative actions. In particular, the department requests comments on how the board may best develop these regulations to account for the total referenda process without assistance or resources from the State Board of Elections, local boards of elections and local registrars.

Additional Information: For additional information, review or copies of material or applicable laws and regulations, contact Mr. App at the address below.

Statutory Authority: § 10.1-634.1 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on July 29, 1997.

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## Notices of Intended Regulatory Action

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**Contact:** Leon E. App, Conservation and Development Programs Supervisor, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141, or (804) 786-2121/TDD ☎

VA.R. Doc. No. R97-396; Filed April 9, 1997, 11:32 a.m.

### VIRGINIA RACING COMMISSION

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-20-190. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Criteria for Unlimited Horse Racing Facilities.** The purpose of the proposed action is to establish standards for the operation of a racetrack including the latest safety standards compiled by Racing Commissioners International. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public comments may be submitted until May 15, 1997.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363 or FAX (804) 371-6127.

VA.R. Doc. No. R97-349; Filed March 19, 1997, 3:43 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-50-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Racing Officials.** The purpose of the proposed action is to establish duties and responsibilities of racing officials and establish new categories of officials for satellite facilities. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public comments may be submitted until May 15, 1997.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363 or FAX (804) 371-6127.

VA.R. Doc. No. R97-347; Filed March 19, 1997, 3:43 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-70-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Stewards.** The purpose of the proposed action is to establish duties and responsibilities of stewards at satellite facilities and set forth procedures for stewards'

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

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public comments may be submitted until May 15, 1997.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363 or FAX (804) 371-6127.

VA.R. Doc. No. R97-350; Filed March 19, 1997, 3:43 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-90-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Formal Hearings.** The purpose of the proposed action is to establish procedures for appeals from stewards' hearings to a review by the Virginia Racing Commission. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public comments may be submitted until May 15, 1997.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363 or FAX (804) 371-6127.

VA.R. Doc. No. R97-348; Filed March 19, 1997, 3:43 p.m.

# PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



## PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

Effective July 1, 1995, publication of notices of public comment periods in a newspaper of general circulation in the state capital is no longer required by the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). Chapter 717 of the 1995 Acts of Assembly eliminated the newspaper publication requirement from the Administrative Process Act. In *The Virginia Register of Regulations*, the Registrar of Regulations has developed this section entitled "Public Comment Periods - Proposed Regulations" to give notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

Notice is given in compliance with § 9-6.14:7.1 of the Code of Virginia that the following public hearings and public comment periods regarding proposed state agency regulations are set to afford the public an opportunity to express their views.

### DEPARTMENT OF HEALTH (STATE BOARD OF)

**June 18, 1997 - 7 p.m.** -- Public Hearing  
Vinton War Memorial Building, 814 East Washington Avenue,  
Vinton, Virginia.

**June 19, 1997 - 7 p.m.** -- Public Hearing  
James City County Board of Supervisors, Administration  
Building, Meeting Room, Kings Mill Offices, Mounts Bay  
Road, Williamsburg, Virginia.

**June 20, 1997 - 7 p.m.** -- Public Hearing  
Spotsylvania County Board of Supervisors, Meeting Room,  
9105 Courthouse Road, Spotsylvania, Virginia.

**July 14, 1997** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-585-10 et seq. Biosolids Use Regulations.** The proposed amendments have been recommended by the Regulations Advisory Committee in response to the public comments received on certain provisions of the regulations subjected to an additional comment period (published in the *Virginia Register* on July 10, 1995). These amendments address three trace element concentration values and the requirements for reporting on distribution or marketing of exceptional quality biosolids. Additional amendments are being proposed that address nutrient management, land application rates, monitoring frequency, submission of reports, Class III treatment standards, and certain technical clarifications.

Statutory Authority: § 32.1-164.5 of the Code of Virginia.

**Contact:** C. M. Sawyer, Division Director, Department of Health, Office of Water Programs, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5567 or (804) 371-2891, or e-mail [csawyer@vdh.state.va.us](mailto:csawyer@vdh.state.va.us)

### DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

**May 20, 1997 - 9 a.m.** -- Public Hearing  
Omni Hotel-Newport News, Newport News, Virginia.

**May 20, 1997 - 3 p.m.** -- Public Hearing  
Department of Social Services Central Regional Office, Koger Executive Center, West End, 1604 Santa Rosa Road, Wythe Building, Richmond, Virginia.

**May 21, 1997 - 10 a.m.** -- Public Hearing  
Department of Social Services Northern Regional Office, 320 Hospital Hill, Suite 31, Warrenton, Virginia.

**May 21, 1997 - 4 p.m.** -- Public Hearing  
Ramada Inn, Wytheville, Virginia.

**July 11, 1997** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **22 VAC 40-705-10 et seq. Child Protective Services.** The purpose of the proposed regulation is to satisfy the need to provide direction for how best to protect children from child abuse and neglect balanced with the right of parents and family integrity.

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

**Contact:** Jesslyn Cobb, Human Services Program Consultant, Child Protective Services Unit, Department of Social Services, Theater Row Bldg., 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1255, FAX (804) 692-2209 or (804) 692-2215, or toll-free 1-800-828-1120/TDD ☎

### STATE WATER CONTROL BOARD

**June 16, 1997 - 11 a.m.** -- Public Hearing  
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Training Room, Woodbridge, Virginia.

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## Public Comment Periods - Proposed Regulations

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**June 18, 1997 - 11 a.m. -- Public Hearing**

Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Training Room, Glen Allen, Virginia.

**June 27, 1997 - 11 a.m. -- Public Hearing**

Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Training Room, Virginia Beach, Virginia.

**July 15, 1997** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **9 VAÇ 25-196-10 et seq. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Cooling Water Discharges**. The purpose of the proposed action is to adopt a regulation for the issuance of a general permit for cooling water discharges.

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

**Contact:** Lily Choi, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23240, telephone (804) 698-4054.

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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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### DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: 12 VAC 5-585-10 et seq. Biosolids Use Regulations (amending 12 VAC 5-585-10, 12 VAC 5-585-20, 12 VAC 5-585-30, 12 VAC 5-585-70, 12 VAC 5-585-130, 12 VAC 5-585-140, 12 VAC 5-585-170, 12 VAC 5-585-190, 12 VAC 5-585-200, 12 VAC 5-585-210, 12 VAC 5-585-220, 12 VAC 5-585-240, 12 VAC 5-585-250, 12 VAC 5-585-260, 12 VAC 5-585-280, 12 VAC 5-585-300, 12 VAC 5-585-320, 12 VAC 5-585-340, 12 VAC 5-585-370, 12 VAC 5-585-410, 12 VAC 5-585-420, 12 VAC 5-585-460, 12 VAC 5-585-470, 12 VAC 5-585-490, 12 VAC 5-585-500, 12 VAC 5-585-510, 12 VAC 5-585-520, 12 VAC 5-585-530, 12 VAC 5-585-550, 12 VAC 5-585-560, 12 VAC 5-585-570, 12 VAC 5-585-590, 12 VAC 5-585-610, 12 VAC 5-585-630, and 12 VAC 5-585-640).

Statutory Authority: § 32.1-164.5 of the Code of Virginia.

Public Hearing Date:

June 18, 1997 - 7 p.m. (Vinton)  
June 19, 1997 - 7 p.m. (James City County)  
June 20, 1997 - 7 p.m. (Spotsylvania)

Public comments may be submitted until July 14, 1997.  
(See Calendar of Events section  
for additional information)

Basis: Sections 32.1-12 and 32.1-164 of the Code of Virginia authorize the State Board of Health to promulgate regulations to govern the safe and sanitary collection, conveyance, transportation, treatment and disposal of sewage, all sewerage systems, and treatment works as they affect the public health and welfare. Section 32.1-164.5 of the Code of Virginia authorizes the board to promulgate regulations for the land application, marketing or distribution of sewage sludge, also known as biosolids.

Purpose: The regulations were adopted by the board in response to HB1067 (1994), which added §§ 32.1-164.5 and 62.1-44.19:3 of the Code of Virginia pertaining to standards and permits required for land application, marketing, or distribution of biosolids.

The Biosolids Use Regulations Advisory Committee includes representatives of local government and private members of the regulated community. The proposed amendments to the regulations have been recommended by the Regulations Advisory Committee in response to the public comments received on certain provisions of the regulations subjected to an additional comment period (published in the Virginia Register on July 10, 1995). These amendments address three trace element concentration values and the requirements for reporting on distribution or marketing of exceptional quality biosolids. Additional amendments address land application rates, monitoring frequency, submission of reports, Class III treatment standards and certain technical clarifications.

The proposed amendments to the regulations will simplify permit issuance procedures by relying on federal reporting requirements administered through the U.S. Environmental Protection Agency (USEPA) rather than continuing a parallel set of different reporting requirements. This will facilitate evaluation and approval of permits issued to sludge management contractors serving treatment works involving approximately one-half of the state's population.

Permits issued through the regulations provide the means to protect public health from improper disposal of sewage and sewage sludge. Land application of improperly treated and unacceptable quality biosolids could result in pollution of surface and groundwater, contamination of soil and exposure of the public to infectious microorganisms and toxic substances.

The permit standards contained in the proposed amendments to the regulations reflect the development of technical requirements from 15 years of experience with permitting land application of biosolids in Virginia. These standards were designed to eliminate any risk of either water quality impairment or infectious disease transmissions resulting from biosolids use. The new federal standards for sludge management promulgated by USEPA, titled "Standards for the Use or Disposal of Sewage Sludge" and published in 40 CFR Part 503 (the "503 Regulations"), include numerical standards for sludge quality as established by environmental health risk assessments for various uses of biosolids and means of exposure of humans to biosolids contamination. Certain portions of the proposed amendments to the regulations will essentially conform to the promulgated federal standards. However, the federal standards do not address site specific management controls for agricultural use of biosolids, provide for specific nutrient management issues, or address many of the concerns of local governments. These critical issues are addressed in the proposed amendments.

The amendments being proposed were developed with the guidance of the advisory committee. Biosolids use can only be regulated effectively through a multidisciplinary permit process that involves agriculture and soil conservation principles to protect water quality and provides for public health protection requirements. The Virginia Department of Health (VDH) sought comments from the regulated community, local government, agricultural interests, academic experts and other concerned agencies to develop the most practical and effective means to ensure that nonpoint pollution would be controlled and that nutrient (i.e., nitrogen and phosphorus) reduction goals would be achieved through biosolids use. This diverse input led to the development of the land application site specific management practices included in the proposed amendments.

The proposed amendments will bring the state requirements more closely in line with the federal standards recently

adopted by the USEPA in the 503 Regulations. Site specific requirements have been revised to provide for statewide nutrient management initiatives. The proposed amendments will ensure that the level of environmental and public health protection expected by the citizens of the Commonwealth will be provided through the site specific and operational provisions incorporated into applicable permits. Many of the requirements contained in the proposed amendments have been included at the request of local governments and are supported by sludge management operators throughout the state. The revised regulations will provide a uniform set of statewide requirements for permit issuance.

Substance: In order to comply with House Bill 1067 (1994) and in the interest of protecting the public health of all Virginians, the State Board of Health convened the advisory committee to analyze the implementation plan for the regulations. The regulated community participated in this process and their concerns were addressed through the deliberations of the advisory committee.

The advisory committee developed specific recommendations for amendments to the regulations and forwarded those recommendations to VDH by letter dated September 18, 1995. These recommendations addressed the following issues:

1. Coordinating the state requirements for monitoring of biosolids quality with parallel federal requirements contained in the 503 Regulations;
2. Coordinating the state and federal maximum concentration limits for the trace elements as noticed in the July 10, 1995, issue of the Virginia Register;
3. Redefining the requirements for agronomic land application rates;
4. Coordinating the state and federal requirements for biosolids treatment standards to achieve Class B pathogen control;
5. Establishing uniform requirements for biosolids monitoring and recordkeeping; and
6. Developing uniform terminology and making certain technical clarifications to the version of the regulations published in the August 21, 1995, issue of the Virginia Register.

Since 1990, VDH has sought the comments of the regulated community, local government, agricultural interests, academic experts and other concerned agencies in the development of site specific management practices now contained in the regulations. The current requirements sought to reconcile competing interests, and are designed to eliminate or minimize violations of both environmental and public health standards. Nonpoint pollution control and nutrient management issues have been addressed in the proposed amendments through consultation with the Department of Conservation and Recreation. The Department of Agriculture and Consumer Services has also addressed concerns of interest to the agricultural community.

The proposed amendments relating to site management operational requirements are designed to prevent nutrient

pollution of state waters through site slope limitations and seasonal application restrictions.

Issues: These proposed amendments offer many advantages to the citizens of the Commonwealth. Local governments, including rural counties and urban municipalities, have requested that the state provide a permit program for agricultural use of biosolids on specific sites identified within their political jurisdictions. Therefore all land application of biosolids in Virginia is regulated under site specific conditions through permits authorizing the operation of such facilities. An advantage of the proposed amendments to the regulations is the heightened assurance to local governments that land application, marketing or distribution of biosolids will be properly regulated. Local governments and concerned citizens will have the opportunity to comment on each application for a biosolids use permit at public meetings arranged to discuss these issues, as required by § 32.1-164.2 of the Code of Virginia.

The department's Division of Wastewater Engineering (DWE) will advise applicants for biosolids use permits of the technical information necessary to complete permit applications. Site investigations will be conducted by the VDH field office staff to verify site suitability and availability. The staff will also evaluate the sludge quality information to verify that sludge sources comply with biosolids standards. The DWE engineering staff will work collaboratively toward an acceptable design or plan with other state agencies and local governments. During this process, small communities will receive the benefits of the DWE statewide technical expertise. The proposed amendments will help to clarify operational requirements and will expedite the issuance of site specific permits to those private companies that are land applying biosolids through contracts with municipalities. These contractors must assure local government that the required site management controls will be implemented. The technical oversight provided by VDH has convinced many local governments that the public health is protected by this program.

Adopting these amendments will help ensure that Virginia maintains an adequate and credible state regulatory program in this area. Without adoption of the proposed amendments, the USEPA would implement the federal standards and the generator of biosolids would not be required to obtain site specific permits. As a consequence, nonuniform and possibly overly restrictive local ordinances and outright biosolids use bans would likely be imposed. Implementation of local standards would place additional financial burdens on rural communities. In addition, the treatment works owners, usually large urban communities, would experience significant increases in costs if biosolids use management options are replaced with more expensive options, such as sludge incineration. These amendments will help ensure the vitality of this regulatory program, allowing the Commonwealth to enjoy many advantages.

One minor disadvantage of the proposed amendments could result from the proposed changes in site slope limitations and the restrictions placed on seasonal agronomic rates, designed to provide the amount of nitrogen needed by the crop or vegetation grown on the sites involved. Additional land application sites may be required for seasonal



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operations. Other means of biosolids management or storage may be necessary during the late fall to early spring time period if sites with adequate cover crops are not available. If this disadvantage occurs, it will affect the regulated persons most directly, and the public and the Commonwealth only indirectly.

Estimated Impact: All sewage treatment works owners (sludge generators) located in Virginia are required to monitor sludge quality in accordance with an approved sludge management plan as required by a Virginia Pollutant Discharge Elimination System (VPDES) permit issued to each treatment works by the Department of Environmental Quality (DEQ). Before March 1995, if the sludge generator contracted with a private firm to take responsibility for biosolids use operations, that firm was issued a Virginia Pollution Abatement (VPA) permit by DEQ in order to land apply, market or distribute biosolids. Permits issued to the owner's contractor, or agent, by the VDH will replace those VPA permits currently issued by DEQ under its regulations protecting water quality (9 VAC-25-30-10 et seq.).

As authorized by § 32.1-164.5 of the Code of Virginia, the current DEQ VPA permit fees charged to sewage sludge management contractors will be replaced by the fees established through a VDH permit fee (to be adopted) that will recover a portion of the costs associated with permit processing. The Permit Fee Regulation Advisory Committee has prepared a draft regulation setting forth a permit fee schedule acceptable to the committee members representing the regulated community. Upon adoption of the amended regulations, the draft permit fee regulation will be proposed for adoption in accordance with the Administrative Process Act.

The permit fee regulation, when adopted, will generate revenue similar to the current VPA permit fees. Major stipulations of the proposed permit fee regulation will include:

1. A maximum permit issuance period of five years.
2. One permit per jurisdiction (county) per contractor (agent).
3. Specific definitions of new permits, modifications, reissuance and conversion of existing VPA permits, including an acreage cap of 2,500 acres per initial permit and each subsequent modification.

The proposed fee schedules include a base fee plus a per acreage charge for increments of site area submitted in an application for a new permit and major modifications to existing permits. The proposed maximum new permit fee will be \$2,500. The proposed fee schedule for major modifications is approximately one-half of new permit fees. The proposed permit reissuance fee is \$150 and the proposed VPA conversion fee (one time) is \$250.

Each contractor will receive a permit for all approved sites located within a political jurisdiction (county). The permit will require a major modification for permitting additional acreage with a limit of 2,500 acres per modification. Each new or modified permit will be reissued for available sites once every five years. The annual cost passed on to treatment works owners now contracting out biosolids use, would be less than one dollar per dry ton of biosolids produced. For example,

the operational costs of treatment works with a design flow capacity of 10 million gallons per day could increase up to approximately \$2,000 annually as a result of fees assessed to their contractors for biosolids use permits. Such fees would primarily impact the municipal governments located in the eastern area of the state, including the Hampton Roads area, and the City of Richmond. The cities of Danville and Roanoke would also be affected.

The proposed amendments may require an expansion of the land base now acquired by each contractor to account for seasonal restrictions on land application operations. The development of additional biosolids storage facilities would not seem to be necessary as co-disposal in landfills is an option available to contractors. Any additional costs passed on to the generator, due to permit fees, will likely be offset by costs saved through coordination of federal and state monitoring, reporting and recordkeeping requirements.

Permit fees will be used to partially reimburse the direct and indirect agency costs of issuing and tracking biosolids use permits. Based on current land application permitting patterns, the proposed biosolids use permit fees could generate an average annual revenue for the Commonwealth totaling \$50,000. Permit processing includes: (i) a complete technical evaluation of the permit application; (ii) notification of appropriate local governments, other concerned agencies and the general public in accordance with Virginia law, VDH regulations, and public participation procedures; and (iii) inspections of each proposed land application site. VDH staff may schedule a public meeting to hear public and agency comments in accordance with § 32.1-164.2 of the Code of Virginia.

Following receipt and evaluation of the permit application, field inspections, and comments from the public, a biosolids use permit will be issued by the State Health Commissioner. If the proposed amendments are adopted, this procedure will be streamlined, allowing local and private activity to occur with minimal regulatory burden and continued protection of public health.

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 § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 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. This proposal makes a number of changes in the rules for using biosolids (sludge) from sewage treatment facilities. While a number of the changes are minor or of a technical nature, several of the changes are substantive and have significant costs and benefits associated with them.

Estimated economic impact. The normal operation of sewage treatment facilities generates a large amount of wet solids commonly referred to as sewage sludge or biosolids. Biosolids are a very complex residual from the treatment of human waste products. While biosolids are generally much less hazardous and offensive than the contents of the waste stream entering the treatment plant, these residuals contain human pathogens, elevated levels of potentially hazardous trace elements, and significant concentrations of the plant nutrients nitrogen and phosphorus. These solids may be incinerated, disposed of in landfills or applied to land. This third option, land application, can be a very cost-effective disposal technique and has the added advantage of reusing the economically valuable concentrations of plant nutrients in the biosolids.

The difficulties with land application are apparent from the description of the biosolids. Without proper handling, the pathogens could be a public health hazard, the trace elements could accumulate to dangerous levels in soils, the nutrients could find their way into nutrient sensitive waters, neighbors could suffer from unpleasant odors, and groundwater could be contaminated. Fortunately, proper handling techniques can control these undesirable impacts making biosolids a valuable soil supplement. Using biosolids in this way reduces the cost of sewage treatment as it improves the productivity of the soil.

Regulation of biosolids use serves a dual function. It protects the public against any adverse effects from improperly handled sludge, but it also improves the acceptability of using a resource that, if improperly handled, can be a health hazard and a nuisance. It is important to mention this dual function because there may be aspects of the regulation of biosolids use where the regulations may go beyond what is minimally necessary to protect the public health and safety. Because individuals and localities are quite reasonably risk averse about having biosolids applied nearby, these regulations must take into account that a few serious problems could generate widespread resistance to biosolids use. The regulations must try to find a reasonable balance between the costs of increasing the acceptability of biosolids and the benefits of expanding the market for their use.

A. Trace element concentrations. While this proposal makes a number of changes in the regulation of trace elements in biosolids, the most controversial of these changes is to relax the maximum allowable concentration of cadmium (Cd) from 21 milligrams per kilogram to 39 mg/kg. This latter figure is the EPA standard. The reason that this change is controversial is that there is substantial disagreement in the scientific community about whether the new standard provides a sufficient margin of safety.

Cadmium can be taken up from the soil by plants. Tobacco is particularly effective at Cd uptake. However, normally this will not occur because the normal levels of zinc in the soil will prevent the Cd from moving into plants. So, if the ratio of zinc to cadmium in the soil is sufficiently high, then there is little or no hazard posed by the 39 mg/kg standard. Some experts<sup>1</sup> have argued that in the absence of a test to ensure

that the zinc-cadmium ratio is sufficient to immobilize the cadmium, then a lower concentration should be used to provide a prudent margin of safety. The EPA standard does not require that the zinc-cadmium ratio be evaluated.

It is not possible in this context to resolve the scientific debate over the appropriate standard for cadmium. However, this debate is not without its economic consequences.

At the present time, there are no treatment facilities in Virginia that are producing biosolids with cadmium concentrations at or near the 21 mg/kg limit. Thus, for the foreseeable future, this concentration limit is not expected to be binding and has no economic costs associated with it. On the other hand, there are localities in Virginia that have zinc-cadmium ratios below that which, at least to some prominent experts, provides a sufficient margin of safety. And a number of other states have established significantly lower concentration limits. Even at the EPA standard, the experts seem to agree that the probability of any significant health effects from cadmium from biosolids are very low.

Given that a number of localities have shown a reluctance to accept the land application of biosolids due in part to concerns about trace element contamination, there is an argument to be made that maintaining the lower concentration limit would improve the public acceptability of the biosolids at little or no additional cost. This, in turn, would lower the cost of land disposal of these residuals. There is no data on which we can base a judgment about the actual magnitude of these possible benefits. Thus, we cannot draw any firm conclusion about the net economic benefits of changing the cadmium standard. The operators of treatment facilities have not indicated that they feel that a higher cadmium standard will hurt the marketability of biosolids.

B. Nutrient runoff. By recycling the plant nutrients from the human waste stream, land application of sewage sludge can help reduce the cost of reducing nutrient flows into Virginia waters. One potential difficulty with using biosolids as fertilizer is that some of the nutrients will find their way back into the water through agricultural runoff. This is true of all fertilizer applied to land. This issue will become increasingly important as greater amounts of nutrients are removed from the effluent of sewage treatment works. Much of the nitrogen and phosphorous not flowing into the water will be concentrated in the sludge. This increases both the quantity of sludge and the concentration of nutrients, especially phosphorous.

At the current time, the supply of sludge exceeds the demand. Hence, sewage treatment plants do not generally charge for the application of land. The excess supply of these nutrients leads to a set of economic incentives that may work against the goals of nutrient reduction. Since the farmer gets the plant nutrients for free, there is some incentive to apply the nutrients at rates that are greater than those that would be used for commercial fertilizer. In addition, treatment works face higher costs, the greater the number of separate sites for land application. Thus, the POTWs have incentive to apply the greatest possible amounts to the fewest possible acres. The combination of these affects could lead to a substantial amount of leakage of the point source nutrients into nonpoint source runoff.

<sup>1</sup> Personal conversations with Rufus Cheney, USDA, Greg Evanylo, VPI.

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One other complicating factor is that the level of the two key nutrients supplied by biosolids is determined by the waste stream and not by the nutrient needs of the crops to which it is being applied. In fact, POTWs using biological nutrient removal to control nutrient effluents will generate sludge that has higher levels of phosphorous relative to the amount of nitrogen than is needed in a balanced fertilizer. Since the biosolids are free, farmers would tend to apply them according to the amount of the limiting nutrient, nitrogen. This could well lead to phosphorous buildup in the soil where biosolids are being applied.

Phosphorous is not generally a biologically limiting nutrient in Chesapeake Bay waters. It is often the limiting nutrient in fresh water. Therefore, the phosphorous buildup that could occur over time is the cause of some concern for the water quality in lakes and streams in Virginia:

These regulations contain a number of provisions to reduce the problem of nutrient runoff from land-applied biosolids. Buffers are required between applied biosolids and nearby lakes and streams. This requirement may tend to increase costs of using biosolids by forcing POTWs to contract with more different landowners for disposal. Aside from contracting costs, this may increase the total costs of transportation and application. Nutrient management experts consulted for this study indicated that the buffer requirements strike a reasonable balance between the increased costs and the protection of water quality.

Another restriction in the regulations, provides that biosolids should not be applied in the absence of a crop that can make effective use of the nutrients before they pass beyond the root zone and into the groundwater, or before they contribute significantly to surface runoff. Like the buffer rules, these rules will tend to increase contracting, transportation and application costs since winter application will be significantly restricted. Since the restriction on winter application will reduce winter demand for sludge, POTWs will have to consider storing biosolids during the winter or disposing of it by landfill or incineration. However, the risks to ground and surface waters from application of biosolids on land with no cover crop are great and appear to justify the increased costs of the restrictions.

Another set of features that contribute to groundwater protection are the requirements of the regulation that application at agronomic rates be done infrequently and, conversely, that frequent application be at below agronomic rates. Combined with the cover-crop restrictions, this provides substantial protection for ground and surface waters. There is a potential problem with the buildup of phosphorus (and subsequent potential for runoff) on parcels of land where biosolids are applied frequently. The reduction of monitoring requirements in areas of frequent applications will also make it more difficult to assess whether frequent application is contributing significantly to nutrient runoff.

According to one extension expert in this field, farmers may tend to discount the nitrogen content of biosolids and supplement an agronomic application of sludge with nitrogen fertilizer. This leads to increased nitrogen runoff and seepage into groundwater. To help reduce this problem, Maryland requires a nutrient management plan for land where biosolids are applied.

It is not known at this time whether these additional precautions would be worth the additional costs. There is insufficient data to measure the actual performance of nutrient controls where biosolids are applied. As discussed later, a program of monitoring and evaluation would help determine whether the controls in this regulation are appropriate. It is unclear how biosolids application compares to the application of fertilizer and animal wastes. More evaluation needs to be done to assess the appropriate mix of controls on these different sources of nonpoint source nutrients.

C. Monitoring, enforcement and program evaluation. The monitoring requirements have been relaxed for biosolids quality from a given generator. For most generators of biosolids, this is probably not a significant change. First, many of them will monitor routinely even in the absence of a regulation, and, second, their sludge tends to be quite uniform in quality. The reduced monitoring is more important for a fraction of the plants that may have difficulty controlling sludge quality either due to the characteristic of the waste stream entering the plant or due to a lack of management skill at the facility. The Class III designation that is being eliminated in these proposed changes was, at least partially, intended to address problems with quality control. The elimination of this class and the reduction of self-monitoring requirements may result in an increase in complaints about product quality.

Except insofar as this variation in product quality will cause a public nuisance, health threat or contamination of ground or surface waters, it can be argued that product quality is an issue that can usually be left to the producers' trade association. The trade association has incentive to create a system of quality enforcement that will protect the marketability of its product to landowners. The protection of public health and waters cannot generally be left to trade associations since they cannot have the same enforcement powers as state government.

Staff of the Department of Conservation and Recreation have reported that the problem of enforcing proper application of biosolids is getting worse. More, smaller firms are participating in the application industry. This has led to wider variations in the quality of application. There is very little monitoring by state agencies of what is actually happening at application sites. It seems likely that an increase in enforcement and monitoring efforts would be quite beneficial for avoiding nuisances and contamination. This would have the beneficial side effect of improving the marketability of biosolids and, hence, lowering the costs of sewage treatment.

While it seems likely that the changes proposed in this regulation will improve the performance of the regulation, many of the decisions made were done in the absence of good data about actual performance of various aspects of the program. The proposal here does not contain a proposal for evaluating its success that would allow VDH to know whether the changes have actually improved public health and safety and environmental quality at a reasonable cost. Some mention of a program for evaluating the regulation's performance would ensure that the next set of changes in the regulation will be based on sound scientific data.

Businesses and entities affected. These regulations will directly affect four groups of entities in the Commonwealth: sewage treatment works, biosolids brokers, trucking firms that apply biosolids, and landowners who have biosolids applied to their land. Indirect effects could be felt by users of Virginia waters, especially those whose use is affected by nutrient levels in the water. Also, those living near land where biosolids are applied or near biosolids storage facilities may feel some affect from these regulations.

Localities particularly affected. These regulations apply to all localities in the Commonwealth. No localities will receive a disproportionate share of the benefits nor will pay a disproportionate share of the costs of this regulation.

Projected impact on employment. This regulation will not have any measurable affect on employment in Virginia.

Effects on the use and value of private property. If these regulations change the quality and availability of biosolids available to landowners, there could be a marginal change in the value of owning the land where biosolids are applied. Also, any changes in the effect of biosolids use on neighboring landowners may have some affect on land values. Overall, the impact of the changes in this regulation on land values should be quite small.

Summary of analysis. The land application of biosolids provides significant net benefits to Virginians. It reduces the cost of sewage treatment and nutrient reduction while improving soil productivity. Biosolids reuse must be done in a way that does not impose undue risks to public health, environmental quality, or the acceptability of the product. These regulations appear, on balance, to provide a significant net benefit to the Commonwealth.

There are three areas where some changes may be warranted to improve the economic performance of the proposal. First, the impact of accepting the EPA standard for cadmium in the absence of any consideration of the zinc-cadmium ratio may have costs associated with it but little or no benefits. Second, given the importance of achieving nutrient reductions in state waters, a program of monitoring and somewhat enhanced enforcement may be economically justifiable especially in light of the reduced monitoring requirements in the regulations. Finally, VDH should monitor whether the reduced monitoring requirements for biosolids quality leads to any additional nuisance complaints or problems with public acceptability of biosolids use.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Health (VDH) substantially agrees with the Department of Planning and Budget's (DPB) economic impact analysis. The analysis notes that there is general agreement among experts and interested parties that, in aggregate, the benefits of the regulations will exceed the costs. This finding is reflective of the process for the development of these regulations; VDH has proceeded carefully and deliberately, with comments being sought from individuals with economic, environmental, scientific and public health interests in the proposed changes. VDH has prepared the following responses to the issues discussed in the DPB analysis.

A. Trace element concentrations. There has been some scientific debate over the appropriate standards for Trace

Element Concentrations, such as cadmium, present in biosolids. However, the U.S. Environmental Protection Agency has used extensive risk assessment studies to verify the 40 CFR Part 503 standards which are based on frequent applications of biosolids. Thus, the potential for developing health effects from biosolids contaminants, at levels below the standard, applied at infrequent intervals is extremely low to nonexistent. The Trace Element Concentrations for cadmium, chromium, molybdenum and selenium have been revised accordingly to provide uniformity between the federal standards, the standards adopted by the State Water Control Board and the VDH regulations.

B. Nutrient runoff. The Commonwealth of Virginia is committed to reducing the amount of nutrients (nitrogen and phosphorus) discharged to state waters from both point and nonpoint sources. The proposed revisions to the regulations address this issue through clarifications to seasonal application and site slope restrictions and requirements for the use of Best Management Practices (BMP's). Nutrient management is also addressed through clarifications to the definitions of the agronomic rates specified to prevent nutrient movement from the biosolids application site. Nutrient management recommendations in the form of either balance sheets or formal plans for additional fertilizer use will be provided to the farmer.

C. Monitoring, enforcement and program evaluation. Monitoring frequency may not be a significant factor in the regulation revisions. Large flow (5 mgd or more) generators supply approximately 90% of the biosolids land applied in Virginia. These larger scale generators have already developed an extensive baseline of regulated biosolids constituent concentrations. These generators typically have effective pretreatment programs in place to monitor and control the introduction of regulated contaminants from industrial sources. Therefore, the quality of biosolids from current sources is established and reasonably constant.

The issues of surveillance and enforcement are critical to the public and local government acceptance of biosolids use and current land application operations. VDH agrees that the proper resources should be provided to assure that these operations are being accomplished in compliance with the regulations.

The regulations provide for an advisory committee composed of a broad representation of stakeholders. This committee has been established and meets on a regular basis. In fact, the proposed revisions were thoroughly evaluated by this committee. VDH believes that this committee is the proper forum to evaluate whether or not the regulations are perceived to provide for public health protection, while maintaining environmental quality at a reasonable cost. The advisory committee will also provide recommendations for future changes to the regulations based on these regular evaluations of scientific data and public acceptance of biosolids use.

D. Land values. Extensive studies have verified that biosolids use by land application will improve soil productivity and actually improve crop yields. Thus, biosolids use can improve the appearance of farmland and forest while reducing the erosion potential. Biosolids used for land reclamation purposes can help establish vegetative cover on

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barren sites. Thus, biosolids can enhance the aesthetics of land that could not be economically maintained by other management practices. The trade off for land value involves short term aesthetic problems, such as odors, compared to long term site improvements that should improve land values. Despite the scientifically unsupported fears that biosolids may contain hazardous wastes, land application of biosolids has actually improved land values on many Virginia farms over the past 16 years.

### Summary:

*The Biosolids Use Regulations provide the means to protect public health from improper and unregulated disposal of sewage and sewage sludge.*

*In response to concerns expressed by one municipality and other interested parties, certain issues were referred to the Regulations Advisory Committee, a standing committee including representatives of local governments and private interests. The proposed amendments reflect the recommendations of the advisory committee by updating and revising the technical standards contained in the previous regulations, and also provide for issuance of Virginia Department of Health (VDH) construction and operation permits by the State Health Commissioner.*

*Additional amendments are being proposed in response to the public comments received since the July 10, 1995, Virginia Register notice requesting additional comments on certain provisions of the regulations. These proposed amendments address three trace element concentration values and the requirements for reporting on the distribution and marketing of exceptional quality biosolids. Other proposed amendments involve land application rates, monitoring frequency, submission of reports, modifying state permit application forms, and Class III treatment issues.*

*The proposed amendments also reflect recommendations from the Virginia Department of Conservation and Recreation concerning slope limitations and seasonal application restrictions.*

### **12 VAC 5-585-10. Definitions.**

A. Unless otherwise specified, for the purpose of these Biosolids Use Regulations, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

*"Biosolids"* means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains acceptable levels of pollutants, such that it is acceptable for use for land application, marketing or distribution in accordance with these regulations *this chapter*.

*"Board"* means the State Board of Health.

*"Certificate"* means a permit issued by the State Water Control Board in accordance with 9 VAC 25-30-10 et seq.

*"Commissioner"* means the State Health Commissioner.

*"Critical areas/waters"* means areas/waters in proximity to shellfish waters, a public water supply, recreation or other waters where health or water quality concerns are identified by the Department or the State Water Control Board.

*"Conventional design"* means the designs for unit operations (treatment system component) or specific equipment that has been in satisfactory operation for a period of one year or more, for which adequate operational information has been submitted to the division to verify that the unit operation or equipment is designed in substantial compliance with these regulations *this chapter*.

*"Department"* means the State Department of Health.

*"Discharge"* means (when used without qualification) discharge of pollutant or any addition of any pollutant or combination of pollutants to State waters or waters of the contiguous zone or ocean other than discharge from a vessel or other floating craft when being used as a means of transportation.

*"Division"* means the Division of Wastewater Engineering of the Office of Water Programs, the administrative unit responsible for implementing these regulations.

*"Effluent limitations"* means schedules of compliance, prohibitions, permit requirements, established under state or federal law for control of sewage discharges.

*"Exceptional quality biosolids"* means biosolids that have received an established level of treatment for pathogen control and vector attraction reduction and contain known levels of pollutants, such that they may be marketed or distributed for public use in accordance with these regulations *this chapter*.

*"Facilities"* means processes, equipment, storage devices and dedicated sites, located or operated separately from a treatment works, utilized for sewage sludge management, including but not limited to, handling, treatment, transport and storage of biosolids.

*"Field office"* means the Environmental Engineering Field Office of the Office of Water Programs through which the division implements its field operations.

*"Industrial wastes"* means liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

*"Land application"* means the distribution of *either* treated wastewater of acceptable quality, referred to as effluent, or *supernatant from biosolids use facilities*, or stabilized sewage sludge of acceptable quality, referred to as biosolids, upon, or insertion into, the land with a uniform application rate for the purpose of utilization, assimilation or pollutant removal. Bulk disposal of stabilized sludge in a confined area, such as in landfills, is not land application. Sites approved for land application of biosolids or *supernatant in accordance with this chapter* are not to be considered to be treatment works.

*"Manual"* and *"manual of practice"* means Part III of the Biosolids Use Regulations the provisions of Part III (12 VAC 5-585-420 et seq.) of this chapter.

"Operate" means the act of making a decision on one's own volition (i) to place into or take out of service a unit process or unit processes or (ii) to make or cause adjustments in the operation of a unit process or unit processes at a treatment works.

"Owner" means the Commonwealth or any of its political subdivision including sanitary districts, sanitation district commissions and authorities, federal agencies, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association which owns or proposes to own a sewerage system or treatment works.

"Permit" means an authorization granted by the commissioner to construct, or operate, facilities and specific sites utilized for biosolids management, including land application, marketing and distribution of biosolids.

"Pollutant" means any substance, radioactive material, or waste heat which causes or contributes to, or may cause or contribute to, pollution.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will, or is likely to, create a nuisance or render such waters (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural or for other reasonable uses; provided that: (a) an alteration of the physical, chemical or biological property of state waters, or a discharge or a deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of, or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the State Water Control Board are "pollution" for the terms and purposes of this chapter.

"Primary sludge" means sewage sludge removed from primary settling tanks that is readily thickened by gravity thickeners.

"Process" means a system, or an arrangement of equipment or other devices such that a waste material can be subsequently treated to remove pollutants, including, but not limited to, a treatment works or portions thereof.

"Settled sewage" is effluent from a basin in which sewage is held or remains in quiescent conditions for 12 hours or more and the residual sewage sludge is not reintroduced to the effluent following the holding period. Sewage flows not in conformance with these conditions providing settled sewage shall be defined as nonsettled sewage.

"Sewage" means the water-carried and nonwater-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes, separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewage sludge" or "sludge" means any solid, semisolid, or liquid residues which contain materials removed from municipal or domestic wastewater during treatment including primary and secondary residues. Other residuals or solid wastes consisting of materials collected and removed by sewage treatment, septage and portable toilet wastes are also included in this definition. Liquid sludge contains less than 15% dry residue by weight. Dewatered sludge contains 15% or more dry residue by weight. *The liquid obtained from separation of suspended matter during sludge treatment or storage is referred to as supernatant.*

"Shall" means a mandatory requirement.

"Should" means a recommendation.

"Sludge management" means the treatment, handling, transportation, use, distribution or disposal of sewage sludge.

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

"Substantial compliance" means designs that do not exactly conform to the guidelines set forth in Part III as contained in documents submitted pursuant to 12 VAC 5-585-130 but whose construction will not substantially affect health considerations or performance of the sewerage system or treatment works.

"Surface waters" means (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters, including interstate "wetlands"; (iii) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetland," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (a) which are or could be used by interstate or travelers for recreational or other purposes, (b) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce, or (c) which are used or could be used for industrial purposes by industries in interstate commerce; (iv) all impoundments of waters otherwise defined as waters of the United States under this definition; (v) tributaries of waters identified in clauses (i) through (iv) of this definition; (vi) the territorial sea; and (vii) "wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in clauses (i) through (vi) of this definition.

"Toxic pollutant" means any agent or material including, but not limited to, those listed under Section 307(a) of the Clean Water Act which after discharge will, on the basis of available information, cause toxicity.

"Toxicity" means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health or other adverse environmental effects.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but

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not limited to pumping, power and other equipment and their appurtenances, septic tanks and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment. *"Treatment works" does not include biosolids use on privately owned agricultural land.*

*"Use"* means to manage or recycle a processed waste product in a manner so as to derive a measurable benefit as a result of such management.

*"Variance"* means any mechanism or provision which allows a conditional approval based on a waiver of specific regulations to a specific owner relative to a specific situation under documented conditions for a specified time period.

*"Water quality standards"* means the narrative statements for general requirements and numeric limits for specific requirements that describe the water quality necessary to meet and maintain reasonable and beneficial uses. Such standards are established by the State Water Control Board under § 62.1-44.15(3a) of the Code of Virginia.

B. Generally used technical terms not defined in subsection A of this section shall be defined in accordance with "Glossary - Water and Wastewater Control Engineering" published by American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and Water Pollution Control Federation (WPCF).

### **12 VAC 5-585-20. Compliance with the Administrative Process Act.**

The provisions of the Virginia Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia, and Title 32.1 of the Code of Virginia govern the adoption and enforcement of ~~these regulations~~ *this chapter*. All procedures outlined below are in addition to, or in compliance with, the requirements of that Act.

### **12 VAC 5-585-30. Powers and procedures of regulations not exclusive.**

The board reserves the right to utilize any lawful procedure for the enforcement of ~~these regulations~~ *this chapter*.

### **12 VAC 5-585-70. Enforcement of regulations.**

A. All biosolids use facilities shall be constructed and operated in compliance with the requirements as set forth in ~~these regulations~~ *this chapter*.

B. Notice. Whenever the commissioner has reason to believe that a violation of Title 32.1 of the Code of Virginia or of any ~~of these regulations~~ *provisions of this chapter* has occurred or is occurring, the division shall so notify the alleged violator. Such notice shall be: (i) in writing, with a request to the owner to respond by providing any pertinent information on this issue they may wish; (ii) cite the statute, regulation or regulations that are allegedly being violated; and (iii) state the facts which form the basis for believing that the violation has occurred or is occurring. Such notification is not an official finding or case decision nor an adjudication, but may be accompanied by a request that certain corrective action be taken.

C. Orders. Pursuant to § 32.1-26 of the Code of Virginia, the commissioner may issue orders to require any owner to comply with the provisions of Title 32.1 of the Code of Virginia or ~~these regulations~~ *the provisions of this chapter*. The order may require:

1. The immediate cessation or correction of the violation;
2. The acquisition or use of additional equipment, supplies or personnel to ensure that the violation does not recur;
3. The submission of a plan to prevent future violations;
4. The submission of an application for a variance;
5. Any other corrective action deemed necessary for proper compliance with ~~the regulations~~ *this chapter*; or
6. Evaluation and approval, if appropriate, of the required submissions.

D. Compliance. The commissioner may act as the agent of the board to enforce all effective orders and ~~these regulations~~ *this chapter*. Should any owner fail to comply with any effective order or ~~these regulations~~ *this chapter*, the commissioner may:

1. Institute a proceeding to revoke the owner's permit in accordance with 12 VAC 5-585-220;
2. Request the attorney for the Commonwealth to bring a criminal action;
3. Request the Attorney General to bring an action for civil penalty, injunction, or other appropriate remedy; or
4. Do any combination of the above.

E. Nothing in this section shall prevent the commissioner or the division from taking actions to obtain compliance with permit requirements prior to issuing an order, or from making efforts to obtain voluntary compliance through conference, warning, or other appropriate means.

### **12 VAC 5-585-130. Permits.**

No owner shall cause or allow the construction, expansion, or modification of facilities necessary for biosolids use except in compliance with a written construction permit from the commissioner unless as otherwise provided for by ~~these regulations~~ *this chapter*. Furthermore, no owner shall cause or allow any facilities or land application sites employed for biosolids use to be operated except in compliance with a written operation permit issued by the commissioner which authorizes the operation of the facilities or land application sites unless otherwise provided for by ~~these regulations~~ *this chapter*. Conditions may be imposed on the issuance of any permit, and construction, modification, or operation shall be in compliance with these conditions.

As described in this section, the requirement to formally obtain a construction permit or an operation permit, or both, through the provisions of this chapter is waived for land application sites meeting the operational restrictions specified in subdivision 1 or 2 of 12 VAC 5-585-320, or those sites utilized entirely for research projects with approved monitoring programs.

In order to qualify for a permit waiver for biosolids use, the permittee or owner must file with the division an application or a letter of intent to construct or operate such a system as described above. The letter shall be filed at least 30 days prior to the time that granting of such a waiver would be required to initiate construction or operation. The letter shall contain a brief description of: (i) the proposed use of biosolids, including land application, marketing or distribution; (ii) applicable management practices; (iii) methods for transporting and handling; and (iv) the location of the proposed biosolids use. If after review of the application or letter, a determination is made by the commissioner that it is not in the best interest of public health to waive the permit requirements of ~~these regulations~~ *this chapter*, the owner will be so notified and will be required to obtain the applicable construction or operation permits. The procedure for issuance of a land application operation permit is described in 12 VAC 5-585-200.

## **12 VAC 5-585-140. Procedure for obtaining a construction or operation permit.**

A. Construction or operation permits are issued by the commissioner, but all requests for a construction or operation permit shall be directed initially to the field office which serves the area where the facility or land application sites are located. The procedure for obtaining the permit includes one or more of the following steps: (i) the submission of a permit application, including the applicable information in ~~Appendix A and B Parts IV (12 VAC 5-585-620 et seq.) and V (12 VAC 5-585-650 et seq.) of this chapter~~ and subsection H of this section; (ii) a preliminary engineering conference; (iii) the establishment of site specific management practices and operation restrictions; (iv) notification of local government and public participation; (v) receipt of comments from all involved agencies as requested by the division; (vi) the submission of final documents including an operation plan, or a sludge management plan. A formal technical evaluation involving a detailed engineering analysis of plans, reports and other design documents submitted in support of a permit application for biosolids use may be required for issuance of a construction permit. A formal technical evaluation may be waived following a review of the permit application or the preliminary engineering proposal, provided that the owner's consultant submits a statement that the design and system operation will meet the requirements established herein.

B. All applications shall be submitted on a form provided by the division and shall be submitted by the owner or authorized agent to the appropriate field office. An application for a construction or operation permit shall be accompanied by notification that local government will issue necessary approvals in accordance with ~~these regulations~~ *this chapter*. An application for a construction permit for facilities will not be considered complete until evidence is submitted that an appropriate certificate (draft permit) has been issued or is not required, by the State Water Control Board in accordance with § 62.1-44.19 of the Code of Virginia. The owner will be notified by the division if a technical evaluation of preliminary or final design documents is required following the preliminary engineering conference, if held. Subsections C through G of this section and 12 VAC 5-585-150 through 12 VAC 5-585-190 would not apply to land application operation permit issuance.

C. A preliminary conference with the appropriate field office engineering staff may be held to establish the requirements for submission of the information necessary for a determination by the commissioner relating to the issuance of a construction permit. The applicant or consultant shall be prepared to set forth any biosolids use problems and the proposed solution in such a manner as to support the conclusions and recommendations presented at this meeting. A preliminary engineering proposal may be submitted prior to, during, or following the preliminary conference.

D. The objective and content of a preliminary engineering proposal are described in this subsection.

1. The objective is to facilitate a determination by the commissioner whether or not the proposed design selected by the owner requires submission of design documents for a formal technical evaluation to establish that the following standards will be reliably met by operation of the facility or system: (i) compliance with requirements established by the State Water Control Board, and (ii) conformance with applicable minimum requirements established by ~~these regulations~~ *this chapter*, in order that a construction permit be issued.

2. The preliminary engineering proposal when submitted for evaluation shall consist of an engineering report and preliminary plans which shall contain the necessary data to portray the biosolids use problem(s) and solution(s). The requirement for a complete preliminary engineering proposal for small flow or minor projects (generator design flow less than one mgd) can be waived by the division in lieu of a letter from the owner's engineer summarizing the agreements reached at the preliminary engineering conference. For all proposals involving facilities, whether new or upgraded, the engineer shall make an evaluation of the flood potential at the proposed site(s), using available data and sound hydrologic principles. If a flood potential is indicated, the flood plain boundaries shall be delineated on a site map, showing its relation to the proposed facility(ies) and actions proposed to comply with acceptable management practices.

E. Construction plans for facilities for which a technical evaluation is required, shall provide the information necessary to determine that the final plans, specifications and other documents satisfy (i) requirements established by ~~these regulations~~ *this chapter* and the applicable engineering standards of practice and (ii) the minimum requirements and limiting factors established in the owner's approved preliminary engineering proposal.

Plans submitted for technical evaluation of facilities, including substantial modifications (new location of storage on site, or increasing design capacity by more than 20%) from that previously approved shall identify the proposed locations, management practices, biosolids sources, treatment and quality information as required. For new construction, the plan shall include sufficient topographic features to indicate its location relative to streams and other land use facilities, as required. The forms of land use (commercial, residential, and agricultural existing or proposed) buffer zones and access controls, for the near future, surrounding the proposed biosolids use facilities must



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be indicated. Existing buildings and their type of use within 200 feet of the new site shall be adequately described, e.g., by means of topographic maps, aerial photos, drawings, etc.

Facility closure plans shall address the following information as a minimum:

1. Residual wastewater and sludge treatment, removal and final disposition.
2. Removal of structures, equipment, piping and appurtenances.
3. Site grading and erosion and sediment control.
4. Restoration of site vegetation and access control.
5. Proposed land use (post-closure) of site.

F. Complete technical specifications for the construction of facilities and all appurtenances are to accompany the plans submitted for technical evaluation. The specifications accompanying construction drawings shall include, but not be limited to, all construction information not shown on the drawings which is necessary to inform the contractor in detail of the design requirement as to the quality of materials and workmanship and fabrication of the facilities. Also, the type, size, strength, operating characteristics and rating of equipment and construction materials shall be identified as necessary, including (i) machinery, pumps, valves, piping, and jointing of pipe, electrical apparatus, and operating tools; (ii) special additive materials such as paper, wood, stone, sand, gravel and combinations of additive materials; (iii) miscellaneous appurtenances utilized; (iv) chemicals required. Specifications shall address instructions for testing materials and equipment as necessary to meet design requirements and standards of practice; and shall describe operating tests for the completed facilities and component units. Specifications shall be submitted to the division in an acceptable number. The title page shall bear the original signature of the appropriately registered professional who prepared the specifications or under whose direct supervision the specifications were prepared.

G. Operation and maintenance manuals prepared for facilities shall be submitted for technical evaluation and approval when requested by the division if requested. Manuals for new construction or revised pages for existing but modified (upgrades) facilities submitted to the division for evaluation will be processed as follows:

1. Copies of the manual shall be submitted to the division in the number specified. An evaluation will not commence until the applicant has submitted all necessary information (see Part IV, 12 VAC 5-585-620 *et seq.*).
2. The division will evaluate the technical contents of the manual and will notify the owner (and manual preparer if appropriate) of any necessary revisions to the manual. The owner is responsible for ensuring that the required revisions are made and submitted to the division.
3. The manual contents will be evaluated for compliance with ~~these regulations this chapter~~ and the State Water Control Board's Department of Environmental Quality's permit regulations and the owner notified of the

commissioner's approval or disapproval following receipt of a complete manual.

One copy of the approved manual will be stamped by the division and returned to the owner. If the manual is disapproved, the owner will be notified of conditions, if any, which must be satisfied for approval. The owner will be responsible for ensuring that such conditions are satisfied in accordance with the operation permit.

4. If the commissioner determines that substantial revisions to the manual are required, the division will send a letter to the owner and manual preparer, outlining the necessary revisions and requesting submission of the revised manual within 60 days. Revised manuals constitute a resubmittal.

5. Any deviations from the approved manual affecting the minimum elements required by the operation permit must be approved in accordance with ~~these regulations~~ *this chapter* before any such changes are made.

H. The scope and purpose, requirements, and submission and approval of sludge management plans or operational plans are described in this subsection.

1. The general purpose of these plans is to facilitate a determination by the commissioner that the management or operational plan developed by the owner presents the necessary technical guidance and regulatory requirements to facilitate the proper management of sewage sludge including use of biosolids, for both normal conditions and generally anticipated adverse conditions. The plan should be developed as a reference document, being as brief as possible while presenting the information in a clear, concise and readily accessible manner. The plan should be directed toward the management option(s) for biosolids use selected for the treatment works. The plan shall address methods of controlling and monitoring the quality of sludge by the owner and the means of use of biosolids developed from that sludge by the owner or his agent (Part IV, 12 VAC 5-585-620 *et seq.*).

2. Complete sludge management plans or operational plans shall be submitted for all biosolids use activities, by the owner, or owner's agent except as noted in 12 VAC 5-585-130. The plan shall contain the elements required by applicable sections of this chapter (Part IV, 12 VAC 5-585-620 *et seq.*).

3. Submission and approval of sludge management plans or operational plans involving the land application of biosolids shall be done in accordance with 12 VAC 5-585-150 or 12 VAC 5-585-240, as applicable. Submission and approval procedures for all other plans are as follows:

a. Three copies of the final sludge management plan or operational plan shall be submitted to the appropriate field office. The technical evaluation of the plan will not commence until the applicant has submitted all necessary information.

b. Upon receipt of comments or no response by contacted agencies the division will complete the

evaluation of the plan and the commissioner will approve or disapprove the plan as technically adequate.

c. The commissioner will approve the plan if it is determined to be in substantial compliance with Part III (12 VAC 5-585-420 *et seq.*) of the regulations ~~this chapter~~ and biosolids use will be in compliance with Part II (12 VAC 5-585-280 *et seq.*) of the regulations ~~this chapter~~. If the commissioner determines that substantial revision to the plan is required, the division shall send a letter to the owner and plan preparer, outlining the necessary revision and requesting submission of a revised plan within 60 days. A revised plan constitutes a resubmittal.

d. One copy of the approved plan will be stamped by the division and returned to the owner. If the plan is disapproved, the owner will be notified of conditions, if any, which must be satisfied.

## **12 VAC 5-585-170. Issuance of the construction permit.**

Upon approval of the proposed design, including submitted plans and specifications, the commissioner will issue a construction permit to the owner to construct or modify biosolids use facilities in accordance with the approved design and submitted plans, specifications and other design documents (Part V, 12 VAC 5-585-650 *et seq.*).

## **12 VAC 5-585-190. Information required upon completion of construction.**

A. Upon completion of the construction or modification of the biosolids use facilities the owner shall submit to the division a statement signed by an appropriate professional stating that the biosolids use facilities were completed in accordance with the approved plans, specifications and other design documents or revised only in accordance with the provisions of ~~these regulations this chapter~~. This statement is called a Statement of Completion of Construction and shall be based upon inspections of the biosolids use facilities during and after construction or modifications that are adequate to ensure the truth of the statement.

B. The owner shall contact the division and request that a final inspection of the completed construction be made so that either a conditional, or a final, operation permit can be issued, within 30 days after placing a new or modified biosolids use facilities into operation. The division shall be provided with any required performance test results prior to issuance of the final operating permit.

C. A closure plan should be submitted with or prior to the statement of completion of construction in accordance with 12 VAC 5-585-140 D 2.

## **12 VAC 5-585-200. Issuance of the operation permit; facilities; land application.**

A. Upon completion of the department's technical evaluation of the sludge management plan, or operation plan and receipt of a construction completion statement if appropriate, the commissioner may issue a final operation permit (Parts IV and V). However, the commissioner may delay the granting of the final permit pending inspection, or

satisfactory evaluation of test results, to ensure that construction work has been satisfactorily completed or that sludge treatment is satisfactory for biosolids use. A conditional operation permit may be issued specifying final approval conditions, with specific time periods, for completion of unfinished work, submission of test results, operations and maintenance manual, sludge management plans, or other appropriate items. The commissioner may issue a conditional operation permit to owners of facilities for which required information, such as the Statement of Completion of Construction, has not been received. Such permits will contain appropriate conditions requiring the completion of any unfinished or incomplete work including approval of a closure plan and subsequent submission of the Statement of Completion of Construction.

B. Upon completion of the department's technical evaluation of the sludge management plan, or operation plan and site-specific information on the proposed land application sites, the commissioner may issue final operation permits (Parts IV and V). After a land application operation permit is issued, new land application sites, new biosolids sources and routine storage facilities can be added to the land application operation permit through a permit modification *approved by the division*. A separate land application operation permit will be issued for each political jurisdiction (county or city) where land application is to be undertaken.

## **12 VAC 5-585-210. Amendment or reissuance of permits.**

The commissioner may amend or reissue a permit where there is a change in the approved biosolids management practices, biosolids treatment, or the source of biosolids at the permitted location, or for any other cause incident to the protection of the public health, provided notice is given to the owner, and, if one is required, a hearing held in accordance with the provisions of 12 VAC 5-585-120. Permits issued as described in ~~these regulations this chapter~~ will remain valid for a period of five years following issuance unless otherwise provided. Permit holders should request permit reissuance in a letter forwarded to the commissioner approximately 90 days or more prior to the expiration date of the permit.

## **12 VAC 5-585-220. Revocation or suspension of a permit.**

A. The commissioner may suspend or revoke a permit in accordance with the Administrative Process Act.

B. Reasons for revoking permits include:

1. Failure to comply with the conditions of the permit.
2. Violation of Title 32.1 of the Code of Virginia or of any ~~of these regulations provisions of this chapter~~ from which no variance or exemption has been granted.
3. Change in ownership.
4. Abandonment of the facilities.
5. Any of the grounds specified in § 32.1-174 of the Code of Virginia.

C. When revoking or suspending permits the commissioner shall:

1. Send a written notice of intent to suspend or revoke by certified mail to the last known address of the permit

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holder. The notice shall state the reasons for the proposed suspension or revocation of the permit and shall give the time and place of the hearing and the authority under which the commissioner proposes to act.

2. Give at least 30 days advance notice of the hearing.

D. Owners who are given notice of intent to revoke or suspend their permits have a right to a hearing as specified in 12 VAC 5-585-120.

**12 VAC 5-585-240. Applications for nondischarging treatment works or sludge management facilities not governed by the sewage handling and disposal regulations.**

A. A permit application submitted by an owner or owner's agent shall contain complete information in accordance with this chapter. This information is to be provided by completion and submission of two copies of the appropriate application form(s) and applicable sections of ~~Appendix A Part IV~~ to the appropriate field office. Applications can be obtained from any field office.

B. The operational plan for the facilities must address the special conditions for the technical operational, monitoring, and reporting requirements that the applicant must satisfy. A construction permit and an operation permit shall be obtained in accordance with this chapter for construction of the facilities. Approval of the operational plan constitutes issuance of an operation permit. Operation of the facilities may not proceed until the owner is notified by the division.

**12 VAC 5-585-250. Compliance with Part II (Operational Regulations) of the regulations *this chapter*.**

Certificates issued by the Department of Environmental Quality under the authority of the State Water Control Board (including approved sludge management plans) prior to January 25, 1995, shall continue in force until expired, reissued, amended, or terminated in accordance with the certificate or this chapter. All owners holding Virginia Pollution Abatement Permits as of January 25, 1995, shall submit an application for an operation permit in accordance with ~~these regulations~~ *this chapter* within 180 days before the date of expiration of certificates issued prior to January 25, 1995, or at the time of any modification request submitted after January 25, 1995, or within 180 days of adoption of this chapter, whichever is later. All owners of biosolids use facilities shall comply with the applicable requirements set forth in the operational regulations except as provided in accordance with 12 VAC 5-585-130. Any owner may request technical assistance from the division to implement corrective action.

**12 VAC 5-585-260. Compliance with Part III (Manual of Practice) of the regulations *this chapter*.**

The design guidelines set forth in Part III of this chapter specify minimum standards for biosolids use for land application, marketing and distribution, including biosolids quality and site specific management practices. Compliance with Part III of this chapter will not be required for facilities not including land application, distribution, or marketing, which have received the approval of the commissioner and the State Water Control Board and for which operation has

commenced as of January 25, 1995. Such operation of facilities is deemed to be commenced upon approval of a complete application for a permit or certificate. However, the commissioner may impose standards and requirements which are more stringent than those contained in Part III of this chapter when required to protect public health or prevent nuisance conditions from developing either within critical areas, or when special conditions develop prior to or during biosolids use operations. Conformance to local land use zoning and planning should be resolved between the local government and the facility owner or permit holder. Applications submitted for facilities must demonstrate that the facility and biosolids use management practices will adequately safeguard public health and will comply with the certificate and permit requirements, as appropriate. Submissions which are in substantial compliance with Part III of this chapter and comply with any additional requirements as noted above will be approved. Justification for biosolid use proposals may be required for those portions of the submitted proposal which differ from these criteria. The owner or owner's agent shall identify and justify noncompliance with specific standards or "shall" criteria which the division identifies, or the applicant, in his judgment, believes to be substantial in nature. The division may request changes in designs which are not in substantial compliance with Part III of this chapter and which are not adequately justified by the applicant. The fact that significant work was accomplished on a specific permit application prior to adoption of this chapter shall be a consideration when evaluating applications.

**12 VAC 5-585-280. Minimum biosolids sampling and testing program.**

A. Sampling and testing methods shall conform to current United States Environmental Protection Agency (EPA) guidelines establishing test procedures for analysis of pollutants or other EPA approved methods.

B. Either the operation and maintenance manual, sludge management plan, or operational plan shall contain a specific testing schedule. The testing schedule shall include minimum tests and their frequencies as required to monitor the facility in accordance with the appropriate certificate and the operating permit issued under ~~these regulations~~ *this chapter*.

C. The following sampling instructions shall be followed when collecting samples as required by ~~these regulations~~ *this chapter*:

1. Raw sewage or sludge samples are to be collected prior to the treatment process unit operations.
2. Final treated samples are to be taken at a point following appropriate unit operations in the treatment process. An evaluation of biosolids treatment may require monitoring of fecal coliform levels in the treated sludge.
3. Compositing of samples shall be in accordance with the treatment works operation and maintenance manual. Composite samples of sludge shall consist of grab samples taken at the specified minimum frequency and should be combined in proportion to flow. Greater

frequency of grab sampling may be desirable where abnormal variation in waste strength occurs. Automatic flow proportional samplers are considered a valid sampling method.

**12 VAC 5-585-300. Records.**

The owner shall maintain records on the biosolids use operation and laboratory testing. The records shall be available for review by division and field office staff during inspections at reasonable times. Any records of monitoring activities and results shall include at least the following for all samples:

1. The date, place and time of sampling or measurements;
2. Individual who performed the process sampling or measurements;
3. The date analysis was performed;
4. Individual that performed laboratory analysis;
5. The analytical techniques/methods used; and
6. The results of such analysis.

The owner shall normally maintain monitoring records for a minimum of ~~three~~ *five* years. This period of retention may be extended during the course of any unresolved litigation regarding the discharge of pollutants at the request of the commissioner.

Monitoring records may include: (i) process control adjustments and results; (ii) all printed charts and graphic recordings for continuous monitoring; (iii) appropriate instrumentation, calibration and maintenance records.

**12 VAC 5-585-320. Additional monitoring, reporting and recording requirements for sewage sludge and residual solids management.**

Either the Operation and Maintenance Manual, sludge management plan, or operational plan shall contain a schedule of required minimum tests and their frequency to be conducted for the sewage sludge and biosolids management system and shall also contain necessary *information* to document sewage sludge and biosolids quality. Such test schedule information should include instructions for recording and reporting. Monitoring, reporting and recording requirements for sewage sludge and biosolids quality control shall be in accordance with the sludge management plan, or operation plan in accordance with 12 VAC 5-585-140 H. The record keeping and reporting requirements for sewage sludge and biosolids management contained in the treatment works Operation and Maintenance Manual shall apply to all application sites, regardless of size or frequency of application. However, the requirements relative to monitoring, reporting and recording of site specific soils and monitoring, reporting and recording of ground water and surface water are not applicable for any site which meets either of the following criteria:

1. Whenever exceptional quality biosolids are marketed and distributed with a label or identification information which specifies proper quality information and describes how agronomic rates are to be determined. Also,

whenever Class I treated biosolids are land applied so that: (i) the annual loading rate will not result in annual maximum loading rates in excess of those specified in Table 9; (ii) applied biosolids will meet vector attraction requirements; (iii) the amount of nutrients applied does not exceed the total crop needs or agronomic loading rate; (iv) no additional biosolids are applied for at least five years, or the biosolids are applied to land maintained only as pasture or hay land for five years following the last application of biosolids and the nutrient loading rate does not exceed 70% of the annual total crop needs of the grass or hay cover (Tables A-2 and 11).

2. Whenever the application site area for biosolids processed by Class I or II treatment is no larger than 10 acres and is isolated (2,000 feet or more separation distance) from other sites receiving applications of biosolids within three years of the time biosolids are applied to the identified site and the necessary vector attraction requirements are met.

The division may recommend that specified site specific monitoring be performed by the holder of the permit for any biosolids land application practice, regardless of frequency of application or size of the application area. Such recommendations will occur in situations in which groundwater contamination, surface runoff, soil toxicity, health hazards or nuisance conditions are identified as an existing problem or documented as a potential problem as a result of biosolids use operations. Article 2 (12 VAC 5-585-460 *et seq.*) of Part III of these regulations *this chapter* shall apply in full whether or not a monitoring waiver provision is applicable.

**12 VAC 5-585-340. Contents.**

The manual shall contain the testing and reporting elements required by ~~these regulations~~ *this chapter*. In addition, for information and guidance purposes, the manual should contain additional schedules which supplement these required schedules.

**12 VAC 5-585-370. Biosolids monitoring/reporting.**

~~A. Monitoring and reporting procedures shall be specified in each sludge management plan or operation plan. For land application of biosolids use on agricultural or nonagricultural sites, sludge composition analysis to document biosolids quality should be performed as required for permit compliance under the following guidelines:~~

TABLE 4

Estimated Size of Facility	Maximum Dry Tons/Year	Frequency
less than .5 MGD	200	once per year
greater than 0.5 to less than 3.0 MGD	1400	four per year
greater than 3.0 to less than 10.0 MGD	7000	six per year
greater than 10.0 MGD	greater than 7000	12 per year

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~~Note: Sampling/testing events should be conducted at approximately equal intervals. After two years of testing at the listed frequencies, the testing frequency may be reduced annually by one-half to a minimum of once annually.~~

A. ~~Monitoring biosolids quality shall be performed as required for permit compliance. Monitoring frequency shall be sufficient to both reflect the degree of variability, if any, expected in the biosolids quality and the frequency of application. The following guidelines should provide sufficient data for characterizing the quality of biosolids for biosolids programs that land apply continuously throughout the year.~~

TABLE 1

Amount of biosolids <sup>(1)</sup> (metric tons per 365-day period)	Frequency
Greater than zero but less than 290.	Once per year.
Equal to or greater than 290 but less than 1,500.	Once per quarter (four times per year).
Equal to or greater than 1,500 but less than 15,000.	Once per 60 days (six times per year).
Equal to or greater than 15,000.	Once per month (12 times per year).

<sup>(1)</sup>Either the amount of bulk sewage applied to the land or the amount of sewage sludge received by a person who prepares sewage sludge that is sold or given away in a bag or other container for application to the land (dry weight basis).

~~Note: Sampling shall be conducted at approximately equal intervals at the listed frequencies. Biosolids programs which store biosolids and land apply only during discrete events, throughout the year, shall schedule sampling events to coincide with application periods. The regulatory agency may require increased monitoring frequencies, if necessary, to adequately define any significant variability in biosolids quality. After two years of monitoring the permittee may request that the monitoring frequency be reduced, but in no case to less than once per year in any year that biosolids are applied to land.~~

~~B. An activity report shall be submitted (postmarked) to the department, by the 15th day of the month following any month in which land application occurs. The report shall indicate those sites where land application activities took place during the previous month.~~

~~B. C. Biosolids application rates should be based on the annual average sludge quality. The average sludge quality should be established from the results of approved analytical testing of composite samples obtained during the most recent 12 months of monitoring. For proposed treatment works rates may be initially based on the biosolids characteristic produced by similar generating facilities.~~

~~C. D. The required treatment and quality characteristics and the maximum allowable land application loading rates shall be established for biosolids use. In addition, operational monitoring results shall verify that required sludge treatment~~

has achieved the specified levels of pathogen control and vector attraction reductions (Table 3). Adequate records on sludge composition, treatment classification, sludge application rates and methods of application for each site shall be maintained by the generator and owner. Table 4 shows a sample operating report for documenting the minimum required information. ~~Unless otherwise provided, a report summary shall be submitted monthly to the division and shall be postmarked by the 15th day of the month or earlier. Reporting shall be yearly (postmarked by February 19 for the preceding calendar year) unless otherwise required.~~ The generator and owner shall maintain the records as necessary for a minimum period of five years, until further notification by the department. Sites receiving frequent applications of sludge which meet or exceed maximum cumulative constituent loadings and dedicated disposal sites should be properly referenced for future land transactions (see the sample Sludge Disposal Site Dedication Form - Table A-3).

## 12 VAC 5-585-410. Groundwater monitoring and reporting.

A. Monitoring wells may be required by the commissioner as recommended by the division for land treatment sites, sludge lagoons, or sludge holding facilities to monitor groundwater quality. The wells should be designed and located to meet specific geologic and hydrologic conditions at each site. Existing wells or springs may be approved for use as monitoring wells if they can be shown to provide a representative sample of groundwater conditions. The monitoring well should be constructed so as to sample the most shallow occurrence of groundwater that can reliably be obtained. The wells must be deep enough to penetrate the water table, and the screened interval must be in the saturated zone. The well construction should include PVC casing and screen with a bottom end plug or cap. The casing joints should be of the threaded, split ring or some other type which does not require adhesive. The screened interval should be backfilled with washed porous media (sand/gravel) and a bentonite or other impermeable seal placed at least two feet above the screen. The remainder of the well may be backfilled with clean native materials. A concrete surface seal should slope away from the well. Locking caps are recommended. Upon well completion, a driller's log shall be submitted to the department.

B. Sampling procedures must assure maintenance of sample integrity. Samples should be collected in clean sample containers and with an uncontaminated sampling device. In order to obtain a representative sample, standing water in the well must be evacuated prior to sampling. At a minimum, at least three times the volume of water standing in the borehole should be removed prior to taking a sample for analysis to assure movement of formation water into the well and eliminate false readings that would be obtained from water that has stratified in the well. Samples may be obtained by pumping, bailing or pressure methods (e.g., Bar Cad samplers). The state does not endorse any one particular method or manufacturer, but each method has advantages and disadvantages which must be considered prior to final selection. Sampling methodology should be submitted for initial review. To obtain sufficient background groundwater quality data, three to six monthly samples

should be collected from each observation well prior to placing the land application site or other facility into operation. Sampling should account for seasonal groundwater table fluctuations. Groundwater samples shall be collected and analyzed on a quarterly basis during operation of the site or facility. Table 6 lists typical parameters for groundwater monitoring. Additional test parameters may be required on a case-by-case basis.

C. Sample analysis and preservation techniques should be in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater.

TABLE 2  
PARAMETERS FOR BIOSOLIDS ANALYSIS<sup>1</sup>-(1)

- A. Suggested Minimum
- Source of Sludge
  - Type of Sludge (Lime Stabilized, Aerobically Digested, etc.)
  - Percent Solids (%)
  - Volatile Solids (%)
  - pH (Standard Units)
  - Total Kjeldahl Nitrogen (%)
  - Ammonia Nitrogen (%)
  - Nitrates (mg/kg)
  - Total Phosphorus (%)
  - Total Potassium (%)
  - Alkalinity as CaCO<sub>3</sub> (mg/kg)<sup>2</sup>-(2)
  - Arsenic (mg/kg)
  - Cadmium (mg/kg)
  - Chromium (mg/kg)
  - Copper (mg/kg)
  - Lead (mg/kg)
  - Mercury (mg/kg)
  - Molybdenum (mg/kg)
  - Nickel (mg/kg)
  - Selenium (mg/kg)
  - Zinc (mg/kg)

B. Additional parameters such as the organic chemicals listed in Table 13 may be required for screening purposes as well as: Aluminum (mg/kg), Water Soluble Boron (mg/kg), Calcium (mg/kg), Chlorides (mg/l), Manganese (mg/kg), Sulfates (mg/kg), and those pollutants for which removal credits are granted.

C. Microbiological testing may be necessary to document the sludge treatment classification (Table 3). Microbiological standards shall be verified by the log mean of the analytical results from testing of nine or more samples of the sludge source. Sampling events shall be separated by an appropriate period of time so as to be representative of the random and cyclic variations in sewage characteristics.

<sup>(1)</sup> Values reported on a dry weight basis unless indicated.

<sup>(2)</sup> Lime treated sludges (10% or more lime by dry weight) should be analyzed for percent CaCO<sub>3</sub>.

<sup>1</sup> Values reported on a dry weight basis unless indicated.

<sup>2</sup> Lime treated sludges (10% or more lime by dry wt.) should be analyzed for percent CaCO<sub>3</sub>.

TABLE 3  
STANDARDS FOR DOCUMENTATION OF PATHOGEN CONTROL AND VECTOR ATTRACTION REDUCTION LEVELS FOR BIOSOLIDS

A. Pathogen Control Standards (Dry Weight of Sludge Solids Basis)

1. Class I Treatment for Class A Pathogen Control

a. Composting or other acceptable time-temperature treatment<sup>1</sup> shall result in a biosolids content equal to or less than 1,000 fecal coliform per gram of total solids in treated sludge prior to removal for use or preparation for distribution.

b. Stabilization<sup>2</sup> shall result in a biosolids content less than either: 1,000 MPN fecal coliform per gram of total solids, or three salmonella, or one virus (PFU), or one helminth egg, per four grams of total sludge solids and vector attraction reduction requirements will be met upon use.

2. Class II Treatment for Class B Pathogen Control.

a. When the influent sludge stream to the stabilization unit operation contains more than 6 log<sub>10</sub> or more of fecal coliform per gram of total solids, a reduction of 2 1.5 log<sub>10</sub> of fecal coliform or more may be required for stabilization or the treated sludge shall not contain more than 6.0 log<sub>10</sub> of fecal coliform per gram of total solids.

b. Stabilization<sup>1</sup> shall result in biosolids with a maximum of 6.3 log<sub>10</sub> of fecal coliform per gram or 3 salmonella per 4 grams of total solids in sludges subjected to adequate treatment and vector attraction reduction requirements will be met upon use.

~~3. Class III Treatment for Class B Pathogen Control.~~

~~a. When the influent sludge stream to the stabilization unit operation contains 6 log<sub>10</sub> or more of fecal coliform per gram of total solids, a reduction of 1.5 log<sub>10</sub> fecal coliform or more may be required for stabilization.~~

~~b. Stabilization<sup>1</sup> 6.3 log<sub>10</sub> of fecal coliform per gram total solids in sludges subjected to adequate treatment.~~

B. Vector attraction reduction requirements (must satisfy one of the following for approval of land application of biosolids).

1. Thirty-eight percent volatile solids (VS) reduction by digestion processes, or:

a. Less than 38% reduction by anaerobic digestion if additional treatment (additional 40 days or more at 32°C or more) results in less than 17% additional VS reduction:

$$\text{Additional VS Reduction} = [\text{VSD1} - \text{VSD2}] / [\text{VSD1} - (\text{VSD1})(\text{VSD2})]$$

D1 = Initial Conventional Digestion Period

D2 = Additional 40 day digestion period

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- b. Less than 38% reduction by aerobic digestion if the specific oxygen uptake rate (SOUR) of sludge is 1.5 or less milligrams of oxygen per hour per gram of total sludge solids (dry weight basis) at a temperature of 20°C.
  - c. Less than 38% reduction by aerobic digestion if additional treatment (additional 30 days or more at 20°C or more) results in less than 15% additional VS reduction.
  - d. Less than 38% reduction if treated in an adequately aerated unit operation for 14 days or more at a temperature exceeding 40°C and the average sludge temperature exceeds 45°C.
2. Sludge pH is 12 or more (alkaline addition) for two consecutive hours and remains at 11.5 or higher for 22 additional hours (no further alkaline additions), or
  3. Seventy-five percent or more total solids in treated sludge if no untreated primary sludge is included, or 90% total solids if unstabilized primary sludge is included, prior to any mixing with other materials, or
  4. Either incorporation of treated sludge into the soil within six hours of surface application, or direct injection below the surface of the land so that no evidence of any significant amounts of sludge is present on the land surface within one hour of injection.
  5. For land application of biosolids receiving Class I treatment:
    - a. For surface application: apply to land within eight hours of final treatment and incorporate below the

surface within six hours of application, or achieve one of the appropriate vector attraction reduction requirements by treatment.

- b. For subsurface application: inject within eight hours of final treatment or achieve one of the appropriate vector attraction reduction requirements by treatment.

C. Documentation statement for submission of treatment, or quality, verification reports:

I have submitted the proper documentation to verify that the necessary levels of pathogen reduction and vector attraction reduction have been achieved for all sludge to be land applied in accordance with the permit requirements. These determinations have been made under my direction and supervision in accordance with approved procedures developed to ensure that qualified personnel obtain and evaluate the information necessary to ensure permit compliance. Also, the sludge quality characteristics are suitable for Land Application in accordance with permit requirements (if appropriate).

Signed by Responsible Person Date

(Title if appropriate) in charge

Note: \* <sup>(1)</sup> Refers to an acceptable method of treatment with established operational controls capable of treating sludge to produce the required microbiological standards (see Article 3 (12 VAC 5-585-540 et seq.) of Part III, Agricultural Use of Biosolids).

\*\* <sup>(2)</sup> Refers to testing standards

TABLE 4  
Example of Report for Submission to Field Offices  
FIELD REPORT

PROJECT/PERMITTEE: _____	PERMIT NO./FIELD NO: _____
[LAND OWNER/FARMER:] _____	FIELD ACRES: _____
APPLICATION MODE: _____	DATE AS OF: _____
GALLONS, WET TONS OR CUBIC YARDS	
APPLIED: _____	Month to Date _____ Year to Date _____
DRY TONS/ACRE APPLIED: _____	Month to Date _____ Year to Date _____
CROP/YIELD _____	Lifetime to Date _____
	SOIL pH _____
	LBS. APPLIED/ACRE _____

SLUDGE PARAMETER	MONTH TO DATE	YEAR TO DATE	LIFETIME TO DATE
P.A.N.			N/A
CaCO <sub>3</sub>			N/A
P.			N/A
K			N/A
As			
Cd			

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Cr  
Cu  
Mo  
Ni  
Pb  
Se  
Zn  
Other:

## DAILY LOADING FIELD SHEET

DATE	SOLIDS	GALLONS, WET TONS OR CUBIC YARDS		DRY TONS
<b>TOTALS</b>				

(If nuisance problems of odors or problems with uniform applications develop, the appropriate regional offices of the State Water Control Board and the Engineering Field Offices of the Virginia Department of Health shall be notified.)

Upon such notification, were any operational changes made? Yes\*      No

\*Specify the methods utilized to comply with treatment/application requirements a separate attachment.

TABLE 5  
RECOMMENDED SOIL TEST PARAMETERS FOR LAND APPLICATION SITE SITES <sup>(1)</sup>

	SLUDGE BIOSOLIDS APPLICATION			STORAGE
	Infrequent <sup>(2)</sup>	Frequent Below Agronomic Rates <sup>(3)</sup> <sup>(2)</sup>	Frequent at Agronomic Rates <sup>(4)</sup> <sup>(2)</sup> <sup>(3)</sup>	Wastewater <sup>(6)</sup> Supernatant <sup>(4)</sup>
Soil Organic Matter (%)			*	*
Soil pH (Std. Units)	*	*	*	*
Cation Exchange Capacity (me/100g)	*	*	*	
Total Nitrogen (ppm)			*	*
Organic Nitrogen (ppm)			*	*
Ammonia Nitrogen (ppm)			*	
Available Phosphorous (ppm)	*	*	*	*
Exchangeable Potassium (ppm)	*	*	*	
Exchangeable Sodium (mg/100g)			*	*
Exchangeable Calcium (mg/100g)			*	*
Exchangeable Magnesium - (mg/100g)	*		*	*
Copper (ppm)			*	*
Nickel (ppm)			*	*
Zinc (ppm)			*	*
Cadmium (ppm)			*	*
Lead (ppm)			*	*
Chromium (ppm)			*	*
Manganese (ppm)			*	
Molybdenum			*	
Selenium			*	



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Particle Size Analysis or  
 USDA Textural Estimate (%) \*  
 Hydraulic Conductivity (in/hr) \*

Note - <sup>(1)</sup> Unless otherwise stated, analyses shall be reported on a dry weight basis(\*).

~~<sup>(2)</sup> Initial testing before application and repeated before Biosolids are again applied at the agronomic rate, after three (3) or more years.~~

~~<sup>(3)</sup> Total sludge application (loading) rate contains less than 70% of the annual agronomic plant available nitrogen (PAN) requirements and testing initially and repeated before Biosolids are applied to support the next cropping cycle.~~

~~<sup>(4)</sup> Annual agronomic loading rate testing initially and annually with general testing requirements to be adjusted in accordance with prior analytical test results. Heavy metal analyses are not required but once every three (3) years before application.~~

<sup>(2)</sup> See 12 VAC 5-585-510 A 3.

<sup>(3)</sup> Testing requirements to be adjusted in accordance with prior analytical test results. Heavy metal analyses are not required but once every three years before application.

<sup>(6)</sup> Supernatant <sup>(4)</sup> Liquid biosolids derived from storage and handling biosolids use facilities.

TABLE 6  
 SUGGESTED GROUNDWATER MONITORING  
 PARAMETERS AND MONITORING FREQUENCY

Annual Monitoring	Quarterly Monitoring
Total Kjeldahl Nitrogen	Nitrate Nitrogen
Ammonia Nitrogen	pH
Phosphorus	Conductivity
Sodium	Chlorides
Boron Static	Water Level
Copper	
Lead	
Nickel	
Cadmium	
Chromium	
Zinc	
Hardness	
Alkalinity	
COD (TOC)	
Pathogen Indicator Organism	

**12 VAC 5-585-420. Sludge stabilization.**

A. The selection and operation of the stabilization process shall be based on the ultimate utilization of the final sludge product. The design information concerning sludge stabilization processes included in this section is provided to update similar requirements contained in the Sewerage Regulations (12 VAC 5-580-10 et seq.). Such design information is based on the assumption that each unit operation is the sole stabilization process employed at the treatment works. This design information is presented to define the conventional design standards for the level of sludge treatment necessary for biosolids use. Consideration will be given to nonconventional designs, on a case-by-case basis, for treatment works employing new technology or series operation of two or more stabilization processes or methods. *The standard buffer distance of 200 feet shall be provided between the walls of enclosed sludge treatment operations and the boundaries of the site area in which either controlled use or access restrictions apply.*

B. Anaerobic digestion.

1. General. Conventional sludge treatment consists of two anaerobic digesters, or enclosed reactors, typically provided, so that each digester may be used as a first stage or primary reactor. Additional digesters are provided to treat the total flow of primary and secondary sludge generated at treatment works with sewage design flows exceeding one MGD. Where multiple digesters are not provided, it is prudent to provide a lagoon or storage basin for emergency use to allow the digester to be taken out of service without unduly interrupting treatment works operation. Each digester should have the means for transferring a portion of its contents to other digesters. Multiple digester facilities should have means of returning supernatant from the settling digester unit to appropriate points for treatment. Provisions for side-stream treatment of supernatant should be addressed when the supernatant load is not included in the treatment works design.

2. Sludge inlets and outlets. Multiple sludge inlets and draw-offs and multiple recirculation section and discharge points (minimum of three) to facilitate flexible operation and effective mixing of the digester contents provide optimum treatment for pathogen control and vector attraction reduction. One inlet usually discharges above the liquid level and is approximately at the center of the digester to assist in scum breakup. Raw sludge inlet discharge points should be so located as to minimize short circuiting to the supernatant draw-off.

3. Digester capacity. Where the composition of the sewage has been established, digester capacity is conventionally computed from the volume and character of the sludge mixture to be digested. The total digestion volume can be determined by rational calculations based upon such factors as volume of sludge added, its percentage of solids and character, the temperature to be maintained in the digesters, the degree or extent of mixing to be obtained and the size of the installation with appropriate allowance for sludge and supernatant storage. Such detailed calculations justify the basis of design. The digester should be capable of maintaining a minimum average sludge digestion temperature of 35°C

(95°F) with the capability of maintaining temperature control within a 4°C (±) range. The design average detention time for sludge undergoing digestion for stabilization is conventionally a minimum of 15 days within the primary digester, but longer periods may be required to achieve the necessary level of pathogen control and vector attraction reduction necessary for the method used for sludge management. If unheated digesters are utilized, the conventional capacity would provide a minimum detention time of 60 days within the digestion volume in which sludge is maintained at a temperature of at least 20°C (68°F).

a. Completely mixed systems. For digesters providing for intimate and effective mixing of the digestion volume contents, the systems are typically designed for an average feed loading rate of less than 200 pounds of volatile solids per 1,000 cubic feet of volume per day in the active digestion volume.

Confined mixing systems, where gas or sludge flows are directed through vertical channels, mechanical stirring or pumping systems and unconfined continuously discharging gas mixing systems are conventionally designed to ensure complete tank

turnover every 30 minutes. For tanks over 60 feet in diameter, multiple mixing devices shall be used.

Unconfined, sequentially discharging gas mixing systems are typically designed using the number of discharge points and gas flow rates shown for the various tank diameters listed in Table 7, unless sufficient operating data has been developed to verify the performance reliability of alternative designs. Gas discharge lines (lances) mounted on a floating cover or top designed to accumulate gas emissions usually extend to the base of the vertical side wall while the cover is resting on its landing brackets. For floor mounted diffuser boxes or lances mounted to a fixed cover, gas discharge are located at the base of the vertical side wall.

The minimum gas flow supplied for complete mixing shall be 15 cubic feet/min./1,000 cubic feet of digestion volume. Flow measuring devices and throttling valves are used to provide the minimum gas flow.

The design power supplied for mechanical stirring or pumping type complete mixing systems typically exceeds 0.5 horsepower per 1,000 cubic feet of digestion volume.

TABLE 7: DESIGN CRITERIA FOR MULTIPLE DISCHARGE MIXING SYSTEMS, SEQUENTIAL DISCHARGE

Tank Diameter Maximum Diameter (Ft.)	20-30	31-40	41-50	51-60	61-70	71-80	81-90	91-100	101-110
Discharge Points (Minimum Number of Points)	4	5	6	7	8	9	10	11	12
Gas Flow (CFM) (Minimum Gas Flow)	95	95	95	150	150	150	200	250	300

b. Moderately mixed systems. For digestion systems where mixing is accomplished only by circulating sludge through an external heat exchanger, the system is normally loaded at less than 40 pounds of volatile solids per 1,000 cubic feet of volume per day in the active digestion volume. The design volatile solids loading should be established in accordance with the degree of mixing provided. Where mixing is accomplished by other methods, loading rates are determined on the basis of information furnished by the design engineer. Where low speed mechanical mixing devices are specified, more than one device is used unless other mixing devices are also provided.

C. Aerobic sludge digestion.

1. Mixing. Aerobic sludge digestion reactors are conventionally designed for effective mixing and aeration. When aeration diffusers are used, they are normally of the type which minimizes clogging, and they should be designed to permit removal for inspection,

maintenance and replacement without dewatering the tanks.

2. Multiple design. Multiple aerobic digesters are conventionally provided at treatment works having a design flow capacity of more than 0.5 MGD. The size and number of aerobic sludge digesters can be determined by rational calculations based upon such factors as of volume of sludge added, its percent solids and character, the required volatile solids reduction for stabilization, allowance for sludge and supernatant storage, and the minimum temperature of the digester contents. The capacity calculations usually include design digester temperature based on the type of mixing equipment and other factors. The following conventional design information will establish the minimum design capacities for provision of pathogen control and vector attraction reduction treatment by aerobic digestion facilities:

a. Hydraulic detention time. Digester volume may exceed 20% of the average design flow of the

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treatment works. The design digester volume can be increased up to 25% of the average design flow if the wastewater temperature will remain below 10°C (50°F) for an extensive period of time (60 days/year). The volatile solids loadings are typically in the range of one to two tenths (0.1 to 0.2) pounds of volatile solids per cubic foot per day. A reduction in conventional aerobic digester hydraulic detention time may be provided for treatment works designed to be operated in the extended aeration mode or coupled with additional stabilization processes.

b. Mixing energy. Energy input requirements for mixing should be in the range of 0.5 to 1.5 horsepower per 1,000 cubic feet, where mechanical aerators are utilized, and 20 to 30 standard cubic feet per minute per 1,000 cubic feet of aeration tank, where air mixing is utilized.

### D. Sludge composting.

1. General design. Conventionally designed compost facilities receive treated dewatered sludge to be mixed with a bulking agent prior to composting. The conventional mixing operation should have sufficient capacity to properly process the peak daily waste input with the largest mixer out of operation. Volumetric throughput values used to establish necessary mixing capacity are typically based on the material volume resulting from the sludge to bulking agent ratio, or are estimated from previous experience or pilot scale tests.

The ability of all selected equipment to produce a compostible mix from sludge of an established moisture content, residual material and the selected bulking agent can be established from previous experience or pilot tests.

Except for windrow composting wherein mobile mixers are used, an area with sufficient space to mix the bulking agent and sludge or residuals and store half of the daily peak input should be provided. The mixing area is usually covered to prevent ambient precipitation from directly contacting the mix materials.

Where conveyors are used to move the compost mix to the composting area and or help provide mixing, sufficient capacity for handling of the mix with one conveyor out of operation is normally provided, or a backup method of handling or storing is available. Site runoff is typically directed to a storage or treatment facility. Capacity of the drainage system may provide for the 24-hour rainfall a peak rate expected once in 10 years.

2. Windrow method. The windrow composting site area requirements are conventionally based on the average daily compost mix inputs, a minimum detention time of 30 days on the compost pad, and the area required for operation of the mixing equipment. Sufficient compost mix handling equipment is usually provided to turn the windrows daily.

3. Aerated-static pile. The size of a conventional static pile compost area is based on the average daily compost mix inputs, along with storing base and cover material.

The area size should provide for a composting time of 21 days, unless the applicant, through previous experience or pilot scale studies establishes that less time is necessary to achieve the pathogen control and vector attraction requirements. A biosolids compost mix should be configured to provide adequate aeration of the mix using either positive or negative pressure for air flow through the piles. In addition, site area space is provided to allow loader movement between daily pile sections and for access roads.

Sufficient aeration blower capacity is typically provided to deliver the necessary air flow through the static pile compost mix, but the delivered air flow usually exceeds an aeration rate of 500 cubic feet per hour per dry ton (CFH/DT). Where centralized aeration is utilized, multiple blower units are provided and arranged so that the design air requirement can be met with the largest single unit out of service. Where individual blowers are used, sufficient numbers of extra blowers are provided so that the design air requirement can be met if 10% or more of the blower capacity is unavailable. For facilities which are not continuously manned, the blower units may be equipped with automatic reset and restart mechanisms or alarmed to a continuously manned station, so that they can quickly be placed back into operation after periods of power outage.

4. Confined composting methods (in-vessel or totally enclosed). Due to the large variation in composting processes, equipment types, and process configuration characteristic of currently available confined systems, it is not feasible to establish conventional design information. However, a conventionally designed confined composting system can be established from previous operating experience or pilot scale studies. Biosolids removed from a conventionally designed reactor or compost process, following the manufacturer's suggested residence time, would have an equivalent or higher degree of pathogen control and vector attraction reduction than would be achieved after 21 consecutive days of conventional design aerated static pile composting operation.

5. Storage. Storage for curing or drying biosolids compost is usually provided if compost is to be recycled for public use. When dry compost is used as a bulking agent screening is not typically provided. Consideration should be given to covering the drying area. If a cover is provided, it can be designed so that sunlight is transmitted to the composting materials while preventing direct contact with ambient precipitation. Efficient drying may be accomplished by drawing or blowing air through the compost mixture or by mechanical mixing of shallow layers with stationary bucket systems, mobile earth moving equipment, or rotating discs.

Storage areas should provide for up to six months storage of biosolids compost with a similar storage period for bulking materials.

E. Heat stabilization. The design of heat treatment systems is conventionally based on the anticipated sludge flow rate (gpm) with the required heat input dependent on sludge characteristics and concentration. The system may

be designed for continuous 24-hour operation to minimize additional heat input to start up the system. Measures for the adequate control of odors should be provided.

Multiple units should be provided unless nuisance-free storage or alternate stabilization methods are available. Multiple units are preferred to avoid disruption to treatment works operation when units are not in service. If a single system is provided, use of standby grinders, fuel pumps, air compressor (if applicable) and dual sludge pumps is normally provided. A reasonable downtime for maintenance and repair based on data from comparable facilities is typically included in the design. Adequate storage for process feed and downtime shall be included.

The conventional heat treatment process provides sludge stabilization in a reaction vessel within a range of 175°C or 350°F for 40 minutes to 205°C or 400°F for 20 minutes at pressure ranges of 250 to 400 psig, or provide for pasteurization at temperatures of 30°C or 85°F or more and gage pressures of more than one standard atmosphere (14.7 psia) for periods exceeding 25 days.

The conventional heat drying system involves either direct or indirect contact between a dewatered sludge cake and hot gases in order to reduce the moisture content of the cake to 10% or less. The sludge cake temperature is typically 800°F or more during this process.

F. Incineration. Sludge incinerator ash may be used as either a material additive, or an ingredient for the manufacture of construction materials and other products. Due to the large variation in incineration processes, equipment types, and configurations characteristic of currently available incineration systems, it is not feasible to describe a conventional design. Design of these systems should be based on pilot plant studies or data from comparable facilities.

G. Alkaline stabilization. The three design parameters typically considered fundamental for design of an alkaline stabilization system include: pH, contact time, and mixture temperature.

The alkaline additive dosage required to produce biosolids is determined by the type of sludge, its chemical composition, and the solids concentration. Performance data taken from pilot plant test programs or from comparable facilities should be used in determining the proper dosage.

The conventional design objective is to furnish uniform mixing in order to maintain a pH of 12 or above for two hours or more in the alkaline additive-sludge mixture. The conventional design for accomplishing Class II treatment biosolids (Article 3 of this part) would include adequate means to:

1. Add a controlled dosage of alkaline to sludge and provide uniform mixing.
2. Bring the alkaline additive-sludge mixture pH to the design objective or provide a mixture pH of 12.5 or more and maintain the mixture pH above 12.5 for 30 minutes.
3. The sludge shall not be altered or further distributed for two hours after alkaline treatment.

Class I treatment is achieved when the pH and contact time objectives described in 12 VAC 5-585-520 are accomplished with a temperature of the alkaline-sludge mixture of more than 52°C and the mixture is maintained at a sufficient temperature over a measured contact period to ensure pasteurization.

Pasteurization vessels are conventionally designed to provide for a minimum retention period of 30 minutes. The means for provision of external heat should be specified.

H. Chlorine stabilization. The production of biosolids through high doses of chlorine would be considered on a case-by-case basis.

I. Other stabilization processes. Other processes for conventional production of biosolids can be considered in accordance with available performance data.

### 12 VAC 5-585-460. General.

12 VAC 5-585-460 through 12 VAC 5-585-500 provide minimum criteria which will be used for reviewing sludge management plans and operating plans. Each plan shall address site specific management practices involving use of biosolids. Final disposition of sludge may involve use or disposal. For the purpose of 12 VAC 5-585-460 through 12 VAC 5-585-500, "use" shall include resource recovery, recycling or deriving beneficial use from the material. "Disposal" shall involve the final disposition of a waste material without resource recovery, recycling or deriving beneficial use from the material.

All practical use options should be evaluated before disposal options are evaluated or selected. Biosolids use practices include land application for agricultural, nonagricultural and silvicultural use and the distribution and marketing of exceptional quality biosolids. Sludge disposal methods include incineration, landfill codisposal, surface disposal, and other dedicated disposal practices, such as burial on dedicated disposal sites.

Water quality protection and monitoring provisions shall be included in all sludge management plans and operating plans, except for those land application practices designed for limited loadings (amounts per area per time period) within defined field areas in agricultural use. Groundwater monitoring requirements shall be evaluated by the commissioner, with the assistance of the Department of Environmental Quality, for annual application of biosolids to specific sites, reclamation of disturbed and marginal lands and application to forest land (silviculture). Submittal of site specific (soils and other) information for each identified separate field area shall be required for issuance of permits 12 VAC 5-585-130. For information regarding handling and disposal of septage, refer to the Sewage Handling and Disposal Regulations, 12 VAC 5-610-10 et seq.

Conformance of biosolids use to local land use zoning and planning should be resolved between the local government and the permit applicant. The permit applicant shall attempt to notify land owners of property within 200 feet and 1,000 feet of the boundaries of sites proposed for frequent use and dedicated sites, respectively, and furnish the division with acceptable documentation of such notifications (i.e., intent to land-apply biosolids on the proposed locations). Relevant

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concerns of adjacent landowners will be considered in the evaluation of site suitability. The requirements for processing approvals of sludge management plans and operational plans are included in 12 VAC 5-585-140 H as well as: (i) requirements for notification of applications, hearings and meetings, (ii) minimum information required for completion of a sludge management plan for land application (Part IV, 12 VAC 5-585-620 *et seq.*).

### 12 VAC 5-585-470. Sludge quality and composition.

A. Sampling and testing sludge. Samples shall be collected so as to provide a representative composition of the sludge. Analytical testing shall be performed by a laboratory capable of testing in accordance with current EPA approved methods or other accepted methods. The operational section of this chapter establishes the minimum constituents which shall be analyzed and the sampling and preservation procedures which should be utilized. The sludge management plan or operational plan shall detail both the sampling and testing methods used to characterize the sludge.

B. Nonhazardous declaration. Regulations under the Resource Conservation and Recovery Act (RCRA) and the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10 *et seq.*) identify listed hazardous wastes and hazardous waste characteristics. Municipal wastewater or sewage sludge is neither excluded nor specifically listed as hazardous waste. Hazardous wastes as established through RCRA and appropriate state regulations are not managed under these regulations *this chapter*. The owner shall monitor sludge characteristics as required to determine if it is hazardous or nonhazardous and declare to the department that the sludge generated at his facility is nonhazardous.

C. Sludge treatment. Sludges shall be subjected to a treatment process sequence designed to reduce both the pathogen content and the solids content to the appropriate level for the selected method of management, such as land application. For such use options, the sludge treatment provided shall minimize the potential for vector attraction and prevent objectionable odor problems from developing during management. Acceptable levels of pathogen reduction may be achieved by various established conventional treatment methods including Class I treatment to accomplish Class A pathogen control and Class II or III treatment to accomplish Class B pathogen control 12 VAC 5-585-560. The level of pathogen control achieved by nonconventional treatment must be verified by microbiological monitoring (Table 3).

For land application, Class B pathogen, or better, shall be achieved. Such Class I, or II, or III treatment may involve either: anaerobic or aerobic digestion, high or low temperature composting, heat treatment, air drying, or chemical treatment processes utilizing alkaline additives or chlorine. For use of treated sludge or sludge products involving a high potential for public contact, it may be necessary to achieve further pathogen reduction (Class A) beyond that attained by the above processes. Such Class I treatment may be accomplished by (i) heat treatment and drying, (ii) thermophilic composting, (iii) alkaline treatment. A three-log reduction or more (a thousand-fold reduction) in pathogenic bacteria and viral microorganisms to meet conventional treatment standards. Raw sludge levels of

pathogenic bacteria and viral microorganisms is accomplished by conventional Class I treatment methods.

Properly treated sludges can be safely utilized and should not create any nuisance problems when managed in accordance with approved sludge management or operating plans. A sludge that receives Class I, II or III or II treatment for adequate pathogen control and is treated or managed to properly reduce vector attraction and pollutants within acceptable levels (Table 8-A) is referred to as "biosolids." A Class I treated sludge with approved control of vector attraction and acceptable levels of pollutants (Table 8-B) is referred to as "exceptional quality biosolids."

D. Sludge composition. The characterization of sludge properties is a necessary first step in the design of a use/disposal system. Monitoring and testing for certain pollutants shall be achieved prior to specific use or disposal practices. For the purposes of this chapter, sludge management and testing methods shall account for moisture content including: (i) liquid sludge defined as sludges with less than 15% total solids, (ii) dewatered sludge normally defined as sludges with 15% to 30% total solids; (iii) dried sludge normally defined as sludges with more than 30% total solids.

### 12 VAC 5-585-490. Transport.

Transport routes should follow primary highways, should avoid residential areas when possible, and should comply with all Virginia Department of Transportation requirements and standards. Transport vehicles shall be sufficiently sealed to prevent leakage and spillage of sludge. For sludges with a solids content of less than 15%, totally closed watertight transport vehicles with rigid tops shall be provided to prevent spillage unless adequate justification is provided to demonstrate that such controls are unnecessary. The commissioner may also require certain dewatered sludges exceeding 15% solids content to be handled as liquid sludges. The minimum information for sludge transport which shall be supplied in the sludge management plan is listed in Part IV (12 VAC 5-585-620 *et seq.*).

### 12 VAC 5-585-500. Storage facilities.

A. Three types of storage may be integrated into a complete sludge management plan including: (i) "emergency storage" involving immediate implementation of storage for any sludge which becomes necessary due to unforeseen circumstances, (ii) "temporary storage" involving the provision of storage of stabilized sludges at the land application site which becomes necessary due to unforeseen climatic events which preclude land application of biosolids in the day that it is transported from the generator, (iii) "routine storage" involving the storage of biosolids as necessary for all nonapplication periods of the year. Only routine storage facilities shall be considered a facility under this chapter.

B. Emergency storage. The owner shall notify the division upon implementation of any emergency storage. Approval of such storage and subsequent processing of the sludge and supernatant will be considered as a contingency plan integrated into the sludge management plan. Only emergency storage shall be used for storage of unstabilized sludges. Further processing utilization and disposal shall be

conducted in accordance with the approved sludge management plan. Design and implementation of facilities used for emergency storage shall not result in water quality, public health or nuisance problems.

C. Temporary storage. The owner shall notify the division whenever it is necessary to implement temporary storage. Temporary storage may be utilized at the land application site due to unforeseen climatic factors which preclude application of sludge (either off-loaded at the site or in transport to the site) to permitted sites within the same working day. Temporary storage is not to be used as a substitute for routine storage and is restricted as follows:

1. Sludge stored at the site shall be land applied prior to additional off-loading of sludge at the same site;
2. The owner shall be restricted to storing a daily maximum amount of 100 wet tons per operational site;
3. The stored sludge shall be land applied within 30 days from the initiation of storage or moved to a routine sludge facility;
4. Approval of plans for temporary storage will be considered as part of the overall sludge management plan;
5. Temporary storage shall not occur in areas prone to flooding at a 25-year or less frequency interval;
6. A synthetic liner shall be required for placement under and over sludge stored in this manner with one exception: where sludge is stockpiled for less than seven days, a liner placed under the stored sludge is not required. Surface water diversions and other Best Management Provisions (BMP) should be utilized as appropriate; and
7. Temporary storage shall not result in water quality, public health or nuisance problems.

D. Routine storage. Routine storage facilities shall be provided for all land application projects if no alternative means of management is available during nonapplication periods. Plans and specifications for any surface storage facilities (pits, ponds, lagoons) or aboveground facilities (tanks, pads) shall be submitted as part of the minimum information requirements.

1. Location. The facility shall be located at an elevation which is not subject to, or is otherwise protected against, inundation produced by the 100-year flood/wave action as defined by U.S. Geological Survey or equivalent information. Storage facilities should be located to provide minimum visibility. All storage facilities with a capacity in excess of 100 wet tons and located off-site of property owned by the generator shall be provided with a minimum 750-foot buffer zone. The length of the buffer zone considered will be the distance measured from the perimeter of the storage facility. Residential uses, high-density human activities and activities involving food preparation are prohibited within the buffer zone. The commissioner may consider a reduction of up to 1/2 of the above buffer requirements based on such facts as lagoon area, topography, prevailing wind direction, and

the inclusion of an effective windbreak in the overall design.

2. Design capacity. The design capacity shall be sufficient to store a minimum volume equivalent to 60 days or more average production of biosolids and the incidental wastewater generated by operation of the treatment works plus sufficient capacity necessary for: (i) the 25 year-24 hour design storm (incident rainfall and any runoff as may be present); (ii) net precipitation excess during the storage period; and (iii) an additional one foot freeboard from the maximum water level (attributed to the sum of the above factors) to the top berm elevation. Storage capacity of less than that specified above will be considered on a case-by-case basis only if sufficient justification warrants such a reduction. If alternative methods of management cannot be adequately verified contractors should provide for a minimum of 30 days of in-state routine storage capacity for the average quantity of sludge transported into Virginia from out-of-state treatment works generating at least a Class III // level treated sludge.

3. Construction. Storage facilities shall be of uniform shape (round, square, rectangular) with no narrow or elongated portions. The facilities shall be lined in accordance with the requirements contained in sewerage regulations or certificate. The facilities shall also be designed to permit access of equipment necessary for loading and unloading biosolids, and should be designed with receiving facilities to allow for even distribution of sludge into the facility. Design should also provide for truck cleaning facilities as may be necessary. Storage facilities with a capacity of 100 wet tons or less shall comply with the provision for temporary storage as a minimum.

4. Monitoring. All sludge storage facilities in excess of 100-wet ton capacity shall be monitored in accordance with the requirements of this chapter. Plans and specifications shall be provided for such a monitoring program in accordance with the minimum information specified in Part IV (12 VAC 5-585-620 *et seq.*).

5. Operation. Only biosolids suitable for land application (Class A or B Biosolids) shall be placed into permitted routine storage facilities. Storage of biosolids located offsite or remote from the Wastewater Treatment Works during the summer months shall be avoided whenever possible so that the routine storage facility remains as empty as possible during the summer months. Storage facilities should be operated in a manner such that sufficient freeboard is provided to ensure that the maximum anticipated high water elevation due to any and all design storm inputs is not less than one foot below the top berm elevation. Complete plans for supernatant disposal shall be provided in accordance with Part IV (12 VAC 5-585-620 *et seq.*). Plans for supernatant disposal may include transport to the sewage treatment works, mixing with the biosolids for land application or land application separately. However, separate land application of supernatant will be regulated as liquid sludge; additional testing, monitoring and treatment (disinfection) may be required. The facility site

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shall be fenced to a minimum height of five feet; gates and locks shall be provided to control access. The fence should be posted with signs identifying the facility. The fence should not be constructed closer than 10 feet to the outside edge of the facility or appurtenances, to allow adequate accessibility.

6. Closure. An appropriate plan of closure or abandonment shall be developed by the permittee when the facility ceases to be utilized and approved by the commissioner. Such plans may also be reviewed by the Department of Environmental Quality.

7. Recordkeeping. A manifest system shall be developed, implemented and maintained and be available for inspection during operations as part of the overall daily recordkeeping for the project (Part IV, 12 VAC 5-585-620 *et seq.*).

### 12 VAC 5-585-510. Biosolids utilization methods.

A. Agricultural use. Agricultural use of sewage sludge is the land application of biosolids (Table 8) to cropland or pasture land to obtain agronomic benefits as a plant nutrient source and soil conditioner. This use shall require a system design which ensures that the land application procedures are performed in accordance with sound agronomic principles.

1. Sludge treatment. As a minimum, biosolids that are applied to the land or incorporated into the soil shall be treated by a Class III pathogen treatment process and shall be treated or managed to provide an acceptable level of vector attraction reduction.

2. Site soils. Soils best suited for agricultural use should possess good tilth and drainage capabilities, have moderate to high surface infiltration rates and moderate to slow subsoil permeability. Depth to bedrock or restrictive layers should be a minimum of 18 inches. Depth to the seasonal water table should exceed 18 inches as defined by the Soil Conservation Service soil survey. If such information is not available the water table depth may be determined by soil characteristics or water table observations. If the soil survey or such evidence indicates that the seasonal water table can be less than 18 inches below the average ground surface, soil borings shall be utilized within seven days prior to land application operations during periods of high water table for the soil series present, to verify that the 18-inch depth restriction is complied with during field operations. The use of soil borings and water table depth verification may be required for such sites from November to May (during seasonal high water table elevations) of each year depending on soil type. Constructed channels (agricultural drainage ditch) may be utilized to remove surface water and lower the water table as necessary for crop productions and site management.

The pH of the biosolids and soil mixture shall be 6.0 or greater at the time of each biosolids application if the biosolids cadmium concentration is greater than or equal to 21 mg/kg. The soil pH must be properly tested and recorded prior to land application operations during which a pH change of 1/2 unit or more may occur within

the zone of incorporation (i.e., use of biosolids containing lime or other alkaline additives at 10% or more of dry solid weight).

### 3. Management practices.

a. Application rates and requirements. Process design considerations shall include sludge composition, soil characteristics, climate, vegetation, cropping practices, and other pertinent factors in determining application rates. Site specific application rates should be proposed using pertinent sludge plant available nitrogen (PAN) and crop nutrient needs (agronomic rate listed in Table 11), the cumulative metals trace element loading rates (Table 9) and the maximum Calcium Carbonate Equivalent (CCE) Loading rates (Table 14). Agricultural use of treated septage shall be in accordance with these requirements (Table 13). The biosolids application rate shall be restricted to the following criteria in accordance with the approved operation plan:

(1) For infrequent applications, biosolids may be applied such that the total crop needs for nitrogen (Table 11- *Agronomic Rate*) is not exceeded (in order to minimize the amount of nitrogen that passes below the crop root zone to actually or potentially pollute groundwater), up to a maximum loading of 15 dry tons per acre, during a normal one year crop rotation period (this includes a double crop system) including the production and harvesting of two crops in succession within a consecutive 12-month growing season. However, the total application of biosolids shall not exceed a computed maximum loading of 15 dry tons per acre, unless a higher loading can be justified in relation to both the biosolids and the site characteristics, including the biosolids nutrient and dry solids content and the site slopes. No further applications of biosolids shall be allowed for a period of three years from the last application date that the agronomic rate is achieved for the crop or crops grown in the following 12 months.

(2) The infrequent application rate may be restricted: (i) down to 10% of the maximum cumulative loading rate (Table 9) for cadmium and lead (i.e., 2.0 kilograms per hectare (kg/ha) for cadmium); (ii) to account for all sources of nutrients applied to the site, including existing residuals.

(3) The infrequent application rate may also be restricted by the maximum established CCE loading rate (Table 14).

(4) For systems designed for frequent application of biosolids (application of the PAN requirement for a normal crop rotation more frequently than once in every three years), the previous year's applied Biosolids nitrogen and mineralization rates (Table 12) and soil phosphorus levels, shall be considered in the design and proposed subsequent application rates. Acceptable nutrient management requirements shall be included in the operation plan

for all sites proposed for frequent *at-agronomic* application rates.

(5) Frequent below agronomic application rate would involve frequent applications of biosolids, providing up to a maximum 70% of the annual nitrogen requirements for permanent hay or pasture fields. The annual pollutant loading rates, the previous year's applied biosolids, nitrogen and mineralization rates and soil phosphorus levels shall be considered in the design of proposed subsequent application rates.

b. Standard slopes and topography. Uniform application of biosolids at approved rates to permitted sites with standard slopes of 8.0% or less will provide acceptable protection of water quality. Biosolids shall not be applied to site slopes exceeding 15%. Biosolids should be directly injected into soils on sites exhibiting slopes exceeding 12% unless best management practices are utilized to minimize soil erosion. Biosolids shall be incorporated (mixed within the normal plow layer within 48 hours) if: (i) applied on cultivated sites exhibiting slopes of 8.0% or more; (ii) surface applied to bare ground (less than 60% uniformly covered by stalks, vines, stubble, etc.) within any portion of the permitted site; or (iii) applied to soils during periods of time soils may be subject to frequent flooding from surface water flows as defined by soil survey information. Biosolids shall not be applied to sites with average slopes exceeding 5.0% if: (i) site is cultivated and ground is frozen; or (ii) site is fallow ground or bare ground and application would occur between October 16 and March 14 time period and no agronomically justified crop is to be planted within a 30-day period following application. Biosolids may be applied on sites with slopes up to 8.0% if the application complies with accepted nutrient management practices or an approved soil conservation plan, or 30% or more crop residue remains on the ground surface following incorporation of the biosolids.

c. Operations. An operation plan, including specific descriptions of sites receiving biosolids shall be submitted and evaluated for issuance of a operation permit in accordance with 12 VAC 5-585-200 or 12 VAC 5-585-240 (Appendix B). The operation plan shall specify the proposed site management practices including cropping restrictions and access controls (Table 10). The operation plan shall include nutrient management requirements for all sites owned or operated in conjunction with confined animal feeding operations as defined by the State Water Control Board. Biosolids shall not be applied to sites for which crops intended for direct human consumption (consumed without processing to eliminate pathogens) will be grown within 18 months of application, unless the biosolids have been subjected to a process sequence operated to eliminate pathogens as verified by acceptable monitoring and testing. Root crops intended for direct human consumption may be subject to additional time restrictions in accordance with the sludge treatment unit processes (Table 10).

Biosolids utilization performed in accordance with this chapter will not cause health hazards, water quality degradation, or render the soil unsuitable for future land use. The prevention of public nuisances such as documented interference with use of adjacent property, the tracking of biosolids and soil mixtures onto roadways at field entrances, etc., shall be addressed by appropriate field management practices.

(1) Field management. The application rate of all application equipment shall be routinely measured as described in an approved sludge management plan and every effort shall be made to ensure uniform application of biosolids in accordance with approved maximum design loading rates. Liquid sludges shall not be applied at rates exceeding 14,000 gallons per acre, per application. Application vehicles should be suitable for use on agricultural land. Biosolids applied to either cultivated ground with slopes exceeding 8.0% on more than 10 acres, or to any bare ground shall be incorporated within 48 hours of application of sludge, for any portion of the site, to minimize non point source runoff. Pasture and hay fields should be grazed or clipped to a grass height of four and six inches or less, respectively, prior to biosolids application unless the biosolids can be uniformly applied so as not to mat down the vegetative cover so that site vegetation can be clipped to a height of approximately four inches within one week of the sludge application. Biosolids application shall not be made during times when the seasonal high water table of the soil is within 18 inches of the ground surface. Surface application of biosolids shall not be made to cultivated or bare ground covered with ice. However biosolids may be applied to snow covered ground if the snow cover does not exceed an average depth of one inch and the snow and biosolids are immediately incorporated. Dry or dewatered biosolids may be applied to frozen ground only if: (i) site slopes are 5.0% or less; (ii) 200-foot vegetative (i.e., not bare ground) buffer is maintained from surface water courses; (iii) entire application site is not bare ground and the site soils are characterized as well drained. When biosolids are land applied between March 15 and October 15, crop planting following biosolids application should take place within a 30-day period. If biosolids are applied between October 16 and March 14 to cultivated land, the average site slope shall not exceed 5.0% and the crop should be planted no later than the spring planting season within six months of application. Additionally, for biosolids incorporation into cultivated land which does not support vegetation or adequate crop residue:

(a) Application shall be limited to slopes averaging 5.0% or less. Average slopes greater than 5.0% and up to and including 8.0% may be used if the biosolids application is in compliance with nutrient management practices, an approved Soil Conservation Plan, or 30% or greater crop residue remains after biosolids incorporation.



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~~(b) Buffers of 100 feet for surface application and 50 feet for subsurface application shall be maintained to perennial streams and other surface water bodies.~~

~~(c) Biosolids shall be injected or incorporated within 24 hours. Subsurface incorporation includes either direct injection, or incorporation within 24 hours of application. Standard slope and buffers apply if: (i) vegetation or adequate crop residue is present, (ii) planting is to occur within a 30-day period after application.~~

(5) Frequent below-agronomic application rate involves frequent applications of biosolids on permanent pasture or hay at less than the PAN requirement listed in Table 11. Frequent below-agronomic application rates shall be calculated using one of the following options:

(a) A maximum of 70% of the nitrogen requirement of the permanent pasture or hay crop can be applied on an annual basis. The 70% application rate shall be calculated after accounting for the previous two years' applied biosolids nitrogen mineralization rates.

(b) A maximum of 50% of the nitrogen requirement of the permanent pasture or hay crop can be applied on an annual basis. It is not necessary to account for the previous two years' applied biosolids nitrogen mineralization rates under this option.

For systems designed for frequent below-agronomic rates, surface and groundwater monitoring and a certified nutrient management plan shall not be required. Soil phosphorus levels shall be considered in the design of proposed subsequent application rates. On warm-season grasses and alfalfa, no application shall be made between September 15 and March 15.

b. Standard slopes and topography. Management practices specifying uniform application of biosolids at approved rates should be established in accordance with standard slopes. Agronomic practices and crop growth on sites with slope of not greater than 5.0% will provide acceptable protection of surface water quality during the active growing season. If biosolids are applied to site slopes greater than 5.0% during the period of November 16 of one year to March 15 of the following year certain Best Management Practices (BMP's) should be utilized (see subdivision 3 c (1) of this subsection). Biosolids should be directly-injected into soils on sites exhibiting erosion potential unless other best management practices are utilized to minimize soil erosion and the potential of nonpoint runoff. Biosolids shall not be applied to site slopes exceeding 15%. Biosolids shall be direct-injected or incorporated (mixed within the normal plow layer within 48 hours) if: (i) applied on sites with less than 60% uniform residue cover (stalks, vines, stubble, etc.) within any portion of the site; or (ii) applied to soils

during periods of time soils may be subject to frequent flooding as defined by soil survey information.

c. Operations.

(1) Field management. The application rate of all application equipment shall be routinely measured as described in an approved sludge management plan and every effort shall be made to ensure uniform application of biosolids within sites in accordance with approved maximum design loading rates. Liquid sludges shall not be applied at rates exceeding 14,000 gallons per acre, per application. Sufficient drying times shall be allowed between subsequent applications. Application vehicles should be suitable for use on agricultural land. Pasture and hay fields should be grazed or clipped to a height of approximately four and six inches, respectively, prior to biosolids application unless the biosolids can be uniformly applied so as not to mat down the vegetative cover so that the site vegetation can be clipped to a height of approximately four inches within one week of the biosolids application. If application methods do not result in a uniform distribution of biosolids, additional operational methods shall be employed following application such as dragging with a pasture harrow, followed by clipping if required, to achieve a uniform distribution of the applied biosolids.

When biosolids are applied to site slopes greater than 7.0% between the period of November 16 of one year, and March 15 of the following year, one of the following practices shall be used to prevent runoff and soil loss:

(a) Biosolids are surface applied or subsurface injected beneath an established living crop such as hay, pasture, or timely planted small grain or cover crop;

(b) Biosolids are surface applied or subsurface injected so that immediately after application the crop residue still provides at least 60% soil surface coverage; or

(c) Biosolids are applied by surface application or subsurface injection and the site is operated in compliance with an existing soil conservation plan approved by the U.S.D.A. Natural Resource Conservation Service and will remain in compliance after any subsequent tillage operation to incorporate the biosolids.

If site slopes exceed 5.0% up to 7.0%, biosolids can be applied by surface application or subsurface injection followed by: (i) incorporation within 48 hours of application if crop residue still provides at least 30% soil surface coverage immediately following incorporation, or (ii) ridge tilling or chisel plowing within 48 hours of application; during the period of November 16 to March 15 of the following year. The site should be chisel plowed or ridge tilled predominately along the contour so that uniform parallel ridges of four inches or greater are created

that will improve soil roughness and reduce runoff. Consideration should also be given to the use of similar practices on slopes of 5.0% or less when feasible for applications during the late fall and winter.

Biosolids application shall not be made during times when the seasonal high water table of the soil is within 18 inches of the ground surface. Biosolids may only be applied to snow covered ground if the snow cover does not exceed one inch and the snow and biosolids are immediately incorporated within 24 hours of application. Liquid sludges may not be applied to frozen ground. Dry or dewatered sludges may be applied to frozen ground only if: (i) site slopes are 5.0% or less; (ii) a 200-foot vegetative (i.e., at least 60% uniformly covered by stalks or other vegetation) buffer is maintained from surface water courses; and (iii) the entire application site has uniform soil coverage of at least 60% with stalks, vines, stubble, or other vegetation and the site soils are characterized as well drained.

When biosolids are land applied between March 15 and September 1, crop planting following biosolids application should occur within a 30-day period. When biosolids are applied to sites between

September 1 and November 16, an agronomically justified crop capable of trapping plant available nitrogen such as small grain shall be planted within 45 days of the application of biosolids or prior to November 16, whichever comes first, or an established cool season grass sod or timely planted small grain crop shall be present. The crop planted should be capable of germination and significant growth before the onset of winter so the plant is able to use available nitrogen released by the biosolids.

On sites with a high leaching index (greater than 10) as defined by the Department of Conservation and Recreation, an established cool season grass or timely planted small grain crop should be present when biosolids are applied to such sites between November 16 and December 21.

(2) Standard buffer zones. If slopes are greater than 7.0% and biosolids will be applied between November 16 and March 15, standard buffer distances to perennial streams and other surface water bodies shall be doubled. The location of land application of biosolids shall not occur within the following minimum buffer zone requirements:

Minimum Distances (Feet) to Land Application Area

Adjacent Features	Surface Application <sup>(1)</sup>	Incorporation	Winter <sup>(2)</sup>
Occupied dwellings	200 ft.	200	200
Water supply wells or springs	100 ft.	100	100
Property lines	100 ft.	50	100
Perennial streams and other surface waters except intermittent streams	50 ft.	35	100
Intermittent streams/ drainage ditches	25 ft.	25	50
All improved roadways	10 ft.	5	10
Rock outcrops and sinkholes	25 ft.	25	25
Agricultural drainage ditches with slopes equal to or less than 2.0%	10 ft.	5	10

Note: <sup>(1)</sup> Not plowed or disced to incorporate within 48 hours;

<sup>(2)</sup> Application occurs on average site slope greater than 7.0%, during the time between November 16 of one year and March 15 of the following year.

The stated buffer zones to adjacent property boundaries, surface waters, and drainage ditches constructed for agricultural operations may be reduced by 50% for subsurface application (includes same day incorporation) unless state or federal regulations provide more stringent requirements. Written consent of affected landowners is required to reduce buffer distances from property lines and dwellings. In cases where more than one buffer

distance is involved, the most restrictive distance governs. Buffer requirements may be increased or decreased based on either site specific features, such as agricultural drainage features and site slopes, or on biosolids application procedures demonstrating precise placement methods.

(3) Monitoring. Groundwater and surface water and soils monitoring may be required for any frequent application sites (reach agronomic rate more than

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once in three years) for which a potential environmental or public health concern is identified by the commissioner in accordance with this chapter. Groundwater monitoring should not be required for infrequent application of biosolids.

B. Forestland (Silviculture). Silvicultural use includes application of biosolids to commercial timber and fiber production land, as well as federal and state forests. The forestland may be recently cleared and planted, young plantations (two-year-old to five-year-old trees) or established forest stands.

1. Sludge standards. Refer to Article 3 of this part.

2. Site suitability. Site suitability requirements should conform to subdivision A 2 of this section. The soil pH should be managed at the natural soil pH for the types of trees proposed for growth.

3. Management practices.

a. Application rates. Biosolids application rates shall be *determined by the division in accordance with the provisions of 12 VAC 5-585-510 A 3 and* based on nitrogen uptake rates and yields as recommended in information provided by the Virginia Department of Forestry.

b. Operations.

(1) Field management.

(a) High pressure spray shall not be utilized if public activity is occurring within 1,500 feet downwind of the application site. Public access to the site shall be adequately limited or controlled following application (Article 3 of this part).

(b) The operations should only proceed when the wind velocity is less than or equal to 15 miles per hour. When high pressure spray is used windless conditions are preferred for such operations.

(c) Biosolids application vehicles should have adequate clearance to be suitable for silvicultural field use.

(d) Application scheduling should take into account high rainfall periods and periods of freezing conditions.

(e) Monitoring requirements shall be site specific and may include groundwater, surface water or soils, for frequent application sites.

(2) Buffer zones. Buffer zones should conform to those for agricultural utilization. Refer to Table 2.

C. Reclamation of disturbed land. Biosolids applied at rates exceeding the agronomic rate may reclaim disturbed land in one or more of the following ways: (i) surface or underground mining operations, (ii) the deposition of ore processing wastes, (iii) deposition of dredge spoils or fly ash in construction areas such as roads and borrow pits. Reclamation of disturbed land is within the jurisdiction of the Virginia Department of Mines, Minerals and Energy. That department should be contacted concerning issuance of a

permit for these operations. The land reclamation operation plan should be prepared with the assistance of the Virginia Department of Conservation and Recreation, the Soil Conservation Service and the Virginia Cooperative Extension Service.

1. Sludge standards. Refer to Article 3 of this part.

2. Site suitability. Site suitability requirements should conform to subdivision A 2 of this section. Exceptions may be considered on a case-by-case basis.

3. Management practices.

a. Application rates. The application rates shall be established ~~based on~~ *by the division in accordance with 12 VAC 5-585-510 A 3 and* the recommendation of appropriate agencies including the Virginia Department of Mines, Minerals and Energy and the appropriate faculty of the Department of Crop and Soil Environmental Sciences of the Virginia Polytechnic Institute and State University.

b. Vegetation selection. The land should be seeded with grass and legumes even when reforested in order to help prevent erosion and utilize available plant nitrogen. The sludge management plan should include information on the seeding mixture and a detailed seeding schedule.

c. Operations.

(1) The soil pH should be maintained at 6.0 or above if the cadmium level in the biosolids applied is at or above 21 mg/kg. during the first year after the initial application. Soil samples should be analyzed by a qualified laboratory. The application rate shall be limited by the most restrictive cumulative ~~metals~~ *trace element* loading (Table 9).

(2) Surface material should be turned or worked prior to the surface application of liquid biosolids, to minimize potential for runoff, since solids in liquid sludge can clog soil surface pores.

(3) Unless the applied biosolids are determined to be Class A or have been documented as subjected to Class I treatment, crops intended for direct human consumption shall not be grown for a period of three years following the date of the last sludge application, unless the crop is tested to verify that the crop is not contaminated. No animals whose products are intended for human consumption may graze the site or obtain feed from the site for a period of six months following the date of the last biosolids application, unless representative samples of the animal products are tested after grazing and prior to marketing to verify that they are not contaminated.

**12 VAC 5-585-520. Distribution or marketing.**

A. Exceptional quality. Distribution or marketing provides for the sale or distribution of exceptional quality biosolids or mixtures of Class I treated biosolids with other materials such that the mixture achieves the Class A pathogen control standard. Distribution or marketing of Class I treated

biosolids which have been mixed with inert materials may be approved on a case-by-case basis. Inert materials shall not contain pathogens or attract vectors. *Use of such mixtures for agricultural purposes should be evaluated through proper testing or research programs designed to assess the suitability of the material for such use.* Exceptional quality biosolids marketed as fertilizers or soil conditioners, must be registered with the Virginia Department of Agriculture and Consumer Services. The permit applicant shall obtain such registration prior to issuance of a permit by the commissioner for residential, agricultural, reclamation or silvicultural use.

1. Because of the high potential for public contact with distributed and marketed sludge or sludge products, only biosolids processed to meet criteria specified for Class I treatment process sequences designed to eliminate or further reduce pathogens (PFRP), shall be sold or given away for application to land. In addition, the biosolids must meet vector attraction reduction requirements, and other quality standards (Table 9) as required for the intended use.

2. Exceptional quality biosolids may be distributed and marketed in either bulk amounts (unpacked) or as a bagged product. For purposes of this chapter, a bulk use quantity of biosolids will be defined as a volume of that sludge product containing 15 dry tons or more of sewage sludge. Application of bulk use quantities of exceptional quality biosolids to home vegetable gardens shall not exceed an equivalent annual loading rate of approximately one pound dry weight of biosolids per square foot (garden products may constitute a significant portion of a family diet and the amount of applied biosolids cannot be specifically controlled as in agricultural use). Exceptional quality biosolids can ideally be used as soil amendments for horticulture and landscaping purposes such as:

- a. Use in potting soil mixes;
- b. Use for seed beds, for establishment of grass and other vegetation and for topdressing of existing lawns and landscape vegetation.

3. Only exceptional quality biosolids produced from an approved sludge processing facility can be distributed and marketed. Biosolids sold for use as soil amendments or fertilizers must be registered with the Virginia Department of Agriculture and Consumer Services. Approved sludge processing facilities are those facilities constructed and operated in compliance with required permits. Approved methods of Class I processing for biosolids for distribution or marketing include, but may not be limited to, the methods described in Article 3 of this part.

B. Permits. Any owner who proposes to distribute or market exceptional quality biosolids or materials derived from Class I biosolids (*distributor*), including soil additives or compost in bulk use quantities, shall be required to obtain a written approval issued by the State Health Commissioner. The derived material shall achieve acceptable vector attraction reduction standards and contain acceptable levels of solids and pollutant concentrations in accordance with this chapter. A permit for distribution or marketing is not required

provided that an operation permit has been issued for land application of the processed material as part of either an approved sludge management plan (12 VAC 5-585-140 H) or an approved operation plan (12 VAC 5-585-240). Approval of the distribution of bulk use quantities of exceptional quality biosolids is not required for a holder of a valid permit that authorizes distribution in bulk use quantities. All requests for bulk use approval shall be directed initially to the appropriate field office of the department. The Virginia Department of Environmental Quality, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Conservation and Recreation may participate in the review of such permits involving land application. An operation permit for distribution of bulk use quantities of exceptional quality biosolids will require the submittal and review of an acceptable distribution information sheet as described in this chapter. The approval of a distribution information sheet for bulk use quantities of exceptional quality biosolids will be issued in the form of a letter of approval of such use by the department's field offices or the Division of Wastewater Engineering.

The permittee shall maintain records on the sludge processing facility operation, maintenance and laboratory testing. Records shall be maintained for all samples to include the following: (i) the date and time of sampling, (ii) the sampling methods used, (iii) the date analyses were performed, (iv) the identity of the analysts, (v) the results of all required analyses and measurements. The records shall include all data and calculations used and shall be available to the department for inspections at reasonable times. All required records shall be kept for a minimum of five years.

C. Information furnished to all users. Exceptional quality Biosolids distributed for public use in Virginia shall have proper identification of the producer and a description of the product including an acceptable statement of quality based on representative analytical testing. This information shall be provided by the owner in either brochures for bulk distribution or by proper labeling on bagged material. Labeling requirements should be addressed in a management plan or in the operation and maintenance manual for the processing facility. ~~Users of biosolids shall be informed that the supplied material is not to be used to grow mushrooms as a food crop.~~

Information provided to users of exceptional quality ~~marketed or distributed~~ biosolids should note the following: (i) the nutrient content, (ii) the acceptable land application rates, (iii) the CCE value, the pH and, (iv) ~~the necessary precautions to be followed when handling exceptional quality biosolids. When biosolids are land applied on residential or public contact (recreation) sites, the following restrictions apply: to follow the stated directions for use, and (v) that for any uses not specified the user should contact the distributor at a listed address or telecommunications number.~~

~~1. Exceptional quality biosolids should not be spread during precipitation events or spread on land with slope greater than 8.0% (eight foot rise in 100 feet), unless a suitable vegetative cover is provided or the biosolids are incorporated within the topsoil immediately following application.~~

~~2. The application site with suitable vegetative cover should not exceed a slope of 12% unless the exceptional~~

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~~quality biosolids are to be incorporated (retilled or disced) within 48 hours after application.~~

~~3. Surface application not followed by immediate (same day) incorporation should not occur on: (i) snow covered areas, (ii) any poorly drained soils if the water table is within 18 inches of the ground surface, (iii) areas exhibiting seasonal ponding, (iv) the 25-year floodplain as defined and delineated by acceptable methods, (such as flood hazard surveys).~~

~~4. Land application should not occur within 100 feet of a public water source, nor 50 feet of a private supply unless the private owner consents.~~

~~5. Public access to the site should be controlled to avoid direct human contact during and immediately (same day) following the spreading operations.~~

~~The processing facility owner shall establish the means to provide information available at the sludge processing site, for inspection by the department. Such information shall document the distribution of exceptional quality biosolids to a single distributor or user in bulk use quantities exceeding 50 cubic yards in a period of five consecutive days. This documentation shall include the name and address of bulk distributors and bulk users and a description of the intended use of bulk use quantities. All users of bulk use amounts that are utilized or stored on a single contiguous site shall be required to provide information identifying that location to the distributor to be furnished to the department upon request. The applied amounts of exceptional quality biosolids should be maintained within recommended volumes or weights per square area. Biosolids should be applied evenly and should not be stockpiled in amounts exceeding 100 cubic yards on unlined ground surfaces for more than seven consecutive days unless adequate covering is provided to prevent potential water quality problems from occurring. Exceptions to the requirement to provide covering may be granted if the applicant satisfactorily demonstrates that water quality pollution will be prevented in the absence of covering. Surface applications of exceptional quality biosolids should be restricted to such thickness for which a uniform application can be obtained. Users of nonbulk amounts of exceptional quality biosolids shall be adequately informed of proper site management practices as for home garden use.~~

~~D. Distribution information. A Distribution information form shall be provided *should be maintained* by the sludge processing facility owner or holder of an operation permit for distribution or marketing (*distributor*) and completed by any single biosolids distributor or user prior to receiving bulk use quantities of unblended exceptional quality *marketed or distributed* biosolids of more than 50 cubic yards during a period of five consecutive days of 24 consecutive hours or less. Copies of this form shall *information should be maintained* by the sludge processing facility. Such records shall *or distributor and* be made available upon request by *the division*. This form shall contain *These records should include* the following information, as available, at a minimum:~~

1. Date;
2. Name, address, and phone number of user;
3. Amount of exceptional quality biosolids obtained;

4. Location and property owner where biosolids are being used;

5. Size of area where biosolids are spread;

6. Proximity of site to closest river or water supply source; and

7. Description of site uses.

Only the information listed in subdivisions 1 through 4 shall be necessary for submission by a biosolids distributor.

The department reserves the right to prohibit the distribution of bulk use quantities of biosolids when it appears that such distribution is being accomplished in such a manner so as to circumvent the foregoing requirements.

E. Other uses. The use of a nonhazardous sewage sludge product, such as incinerator ash, will be evaluated on a case-by-case basis as provided for by this chapter.

## 12 VAC 5-585-530. Sludge disposal.

Permits for sludge disposal practices will be issued through other state and federal regulations and are not subject to this chapter. Such practices may include:

1. Incineration. Emission quality control requirements will be established in accordance with state and federal regulations. The generated ash is required to be properly managed in accordance with *local*, state and federal regulations. Applicable regulatory requirements in addition to these regulations *this chapter* may involve permits issued by the appropriate state and federal agencies. Buffer separation requirements will be established on a site specific basis in accordance with the applicable regulations.

2. Landfill. Management of stabilized sludge suitable for topdressing of completed landfill areas will be subject to state and federal regulations. Codisposal of sludge within municipal solid waste landfills is subject to state and federal regulation. Codisposal requirements have included:

- a. Stabilization treatment of sludges.
- b. Dewatering of sludges by methods designed to achieve a suspended solids level of 20% or more, or a treated sludge sample passes the paint filter test standards for free water.
- c. A nonhazardous declaration from the owner.

3. Lagooning (surface disposal). When these facilities are closed by burying the wastes in place, they may be considered to be surface disposal sites. A closure plan shall be provided to the appropriate agencies.

4. Dedicated sites. The primary purpose of surface disposal sites is to allow frequent long-term sludge application at a single location at amounts which exceed agronomic rates but not for the purpose of reclaiming disturbed soils. Sludge disposal operations on dedicated sites will be subject to *local*, state and federal regulations including site management practices. Permits will be issued through state and federal regulations to protect public health and the quality of state waters. Any

dedicated site may be subject to local zoning requirements and may be recorded as a dedicated site in the appropriate circuit court deed book (Table A-3).

**12 VAC 5-585-550. Biosolids characteristics; nutrients; heavy metals trace elements; organic chemicals.**

A. The primary agronomic value of biosolids, the nutrient content, shall be established prior to agricultural use. The applied nitrogen and phosphorous content of biosolids shall be limited to amounts established to support crop growth. Nitrate nitrogen developed as a result of biosolids application shall be controlled in order not to accumulate in groundwater as a pollutant. Thus, the amount of biosolids applied to land shall be restricted based on the nitrogen requirements of the crop grown on the amended site immediately following application (agronomic rate). In addition, soil erosion and site runoff should not result in phosphorous pollution of surface waters as a result of surface application of biosolids. The results of approved groundwater monitoring programs may be utilized to verify frequent application rates.

B. The heavy metal content of biosolids may restrict the application rate below the agronomic rate. However, municipal biosolids would not normally contain excessive heavy metal concentrations unless a significant amount of a high metal content wastewater without pretreatment is routinely discharged into the municipal system. If a biosolid contains heavy metal concentrations below the ceiling values listed in Table 8, or is processed and evaluated as exceptional quality biosolids, the application rate for agricultural use shall be unrestricted up to the agronomic rate for infrequent applications. The accumulated amount of heavy metals trace elements can restrict the application rate for frequent applications of biosolids.

C. Municipal biosolids can contain synthetic organic chemicals from industrial wastewater contributions and disposal of household chemicals and pesticides. Municipal biosolids typically contain very low levels of these compounds; however, biosolids may be required to be tested for certain toxic organic compounds prior to agricultural use (Table 13). If performed and validated, these test results shall be utilized to evaluate the maximum allowable annual loading rate for the tested biosolids. If analytical test results verify that biosolids contains levels of organic chemicals exceeding concentration limits incorporated in federal regulations or standards, appropriate restrictions shall be imposed for agricultural use of that biosolid.

**12 VAC 5-585-560. Biosolids treatment.**

A. Stabilization. Biosolids treatment processes are primarily designed to increase the solids content of the biosolids by separation and removal of liquid and are designed to stabilize the solid fraction through biochemical conversions that inactivate pathogens and reduce vector attraction characteristics and the potential for odor production. Such treatment should be designed to improve the characteristics of the biosolids for a particular use/disposal practice, increase the economic viability of using a particular practice and reduce the potential for public health, environmental and nuisance problems.

B. Class I treatment. Class I treatment may be achieved by process sequences to further reduce (PFRP) or eliminate pathogens, i.e., Class A pathogen control. Class I treatment methods reduce all pathogens potentially contained in biosolids or septage to a level below specified limits (Table 3). Class A microbiological standards and an acceptable solids content shall be achieved at the time biosolids are used or prepared for distribution or marketing in accordance with the appropriate management practices specified in this chapter. Class I treatment processes should include one or more of the following operations:

1. Heat treatment. The temperature of the biosolids that is used or disposed is maintained at a specific value for a specified period of time:

a. When the percent solids of the biosolids is 7.0% or higher, the temperature of the biosolids shall be 50°C or higher; the time period shall be 20 minutes or longer; and the temperature and time period shall be determined using equation B-1, except when small particles of biosolids are heated by either warmed gases or an immiscible liquid.

$$\text{Equation B-1: } D1 = (131,700,000) / 10(\exp 0.1400(t))$$

Where,

D1 = time in days that biosolids temperature is t or more

t = Biosolids temperature in degrees Celsius (°C).

exp = exponent or power that Base 10 is raised to.

b. When the percent solids of the biosolids is 7.0% or higher and small particles of biosolids are heated by either warmed gases or an immiscible liquid, the temperature of the biosolids shall be 50°C or higher; the time period shall be 15 seconds or longer; and the temperature and time period shall be determined using equation B-1.

c. When the percent solids of the biosolids is less than 7.0% and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using equation B-1.

d. When the percent solids of the biosolids is less than 7.0% the temperature of the biosolids is 50°C or higher; and time period is 30 minutes or longer, the temperature and time period shall be determined using equation B-2.

$$\text{Equation B-2: } D2 = (50,070,000) / 10(\exp 0.1400(t))$$

D2 = time in days that biosolids temperature is t or more

t = Biosolids temperature in degrees Celsius (°C).

e. The temperature of the biosolids is maintained at 70°C or higher for a time period of 30 minutes or longer (Pasteurization).

2. Heat drying. A process wherein dewatered biosolids cake is dried by direct or indirect contact with hot gases and the biosolids moisture content is reduced to 10% or lower. Direct drying is achieved when the biosolids

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particles reach temperatures of 80°C or higher. Indirect drying may involve the temperature of the gas stream measured at the point where the gas stream leaves the dryer. Indirect drying may be achieved when the wetbulb temperature of the gas stream leaving the dryer is in excess of 80°C or the biosolids particles reach temperatures of 80°C or higher.

3. Thermophilic composting. A process using the within-vessel composting method which maintains a treated biosolids temperature of 55°C or greater for three days. A process using the static aerated pile composting method which maintains a treated biosolids temperature of 55°C or greater for three days. A process using the windrow composting method which maintains a treated biosolids temperature at 55°C or greater for at least 15 days during the composting period, and during the indicated high temperature period, there is a minimum of five turnings of the windrow. Operating temperatures are measured at the depth of 30 cm from the surface of the compost mixture. As thermophilic composting processes are less efficient in destroying pathogens than other disinfection processes an additional storage of processed compost up to 30 days or more may be necessary to achieve an adequate level of vector attraction reduction as verified by testing prior to final disposition (Table 3).

4. Thermophilic aerobic digestion. Liquid biosolids consisting of 50% or more waste biological liquid by dry weight, is agitated with air or oxygen to maintain one mg/l or more dissolved oxygen at mid-depth, during a mean cell residence time of 10 days or more at 55°C or more.

5. Alkaline (PFRP) stabilization. Thorough blending of an alkaline additive to digested biosolids in sufficient quantities to produce a mixture pH of 12 or more for a period of 72 hours or more with one of the following: (i) mixture temperature of 55°C for a minimum period of 12 hours, (ii) mixture temperature of 70°C or more for a minimum period of 30 minutes or more. Such treatment may be followed by storage for an acceptable period of time to dry the mixture to an adequate dry solids content. Alkaline addition to undigested biosolids will be considered on a case-by-case basis with extensive monitoring used to verify the level of pathogen control achieved.

6. Chlorine oxidation. A process of introducing high doses of chlorine (1,000 mg/l to 3,000 mg/l) into the biosolids stream under low pressure (30 psig or more) producing a biosolids pH of four or less in order to achieve Class A microbiological standards (Table 3), followed by acceptable drying to achieve a suspended solids content of 30% or more.

7. Alternative equivalent stabilization processes. The process operating parameters for alternative equivalent stabilization processes (PFRP) should be addressed, case-by-case, based on division evaluation of the results of adequate monitoring and testing programs (Table 3), with input from the USEPA staff, i.e., the Pathogen Equivalency Committee.

C. Class II treatment. Class II Treatment may be achieved by Process Sequences to Significantly Reduce Pathogens (PSRP), i.e., Class B Pathogen Control. Class II treatment methods reduce bacteria (fecal coliform, fecal streptococci, enterococci) found in the treated biosolids or septage two 1½ logs or more (400 32 fold) below the densities found in the raw biosolids to achieve a density of (6 6.3 log10 per gram of total solids or less (Table 3)). Class B microbiological standards shall be achieved at the time the biosolids are removed and transported for land application in accordance with the management practices specified. Class II treatment processes may include one or more of the following operations:

1. Anaerobic digestion. A process whereby biosolids are maintained in an anaerobic environment for a mean cell residence period ranging from 60 days at 20°C to 15 days at 35°C.

2. Aerobic digestion. A process of agitating biosolids with air or oxygen to maintain aerobic conditions for a mean cell residence period ranging from 60 days at 15°C to 40 days at 20°C.

3. Low-temperature composting. A process using the within-vessel, aerated static pile or windrow composting methods, whereby the temperature of treated biosolids is maintained at a minimum of 40°C for five days. For four hours during this period the operating temperature of the treated biosolids exceeds 55°C. Additional storage of processed compost for 30 days or more may be necessary to provide the necessary level of vector attraction reduction prior to final disposition.

4. Alkaline (PSRP) stabilization. A process where sufficient alkaline additive is blended with unstabilized biosolids to produce a minimum mixture pH of 12 after two hours of contact and a pH of 11.5 or more for 22 additional hours or more, with storage for a period sufficient to produce an acceptable dry solids content as necessary for the method of final disposition.

5. Air drying. Biosolids treated by methods similar to those listed above, but not meeting Class II or III treatment standards are dried on sand beds or in basins with underdrains for a minimum period of three months, during which time the ambient daily temperature exceeds 0°C and a dried biosolids are produced.

~~D. Class III treatment. Class III treatment may be achieved by Process Sequences to Lower Pathogens (PSLP) that can result in Class B Pathogen Control. Class III treatment methods can reduce pathogenic bacteria (fecal coliform, fecal streptococci, enterococci) found in the treated biosolids or septage to 1.5 logs (32 fold) below the densities found in the raw wastewater (Table 3). These processes may include the following:~~

~~1. Anaerobic digestion. A process whereby the biosolids are maintained in an anaerobic environment for a period of no more than 60 days at 20°C or no more than 15 days at 35°C, resulting in a volatile solids reduction of less than 38%.~~

~~2. Aerobic digestion. A process of agitating biosolids with air or oxygen to maintain aerobic conditions for a~~

period of more than 40 days at 20°C or no more than 60 days at 15°C, resulting in a volatile solids reduction of less than 38%.

~~3. Air drying. A process whereby partially digested or Alkaline conditioned (pH greater than 10.5) sludge or septage is allowed to drain or dry on an underdrained surface or media, or in lined basins, in which the biosolids layer is 24 inches thick or less. The process requires a minimum drying time of three months and a residual solids content of 20% or more must be provided in the biosolids cake.~~

~~4. Lagoon storage. A process whereby partially digested or lime conditioned (pH greater than 10.5) sludge or septage is stored in lined lagoons for a period of 90 days or more at a temperature exceeding 0°C, and a dewatered biosolids is produced.~~

~~5. Alkaline treatment. A process whereby sufficient alkaline additive is blended with a mixture of primary/secondary sludge with more than 50% waste activated biosolids by weight, to produce a pH of 12 after two hours of contact.~~

E. D. Additional treatment methods to provide disinfection of treated biosolids. Pathogen treatment processes may be enhanced by providing additional treatment methods to eliminate parasitic worms and ova (EH process sequence). Any of the processes listed below, if added to stabilization processes described previously, will further lower pathogens. Because these processes, when used alone, do not reduce nuisance odors and the attraction of vectors, they are considered to be supplementary to typical stabilization and pathogen treatment processes.

1. Beta Ray Irradiation. A process involving the irradiation of biosolids with beta rays at dosages of at least one megarad at 2°C.

2. Gamma Ray Irradiation. A process involving the irradiation of biosolids with gamma rays from certain isotopes, such as 60Cobalt and 137Cesium, at dosages of at least 1.0 megarad at 20°C.

F. E. Vector attraction reduction parameters. One of the appropriate vector attraction reduction requirements shall be achieved and Class A or B pathogen control obtained when bulk biosolids are applied to agricultural land, forest, a public contact site, reclamation site, lawn or home gardens. One of the appropriate vector attraction reduction requirements shall be met when Class A biosolids are sold or given away in a bag or other container for application to the land. The following operational methods will achieve the necessary vector attraction reduction requirements:

1. The mass of volatile solids in the biosolids shall be reduced by a minimum of 38% (see calculation procedures in "Environmental Regulations and Technology - Control of Pathogens and Vector Attraction in Biosolids", EPA-625/R-92/013, 1992, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268).

2. When the 38% volatile solids reduction cannot be met for an anaerobically digested biosolid, vector attraction

reduction can be demonstrated by digesting a portion of the originally digested biosolids anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30°C and 37°C. When at the end of the 40 days, the volatile solids in the biosolids at the beginning of that period is reduced by less than 17%, adequate vector attraction reduction is considered demonstrated for the originally digested biosolids.

3. When the 38% volatile solids reduction requirement cannot be met for an aerobically digested biosolid, vector attraction reduction can be demonstrated by digesting a portion of the originally digested biosolids that has a percent solids of 2.0% or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20°C. When at the end of the 30 days, the volatile solids in the biosolids at the beginning of that period is reduced by less than 15%, adequate vector attraction reduction is considered demonstrated for the originally digested biosolids.

4. The specific oxygen uptake rate (SOUR) for biosolids treated in a Class III // or better aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20°C.

5. Biosolids shall be treated in a Class III // or better aerobic process for 14 days or longer. During that time, the temperature of the biosolids shall be higher than 40°C and the average temperature of the biosolids shall be higher than 45°C.

6. The pH of treated biosolids shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours. Alkaline stabilization of untreated biosolids shall be evaluated on a case-by-case basis.

7. The percent solids of treated biosolids that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials.

8. The percent solids of treated biosolids that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials.

9. For biosolids that are surface applied and incorporated, or injected, below the surface of the land:

a. No significant amount of the biosolids shall be present on the land surface within one hour after the biosolids are injected.

b. When the biosolids that are injected below the surface of the land are Class A with respect to pathogens, the biosolids shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.



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c. Biosolids applied to the land surface shall be incorporated into the soil within six hours after application to or placement on the land.

d. When biosolids that are incorporated into the soil are Class A with respect to pathogens, the biosolids shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

10. The pH of untreated domestic septage applied to land shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes prior to application.

## 12 VAC 5-585-570. Site access time restrictions.

A. Unrestricted access (UA). Biosolids that have undergone Class I Treatment to achieve Class A Pathogen Control may be applied or incorporated into the soil of agricultural lands and immediate public access is permitted. A waiting period is required up to 30 days following application (to allow adhering biosolids to be washed from the foliar portion of the plants by precipitation). This waiting period is required before: (i) crops are harvested for human consumption, (ii) domestic animals are allowed to graze on the site.

B. Restricted access (RA). Following application or incorporation of biosolids that have undergone Class II treatment to achieve Class B Pathogen Control public access and crop management shall be restricted as follows: (i) access to any site with a high potential for contact with the ground surface (public use) by the general public shall be controlled for a minimum time period of one year, (ii) access to agricultural sites and other sites with a low potential for public exposure shall be controlled for 30 days, (iii) food crops with harvested parts that touch the biosolids/soil mixture and are not totally above the land surface shall not be harvested for 14 months, (iv) food crops with harvested parts below the surface of the land shall not be harvested for 20 months following application, when the biosolids remain on the land surface for four months or longer prior to incorporation into the soil, (v) food crops with subsurface harvested parts shall not be harvested for 38 months following application, when the biosolids remain on the land surface less than four months prior to incorporation, (vi) feeding of harvested crops to animals shall not take place for a total of one month following surface application (two months for lactating dairy livestock), (vii) grazing by animals whose products will or will not be consumed by humans is prevented for at least 30 days (60 days for lactating dairy livestock).

~~C. Rigo~~ ~~rous~~  ~~Restricted~~  ~~Access~~  ~~(RRA).~~  ~~Following~~  ~~application~~  ~~to~~  ~~the~~  ~~surface~~  ~~or~~  ~~incorporation~~  ~~into~~  ~~soil~~  ~~Class~~  ~~B~~  ~~biosolids~~  ~~that~~  ~~have~~  ~~undergone~~  ~~Class~~  ~~III~~  ~~pathogen~~  ~~reduction~~  ~~processes,~~  ~~public~~  ~~access~~  ~~and~~  ~~crop~~  ~~management~~  ~~shall~~  ~~be~~  ~~restricted~~  ~~as~~  ~~follows:~~  ~~(i)~~  ~~public~~  ~~access~~  ~~is~~  ~~controlled~~  ~~for~~  ~~18~~  ~~months~~  ~~or~~  ~~more~~  ~~on~~  ~~public~~  ~~use~~  ~~sites~~  ~~(ii)~~  ~~public~~  ~~access~~  ~~is~~  ~~controlled~~  ~~for~~  ~~60~~  ~~days~~  ~~on~~  ~~agricultural~~  ~~sites~~  ~~and~~  ~~other~~  ~~sites~~  ~~with~~  ~~a~~  ~~low~~  ~~potential~~  ~~for~~  ~~direct~~  ~~contact~~  ~~with~~  ~~the~~  ~~ground~~  ~~surface,~~  ~~(iii)~~  ~~crops~~  ~~for~~  ~~direct~~  ~~human~~  ~~consumption~~  ~~cannot~~  ~~be~~  ~~grown~~  ~~within~~  ~~24~~  ~~months,~~  ~~(iv)~~  ~~food~~  ~~crops~~  ~~with~~  ~~harvested~~  ~~parts~~  ~~that~~  ~~touch~~  ~~the~~  ~~biosolids/soil~~  ~~mixture,~~  ~~but~~  ~~are~~  ~~totally~~  ~~above~~  ~~the~~  ~~land~~

~~surface,~~  ~~shall~~  ~~not~~  ~~be~~  ~~harvested~~  ~~for~~  ~~18~~  ~~months,~~  ~~(v)~~  ~~food~~  ~~crops~~  ~~with~~  ~~harvested~~  ~~parts~~  ~~below~~  ~~the~~  ~~surface~~  ~~of~~  ~~the~~  ~~land~~  ~~shall~~  ~~not~~  ~~be~~  ~~harvested~~  ~~for~~  ~~26~~  ~~months~~  ~~after~~  ~~application~~  ~~when~~  ~~the~~  ~~biosolids~~  ~~remain~~  ~~on~~  ~~the~~  ~~land~~  ~~surface~~  ~~up~~  ~~to~~  ~~4~~  ~~months~~  ~~or~~  ~~more~~  ~~prior~~  ~~to~~  ~~incorporation~~  ~~into~~  ~~the~~  ~~soil,~~  ~~(vi)~~  ~~food~~  ~~crops~~  ~~with~~  ~~subsurface~~  ~~harvested~~  ~~parts~~  ~~shall~~  ~~not~~  ~~be~~  ~~harvested~~  ~~for~~  ~~42~~  ~~months~~  ~~when~~  ~~the~~  ~~biosolids~~  ~~remain~~  ~~on~~  ~~the~~  ~~land~~  ~~surface~~  ~~less~~  ~~than~~  ~~4~~  ~~months~~  ~~prior~~  ~~to~~  ~~incorporation,~~  ~~(vii)~~  ~~other~~  ~~food~~  ~~crops,~~  ~~feed~~  ~~crops~~  ~~and~~  ~~fiber~~  ~~crops~~  ~~shall~~  ~~not~~  ~~be~~  ~~harvested~~  ~~for~~  ~~30~~  ~~days,~~  ~~(viii)~~  ~~grazing~~  ~~is~~  ~~prevented~~  ~~for~~  ~~two~~  ~~months~~  ~~for~~  ~~animals~~  ~~whose~~  ~~products~~  ~~are~~  ~~consumed~~  ~~by~~  ~~humans.~~  ~~For~~  ~~sites~~  ~~receiving~~  ~~frequent~~  ~~applications~~  ~~of~~  ~~Class~~  ~~III~~  ~~biosolids~~  ~~site~~  ~~restrictions~~  ~~shall~~  ~~include:~~

- ~~1. Access~~  ~~controlled~~  ~~by~~  ~~trespass~~  ~~resistant~~  ~~fencing~~  ~~in~~  ~~all~~  ~~except~~  ~~those~~  ~~remote~~  ~~sites~~  ~~not~~  ~~accessible~~  ~~to~~  ~~the~~  ~~public.~~
- ~~2. Warnings~~  ~~posted~~  ~~of~~  ~~hazard~~  ~~and~~  ~~intent~~  ~~to~~  ~~prosecute~~  ~~trespassers.~~  ~~Warning~~  ~~signs~~  ~~must~~  ~~be~~  ~~posted~~  ~~at~~  ~~least~~  ~~90~~  ~~inches~~  ~~in~~  ~~area~~  ~~with~~  ~~lettering~~  ~~at~~  ~~least~~  ~~0.5~~  ~~inch~~  ~~in~~  ~~size~~  ~~in~~  ~~conspicuous~~  ~~places~~  ~~every~~  ~~100~~  ~~feet~~  ~~in~~  ~~wooded~~  ~~or~~  ~~heavily~~  ~~vegetated~~  ~~areas~~  ~~and~~  ~~every~~  ~~500~~  ~~feet~~  ~~in~~  ~~open~~  ~~areas.~~
- ~~3. Procedures~~  ~~in~~  ~~place~~  ~~for~~  ~~minimizing~~  ~~inadvertent~~  ~~transport~~  ~~of~~  ~~biosolids~~  ~~or~~  ~~septage~~  ~~from~~  ~~the~~  ~~site~~  ~~by~~  ~~staff,~~  ~~contaminated~~  ~~equipment~~  ~~or~~  ~~animals~~  ~~(e.g.,~~  ~~washing~~  ~~of~~  ~~contaminated~~  ~~articles,~~  ~~animals~~  ~~or~~  ~~equipment~~  ~~when~~  ~~leaving~~  ~~a~~  ~~site).~~
- ~~4. Site~~  ~~buffers~~  ~~separating~~  ~~operations~~  ~~by~~  ~~500~~  ~~feet~~  ~~or~~  ~~more~~  ~~from~~  ~~residences~~  ~~or~~  ~~other~~  ~~concentrations~~  ~~of~~  ~~human~~  ~~activity.~~
- ~~5. Nonpoint~~  ~~source~~  ~~pollution~~  ~~to~~  ~~surface~~  ~~waters~~  ~~prevented~~  ~~through~~  ~~soil~~  ~~conservation~~  ~~plans,~~  ~~vegetation~~  ~~belts,~~  ~~or~~  ~~other~~  ~~best~~  ~~management~~  ~~practices.~~

~~D. C. Modified~~  ~~Access~~  ~~(MA). If~~  ~~a~~  ~~biosolids~~  ~~processing~~  ~~sequence~~  ~~is~~  ~~used~~  ~~to~~  ~~treat~~  ~~PSRP~~  ~~or~~  ~~PSLP~~  ~~biosolids~~  ~~that~~  ~~eliminates~~  ~~or~~  ~~inactivates~~  ~~helminth~~  ~~eggs~~  ~~(EH),~~  ~~public~~  ~~use~~  ~~access~~  ~~restrictions~~  ~~are~~  ~~reduced~~  ~~to~~  ~~six~~  ~~and~~  ~~eight~~  ~~months~~  ~~respectively,~~  ~~which~~  ~~shall~~  ~~include~~  ~~two~~  ~~summer~~  ~~months.~~  ~~A~~  ~~summary~~  ~~listing~~  ~~of~~  ~~access~~  ~~restrictions~~  ~~is~~  ~~presented~~  ~~in~~  ~~Table~~  ~~10.~~

## 12 VAC 5-585-590. Maximum application rates for trace elements.

The maximum cumulative application of cadmium and other biosolids borne metals *trace elements* to soils used for crop production is summarized in Table 9. Parameters other than those listed in Tables 8, 9 and 14 can be used to evaluate the application rate of biosolids in accordance with current EPA technical regulations. Exceptional Quality Biosolids applied to lawns or home gardens in residential areas shall be of such quality so as to conform with the pollutant levels specified in Table 8-B.

## 12 VAC 5-585-610. Maximum application rates for phosphorus.

Biosolids use operations involving high application rates of phosphorus may involve additional monitoring requirements (12 VAC 5-585-400) for permit issuance. Submission of additional information may be requested for any proposed biosolids use sites exhibiting very high soil test phosphorus of 55 or more parts per million parts phosphorus (Mehlich 1

## Proposed Regulations

analytical test procedure or equivalent). The Virginia Department of Conservation and Recreation may require the preparation of a complete nutrient management plan or a soil conservation plan, as appropriate, if such sites exhibit a significant erosion potential based on site soils and topography. The division will request such information from the Virginia Department of Conservation and Recreation and the required plans shall be completed prior to any biosolids use operations on that site.

TABLE 8

**A. RECOMMENDED CEILING POLLUTANT LIMITS FOR THE TRACE METAL ELEMENT CONTENT OF BIOSOLIDS ACCEPTABLE FOR LAND APPLICATION**

POLLUTANT TRACE ELEMENT	CONCENTRATION IN MILLIGRAMS PER KILOGRAMS (DRY WEIGHT)
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	32 100
Zinc	7500
Cadmium/Zinc Ratio (if cadmium equals or exceeds 21 mg/kg)	1.5%

**B. MAXIMUM MONTHLY AVERAGE POLLUTANT TRACE ELEMENT CONCENTRATIONS FOR APPLICATION OF EXCEPTIONAL QUALITY BIOSOLIDS TO LAWNS OR HOME GARDENS IN RESIDENTIAL LOCATIONS**

POLLUTANT TRACE ELEMENT	CONCENTRATION IN MILLIGRAMS PER KILOGRAMS (DRY WEIGHT)
Arsenic <sup>(1)</sup>	41± <sup>(4)</sup>
Cadmium	24 39
Chromium	1200
Copper	1500

Lead	300
Mercury	17
Molybdenum <sup>(1)</sup>	44* <sup>(4)</sup>
Nickel	420
Selenium	32 100
Zinc	2800

Note: <sup>(1)</sup> The monthly average concentration is currently under study by USEPA as USDA has identified that these levels were unnecessarily low due to incomplete evaluation of data. The standard may be increased up to 54 mg/kg based on the 98 percentile levels in typical Biosolids as identified in NSSS.

TABLE 9

**MAXIMUM CUMULATIVE APPLICATION OF BIOSOLIDS BORNE METALS TRACE ELEMENTS THAT CAN BE APPLIED TO SOILS USED FOR CROP PRODUCTION<sup>(1)</sup>**

Metal Trace Element	Kg/ha	(lbs/AC)
Arsenic <sup>(2)</sup>	41	(36)
Cadmium	24 39	(48) (35)
Chromium	3,000	(2,680)
Copper	1,500	(1,340)
Lead	300	(270)
Mercury	17	(16)
Molybdenum <sup>(2)</sup>	44	(36)
Nickel	420	(375)
Selenium	32 100	(29) (89)
Zinc	2,800	(2,500)

Note: <sup>(1)</sup> Such total applications to be made on soils with the Biosolids/soil mixture pH adjusted to 6.0 or greater if the Biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil background pH in Virginia of less than 6.5, and lack of regulatory controls of soil pH adjustment after Biosolids application ceases.

<sup>(2)</sup> The maximum cumulative application may be increased in accordance with the results of USEPA recommendations at a later date is currently under study by USEPA.

# Proposed Regulations

TABLE 10  
COMPARISONS OF TIME RESTRICTIONS FOLLOWING COMPLETION OF BIOSOLIDS APPLICATION ASSOCIATED WITH CLASS II AND CLASS III TREATMENT LEVELS

Treatment Classification	II	III	II	III
	(PSRP)	(PSLP)	(PSRP)	(PSLP)
Type of Application	Surface <sup>(1)</sup>	Surface <sup>(4)</sup>	Incorporated <sup>(2)</sup>	Incorporated <sup>(2)</sup>
Control of Access for Public Use <sup>(3)</sup>	12 Months	18 Months	12 Months	12 Months
Time lapse required before above ground food crops with harvested parts that touch the biosolids/soil mixture can be harvested.	14 Month	18 Months	14 Months	18 Months
Time lapse before food crops with harvested parts below the land surface can be harvested	20 Months	26 Months	38 Months	42 Months
Harvesting food crops, feed crops and fiber crops	1 Month	4 Month	1 Month	4 Month
Grazing and feeding harvested crops to animals whose products are consumed by humans <sup>(4)</sup>	1 Month	2 Months	1 Month	2 Months
Grazing or feeding harvested crops to <i>of farm</i> animals whose products are not consumed by humans	1 Month	4 Month	1 Month	4 Month
Harvesting turf for placement on land with a high potential for public exposure or a lawn <sup>(5)</sup>	12 Months	12 Months	12 Months	12 Months

Note: <sup>(1)</sup> remains on land surface for four (4) months or longer prior to incorporation

<sup>(2)</sup> remains on land surface for less than four (4) months prior to incorporation

<sup>(3)</sup> public access to agricultural sites and other sites with a low potential for direct contact with the ground surface shall be controlled for 30 days for sites receiving application of Class II treated biosolids and up to 60 days or more following application of Class III treated biosolids.

<sup>(4)</sup> the restriction for lactating dairy cows is two (2) months

<sup>(5)</sup> this time restriction must be met unless otherwise specified by the permitting authority.

# Proposed Regulations

TABLE 11: NITROGEN REQUIREMENTS FOR AGRONOMIC RATES

A. RECOMMENDED PLANT AVAILABLE NITROGEN (PAN) APPLICATION RATES IN POUNDS OF NITROGEN (N) PER ACRE FOR VARIOUS NON-IRRIGATED CROPS GROWN ON SOILS RECEIVING INFREQUENT BIOSOLIDS APPLICATIONS<sup>(1)</sup>

Crop	Soil Productivity Group									
	I		II		III		IV		V	
	A	B	A	B	A	B	A	B		
	lbs N/acre									
Corn grain or silage	160 to 180	150 to 170	140 to 160	130 to 150	120 to 140	110 to 130	100 to 120	85 to 105	65 to 85	
Grain sorghum	140	130	120	110	100	95	90		80	
Full Season Soybeans <sup>(2)</sup>	160 to 180	150 to 170	140 to 160	130 to 150	120 to 140	110 to 130	100 to 120	85 to 105	65 to 85	
Canola <sup>(3)</sup>	100		90		80		60		60	
Wheat	100		90		80		60		60	
Barley	90		80		80		60		60	
Rye	75		75		75		75		75	
Oats	80		80		80		60		60	
Tallgrass hay <sup>(4)</sup>	250		250		200		160		160	
Bermudagrass hay	300		300		260		210		210	
Pasture Fescue/ Orchardgrass <sup>(5)</sup>	120		120		100		80		80	
Bermudagrass pasture	200		200		160		120		120	
Alfalfa	300		300		210		150		150	
Sudangrass, sudanorghum <i>sudan-</i> <i>sorghum</i> , millet <sup>(6)</sup>	70		70		70		70		70	
Stockpiled tall fescue (summer application by August 31)	90		90		90		60		60	

Notes: <sup>(1)</sup> For proposed use of crops or PAN rates (lbs/A) not included in the following tables, adequate yield and PAN Data are to be submitted in accordance with 12 VAC 5-585-140 G (and Part IV) of these regulations.

<sup>(2)</sup> For doublecrop or late beans planted after 6/21, (of any year,) allowable PAN rates are the lowest of the listed values, as rounded to nearest factor of ten.

<sup>(3)</sup> For Fall Application Rate may sidedress up to 60 lbs fertilizer N/acre in late February before spring growth begins.

B. ESTIMATED YIELDS IN BUSHELS (bu) OR TONS (T) PER ACRE(A) OF VARIOUS NON-IRRIGATED CROPS FOR IDENTIFIED SOIL PRODUCTIVITY GROUPS

Crop	Soil Productivity Group									
	I		II		III		IV		V	
	A	B	A	B	A	B	A	B		
Corn										
Grain(bu/A)	160	150	140	130	120	110	100	85	65	
Silage (T/A)	21	20	19	18	17	16	15	13	10	
Grain Sorghum (bu/A)	140	130	120	110	100	90	90		80	

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Soybeans (bu/A)							
Early season	50	45	40		35	25	20
Late season <sup>(7)</sup>	40	34	34	30	25	18	15
Canola <sup>(8)</sup>	UNDETERMINED AT THIS TIME						
Wheat (bu/A)							
Standard		64		56	48	40	24
Intensive		80		70	60	50	30
Barley (bu/A)							
Standard		110		70	60	50	30
Intensive		115		88	75	63	38
Oats		80		80	80	60	60
Tallgrass hay (T/A)		>4.0	3.5-4.0	3-3.5	<3.0	NA	NA
Bermudagrass hay (T/A)		>6.0		4.0-6.0	<4.0	NA	NA
Alfalfa (T/A)		>6.0		4.0-6.0	<4.0	NA	NA

Notes: <sup>(4)</sup> Apply listed PAN rate when application occurs between 3/1 and 9/30 in any year and apply only one-half of listed PAN rates if application will occur between 10/1 of any year and 2/28 of the following year, with remaining PAN applied after 3/1 of that following year.

<sup>(5)</sup> For frequent applications apply 60 lbs PAN/acre per year. Following infrequent application rate, subsequent frequent applications should be adjusted on a case-by-case basis, accounting for residual from other wastes and crops (Part IV, Table A-2).

<sup>(6)</sup> Sudangrass, sudan-sorghum *sudan-sorghum* and pearl millet may receive a PAN rate of 120 lbs/A if the application occurs between 3/1 and 6/1 of any year and two cuttings are to be made, weather permitting. For Foxtail or German Millet, cut only once, application will be limited to a PAN rate of 70 LBS/A.

<sup>(7)</sup> Late season beans would be planted on or after 6/21 of that year.

<sup>(8)</sup> Sufficient Yield Data not currently available.

## C. RESIDUAL PLANT AVAILABLE NITROGEN (PAN) REMAINING FROM GROWTH OF VARIOUS LEGUMES DURING THE PREVIOUS YEAR <sup>(9)</sup>

Crop	%Stand	Yield Description	Residual Pan (lbs/A)
Alfalfa	50-75	Good (>4T/A)	90
	25-49	Fair (3-4T/A)	70
	<25	Poor (<3T/A)	50
Red Clover	>50	Good (>3T/A)	80
	25-49	Fair (2-3T/A)	60
	<25	Poor (<2T/A)	40
Hairy Vetch	80-100	Good	100
	50-79	Fair	75
	<50	Poor	50
Peanuts			45
Soybeans			20 <sup>(10)</sup>

Notes: <sup>(9)</sup> The Residual PAN values must be subtracted from the PAN values listed in Table A of this section to determine Biosolids Application rates following growth of Legume Crops the previous year.

<sup>(10)</sup> Where yield data is available utilize 0.5 pounds per bushel.

TABLE 12

A. ESTIMATED NITROGEN MINERALIZATION RATES FOR BIOSOLIDS

Biosolids Type	Years After Application		
	First	Second	Third
Lime Stabilized	0.30	0.15	0.07
Aerobic digestion	0.30	0.15	0.08
Anaerobic digestion <sup>(1)</sup>	0.20 <sup>(2)</sup>	0.10	0.05
Composted <sup>(3)</sup>	0.10	0.05	0.03

NOTE: <sup>(1)</sup> Typical anaerobically digested municipal biosolids should be characterized by a total volatile solids fraction of of 55 percent % or less total organic nitrogen of 4.0 percent % or less and an ammonia nitrogen content of 1.0 percent % or less.

<sup>(2)</sup> The mineralization rate may be increased up to a value of 0.3 in accordance with the degree of stabilization achieved.

<sup>(3)</sup> Biosolids compost should be characterized by a total organic nitrogen content of 2.0 percent % or less and no significant ammonia nitrogen.

B. ESTIMATED AMMONIA NITROGEN VOLATILIZATION RATES FOR BIOSOLIDS

Management Practice	Percent Ammonia Volatilized	
	Biosolids pH Less than 10	Biosolids pH Greater than 10
Injection below surface	0	0
Surface application with/		
--Incorporation within 24 hours	15	25
--Incorporation within 1-7 days	30	50
--Incorporation after 7 days	50	75

TABLE 13

A. ORGANIC CHEMICAL TESTING THAT MAY BE REQUIRED TO IDENTIFY AN EXCEPTIONAL QUALITY BIOSOLIDS

- Organic Chemicals
- Aldrin/dieldrin (total)
- Benzo (a) pyrene
- Chlordane
- DDT/DDE/DDD <sup>(1)</sup>
- Dimethyl nitrosamine
- Heptachlor
- Hexachlorobenzene
- Hexachlorobutadiene
- Lindane
- Polychlorinated biphenols
- Toxaphene
- Trichloroethylene

NOTE:

<sup>(1)</sup> DDT 2,2 - Bis (chlorophenyl) - 1,1,1 - Trichloroethane  
 DDE 1,1 - Bis (chlorophenyl) - 2,2 - Dichloroethane  
 DDD 1,1 - Bis (chlorophenyl) - 2,2 - Dichloroethane

B. THE RECOMMENDED APPLICATION RATE FOR DOMESTIC SEPTAGE APPLIED TO AGRICULTURAL

LAND, FOREST, OR A RECLAMATION SITE SHALL NOT EXCEED THE ANNUAL APPLICATION RATE CALCULATED USING THE FOLLOWING EQUATION:

$$AAR = N/(0.0026)$$

Where:

AAR = Annual application rate in gallons per acre per 365 day period.

N = Amount of nitrogen in pounds per acre per 305 day period needed by the crop or vegetation grown on the land.

TABLE 14

A. RECOMMENDED LIME APPLICATION RATES NEEDED TO ADJUST INITIAL SOIL pH TO 6.5 FOR THE LOWER COASTAL PLAINS SOILS.

Initial Soil pH	Soil Type*	
	Sandy Coarse Textured	Loamy Fine Textured
	Lime, Tons/AC	
4.8	3.5	4.5
5.0	3.0	3.75
5.5	1.75	2.5
6.0	1.25	1.5
6.3	0.75	1.0

B. RECOMMENDED LIME APPLICATION RATES NEEDED TO ADJUST INITIAL SOIL pH TO 6.8 FOR MIDDLE AND UPPER COASTAL PLAINS SOILS.

Initial Soil pH	Soil Type*	
	Sandy Coarse Textured	Loamy Fine Textured
	Lime, Tons/AC	
4.8	4.25	5.75
5.0	4.0	5.25
5.5	3.0	4.0
6.0	2.0	2.75
6.5	1.25	1.5

NOTE: \*"Sandy Coarse textured soils" include those surface soils designated by VSDA USDA-SCS soil classification as "sandy loam" or lighter in texture; loamy: "fine textured soils" include those classified as having textures heavier than sandy loam.

12 VAC 5-585-630. Operation plan (to be made available for field use and farmer/owner information).

A. Comprehensive, general description of the operation including biosolids source(s), quantities, flow diagram illustrating treatment works biosolids flows and solids handling units, site description, crops utilized, application rates, methodology of biosolids handling for application periods, including storage and nonapplication period storage, and alternative management methods when storage is not provided. Information in accordance with a nutrient management plan as approved by the Department of Conservation and Recreation shall be submitted for: (i) all frequent at agronomic application sites; and (ii) all frequent below agronomic application sites. The nutrient management

# Proposed Regulations

plan information shall also be submitted for proposed application sites owned or operated in conjunction with operations in which: (i) domestic livestock have been, are, or will be stabilized or confined and fed or maintained for a total of 45 days or more in any 12-month period; and (ii) crops, vegetation, forage growth or post-harvest residues are not sustained over any portion of the operation site. The approved nutrient management plan shall account for all sources of nutrients to be applied to the site and include at a minimum the following information: (i) a site map indicating the location of any waste storage facilities and the fields where biosolids will be applied; (ii) site evaluation and assessment of soil types and potential productivities; (iii) nutrient management sampling including soil monitoring; (iv) biosolids application rates based on the overall nutrient requirements of the proposed crop and soil monitoring results; and (v) biosolids and other nutrient source application schedules and land area requirements.

## B. Biosolids transport.

1. Description and specifications on the bed or the tank vehicle.
2. Haul routes to be used from the biosolids generator to the storage unit and land application sites.
3. Procedures for biosolids off-loading at the biosolids facilities and the land application site together with spill prevention, cleanup, (including vehicle cleaning), field reclamation and emergency spill notification and cleanup measures.
4. Voucher system used for documentation and record keeping.

## C. Field operations.

1. Storage.
  - a. Routine storage - supernatant handling and disposal, biosolids handling, and loading of transport vehicles, equipment cleaning, freeboard maintenance, inspections for structural integrity.
  - b. Emergency storage - procedures for department/board approval and implementation.
  - c. Temporary storage - procedures to be followed including either designated site locations provided in the "Design Information" or the specific site criteria for such locations including the liner/cover requirements and the time limit assigned to such use.
  - d. Field reclamation of off-loading areas.
2. Application methodology.
  - a. Description and specifications on spreader vehicles.
  - b. Procedures for calibrating equipment for various biosolids contents to ensure uniform distribution and appropriate loading rates on a day-to-day basis.
  - c. Procedures used to ensure that operations address the following constraints: Application of biosolids to frozen ground, pasture/hay fields, crops for direct human consumption and saturated or ice/snow

covered ground; maintenance buffer zones, slopes, prohibited access for beef and dairy animals, soil pH requirements, and proper site specific biosolids loading rates on a field-by-field basis.

## 12 VAC 5-585-640. Recordkeeping.

A. Monitoring and testing requirements for biosolids, groundwater, soil and surface water including sample frequency, methods and locations of sampling and analytical methods/laboratory facilities to be utilized. Procedures for daily acquisition and recording of all necessary data including all necessary forms must be fully described.

B. Reporting requirements, as specified by issued certificates, permits or other approvals, will be fully described to ensure timely submission of all such reports.

C. Records related to data and information specified in agreements between generator, owner, agents, landowners and farmers shall be described and maintained for a minimum period of five years or the duration of the certificate or permit or subsequent revisions, if longer than five years.

### TABLE A-1 BIOSOLIDS APPLICATION AGREEMENT

This Biosolids application agreement is made on ..... between ....., referred to here as "landowner," and ....., referred to here as "owner."

Landowner is the owner of agricultural land shown on the map attached as Exhibit A and designated there as ..... ("landowner's land"). Owner agrees to apply and landowner agrees to comply with certain permit requirements following application of Biosolids on landowner's land in amounts and in a manner authorized by permit number ..... which is held by the owner.

Landowner acknowledges that the appropriate application of Biosolids will be beneficial in providing fertilizer and soil conditioning to his property. Moreover, landowner acknowledges that he has been expressly advised that, in order to protect public health:

1. Public access to landowner's land upon which Biosolids has been applied should be controlled for at least 30 days (~~60 days for Class III treatment biosolids which remain on the land surface for a time period of four (4) or more months~~) following any application of biosolids and no biosolids amended soil shall be excavated or removed from the site during this same period of time unless adequate provisions are made to prevent public exposure to soil, dusts or aerosols;

2. Food crops with harvested parts that touch the biosolids/soil mixture and are totally above the land surface shall not be harvested for 14 months (~~18 months for Class III treatment biosolids~~) after the application of biosolids. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months (~~26 months for Class III treatment biosolids~~) after the application of biosolids when the biosolids remain on the land surface for a time period of four (4) or more months prior to incorporation into the soil, or 38 months (~~42 months for Class III treatment biosolids~~) when the biosolids remain on the land surface for a time period of

# Proposed Regulations

less than four (4) months prior to incorporation. Other food crops, feed crops and fiber crops shall not be harvested for 30 days after the application of biosolids;

3. Following biosolids application to pasture or hayland sites, meat producing livestock should not be grazed or fed chopped foliage *foliage* for 30 days (~~60 days for Class III treatment biosolids~~) and lactating dairy animals should be similarly restricted for a minimum of 60 days. Other animals should be restricted from grazing for 30 days;

4. Supplemental commercial fertilizer or manure applications should be coordinated with the Biosolids applications such that the total crop needs for nutrients are not exceeded as identified on the nutrient balance sheet (Table A-2) or the nutrient management plan approved by the Virginia Department of Conservation and Recreation to be supplied to the landowner by the owner at the time of application of Biosolids to a specific permitted site;

5. Tobacco, because it has been shown to accumulate cadmium, should not be grown on landowner's land for three years following the application of biosolids borne cadmium equal to or exceeding 0.45 pounds/acre (0.5 kilograms/hectare);

6. Turf grown on land where biosolids are applied shall not be harvested for one year after application of biosolids when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the permitting authority.

Owner agrees to notify landowner or landowner designee of his proposed schedule for Biosolids application and specifically prior to any particular application to landowner's land. This agreement may be terminated by either party upon written notice to the address specified below.

Landowner: \_\_\_\_\_ Owner:  
By: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ Mailing Address  
\_\_\_\_\_

TABLE A-2  
EXAMPLE OF A NUTRIENT BALANCE SHEET

Year	Crop	Field:		Balance Needed		Notes
		Crop Needs	Biosolids Supplied	From Fertilizer		
		N-P2O3-K2O P2O5	N-P2O3-K2O P2O5	N-P2O3-K2O P2O5		
1992	Corn	140-50-80	140-70-10	0-0-70		1.
1993	Wheat- Soybeans	100-90-140	70-90-0	30-0-140		2,3.

NOTES:

- 1 The supplied information above should be used as a guide to coordinate manure and/or fertilizer applications if needed with the biosolids supplied nutrients. Crop needs are based upon Virginia Tech recommendations for your soil sample results and the predominant (10% or more of acreage) soil series in your field.
- 2 Significant residual nitrogen and phosphorus is supplied by biosolids in the second year following application.
- 3 Apply 140 pounds potash in fall or winter to small grain, apply 30 pounds nitrogen to small grain in late winter or early spring if needed.

TABLE A-3  
SLUDGE DISPOSAL SITE DEDICATION

....., a Virginia Corporation, does dedicate that tract or parcel of real estate situated, lying and being in ..... County, Virginia, more particularly described by deed and plat of survey of record in Deed Book ....., pages ....., ....., and ....., of the Clerk's Office of the Circuit Court of ..... County, Virginia, and being the identical real estate which said corporation acquired by grant with General Warranty of Title and Modern English Covenants from ..... Said dedication being to establish the aforesaid area for the disposal of sewage sludge only, and that said sludge disposal site will not be used for human habitation, grazing land for domestic animals or for agricultural purposes, and will not be accessible to the public. The full interest and control of the foresaid area dedicated shall remain with the ..... and this instrument is solely for the purpose of assuring the Department of Health and the Water Control Board of the Commonwealth of Virginia as to the matters hereinabove set forth. WITNESS the following signatures and seal this .... day of ....., 19....



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BY:..... ATTEST: .....  
State of .....  
County of .....

The foregoing instrument was acknowledged before me this ..... day of ...., 19...., by ..... of ..... a ..... corporation,  
on behalf of the corporation .....

Notary Public

My Commission Expires.....

For use of Clerk of Court

This Sludge Disposal Site Dedication Document, as described above, was recorded in Deed Book .... page... on the ..... day  
of ....., 19....

SIGNED: ..... of the ..... Circuit Clerks Office

## FORMS

Application for a Biosolids Use Construction or Operation  
Permit, 1997.

Biosolids Use/Treatment Works Construction Permit, 1997.

Biosolids Use/Treatment Works Operation Permit, 1997.

### APPLICATION FOR A BIOSOLIDS USE CONSTRUCTION OR OPERATION PERMIT

For Department Use Only	
Commonwealth of Virginia Department of Health Env. Engineering Field Office: _____	Health Department Identification No.: _____ Date Received: _____

Type of System(1) or Works:  NEW  UPGRADE  MODIFICATIONS

**Owner:**

Name: \_\_\_\_\_

Street or Mailing Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Phone No.: (\_\_\_\_\_) \_\_\_\_\_  
Area Code

**Authorized Representative:**

Name: \_\_\_\_\_

Street or Mailing Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Phone No.: (\_\_\_\_\_) \_\_\_\_\_  
Area Code

**Consulting Engineer:**

Name of Firm: \_\_\_\_\_

Project Engineer: \_\_\_\_\_

Street or Mailing Address: \_\_\_\_\_

Phone No.: (\_\_\_\_\_) \_\_\_\_\_  
Area Code

# Proposed Regulations

**Project Description:**

Permit No.: \_\_\_\_\_  
 INTERIM  FINAL

DATE ISSUED: \_\_\_\_\_ EXPIRATION DATE: \_\_\_\_\_  
 System(s)  Works Biosolids Source(s): \_\_\_\_\_

**Location of Operations:**

City: \_\_\_\_\_ Counties County: (2) \_\_\_\_\_  
(Attach Listing of Sites if Applicable)

Total acreage involved: \_\_\_\_\_

Total annual amount of Biosolids from each source: (2) \_\_\_\_\_

Type of treatment for pathogen control for each source (if applicable) \_\_\_\_\_

Process Description including supernatant management: (2) \_\_\_\_\_

**Treatment Certification:**

Owner(s) of Biosolids Source/Treatment Works: \_\_\_\_\_  
phone # \_\_\_\_\_

Street or Mailing Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Yes  No A statement indicating that a proper class of Biosolids treatment will be provided for this project has been issued by the owner(s) of the Biosolids Source/Treatment Works and is attached (Biosolids Use Regulation).

\_\_\_\_\_  
(Name, Title and Signature of Official Representative Applicant)

Note: (1) Including sites proposed for land application of biosolids.  
(2) List on separate attachment if applicable.

COMMONWEALTH OF VIRGINIA  
Department of Health  
Division of Wastewater Engineering  
Biosolids Use/Treatment Works Construction Permit

\_\_\_\_\_ is Hereby Granted Permission to Construct  
a Biosolids Use/Treatment Works that will consist of \_\_\_\_\_

and that will have a Design Capacity of \_\_\_\_\_  
at \_\_\_\_\_ Located in \_\_\_\_\_ (city, town, and/or county)

In Accordance with the Provisions of Title 32.1, Chapter 6, Article 2, Section 32.1-154, Code of Virginia As Amended and Section 51-17 of the Biosolids Use Regulations of the Virginia Department of Health As Amended. This Permit is in accordance with the Department's approval of Plans, Specifications and Other Documents as follows:

Project Description Sheet Attached ( ) Yes ( ) No

PERMIT NO. \_\_\_\_\_ RECOMMENDED \_\_\_\_\_  
Director, Division of Wastewater Engineering

EFFECTIVE DATE \_\_\_\_\_ RECOMMENDED \_\_\_\_\_  
Director, Office of Water Programs

APPROVED \_\_\_\_\_  
State Health Commissioner

# Proposed Regulations

COMMONWEALTH OF VIRGINIA  
Department of Health  
Division of Wastewater Engineering  
Biosolids Use/Treatment Works Operation Permit

\_\_\_\_\_ is Hereby Granted Permission to Operate  
a Biosolids Use/Treatment Works Having a Design size or Capacity of \_\_\_\_\_  
At \_\_\_\_\_  
(Attach List of Approved Sites)  
Located in \_\_\_\_\_  
(city, town, and/or county)

In Accordance with the Provisions of Title 32.1, Chapter 6, Article 2, Section 32.1-164, Code of Virginia As Amended and ~~Section 31-20~~ of the Biosolids Use Regulations of the Virginia Department of Health as Amended. This Permit is in accordance with the Department's approval of Plans, Specifications and Other Documents as follows: \_\_\_\_\_

And With the Understanding That \_\_\_\_\_ Will Operate  
the Sewerage System Biosolids Use/Treatment Works in Accordance with ~~Section 31-25~~ of the Biosolids Use  
Regulations of the Virginia Department of Health As Amended.

Engineering Description Sheet Attached ( ) Yes ( ) No

PERMIT NO. _____	RECOMMENDED _____ Director, Division of Wastewater Engineering
EFFECTIVE DATE _____	RECOMMENDED _____ Director, Office of Water Programs
	APPROVED _____ State Health Commissioner

**VIRGINIA HOUSING DEVELOPMENT AUTHORITY**

Title of Regulation: 13 VAC 10-20-10 et seq. Rules and Regulations for Multi-Family Housing Developments (amending 13 VAC 10-20-40).

Statutory Authority: § 36.55-30:3 of the Code of Virginia.

The Virginia Housing Development Authority has **WITHDRAWN** the proposed amendments to the regulation entitled, "13 VAC 10-20-10, Rules and Regulations for Multi-Family Housing Developments," which were published in 13:4 VA.R. 382-384 November 11, 1996.

VA.R. Doc. No. R97-425; Filed April 22, 1997, 3:13 p.m.

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**NOTICE:** The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia); however, under the provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.

Title of Regulation: 13 VAC 10-20-10 et seq. Rules and Regulations for Multi-Family Housing Developments (amending 13 VAC 10-20-40, 13 VAC 10-20-60, and 13 VAC 10-20-110).

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Summary:

*Pursuant to amendments to § 36-55.39 of the Code of Virginia enacted by the 1997 Session of the General Assembly, the proposed amendments (1) delete the provisions requiring the executive director to make the finding under § 36-55.39 B that the governing body of the locality has not disapproved the proposed financing by the authority of the multi-family housing development, (2) require that prior to financing, the applicant must provide the authority with (i) a copy of the written staff determination from the locality that the development is consistent with zoning and other land use regulations, (ii) a written certification from the applicant that the locality failed to respond to the applicant's request for such determination within 30 days, or (iii) a copy of any building permit issued by the locality for the development, and (3) authorize the executive director to make the findings under subsection A of § 36-55.39 of the Code of Virginia as to the need and shortage of low and moderate income housing, the plan and design of the development, the financial responsibility of the housing sponsor, the public use and benefit for the development, and the authorization of the development. The proposed amendments also authorize the executive director to permit or approve transfers of ownership of developments which are expected to have no substantial effect on the operation and management of the developments or the authority's interest as lender and to have no policy implications for the programs of the authority.*

13 VAC 10-20-40. Application and acceptance for processing.

Application for a mortgage loan shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe, together with such documents and additional information as may be requested by the authority. The applicant shall complete a previous participation certificate, in such form as the executive director shall require, which shall provide information about rental housing projects in which the principal participants (or their affiliates) in the proposed development have previously had any interest or participation, all as more fully specified by the executive director.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each proposed development. Such review shall be performed in accordance with subdivision 2 of subsection D of § 36-55.33:1 of the Code of Virginia and shall include, but not be limited to, the following:

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, employment opportunities, recreational opportunities, shopping facilities and other factors affecting the site;
2. An evaluation of the ability, experience, financial capacity and predisposition to regulatory compliance of the applicant;
3. A preliminary evaluation of the estimated construction costs and the proposed design and structure of the proposed development;
4. A preliminary review of the estimated operating expenses and proposed rents and a preliminary evaluation of the adequacy of the proposed rents to sustain the proposed development based upon the assumed occupancy rate and estimated construction and financing costs; and
5. A preliminary evaluation of the need for such housing at rentals or prices which persons and families of low and moderate income can afford within the general housing market area to be served by the proposed development.

Based on the authority's review of the applications, previous participation certificates, documents, and any additional information submitted by the applicants or obtained from other sources by the authority in its review of the proposed developments, the executive director shall accept for processing those applications which he determines satisfy the following criteria:

1. The applicant either owns or leases the site of the proposed development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.
2. Subject to further review and evaluation by the authority's staff under 13 VAC 10-20-50, the estimated

# Proposed Regulations

construction costs and operating expenses appear to be complete, reasonable and comparable to those of similar developments.

3. Subject to further review and evaluation by the authority's staff under 13 VAC 10-20-50, the proposed rents appear to be at levels which will: (i) be affordable by the persons and families intended to be assisted by the authority; (ii) permit the successful marketing of the units to such persons and families; and (iii) sustain the operation of the proposed development.

4. The applicant and other principal participants in the proposed development have the experience, ability, financial capacity and predisposition to regulatory compliance necessary to carry out their respective responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development and will fully and properly perform all of their respective duties and obligations relating to the proposed development under law, regulation and the applicable mortgage loan documents of the authority.

5. The proposed development will contribute to the implementation of the policies and programs of the authority in providing decent, safe and sanitary rental housing for low and moderate income persons and families who cannot otherwise afford such housing and will assist in meeting the need for such housing in the market area of the proposed development.

6. It appears that the proposed development and applicant will be able to meet the requirements for feasibility and commitment set forth in 13 VAC 10-20-50 and that the proposed development will otherwise continue to be processed through initial closing and will be completed and operated, all in compliance with the Act, the documents and contracts executed at initial closing, applicable federal laws, rules and regulations, and the provisions of this chapter and without unreasonable delay, interruptions or expense.

The executive director's determinations with respect to the above criteria shall be based on the documents and information received or obtained by him at that time from any source and are subject to modification or reversal upon his receipt of additional documents or information at a later time. If the executive director determines that the above criteria are satisfied, he will recommend further processing of the application and shall present his recommendation to the board. If the executive director determines that one or more of the above criteria are not satisfied, he may nevertheless, in his discretion, recommend to the board that the application be approved and that the mortgage loan and issuance of the commitment therefor be authorized subject to satisfaction of such criteria in such manner and within such time period as he shall deem appropriate. The board shall review and consider the recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize the mortgage loan and the issuance of a commitment therefor, subject to the further review in 13 VAC 10-20-50 and such terms and conditions as the board shall require in such resolution.

A resolution authorizing a mortgage loan to a for-profit housing sponsor shall prescribe the maximum annual rate, if any, at which distributions may be made by such for-profit housing sponsor with respect to the development, expressed as a percentage of such for-profit housing sponsor's equity in such development (such equity being established in accordance with 13 VAC 10-20-80), which rate, if any, shall not be inconsistent with the provisions of the Act. In connection with the establishment of any such rates, the board shall not prescribe differing or discriminatory rates with respect to substantially similar developments. The resolution shall specify whether any such maximum annual rate of distributions shall be cumulative or noncumulative and shall establish the manner, if any, for adjusting the equity in accordance with 13 VAC 10-20-80.

~~A mortgage loan shall not be authorized by the board unless the board by resolution shall make the applicable findings required by subsection A of § 36-55.39 of the Code of Virginia. The board, however, may in its discretion authorize the mortgage loan without the executive director having previously made the finding, if applicable, required by subsection B of § 36-55.39 of the Code of Virginia, subject to the condition that such finding be made by the executive director prior to the financing of the mortgage loan.~~

The executive director may impose such terms and conditions with respect to acceptance for processing as he shall deem necessary or appropriate. If any proposed development is so accepted for processing, the executive director shall notify the sponsor of such acceptance and of any terms and conditions imposed with respect thereto. If the executive director determines not to recommend approval of the application, he shall so notify the applicant.

## 13 VAC 10-20-60. Initial closing.

Upon issuance of the commitment, the applicant shall direct its attorney to prepare and submit the legal documentation (the "initial closing documents") required by the commitment within the time period specified. When the initial closing documents have been submitted and approved by the authority staff and all other requirements in the commitment have been satisfied, the initial closing of the mortgage loan shall be held. At this closing, the initial closing documents shall be, where required, executed and recorded, and the mortgagor will pay to the authority the balance owed on the processing and financing fees, will make any initial equity investment required by the initial closing documents and will fund such other deposits, escrows and reserves as required by the commitment. The initial disbursement of mortgage loan proceeds will be made by the authority, if appropriate under the commitment and the initial closing documents.

Prior to the ~~initial closing financing~~ of the mortgage loan, the executive director shall make the ~~finding findings~~, if applicable, required by subsection B A of § 36-55.39 of the Code of Virginia.

*Prior to the financing of the mortgage loan, the applicant shall, pursuant to subsection B of § 36-55.39 of the Code of Virginia, provide the authority with (i) a copy of the written staff determination received by the applicant from the locality that the development is consistent with current zoning and*

other land use regulations, (ii) a written certification from the applicant that the locality failed to respond to the applicant's request for a determination described in clause (i) within 30 days as provided in subsection B of § 36-55.39 of the Code of Virginia, or (iii) a copy of any building permit issued by the locality for the construction or rehabilitation of the development.

The actual interest rate on the mortgage loan shall be established by the executive director prior to or at the time of the execution of the deed of trust note at initial closing and may thereafter be altered by the executive director in accordance with the authority's rules and regulations and the terms of such note.

The executive director may require such accounts, reserves, deposits, escrows, bonds, letters of credit and other assurances as he shall deem appropriate to assure the satisfactory construction, completion, occupancy and operation of the development, including without limitation one or more of the following: working capital deposits, construction contingency funds, operating reserve accounts, payment and performance bonds or letters of credit, latent construction defect escrows, replacement reserves, and tax and insurance escrows. The foregoing shall be in such amounts and subject to such terms and conditions as the executive director shall require and as shall be set forth in the initial closing documents.

### 13 VAC 10-20-110. Transfers of ownership.

A. It is the authority's policy to evaluate requests for transfers of ownership on a case-by-case basis. The primary goal of the authority is the continued existence of low and moderate income rental housing stock maintained in a financially sound manner and in safe and sanitary condition. Any changes which would, in the opinion of the authority, detrimentally affect this goal will not be approved.

The provisions set forth in this section shall apply only to transfers of ownership to be made subject to the authority's deed of trust and regulatory agreement. Such provisions shall not be applicable to transfers of ownership of developments subject to FHA mortgage insurance, it being the policy of the authority to consent to any such transfer approved by FHA and permitted by the Act and applicable note or bond resolutions.

For the purposes hereof, the terms "transfer of ownership" and "transfer" shall include any direct or indirect transfer of a partnership or other ownership interest (including, without limitation, the withdrawal or substitution of any general partner) or any sale, conveyance or other direct or indirect transfer of the development or any interest therein; provided, however, that if the owner is not then in default under the deed of trust or regulatory agreement, such terms shall not include: (i) any sale, transfer, assignment or substitution of limited partnership interests prior to final closing of the mortgage loan or; (ii) any sale, transfer, assignment or substitution of limited partnership interests which in any 12 month period constitute in the aggregate 50% or less of the partnership interests in the owner. The term "proposed ownership entity," as used herein, shall mean: (i) in the case of a transfer of a partnership interest, the owner of the development as proposed to be restructured by such transfer;

and (ii) in the case of a transfer of the development, the entity which proposes to acquire the development.

B. The proposed ownership entity requesting approval of a transfer of ownership must initially submit a written request to the authority. This request should contain, to the extent applicable or requested by the authority: (i) a detailed description of the terms of the transfer; (ii) all documentation to be executed in connection with the transfer; (iii) information regarding the legal, business and financial status and experience of the proposed ownership entity and of the principals therein, including current financial statements (which shall be audited in the case of a business entity); (iv) an analysis of the current physical and financial condition of the development, including a current audited financial report for the development; (v) information regarding the experience and ability of any proposed management agent; and (vi) any other information and documents relating to the transfer. The request will be reviewed and evaluated in accordance with the following criteria:

1. The proposed ownership entity and the principals therein must have the experience, ability and financial capacity necessary to own, operate and manage the development in a manner satisfactory to the authority.
2. The development's physical and financial condition must be acceptable to the authority as of the date of transfer or such later date as the authority may approve. In order to assure compliance with this criteria, the authority may require any of the following:
  - a. The performance of any necessary repairs and the correction of any deferred or anticipated maintenance work;
  - b. The addition of any improvements to the development which, in the judgment of the authority, will be necessary or desirable for the successful marketing of the development, will reduce the costs of operating or maintaining the development, will benefit the residents or otherwise improve the liveability of the development, or will improve the financial strength and stability of the development;
  - c. The establishment of escrows to assure the completion of any required repairs, maintenance work, or improvements;
  - d. The establishment of such new reserves and/or such additional funding of existing reserves as may be deemed necessary by the authority to ensure or preserve the financial strength and stability or the proper operation and maintenance of the development; and
  - e. The funding of debt service payments, accounts payable and reserve requirements such that the foregoing are current at the time of any transfer of ownership.
3. The management agent, if any, to be selected by the proposed ownership entity to manage the development on its behalf must have the experience and ability necessary to manage the development in a manner satisfactory to the authority. The management agent

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must satisfy the qualifications established by the authority for approval thereof.

If the development is subsidized or otherwise assisted by the U.S. Department of Housing and Urban Development or any successor entity ("HUD"), the approval by HUD may be required. Any and all documentation required by HUD must be submitted by the proposed ownership entity in conjunction with its request.

C. The authority may charge the proposed ownership entity a fee of \$5,000 or such higher fee as the executive director may for good cause require. This fee, if any, is to be paid at the closing.

D. The amount and terms of any secondary financing (i.e., any portion of the purchase price is to be paid after closing of the transfer of ownership) shall be subject to the review and approval of the authority. Secondary financing which would require a lien on the development may be prohibited by the authority's bond resolution and, if so prohibited, will not be permitted or approved. The authority will not provide a mortgage loan increase or other financing in connection with the transfer of ownership. The authority will also not approve a rent increase in order to provide funds for the repayment of any secondary financing. Cash flow (other than dividend distributions) shall not be used to repay the secondary financing. Any proposed secondary financing must not, in the determination of the authority, have any material adverse effect on the operation and management of the development, the security of the mortgage loan, the interests of the authority as lender, or the fulfillment of the authority's public purpose under the Act. The authority may impose such conditions and restrictions (including, without limitation, requirements as to sources of payment for the secondary financing and limitations on the remedies which may be exercised upon a nonpayment of the secondary financing) with respect to the secondary financing as it may deem necessary or appropriate to prevent the occurrence of any such adverse effect.

E. In the case of a transfer from a nonprofit owner to a proposed for-profit owner, the authority may require the proposed for-profit owner to deposit and/or expend funds in such amount and manner and for such purposes and to take such other actions as the authority may require in order to assure that the principal amount of the mortgage loan does not exceed the limitations specified in the Act and this chapter or otherwise imposed by the authority. No transfer of ownership from a nonprofit owner to a for-profit owner shall be approved if such transfer would, in the judgment of the authority, affect the tax-exemption of the notes or bonds issued by the authority to finance the development. The authority will not approve any such transfer of ownership if any loss of property tax abatement as a result of such transfer will, in the determination of the authority, adversely affect the financial strength or security of the development.

At the closing of the transfer of the ownership from a nonprofit owner to a for-profit owner, the total development cost and the equity of a proposed for-profit owner shall be determined by the authority. The resolution of the board approving the transfer of ownership shall include a determination of the maximum annual rate, if any, at which distributions may be made by the proposed for-profit owner

pursuant to this chapter. The proposed for-profit owner shall execute and deliver such agreements and documents as the authority may require in order to incorporate the then existing policies, requirements and procedures relating to developments owned by for-profit owners. The role of the nonprofit owner in the ownership, operation and management of the development subsequent to the transfer of ownership shall be subject to the review and approval of the authority. The authority may require that any cash proceeds received by the nonprofit owner (after the payment of transaction costs and the funding of any fees, costs, expenses, reserves or escrows required or approved by the authority) be used for such charitable or other purposes as the authority may approve.

F. A request for transfer of ownership shall be reviewed by the executive director. If the executive director determines to recommend approval thereof, he shall present his analysis and recommendation to the board. The board shall review and consider the analysis and recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the request and authorize the executive director to consent thereto, subject to such terms and conditions as the board shall require in such resolution.

Notwithstanding the foregoing, if any proposed transfer is determined *expected* by the executive director to be ~~insubstantial in effect~~ and to have no ~~material detrimental~~ *substantial* effect on the operation and management of the development or the authority's interest therein as lender *and to have no policy implications for the programs of the authority*, such transfer may be *permitted or approved* by him without approval of the board.

After approval of the request, an approval letter will be issued to the mortgagor consenting to the transfer. Such letter shall be contingent upon the delivery and execution of any and all closing documents required by the authority with respect to the transfer of ownership and the fulfillment of any special conditions required by the resolution of the board or by the executive director. The partnership agreement of the proposed ownership entity shall be subject to review by the authority and shall contain such terms and conditions as the authority may require.

The authority may require that the proposed ownership entity execute the then current forms of the authority's mortgage loan documents in substitution of the existing mortgage loan documents and/or to execute such amendments to the existing mortgage loan documents as the authority may require in order to cause the provisions of such documents to incorporate the then existing policies, procedures and requirements of the authority. At the closing of the transfer, all documents required by the approval letter shall be, where required, executed and recorded; all funds required by the approval letter will be paid or deposited in accordance therewith; and all other terms and conditions of the approval letter shall be satisfied. If deemed appropriate by the executive director, the original mortgagor shall be released from all liability and obligations which may thereafter arise under the documents previously executed with respect to the development.

In the case of a development which is in default or which is experiencing or is expected by the authority to experience financial, physical or other problems adversely affecting its financial strength and stability or its proper operation, maintenance or management, the authority may waive or modify any of the requirements herein as it may deem necessary or appropriate in order to assist the development and/or to protect the authority's interest as lender.

VA.R. Doc. No. R97-418; Filed April 22, 1997, 10:02 a.m.

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**Title of Regulation:** 13 VAC 10-160-10 et seq. Rules and Regulations for Administration of Rent Reduction Tax Credits (amending 13 VAC 10-160-10, 13 VAC 10-160-20, 13 VAC 10-160-30, 13 VAC 10-160-60, 13 VAC 10-160-70, and 13 VAC 10-160-90; adding 13 VAC 10-160-41, 13 VAC 10-160-51, and 13 VAC 10-160-55).

**Statutory Authority:** § 36-55.30:3 of the Code of Virginia.

**Summary:**

*The proposed amendments (i) change the name of the existing rules and regulations to Rules and Regulations for Administration of Rent Reduction Tax Credit; (ii) add persons who have been previously homeless at any time within the 12-month period prior to commencement of a lease term as eligible tenants under the program; and (iii) add provisions for allocating and administering tax credits for previously homeless tenants.*

CHAPTER 160.

RULES AND REGULATIONS FOR ADMINISTRATION OF ELDERLY AND DISABLED LOW INCOME HOUSING RENT REDUCTION TAX CREDITS.

**13 VAC 10-160-10. Definitions.**

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

"*Authority*" means the Virginia Housing Development Authority.

"*Board*" means the Board of Commissioners of the authority.

"*Disability*" means (i) a physical or mental impairment which substantially limits one or more of the major life activities of such individual and includes any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities (the term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency

Virus (HIV) infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance, and alcoholism) or (ii) a record of such an impairment; or being regarded as having such an impairment which includes a history of or being misclassified as having a mental or physical impairment that substantially limits one or more major life activities; or a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation; or a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or none of the impairments defined above but the individual is treated by another person as having such an impairment; provided, however, that any physical or mental impairment described in (i) or (ii) shall be expected to result in death or shall have lasted continuously during the immediately preceding 12-month period or shall be expected to last continuously during the next succeeding 12-month period.

"*Elderly person*" means a person who exceeds, by any period of time, 62 years of age.

"*Elderly tenant*" means (i) an elderly person or (ii) a household in which any member is an elderly person.

"*Eligible owner*" means any person meeting the criteria for an eligible owner as set forth in the state code and these rules and regulations.

"*Eligible tenant*" means an elderly tenant or, a tenant with a disability or a previously homeless tenant whose income does not exceed the limit described in these rules and regulations.

"*Executive director*" means the executive director of the authority or any other officer or employee of the authority who is authorized to act on his behalf or on behalf of the authority pursuant to a resolution of the board.

"*HUD fair market rent*" means the rent published by the U.S. Department of Housing and Urban Development for the Section 8 Rental Certificate Program.

"*Income*" means gross income (including but not limited to all salary, wages, bonuses, commissions, income from self-employment, interest, dividends, alimony, rental income, pensions, business income, annuities, social security payments, cash public assistance, support payments, retirement income and any other sources of cash income) which is being received by the elderly tenant or, a tenant with a disability or a previously homeless tenant or is regularly paid to or on behalf of such tenant by a third party as of the application date. The income of any person who is living with an elderly person or person with a disability for the primary purpose of providing care to such person shall be excluded. All such income, provided it is not temporary, shall be computed on an annual basis to determine income for the purpose of program eligibility.

"*Market rent*" means the amount of rent, as determined by the authority pursuant to these rules and regulations, charged to other tenants for comparable units (other than tax credit units) in the same property or, if there are no such



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comparable units in the same property, for comparable units in the same market area.

"Owner" means an applicant for tax credits under these rules and regulations and, upon and subsequent to an allocation of such credits, means the owner of the tax credit unit to whom the tax credits are allocated.

"Person with a disability" means a person having a disability as defined in these rules and regulations.

"Previously homeless" means having, at any time within the 12 months preceding the commencement of the lease term, resided in a domestic violence shelter or homeless shelter.

"Previously homeless tenant" means (i) a previously homeless person or (ii) a household in which any adult member is previously homeless.

"Program" means the elderly and disabled low-income housing tax credit program for rent reductions described in these rules and regulations.

"State code" means Article 3 (§ 58.1-331 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia.

"Tax credit rent" means the reduced amount of rent charged for the tax credit unit to the eligible tenant. As provided in 13 VAC 10-160-30, the tax credit rent shall be at least 15% less than the market rent.

"Tax credits" means the tax credits as described in § 58.1-339 of the Code of Virginia;

"Tax credit unit" means a unit occupied or to be occupied by eligible tenants at reduced rents in order for the owner to be entitled to receive tax credits hereunder.

"Tenant" means a person or household who is applying for occupancy of, or is occupying, a tax credit unit.

"Tenant with a disability" means (i) a person with a disability or (ii) a household in which any member is a person with a disability.

### 13 VAC 10-160-20. Purpose and applicability.

The following rules and regulations will govern the allocation and administration of tax credits by the authority pursuant to the state code.

Notwithstanding anything to the contrary herein, acting at the request or with the consent of the owner, the executive director is authorized to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the state code.

The rules and regulations set forth herein are intended to provide a general description of the authority's processing and administration requirements and are not intended to include all actions involved or required in the processing and administration of the tax credits. These rules and regulations are subject to change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time.

Notwithstanding anything to the contrary herein, all procedures and requirements in the state code must be complied with and satisfied.

### 13 VAC 10-160-30. General description.

The state code was amended by adding a section numbered 58.1-339 relating to a tax credit for owners providing rent reduction for eligible tenants.

For taxable years beginning on or after January 1, 1991, through December 31, 1999, any individual or corporation receiving an allocation of tax credits pursuant to § 58.1-339 of the Code of Virginia shall, subject to the provisions of the state code and these rules and regulations, be entitled to a credit against the tax levied pursuant to § 58.1-320 or § 58.1-400 of the Code of Virginia, provided that the following requirements are satisfied:

1. The individual or corporation is engaged in the business of the rental of dwelling units (as hereinafter specified) and is subject to the Virginia Residential Landlord and Tenant Act, § 55-248.2 et seq. of the Code of Virginia, either by virtue of the provisions thereof or by virtue of the owner's providing for the applicability thereof pursuant to § 55-248.5 B of the Code of Virginia;
2. The owner provides a reduced rent to eligible tenants;
3. The rent charged to the eligible tenants is at least 15% less than the market rent; and
4. To claim a credit for reduction of rents charged to a tenant on or after July 1, 1996: (i) a credit for rental reductions must have been validly claimed on the tax credit unit for all or part of the month of June 1996 and such tenant must have been an occupant of such tax credit unit on June 30, 1996, or (ii) the tenant must have been previously homeless.

The allowable tax credit amount shall be 50% of the total rent reductions allowed during the taxable year to the eligible tenants occupying the tax credit units. The amount of the rent reduction shall be equal to the market rent minus the tax credit rent. For this purpose, the tax credit rent shall include any rental subsidy payable on behalf of the eligible tenant under any governmental or private program.

If there are comparable units (other than tax credit units) in the same property, the market rent shall be determined by the authority to be the rent charged to other tenants for such comparable units. For the purpose of determining the amount of rent charged to other tenants for comparable units in the same property, the authority shall assume that the other tenants commenced and, if applicable, renewed their leases as of the same date or dates, and for the same term or terms as the eligible tenants and at the rents in effect on such date or dates.

If there are no other such comparable units in the same property, then the market rent shall be determined by the authority to be the rent charged for comparable units in the same market area. Such rent shall be (i) the rent most recently charged for the tax credit unit to a person (who may be the eligible tenant to be assisted) unrelated to the owner within the one-year period prior to the date of filing of the application, plus a rental increase in an amount determined

by the authority to reflect increases in rents in the market area of such tax credit unit since the date such rent was last charged, or (ii) if no rental history as described in (i) exists, the HUD fair market rent allowed for a comparable unit in the same market area (as reduced, to the extent determined by the authority, for any utilities which are not to be included in the tax credit rent under the terms of the lease); provided, however, that the owner may demonstrate to the authority that the rent for a comparable unit in the same market area is higher than (i) or (ii) above, as applicable, and to the extent so demonstrated to the satisfaction of the authority, such higher rent shall be used.

Notwithstanding anything to the contrary herein, the market rent shall in no event exceed 150% of the HUD fair market rent allowed for comparable units in the same market area (as reduced, to the extent determined by the authority, for any utilities which are not to be included in the tax credit rent under the terms of the lease).

If the tax credit unit is subsidized or assisted under any governmental or private program, the comparable units in the same property or market area, as applicable, shall include only those units similarly subsidized or assisted.

Because the intent of the state code is to provide tax credits for the rental of dwelling units only, tax credits shall not be *allocated* or claimed for the leasing of land only, including without limitation mobile home lots. Tax credits may be *allocated and* claimed for the leasing of both a mobile home lot and the mobile home located thereon.

To be eligible for the program, a dwelling unit must contain separate and complete facilities for living, sleeping, eating, cooking and sanitation. Such accommodations may be served by centrally located equipment such as air conditioning or heating. Thus, for example, an apartment containing a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink, all of which are separate and distinct from other apartments, would constitute a unit.

In order to satisfy the requirement in § 58.1-339 of the state code that the owner be an individual or corporation engaged in the business of the rental of dwelling units, the owner must *intend* or have intended at the time of application and must intend at all times thereafter to report, for federal income tax purposes, all rental and other income and any related expenses of the tax credit unit with respect to each tax year for which the tax credits are to be claimed for such tax credit unit.

The amount of credit for each individual or corporation for each taxable year shall not exceed \$10,000 or the total amount of tax imposed by Chapter 3 (§ 58.1-300 et seq.) of Title 58.1 of the Code of Virginia, whichever is less. If the amount of such credit exceeds the taxpayer's tax liability for such taxable year, the amount which exceeds the tax liability may be carried over for credit against income taxes of such individual or corporation in the next five taxable years until the total amount of the tax credit has been taken.

Credits granted to a partnership or an electing small business corporation (S corporation) shall be passed through to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S corporation.

The total amount of tax credits which may be approved by the authority in any fiscal year prior to fiscal year 1996-1997 shall not exceed \$1,000,000. Commencing in fiscal year 1996-1997, the total amount of tax credits which may be approved by the authority in any fiscal year shall not exceed \$250,000. ~~In the case of tax credits to be claimed for any period after June 30, 1996, With the exception of tax credits claimed for units occupied by previously homeless tenants,~~ no tax credits will be approved for a unit for any period after June 30, 1996, unless a tax credit was validly claimed for such unit for all or part of the month of June 1996. No tax credits may be claimed for taxable years after December 31, 1999.

The authority may charge to each owner fees in such amount as the executive director shall determine to be necessary to cover the administrative costs to the authority. Such fees shall be payable at such time or times as the executive director shall require.

**13 VAC 10-160-41. Solicitations of applications for previously homeless tenants.**

*The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for allocation of tax credits for units occupied or to be occupied by previously homeless tenants. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of such applications and the selection thereof as he shall consider necessary or appropriate.*

**13 VAC 10-160-51. Applications for units occupied or to be occupied by previously homeless tenants.**

*Application for an allocation of tax credits for units occupied or to be occupied by previously homeless tenants shall be commenced by filing with the authority an application on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority in order to comply with the state code and to make the allocation of the tax credits in accordance with these rules and regulations.*

*The executive director may establish criteria and assumptions to be used by the owner in the calculation of amounts in the application, and any such criteria and assumptions shall be indicated on the application form or instructions.*

*The executive director may prescribe such deadlines for submission of applications for allocation of tax credits for units occupied or to be occupied by previously homeless tenants for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such allocations.*

*The tax credit unit for which an application is submitted may be, but shall not be required to be, financed by the*

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authority. If any such tax credit unit is to be financed by the authority, the application for such financing shall be submitted to and reviewed by the authority in accordance with its applicable rules and regulations.

### **13 VAC 10-160-55. Review and selection of application; allocation of tax credits.**

Tax credits shall be allocated to eligible owners for units occupied or to be occupied by previously homeless tenants on a "first-come, first-served" basis. In the event that the amount of tax credits available for such units is sufficient for some but not all of eligible applications received by the authority on the same day, then the authority shall select one or more of such applications by lot. After July 1, 1996, no tax credits shall be allocated to owners of units occupied or to be occupied by elderly tenants or tenants with disabilities except as provided in 13 VAC 10-160-120.

The executive director may exclude and disregard any application which he determines is not submitted in good faith.

The amount of tax credits which may be allocated for tax credit units in any single development shall not exceed \$10,000; provided, however, that the executive director may from time to time terminate or suspend such \$10,000 limit for such period of time as he shall deem appropriate to assure full utilization and proper distribution of the tax credits. For the purpose of compliance with such \$10,000 limit, the executive director may determine that developments in one or more applications constitute a single development based upon such factors as he may deem relevant, including without limitation the ownership, proximity, age, management, financing and physical characteristics of the developments.

The executive director shall allocate tax credits, in the manner described above, to eligible owners of units occupied or to be occupied by previously homeless tenants until either all available tax credits are so allocated or all such eligible owners have received allocations. The amount allocated to each such eligible owner shall be equal to the lesser of (i) the amount requested in the application or (ii) the amount, determined by the executive director, to which the eligible owner is entitled under the state code and these rules and regulations as of the date of application.

The executive director determines whether the owner and the tax credit units are entitled to tax credits under the state code and these rules and regulations. If the executive director determines that the owner or the tax credit units are not so entitled to tax credits, the owner shall be so informed and his application shall be terminated. If the authority determines that the owner and the tax credit units are so entitled to tax credits, then the executive director shall issue to the owner, on behalf of the authority, a commitment for allocation of tax credits with respect to the applicable tax credit units. The allocation shall be subject to the approval or ratification thereof by the authority's board as described below.

The board shall review and consider the analysis and recommendation of the executive director for the allocation of tax credits, and, if it concurs with such recommendation, it

shall by resolution approve or ratify the allocation by the executive director of the tax credits to the eligible owner, subject to such terms and conditions as the board or the executive director shall deem necessary or appropriate to assure compliance with the state code and these rules and regulations. If the board determines not to approve or ratify an allocation of tax credits, the executive director shall so notify the owner.

Upon compliance with the state code and these rules and regulations, the owner to whom an allocation is made hereunder shall be entitled to tax credits annually, in such amount as is determined by the authority pursuant to these rules and regulations, for each year beginning in the year for which such allocation is made and ending December 31, 1999, unless sooner terminated or reduced pursuant to these rules and regulations.

### **13 VAC 10-160-60. Eligibility of tenants and verification.**

The occupancy of units entitled to tax credits is limited to elderly tenants or tenants with disabilities or previously homeless tenants whose incomes, as of initial occupancy of the tax credit unit by such tenants (or, if any such tax credit unit was occupied by such a tenant on January 1 of the first calendar year for which the tax credits were claimed for such tax credit unit, as of such January 1), did not exceed 80% of the median income for the area. Preference in occupancy of tax credit units must have been given to eligible tenants whose incomes were less than or equal to 50% of the median income for the area. The United States Department of Housing and Urban Development income limits for subsidized programs, as adjusted by family size, must have been used in determining such 80% and 50% of median income for the area.

In the case of tax credits to be claimed for any period after June 30, 1996, in order to be eligible the *an elderly tenant or a tenant with a disability* must have been an occupant of the tax credit unit on June 30, 1996.

Owners must have ~~obtained~~ *obtain* written income verification for eligible tenants who occupy a tax credit unit. The verification of income must ~~have been~~ *be* sent by the owner to each employer or the agency providing benefits along with a stamped, self-addressed return envelope. Such verification must ~~have then~~ *be* retained by the owner and a copy submitted to the authority (together with an executed confirmation of resident eligibility form and the verification of age or, disability or *previous homelessness*) at the time that the eligible tenant was determined by the owner to be income eligible. Verification of income must ~~have been~~ *be* current as of a date no earlier than 90 days prior to the date (see first paragraph in this section) as of which the income of the eligible tenant was determined for eligibility purposes.

With respect to tax credits claimed for rental of tax credit units to tenants with disabilities, owners must have obtained a written verification of disability. Verification of said disability must have been obtained from a physician, diagnostic or vocational rehabilitation service center or the Social Security Administration.

With respect to tax credits claimed for rental of tax credit units to elderly tenants, owners must have verified the age of

all persons claiming to exceed 62 years of age. Verification of Social Security benefits paid on the person's behalf is acceptable if a birth certificate could not have been obtained; provided, however, that any person receiving survivor Social Security benefits who did not exceed 62 years of age or did not have a disability is not eligible for occupancy of a tax credit unit.

*With respect to tax credits claimed for rental of tax credit units to previously homeless tenants, owners must obtain a written verification that such tenant resided in a domestic violence shelter or homeless shelter during the 12 months preceding commencement of the lease term for the tax credit unit. Such written verification must be obtained from the homeless shelter or domestic violence shelter in which the previously homeless tenant resided.*

The initial lease term for all eligible tenants occupying a tax credit unit must not have been be less than a 12-month period.

### **13 VAC 10-160-70. Administration of allocation of tax credits.**

Except as provided in 13 VAC 10-160-120, and except for the allocation of tax credits for units occupied or to be occupied by previously homeless tenants pursuant to 13 VAC 10-160-55, tax credits shall not be allocated by the authority after June 30, 1996. Allocations of tax credits made by the authority prior to June 30, 1996, for units occupied by elderly and disabled tenants shall remain in effect, subject to the provisions of these rules and regulations.

The amount of tax credits claimed by an owner in any taxable year for tax credit units shall not exceed the amount of tax credits allocated to such owner for such tax credit units. The executive director may require that owners to whom tax credits have been allocated shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of each tax credit unit and its compliance with the application and these rules and regulations. If on the basis of such written confirmation and documentation and other available information the executive director determines that any tax credit unit does not or will not qualify or will not continue to qualify for such tax credits, then the executive director may terminate or reduce the allocation of such tax credits. *Without limiting the foregoing, the owner of any tax credit units to be occupied by previously homeless tenants shall lease the tax credit units to eligible previously homeless tenants at reduced rents such that the aggregate of such rent reductions shall be no less than the aggregate of the rent reductions set forth in the application for tax credits for such units. In the event that the owner shall fail to so lease such tax credit units, the authority may, upon its determination that the owner is unable or unwilling to utilize fully its allocation of tax credits for such tax credit units, terminate or reduce such allocation, as it shall deem appropriate.*

The authority shall have the right to inspect the tax credit units and related property and improvements from time to time, and the tax credit units and related property and improvements shall be in a state of repair and condition satisfactory to the authority. The authority may require the owner to make necessary repairs or improvements, in a

manner acceptable to the authority, as a condition for receiving an allocation of tax credits or for qualifying for certification to the Department of Taxation as described hereinbelow.

*The executive director may establish such deadlines for the owner of units for occupancy by previously homeless tenants to qualify for the tax credits and to comply with the application and these rules and regulations as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of such owner's allocation, to allocate such tax credits to other eligible owners.*

Any material changes to the condition, use or occupancy of the tax credit unit or in any other representations, facts or information, as contained or proposed in the application, occurring subsequent to the submission of the application for the tax credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with these rules and regulations and the state code, reduce the amount of tax credits allocated or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the allocation of such tax credits or impose additional terms and conditions with respect thereto.

*In the event that any allocation of tax credits is terminated or reduced by the executive director under this section, he may allocate such tax credits (in the amount of such termination or reduction) to eligible owners (other than the owners whose tax credit allocation was so terminated or reduced) in the first-come first-served manner described in 13 VAC 10-160-55, in the manner described in 13 VAC 10-160-120, or in such other manner as he shall determine consistent with the requirements of the state code.*

If an owner shall transfer any of the tax credit units to a transferee which is eligible for such tax credits under the state code and these rules and regulations, such transferee shall thereupon be entitled to the allocation of tax credits for such tax credit units and shall, for the purposes of these rules and regulations, be thereafter deemed the owner for such tax credits.

### **13 VAC 10-160-90. Maintenance of records; submission requirements; termination of occupancy.**

Owners shall be responsible for obtaining and maintaining all documentation required by the authority to evidence that the tax credit units qualify for tax credits under the program. Owners will be responsible for providing this documentation to the authority for review within 30 days following the end of each calendar year; provided, however, that the documents listed in subdivisions 2 a, b, c and g of this section must have been submitted at the time required by 13 VAC 10-160-60 that the eligible tenant was determined by the owner to be eligible. The tax credit unit will not qualify for tax credits if all required documents, in the form required by the authority, are not so provided. Required documentation to be submitted to the authority includes, but is not limited to, the following:

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1. A listing (including dates of occupancy) of all tenants who *occupy or occupied* a tax credit unit entitled to a tax credit for that year.

2. A complete certification package for each eligible tenant receiving the reduced rent. The certification must include:

a. A completed and executed confirmation of resident eligibility form.

b. Verification of income.

c. Verification of age or, disability or *previous homelessness*.

d. A certification from the tenant verifying:

(1) What unit type/size was occupied,

(2) Number of months said unit was occupied,

(3) The amount of rent paid,

(4) How many months that amount of rent was paid, and

(5) In the case of the tax credits claimed for any period after June 30, 1996, (*except for tax credits claimed for units occupied by previously homeless tenants*), occupancy of the tax credit unit by the tenant on June 30, 1996.

e. A certification of the owner that prior to July 4, 1996, preference in occupancy of the tax credit units was given to eligible tenants whose incomes were less than or equal to 50% of the median income for the area (the waiting list for tax credit units during the calendar year identifying the persons applying for such units and their incomes shall be maintained by the owner and shall be available for inspection by the authority).

f. Rent rolls for the comparable units in the same property as the tax credit units setting forth the rents charged to other tenants, if rents for such comparable units are to be used to determine the amount of the rent reduction pursuant to 13 VAC 10-160-30.

g. Copies of leases for each tax credit unit.

h. In the case of the tax credits claimed for any period after June 30, 1996, *other than tax credits claimed for units occupied by previously homeless persons*, a certification of the owner that a tax credit for rental reductions was validly claimed on the tax credit unit for all or part of the month of June 1996, and that the tenant receiving such rental reductions was an occupant of such tax credit unit on June 30, 1996.

In the event of termination of occupancy, the rent reduction shall be calculated pro rata based upon the number of days determined in the following manner. In the event of death of the only elderly person or, person with a disability or *previously homeless person* occupying a tax credit unit, the owner must obtain a copy of the death certificate or must provide other acceptable documentation of death; and the number of days for which an owner is entitled to tax credits on such deceased person's tax credit unit shall be

determined by the date of death. If the eligible tenant abandons the tax credit unit, the earliest of the date the owner discovers the tax credit unit is vacant, the date any utility company terminates service on the tax credit unit, or the date 30 days after abandonment will be used to determine the number of days for which the tax credit unit is entitled to the tax credit. If the tax credit unit shall not be so abandoned but the eligible tenant shall not occupy the tax credit unit for a period of 30 days (or such longer period of time as the executive director may approve), the end of such period shall be used to determine the number of days for which the tax credit unit is entitled to the tax credit. If the lease is terminated for any reason other than those set forth above in this paragraph, the effective date of termination shall be used to determine the number of days for which the tax credit unit is entitled to the tax credit.

VA.R. Doc. No. R97-419; Filed April 22, 1997, 10 a.m.

## DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: 22 VAC 40-705-10 et seq. Child Protective Services.

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

Public Hearing Date: May 20, 1997 - 9 a.m. (Newport News)  
May 20, 1997 - 3 p.m. (Richmond)  
May 21, 1997 - 10 a.m. (Warrenton)  
May 21, 1997 - 4 p.m. (Wytheville)

Public comments may be submitted until July 11, 1997.  
(See Calendar of Events section for additional information)

Basis: The statutory authority for promulgating this regulation is found in Title 63.1 of the Code of Virginia, which places the responsibility for providing protective services to children with the Department of Social Services in Chapter 12.1, §§ 63.1-248.1 to 63.1-248.18, and gives the Board of Social Services the authority to make rules and regulations in § 63.1-25. These state mandates are consistent with the accountabilities of the federal mandates authorized in the Child Abuse Prevention and Treatment Act (CAPTA), and Public Law 104-235 which came into effect on October 3, 1996, to modify and reauthorize CAPTA. These regulations are necessitated by current reforms being implemented in the Child Protective Services (CPS) system in the Commonwealth of Virginia as a result of the findings and recommendations of the State Board of Social Services subcommittee study begun in 1995, of the findings of the 1995 legislative subcommittee (HJR 502), and of legislation passed in the 1996 legislative session.

Purpose: The purpose of the proposed regulation is to satisfy the need to provide direction for how best to protect children from child abuse and neglect balanced with the rights of parents and family integrity. These regulations will clarify and effect certain fundamental changes in how children are protected in the Commonwealth of Virginia with regard to the categories of reporting, investigations, appeals, training and accountability. Proposed regulations are needed to give regulatory authority to the findings and recommendations of the subcommittee which were adopted by the full board.

These reforms shall result in better protection of children, as well as better due process rights toward persons named in child abuse and neglect complaints.

**Substance:** Currently, only three areas of child protective services are regulated in Virginia. These regulations include Child Protective Services Client Appeals (22 VAC 40-710-10), which will be repealed in entirety and included in this proposed regulation; Investigation of Child Abuse and Neglect in Out of Family Complaints (22 VAC 40-730-10 et seq); Child Protective Services Release of Information to Family Advocacy Program Representatives of the United States Armed Forces (22 VAC 40-720-10 et seq); and Child Protective Services Central Registry Information (22 VAC 40-700-20 et seq). Other Code of Virginia sections dealing with child protective services since the original law was passed in 1975, have been developed and incorporated into CPS policy in Volume VII, Section III, Chapter A of the Service Programs Manual. However, comprehensive CPS regulations have never been promulgated until the State Board requested the Department to promulgate same.

Although this has resulted in certain flexibility for the department and local departments to respond to child protective services needs through the years, it has also resulted in less effective legal representation from the Attorney General's office and local city and county attorneys, since judges frequently give less credence to CPS policy than to regulations promulgated through the Administrative Process Act. In addition, a need has developed for clarification and consistency in how the various Code of Virginia sections accumulated through the years are currently being interpreted.

The ten areas where the proposed regulations differ from current policy are as follows:

#### 1. Audio/Video Tape-recording:

- Current policy gives the alleged abuser the right to tape record any communication between him and the CPS worker during the investigation. The CPS worker may use discretion in deciding whether or not to taperecord a child interview.
- Proposed regulations mandate the CPS worker to inform the alleged abuser of this right, and to provide the necessary equipment. There is a mandate that all interviews with alleged victim children be audiotape recorded.

#### 2. Substance Abuse:

- Current policy is silent on substance abuse specifically; however, when substance abuse is identified as a problem, current policy allows for a CPS worker to have discretion in requesting either voluntary consent to substance abuse testing at a laboratory test site, or to petition the court to order such screening.
- Proposed regulations mandate local departments be responsible for developing guidelines for such screening which may include CPS workers administering urine screening.

#### 3. Level of Evidence to Make a Founded Disposition:

- The current level of evidence to make a founded disposition is the standard "clear and convincing."

- Proposed regulations change the level of evidence to preponderance.

#### 4. Predispositional Consultation:

- Current policy requires a 45-day to 60-day investigation resulting in a disposition of founded or unfounded. In cases with founded dispositions, the abuser is notified of the disposition and of his right to request a local conference as the first step in the appeal process should he disagree with the disposition.

- Proposed regulations require that when there is evidence of abuse or neglect the local department shall provide the alleged abuser or neglector with written notice of the option to proceed according to current policy, or to waive the 45-60 day time frame for disposition, to waive the opportunity for a local conference after the disposition, and attend a predispositional consultation to discuss the findings before a disposition is rendered. Then, if the alleged abuser or neglector disagrees with the disposition, he may request a state hearing as the first step of the appeal process.

- During the predispositional conference there will be a shift in the burden of proof; the local department has to prove the allegation is true.

- In addition, the standard of proof in these proceedings will be preponderance, and there will be greater reliance on first source material, rather than circumstantial only, although hearsay can still be considered.

#### 5. Retention of Invalid Reports:

- Current policy requires that local departments do not have authority to investigate reports that do not meet the criteria for validity. These reports can be discarded after informing the reporter they will not be investigated, after reporting substandard conditions in child care facilities to the appropriate regulatory authority, and after reporting noncaretaker sexual abuse to the local law enforcement agency.

- Proposed regulations require that all reports made to the local department or to the state hotline found valid or not valid shall be retained. Nonvalid reports shall be retained for one year past the date of the report; valid reports shall be retained according to the policy which governs disposition and retention time.

#### 6. False Reports:

- Current policy requires the CPS worker to inform the alleged abuser in an unfounded case that he has the right to petition the court to obtain the identity of the complainant if he believes the complaint was made in bad faith or maliciously. Legislation passed in 1996 makes it a criminal offense to make a knowingly false complaint, and increases the penalties.

- Proposed regulations require the department, upon receipt of notification of such conviction, to retain a list of convicted reporters.

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## Proposed Regulations

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### 7. Screening Valid Reports for Priority Investigation:

- Current policy is silent on which report requires a more "immediate" response than another; however, current practice in the local departments involves setting priority according to potential risk of the child by considering,
  - The immediate danger to the child;
  - The severity of the type of abuse or neglect alleged;
  - The age of the child;
  - The circumstances surrounding the alleged abuse or neglect; and
  - The physical and mental condition of the child.
- Proposed regulations require reports from mandated reporters be added to the above considerations.

### 8. Reasonable Diligence:

- Policy was silent on locating missing children until legislation was passed in 1996 mandating that local departments use reasonable diligence to locate any child for whom a report of suspected abuse or neglect has been received, or for whom services were being provided as a result of a founded disposition of child abuse or neglect, and who subsequently disappears. New policy requires that local departments document reasonable and prompt attempts to locate the child and family including checking, at a minimum, with a standard checklist when applicable.
- Proposed regulations reflect this Code of Virginia change.

### 9. Retention and Purging of Cases With Unfounded Dispositions:

- Prior to legislation passed in 1996, the records of unfounded dispositions were purged 30 days from the date the alleged abuser or neglecter was notified of such determination unless that individual requested in writing that the record be retained an additional period of up to two years.
- Proposed regulations and new policy, effective July 1, 1996, reflect this new law that requires local departments and the department to retain case record information of unfounded complaints of child abuse or neglect for one year. The department shall keep these records separate from the Central Registry of founded abuse and neglect cases. The records shall be purged in one year if there are no subsequent founded or unfounded reports regarding the same child or the subject of the report in that one year, or unless the alleged abuser or neglecter requests in writing that the record be retained an additional period of up to two years.

### 10. Training:

- Current policy is silent regarding qualifications of CPS workers, although 1993 (Designated Out of Family) and 1994 (House Joint Resolution 82) legislation required minimum training requirements for both new and existing staff.

- Proposed regulations require the department to implement a uniform training plan establishing minimum standards for all CPS workers. Workers shall complete skills and policy training specific to child abuse and neglect investigations within the first year of their employment.

Issues: Advantages: Child Protective Services (CPS) is unique in its emphasis on reaching out to children and their families. It is a specialized continuum of casework services to abused, neglected or exploited children. The focus of the service is identification, assessment and service provision in an effort to protect children, preserve families whenever possible, enhance potential capacity for adequate child care, and prevent further maltreatment. Families are often not voluntary recipients of services, and thus protective services has been given certain authorities by the community to enable the provision of critical services. In return, the public requires assurances that the CPS system and any reforms shall result in better protection of children, that child protective services workers be qualified and professional, and that persons named in child abuse and neglect complaints be given better due process rights in order to ensure there are no undue infringements on their privacy, family integrity and constitutional rights. There are no disadvantages to the Commonwealth and its public in implementing this regulation.

Estimated Impact: It is a desire of the Virginia Department of Social Services and of the State Board of Social Services to improve the Child Protective Services delivery system in Virginia without making it overly burdensome or more expensive to local agencies and taxpayers. One anticipated result of these regulations should be less intrusiveness to Virginia families. In fiscal year 1995-96 there were 33,650 child abuse and neglect complaints investigated by the 123 local departments of social services. For over 20 years social workers in Virginia have provided protective services to children. Despite diligent efforts, the problem of child abuse and neglect continues to grow. Child protective services professionals across the country are struggling with the difficult question of how best to protect children and strengthen families in the least intrusive way. The proposed regulation is a partial solution to this complex problem. The provisions of this regulation dealing with reporting, investigation, appeals, and training will affect each of the 123 local departments of social services and every child protective services social worker in the administration and implementation of this 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 § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 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 effects.

Summary of the proposed regulation. The proposed regulation incorporates current regulations for Child Protective Services Client Appeals (22 VAC 40-710-10) and establishes a regulatory framework for procedures regarding the investigation and processing of child abuse and neglect complaints. Most of the requirements contained in the proposed regulation are based on Code of Virginia provisions and, more importantly from an economic perspective, reflect current procedure. Because these requirements will not necessitate any behavioral changes, they will not generate any economic effects. There are three provisions contained in the proposed regulation that could have economic consequences, however:

- A requirement that child protective service workers tape record interviews with victim children and, in some cases, alleged abusers;
- A requirement that local child protective service departments develop guidelines for substance abuse screening in circumstances where there is "reason to believe that the alleged [child] abuser ... is abusing substances, and such behavior may be related to the matter being investigated ... [g]uidelines may include child protective service worker administration of urine screening"; and
- An option for alleged abusers to waive their right to a post-dispositional local conference in favor of a predispositional conference in which the alleged abuser would have "the opportunity to meet with the local department conducting the investigation and discuss the local department's investigation findings prior to ... disposition."

Estimated economic impact. The economic consequences associated with the proposed new provisions can be roughly divided into two general categories: (i) agency costs, additional costs that would be imposed on local departments of social services and (ii) social benefits, the gain that would accrue to those affected by child protective services as a result of the new provisions.

### I. Tape recording.

Agency costs: The requirement that child protective service workers tape record interviews would impose an unfunded mandate on local social services departments. Although estimates vary,<sup>1</sup> statewide data provided by DSS indicate that: (i) the one-time costs for purchasing tape recorders would be approximately \$32,500; (ii) there may be some additional one-time costs associated with purchasing tape storage cabinets; (iii) the annual costs for purchasing tapes would be in the neighborhood of \$80,000 to \$100,000; and (iv) in some cases transcription of the tapes would be required, causing additional clerical costs. According to DSS,

however, there is a possibility that between 50% and 75% of these costs would be borne by the federal government under Title IV-B of the Social Security Act and the Social Services Block Grant if funds were made available.

Social benefits: The new provision for tape recording interviews would have two primary social benefits: enhanced due process and "quality control." Currently, information from interviews with victim children is sometimes provided as testimony by personnel other than those who conducted the interview. Tape recording the interviews will allow objective confirmation of the information provided in testimony against alleged abusers, thereby further guaranteeing due process. Additionally, tape recording of the interviews will allow local departments to better monitor the procedures and structure used in victim interviews, thereby enhancing internal "quality control."

### II. Substance abuse screening.

Agency costs: It is unclear whether the new provision regarding substance abuse screening will have any effect on agency costs. As written, the provision only requires local child protective service departments to develop guidelines for substance abuse screening, where such guidelines "may include child protective service worker administration of urine screening." This language does not mandate child protective service worker administration of urine screening.

Currently, local departments must seek a court order to obtain a drug test. Under the proposed regulation, they would be permitted to obtain a drug test without a court order. In both instances, if the local department is the agency requesting the test, the local department bears the cost of the test. The major differences under the proposed regulation would be, if the local department chose to administer the test: (i) it could avoid those costs associated with obtaining the court order and (ii) it might incur additional costs associated with personnel and training. There is nothing in the proposed regulation that would require the local department to change its current substance abuse screening procedures, however.

Social benefits: Because the new provision only allows, rather than mandates, local department administration of drug tests, the only departments likely to choose this option are those that can use it to reduce their costs or increase their effectiveness. This should enhance the ability of local departments to use these tests and, to the extent that such tests are helpful in designing better programmatic responses to child abuse/neglect cases, could induce an associated social benefit.

### III. Predispositional conference.

Agency costs: Because the optional predispositional conference would only replace the current post-dispositional local conference, there should be no additional agency costs associated with it.

Social benefits: The optional predispositional conference should enhance due process by: (i) providing alleged abusers an opportunity to discuss with representatives from the local department their investigative findings prior to disposition and (ii) providing one more opportunity for local departments to inform alleged abusers of their rights and the options available to them.

<sup>1</sup> DPB received cost estimates from DSS; local social services departments in the cities of Charlottesville, Fredericksburg, and Newport News; the Counties of Accomack, Buchanan, Buckingham, Campbell, Giles, Goochland, Henry, King William, Madison, Page, Pulaski, Roanoke, Tazewell, York, Wise, and Wythe; and the Virginia League of Social Service Executives.



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Businesses and entities particularly affected. The proposed regulation particularly affects Virginia's 123 local departments of social services, victims of child abuse and neglect, and their alleged abusers.

Localities particularly affected. No localities are particularly affected by the proposed regulation.

Projected impact on employment. The proposed regulation is not anticipated to have a significant effect on employment.

Effects on the use and value of private property. The proposed regulation is not anticipated to have a significant effect on the use and value of private property.

Summary of analysis. DPB anticipates that the proposed amendments to the current regulation governing child protective services will have two primary economic effects: (i) a modest increase in agency costs and (ii) an associated increase in the due process and internal quality control associated with child protective services investigations.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Department of Social Services concurs with the Economic Impact Analysis of proposed regulation, Child Protective Services, 22 VAC 40-705-10 et seq., conducted by the Virginia Department of Planning and Budget.

## Summary:

*These proposed regulations establish a regulatory framework for protecting children in the Commonwealth of Virginia from abuse and neglect with regard to the categories of reporting, investigations, appeals, training, and accountability. They provide direction for how best to protect children balanced with the rights of parents and family integrity.*

*The proposed regulations are based on findings and recommendations of a State Board of Social Services study begun in 1995, of the findings of a legislative study in 1995, and legislation passed by the 1996 Session of the General Assembly.*

## CHAPTER 705.

### CHILD PROTECTIVE SERVICES.

#### 22 VAC 40-705-10. Definitions.

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

*"Abuser or neglector" means any person who is found to have committed the abuse and/or neglect of a child pursuant to § 63.1-248.1 et seq. of the Code of Virginia.*

*"Administrative appeal rights" means the child protective services appeals procedures for a local level informal conference and a state level hearing pursuant to § 63.1-248.6:1 of the Code of Virginia, under which an individual who is found to have committed abuse and/or neglect may request that the local department's records be amended.*

*"Appellant" means anyone who has been found to be an abuser and/or neglector and appeals the founded disposition*

*to the director of the local department of social services, an administrative hearing officer, or to circuit court.*

*"Assessment" means the process by which child protective services workers determine a child's and family's needs.*

*"Caretaker" means any individual having the responsibility of providing care for a child, and includes the following: (i) parent or other person legally responsible for the child's care; (ii) any other person who has assumed caretaking responsibility by virtue of an agreement with the legally responsible person; (iii) persons responsible by virtue of their positions of conferred authority; and (iv) adult persons residing in the home with the child.*

*"Case record" means a collection of information maintained by a local department, including written material, letters, documents, tapes, photographs, film or other materials regardless of physical form about a specific child protective services investigation, family or individual.*

*"Central Registry" means a subset of the information system of CANIS, and is the name index with identifying information of individuals named as an abuser and/or neglector in founded child abuse and/or neglect complaints or reports not currently under administrative appeal, maintained by the department.*

*"Child Abuse and Neglect Information System (CANIS)" means the computer system which collects and maintains information regarding incidents of child abuse and neglect involving parents or other caretakers. CANIS is composed of three parts: the statistical information system with nonidentifying information, the Central Registry, and a data base that can be accessed only by the department and local departments consisting of all nonpurged investigation information.*

*"Child protective services" means the identification, receipt and immediate investigation of complaints and reports of alleged child abuse and/or neglect for children under 18 years of age. It also includes assessment, arranging for and providing services for the alleged victim child, his family and the alleged abuser and/or neglector, and disposition.*

*"Child protective services worker" means one who is qualified by virtue of education, training and supervision, and is employed by the local department to respond to child protective services complaints and reports of alleged child abuse and/or neglect.*

*"Collateral" means a person whose personal or professional knowledge may help confirm or rebut the allegations of child abuse and/or neglect or whose involvement may help ensure the safety of the child.*

*"Complaint" means any information or allegation of child abuse and/or neglect made orally or in writing pursuant to § 63.1-248.2:5 of the Code of Virginia.*

*"Consultation" means the process by which the alleged abuser and/or neglector may request an informal meeting to discuss the investigative findings with the local department prior to the local department rendering a founded disposition of abuse and/or neglect against that person pursuant to § 63.1-248.6:1 A of the Code of Virginia.*

"Department" means the Virginia Department of Social Services.

"Disposition" means the determination of whether or not child abuse and/or neglect has occurred.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts and evidence.

"Family Advocacy Program representative" means the professional employed by the United States Armed Forces who has responsibility for the program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up and reporting of family violence, pursuant to 22 VAC 40-720-20.

"First source" means any direct evidence establishing or helping to establish the existence or nonexistence of a fact.

"Founded" means that a review of the facts shows by a preponderance of the evidence that child abuse and/or neglect has occurred.

"He" means he or she.

"His" means his or her.

"Identifying information" means name, social security number, address, race, sex, and date of birth.

"Investigation" means the formal information gathering process utilized by the local department in determining whether or not child abuse or neglect has occurred.

"Investigative narrative" means the written account of the investigation contained in the child protective services case record.

"Legitimate interest" means a lawful, demonstrated privilege to access the information.

"Local department" means the city or county local agency of social services or department of public welfare in the Commonwealth of Virginia responsible for conducting investigations of child abuse and/or neglect complaints or reports pursuant to § 63.1-248.6 of the Code of Virginia.

"Local department of jurisdiction" means the local department in the city or county in Virginia where the alleged victim child resides or in which the alleged abuse and/or neglect is believed to have occurred. If neither of these are known, then the local department of jurisdiction shall be the local department in the county or city where the abuse and/or neglect was discovered.

"Mandated reporters" means those persons who are required to report suspicions of child abuse and/or neglect pursuant to § 63.1-248.3 of the Code of Virginia.

"Monitoring" means contacts with the child, family and collaterals which provide information about the child's safety and the family's compliance with the service plan.

"Multidisciplinary teams" means any organized group of individuals representing, but not limited to, medical, mental health, social work, education, legal and law enforcement, which will assist local departments in the protection and prevention of child abuse and neglect pursuant to § 63.1-248.6

F of the Code of Virginia. Citizen representatives may also be included.

"Notification" means informing designated and appropriate individuals of the local department's actions and the individuals' rights.

"Preponderance of evidence" means the evidence as a whole shows that the facts are more probable and credible than not. It is evidence which is of greater weight or more convincing than the evidence offered in opposition.

"Purge" means to delete or destroy any reference data and materials specific to subject identification contained in records maintained by the department and the local department pursuant to §§ 63.1-248.5:1 and 63.1-248.5:1.01 of the Code of Virginia.

"Reasonable diligence" means the exercise of justifiable and appropriate persistent effort.

"Report" means an official document on which information is given concerning abuse and neglect and which is required to be made by persons designated herein and by local departments in those situations in which investigation of a complaint from the general public reveals suspected child abuse and/or neglect pursuant to § 63.1-248.2:5 of the Code of Virginia.

"Safety plan" means a proposed course of action designed to protect a child from abuse or neglect.

"Unfounded" means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect occurred.

22 VAC 40-705-20. General policy regarding complaints or reports of child abuse and neglect.

It is the policy of the Commonwealth of Virginia to require complaints and/or reports of child abuse and neglect for the following purposes:

1. Identifying abused and neglected children;
2. Assuring protective services to such identified children;
3. Preventing further abuse and neglect.

22 VAC 40-705-30. Types of abuse and neglect.

A. Physical abuse occurs when there is a physical injury, threat of injury or creation of a real and significant danger of substantial risk of death, disfigurement or impairment of bodily functions. Such injury or threat of injury, regardless of intent, is inflicted or allowed to be inflicted by nonaccidental means pursuant to § 63.1-248.2 of the Code of Virginia.

B. Physical neglect occurs when there is the failure to provide food, clothing, shelter, or supervision for a child to the extent that the child's health or safety is endangered. This also includes abandonment and situations where the parent's or caretaker's own incapacitating behavior or absence prevents or severely limits the performing of child caring tasks pursuant to § 63.1-248.2 of the Code of Virginia.

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1. Physical neglect may include multiple occurrences or a one-time critical or severe event that results in a threat to health or safety.

2. Physical neglect may include failure to thrive.

a. Failure to thrive occurs as a syndrome of infancy and early childhood which is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.

b. Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

C. Medical neglect occurs when there is the failure by the caretaker to obtain or follow through with a complete regimen of medical, mental or dental care for a condition which, if untreated, could result in illness or developmental delays pursuant to § 63.1-248.2 of the Code of Virginia.

1. Medical neglect does not apply to a child who, in good faith, is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination pursuant to § 63.1-248.2 of the Code of Virginia.

2. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), the term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:

a. The infant is chronically and irreversibly comatose;

b. The provision of such treatment would:

(1) Merely prolong dying;

(2) Not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(3) Otherwise be futile in terms of the survival of the infant; or

c. The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

D. Mental abuse or neglect occurs when there is a mental injury, threat of mental injury, or impairment of mental functions.

1. Such injury or threat of injury, regardless of intent, is inflicted or allowed to be inflicted by nonaccidental means pursuant to § 63.1-248.2 of the Code of Virginia.

2. Mental abuse or neglect may include failure to thrive.

a. Failure to thrive occurs as a syndrome of infancy and early childhood which is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.

b. Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

E. Sexual abuse occurs when there is any act of sexual exploitation or any sexual act upon a child in violation of the law which is committed or allowed to be committed by the child's parents or other persons responsible for the care of the child pursuant to § 63.1-248.2 of the Code of Virginia.

22 VAC 40-705-40. Complaints and reports of suspected child abuse and/or neglect.

A. Persons who are mandated to report are those individuals defined in § 63.1-248.3 of the Code of Virginia.

1. Mandated reporters shall report immediately any suspected abuse or neglect that they learn of in their professional capacity.

2. Mandated reporters shall disclose all information which is the basis for the suspicion of child abuse or neglect and shall make available, upon request, to the local department any records and reports which document the basis for the complaint and/or report.

3. A mandated reporter's failure to report within 72 hours of the first suspicion of child abuse or neglect may result in a fine.

B. Persons who may report child abuse and/or neglect include any individual who has reason to suspect that a child is being abused and/or neglected by the child's parent or other caretaker pursuant to § 63.1-248.4 of the Code of Virginia.

C. Complaints and reports of child abuse and/or neglect may be made anonymously.

D. Any person making a complaint and/or report of child abuse and/or neglect shall be immune from any civil or criminal liability in connection therewith, unless the court decides that such person acted in bad faith or with malicious intent pursuant to § 63.1-248.5 of the Code of Virginia.

E. When the identity of the reporter is known to the department or local department, these agencies shall make every effort to protect the reporter's identity.

F. If a person suspects that he is the subject of a report of child abuse and/or neglect made in bad faith or with malicious intent, that person may petition the court for access to the record including the identity of the reporter pursuant to § 63.1-248.5:1 of the Code of Virginia.

G. Any person age 14 years or older who makes or causes to be made a knowingly false complaint or report of child abuse and/or neglect, and is convicted, shall be guilty of a Class 4 misdemeanor for a first offense pursuant to § 63.1-248.5:1.01 of the Code of Virginia.

1. A subsequent conviction results in a Class 2 misdemeanor.

2. Upon receipt of notification of such conviction, the department will retain a list of convicted reporters.

3. The subject of the records may have the records purged upon presentation of proof of such conviction.

H. To make a complaint or report of child abuse and/or neglect, a person may telephone the department's toll-free child abuse and neglect hotline or contact a local department of jurisdiction pursuant to § 63.1-248.4 of the Code of Virginia.

1. The local department of jurisdiction that first receives a complaint or report of child abuse and/or neglect shall assume responsibility to ensure that the complaint or report is investigated.

2. A local department may ask another local department which is a local department of jurisdiction to assist in conducting the investigation. If assistance is requested, the local department shall comply.

3. A local department may ask another local department through a cooperative agreement to assist in conducting the investigation.

4. If a local department employee is suspected of abusing and/or neglecting a child, the complaint or report of child abuse and/or neglect shall be made to the juvenile and domestic relations district court of the county or city where the alleged abuse and/or neglect was discovered. The judge may assign the report for investigation to the court services unit or to a local department that is not the employer of the subject of the report.

22 VAC 40-705-50. Actions to be taken upon receipt of a complaint or report.

A. All complaints and reports of suspected child abuse and/or neglect shall be recorded in writing on the intake document. A record of all reports and complaints made to a local department or to the department, regardless of whether the report or complaint was found to be a valid complaint of abuse and/or neglect, shall be retained for one year from the date of the complaint.

B. All valid complaints or reports of child abuse and/or neglect shall be investigated. A valid complaint or report is one in which:

1. The alleged victim child or children are under the age of 18 at the time of the complaint and/or report;

2. The alleged abuser is the alleged victim child's parent or other caretaker;

3. The local department receiving the complaint or report is a local department of jurisdiction; and

4. The circumstances described allege suspected child abuse and/or neglect as defined by this chapter or defined by the policy manual of the Virginia Department of Social Services.

C. The local department shall not investigate complaints or reports of child abuse and/or neglect that fail to meet all of the above criteria.

D. The local department shall report certain cases of suspected child abuse or neglect to the local attorney for the Commonwealth and the local law-enforcement agency pursuant to § 63.1-248.6 E 5 of the Code of Virginia.

E. The local department shall report to the following when the death of a child is involved:

1. When abuse and/or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the regional medical examiner pursuant to § 63.1-248.6 E 5 of the Code of Virginia.

2. When abuse and/or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the attorney for the Commonwealth pursuant to § 63.1-248.6 E 5 of the Code of Virginia.

3. The local department shall contact the department immediately upon receiving a complaint involving the death of a child, and at the conclusion of the investigation.

F. Complaints or reports which meet the criteria for investigation shall be screened for high priority based on the following:

1. The immediate danger to the child;

2. The severity of the type of abuse or neglect alleged;

3. The age of the child;

4. The circumstances surrounding the alleged abuse or neglect;

5. The physical and mental condition of the child; and

6. Reports made by mandated reporters.

G. The local department shall initiate an immediate investigation.

1. The purpose of an investigation is to collect the information necessary to determine or assess the following:

a. Immediate safety needs of the child;

b. Whether or not abuse or neglect has occurred;

c. Who abused or neglected the child;

d. To what extent the child is at risk of future harm, either immediate or longer term;

e. What types of services can meet the needs of this child or family; and

f. If services are indicated and the family appears to be unable or unwilling to participate in services, what alternate plans will provide for the child's safety.

2. The local department shall use reasonable diligence to locate any child for whom a report or complaint of suspected child abuse and/or neglect has been received and is under investigation or persons who are the subject of a report that is under investigation if the

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whereabouts of such persons are unknown to the local department pursuant to § 63.1-248.6 E 12 of the Code of Virginia.

3. The local department shall document its attempts to locate the child and family.

4. In the event the alleged victim child or children cannot be found, the 45-60-day time frame to complete the investigation, pursuant to § 63.1-248.6 E 7 of the Code of Virginia, is stayed.

### 22 VAC 40-705-60. Authorities of local departments.

When conducting investigations local departments have the following authorities:

1. To talk to any child suspected of being abused and/or neglected, or child's siblings, without the consent of and outside the presence of the parent or other caretaker, as set forth by § 63.1-248.10 of the Code of Virginia.

2. To take or arrange for photographs and x-rays of a child, who is the subject of a complaint, without the consent of and outside the presence of the parent or other caretaker, as set forth by § 63.1-248.13 of the Code of Virginia.

3. To take a child into custody on an emergency removal for up to 72-96 hours under such circumstances as set forth by § 63.1-248.9 of the Code of Virginia.

a. A child protective services (CPS) worker planning to take a child into 72-96 hours emergency custody shall first consult with a supervisor. However, this requirement shall not delay action on the CPS worker's part if a supervisor cannot be contacted and the situation requires immediate action.

b. Any person who takes a child into custody pursuant to § 63.1-248.9 of the Code of Virginia shall be immune from any civil or criminal liability in connection therewith, unless it is proven that such person acted in bad faith or with malicious intent.

c. The local department shall have the authority to have a complete medical examination made of the child including a written medical report and, when appropriate, photographs and x-rays pursuant to § 63.1-248.13 of the Code of Virginia.

d. When a child in 72-96 hour custody is in need of immediate medical or surgical treatment, the local director of social services or his designee(s) may consent to such treatment when the parent does not provide consent and a court order is not immediately obtainable.

e. When a child is not in the local department's custody the local department cannot consent to medical or surgical treatment of the child.

### 22 VAC 40-705-70. Collection of evidence.

When conducting an investigation the local department shall seek first-source information about the allegation of child abuse/and or neglect. When applicable, the local department shall include in the case record: police reports;

depositions; photographs; physical, medical and psychological reports; and any tape recordings of interviews.

### 22 VAC 40-705-80. Investigation contacts.

A. During the course of the investigation, the child protective services (CPS) worker shall make and record in writing in the investigative narrative the following contacts and observations. When any of these contacts or observations is not made, the CPS worker shall record in writing in the investigative narrative why the specific contact or observation was not made.

B. The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child. All interviews with alleged victim children must be audio tape recorded.

C. The child protective services (CPS) worker shall conduct a face-to-face interview with the alleged abuser and/or neglector.

1. The CPS worker shall inform the alleged abuser and/or neglector of his right to tape record any communication pursuant to § 63.1-248.6:2 of the Code of Virginia.

2. The local department shall provide the necessary equipment in order to tape record the interview and retain a copy of the tape for the record.

D. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians.

E. The child protective services worker shall observe the environment where the alleged victim child lives.

F. The child protective services worker shall observe the site where the alleged incident took place.

G. The child protective services worker shall conduct interviews with collaterals who have pertinent information relevant to the investigation and the safety of the child.

### 22 VAC 40-705-90. Investigative protocol.

A. The child protective services (CPS) worker may enter the home if permitted to enter by a person who resides in the home. When it is believed the life or health of the child would be seriously endangered within the time it would take to obtain a court order or the assistance of a law-enforcement officer, a CPS worker may enter the home without permission.

B. The child protective services worker may transport a child with parental consent, or when the local department has assumed custody of that child by virtue of 72-96-hour removal authority pursuant to § 63.1-248.9 of the Code of Virginia, or by an emergency removal court order pursuant to § 16.1-251 of the Code of Virginia.

C. When a child protective services worker has reason to believe that the alleged abuser and/or neglector is abusing substances, and such behavior may be related to the matter being investigated, the worker may request that person to consent to substance abuse screening, or may petition the court to order such screening.

1. Local departments must develop guidelines for such screening.

2. Guidelines may include child protective services worker administration of urine screening.

## 22 VAC 40-705-100. Judicial proceedings.

A. A child protective services worker may petition for removal pursuant to §§ 16.1-251 and 16.1-252 of the Code of Virginia.

B. A child protective services worker may petition for a preliminary protective order pursuant to § 16.1-253 of the Code of Virginia.

C. A child protective services worker shall petition the court for parental child support pursuant to § 63.1-204.2 of the Code of Virginia.

D. Any person who participates in a judicial proceeding resulting from making a child protective services report or complaint, or from taking a child into custody pursuant to §§ 63.1-248.3, 63.1-248.4, and 63.1-248.9 of the Code of Virginia, shall be immune from any civil or criminal liability in connection therewith unless it is proven that such person acted in bad faith or with malicious intent pursuant to § 63.1-248.5 of the Code of Virginia.

## 22 VAC 40-705-110. Assessment.

A. The child protective services worker shall conduct an initial assessment of the child's circumstances and threat of danger or harm, and shall make a safety plan to provide for the protection of the child.

B. The child protective services worker shall make a dispositional assessment after collecting and synthesizing information about the alleged abuse or neglect.

C. The child protective services worker shall make a risk assessment to determine whether or not the child is in jeopardy of future abuse and/or neglect, and whether or not intervention is necessary to protect the child.

## 22 VAC 40-705-120. Complete the investigation.

A. The local department shall promptly notify the alleged abuser and/or neglector and the alleged victim's parents or guardians of any extension of the deadline for the completion of the investigation pursuant to § 63.1-248.6 E 7 of the Code of Virginia. The child protective services worker shall document the notifications and the reason for the need for additional time in the case record.

B. Prior to rendering a founded disposition concerning a complaint of child abuse and/or neglect, the local department shall provide the alleged abuser and/or neglector with written notice of the options available to him pursuant to subdivisions C 1 and C 2 of this section. Whenever a criminal charge is also filed against the alleged abuser for the same conduct involving the same victim child as investigated by the local department, a predispositional conference is not an option.

C. Otherwise, an alleged abuser and/or neglector may elect to proceed under either subdivision 1 or 2 of this subsection. If the alleged abuser and/or neglector does not advise the local department of his decision within 10 days of

receipt of the written notice, he will be deemed to have elected to proceed under subdivision 2 of this subsection.

1. Predispositional consultation. The purpose of the predispositional consultation shall be to allow a person suspected of committing child abuse and/or neglect the opportunity to meet with the local department conducting the investigation and discuss the local department's investigation findings prior to the disposition.

a. In order to participate in a predispositional consultation, the alleged abuser and/or neglector must agree to waive the 45-60-day time frame to conduct the investigation, not to exceed an additional 30 working days. Further, the alleged abuser and/or neglector must agree to waive his right to a local conference pursuant to § 63.1-248.6:1 of the Code of Virginia.

b. The alleged abuser and/or neglector shall be afforded the opportunity to informally present testimony, witnesses or documentation to representatives of the local department.

c. The local department shall consider any evidence presented by the alleged abuser and/or neglector prior to rendering a disposition.

d. Should the local department render a founded disposition following a predispositional consultation, the local department shall notify the abuser and/or neglector, in writing, of that person's right to appeal the local department's finding to the Commissioner of the Virginia Department of Social Services pursuant to 22 VAC 40-705-140 and § 63.1-248.6:1 A of the Code of Virginia.

## 2. Local conference.

a. If the alleged abuser and/or neglector elects not to participate in a predispositional consultation, or does not advise the local department of his decision within 10 days of receiving written notification of the local department's findings pursuant to subsection B of this section, he will be deemed to have elected to proceed under this subdivision 2. If the alleged abuser and/or neglector is found to have committed abuse or neglect, that alleged abuser and/or neglector may, within 30 days of being notified of that determination, submit a written request for an amendment of the determination and the local department's related records pursuant to § 63.1-248.6:1 A of the Code of Virginia. The local department shall conduct an informal conference in an effort to examine the local department's disposition and reasons for it, and consider additional information about the investigation and disposition presented by the alleged abuser and/or neglector.

b. The local conference shall be conducted in accordance with 22 VAC 40-705-190.

## 22 VAC 40-705-130. Report findings.

A. Pursuant to § 63.1-248.5:1 of the Code of Virginia, the local department shall report all unfounded case dispositions

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to the Child Abuse and Neglect Information System (CANIS) when disposition is made.

1. The department shall retain unfounded complaints and/or reports in CANIS to provide local departments with information regarding prior investigations.
2. This record shall be kept separate from the Central Registry and accessible only to the department and to local departments.
3. The record of the unfounded case shall be purged one year after the date of the complaint or report if there are no subsequent founded or unfounded complaints and/or reports regarding the individual against whom allegations of abuse and/or neglect were made or regarding the same child in that one year.
4. If the individual against whom allegations of abuse and/or neglect were made or if the same child is involved in subsequent complaints and/or reports, the information from all complaints and/or reports shall be maintained until the last purge date has been reached.
5. The individual against whom allegations of abuse and/or neglect were made may request in writing that the local department retain the record for an additional period of up to two years.
6. The individual against whom allegations of abuse and/or neglect were made may request in writing that both the local department and the department shall immediately purge the record after a court rules that the report was made in bad faith or with malicious intent pursuant to § 63.1-248.5:1 of the Code of Virginia.

B. The local department shall report all founded case dispositions to the Child Abuse/Neglect Information System for inclusion in the Central Registry pursuant to § 63.1-248.5:1 of the Code of Virginia and 22 VAC 40-700-20. Identifying information about the abuser and/or neglector and the victim child or children reported include demographic information, type of abuse or neglect, and date of the complaint. The identifying information shall be retained based on the determined level of severity of the abuse or neglect, pursuant to the regulation dealing with retention in the Central Registry, 22 VAC 40-700-30.

22 VAC 40-705-140. Notification of findings.

A. Upon completion of the investigation the local child protective services worker shall make notifications as provided in this section.

B. Individual against whom allegations of abuse and/or neglect were made.

1. When the disposition is unfounded, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made of this finding. This notification shall be in writing with a copy to be maintained in the case record. The individual against whom allegations of abuse and/or neglect were made shall be informed that he may have access to the case record, and that the case record shall be retained by the local department for one year unless requested in writing by such individual that the local

department retain the record for up to an additional two years.

- a. If the individual against whom allegations of abuse and/or neglect were made or the subject child is involved in subsequent complaints, the information from all complaints shall be retained until the last purge date has been reached.
  - b. The local worker shall notify the individual against whom allegations of abuse and/or neglect were made of the procedures set forth in § 63.1-248.5:1 of the Code of Virginia.
  - c. When an unfounded investigation involves a child death, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made that the case record will be retained for the longer of 12 months or until the State Child Fatality Review Team has completed its review of the case pursuant to § 32.1-283.1 D of the Code of Virginia.
2. Pursuant to 22 VAC 40-705-120 and 22 VAC 40-705-190, when a predispositional consultation results with the local department rendering a founded disposition of abuse and/or neglect, the child protective services worker shall notify the abuser and/or neglector by letter, with a copy included in the case record. The letter shall include:
- a. A clear statement that they are the abuser and/or neglector;
  - b. The type of abuse and/or neglect;
  - c. The disposition, level and retention time.
  - d. The name of the victim child or children; and
  - e. A statement informing the abuser of the right to appeal to the commissioner of the department and to have access to the case record.

3. Pursuant to 22 VAC 40-705-120 and 22 VAC 40-705-190, if a predispositional consultation did not occur and the local department renders a founded disposition of abuse and/or neglect, the child protective services worker shall notify the abuser and/or neglector by letter, with a copy included in the case record. The letter shall include:

- a. A clear statement that they are the abuser and/or neglector;
- b. The type of abuse and/or neglect;
- c. The disposition, level and retention time;
- d. The name of the victim child or children; and
- e. A statement informing the abuser and/or neglector of his right to request the local department for a local conference and to have access to the case record.

4. When the abuser and/or neglector in a founded complaint is a foster parent of the victim child, the local department shall place a copy of this notification letter in

the child's foster care record and in the foster home provider record.

C. Subject child's parents or guardian.

1. When the disposition is unfounded, the child protective services worker shall inform the parents or guardian of the subject child in writing, when they are not the individuals against whom allegations of child abuse and/or neglect were made, that the complaint involving their child was determined to be unfounded, and the length of time the child's name and information about the case will be maintained. The child protective services worker shall file a copy in the case record.

2. When the disposition is founded, the child protective services worker shall inform the parents or guardian of the child in writing, when they are not the abuser and/or neglecter, that the complaint involving their child was determined to be founded, and the length of time the child's name and information about the case will be retained in the Central Registry. The child protective services worker shall file a copy in the case record.

D. Complainant.

1. When an unfounded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and determined to be unfounded. The worker shall file a copy in the case record.

2. When a founded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and necessary action was taken. The local worker shall file a copy in the case record.

E. Family Advocacy Program. When a founded disposition is made, the child protective services worker shall notify the Family Advocacy Program representative in writing as set forth in 22 VAC 40-720-20.

22 VAC 40-705-150. Services.

A. When abuse or neglect is found, the local department shall arrange for necessary protective and rehabilitative services to be provided to the child and his family pursuant to § 63.1-248.6 E 3 of the Code of Virginia.

B. Protective services also includes preventive services to children about whom no formal complaint of abuse or neglect has been made, but for whom potential harm or threat of harm exists, to be consistent with §§ 16.1-251, 16.1-252, 16.1-279, 63.1-248.6 F, and 63.1-248.7 of the Code of Virginia.

C. Local departments shall support the establishment and functioning of multidisciplinary teams pursuant to § 63.1-248.6 F of the Code of Virginia.

D. Pursuant to § 63.1-248.6 of the Code of Virginia, local departments shall not purchase from private or other public nonsocial services departments the following:

1. Investigation of complaints;

2. Monitoring safety of the child and monitoring service provision to the child and family.

Local departments may contract with one another to provide these services.

E. The local department must use reasonable diligence to locate any child for whom a founded disposition of abuse or neglect has been made and a child protective services case has been opened pursuant to § 63.1-248.6 E 10 of the Code of Virginia. The local department shall document its attempts to locate the child and family.

F. When an abused or neglected child and persons who are the subject of an open child abuse services case have relocated out of the jurisdiction of the local department, the local department shall notify the child protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth of Virginia, and forward to such agency relevant portions of the case records pursuant to § 63.1-248.6 E 11 of the Code of Virginia.

G. The receiving local department shall arrange necessary protective and rehabilitative services pursuant to § 63.1-248.6 of the Code of Virginia.

22 VAC 40-705-160. Releasing information.

A. In the following instances of mandatory disclosure the local department shall release child protective services information. The local department may do so without any written release.

1. Report to attorney for the Commonwealth and law enforcement pursuant to § 63.1-248.6 E 5 of the Code of Virginia.

2. Report to the medical examiner's office pursuant to §§ 32.1-283.1 C and 63.1-248.6 E 9 of the Code of Virginia.

3. If a court mandates disclosure of information from a child abuse and neglect case record, the local department must comply with the request. The local department may challenge a court action for the disclosure of the case record or any contents thereof. Upon exhausting legal recourse, the local department shall comply with the court order.

4. When a disposition is made, the child protective services worker shall notify the complainant that either a complaint is unfounded or that necessary action is being taken.

5. Any individual, including an individual against whom allegations of child abuse and/or neglect were made, may exercise his Privacy Protection Act (§ 2.1-377 et seq. of the Code of Virginia) rights to access personal information related to himself which is contained in the case record including, with the individual's notarized consent, a search of the Central Registry pursuant to § 2.1-342 of the Code of Virginia.

6. When the material requested includes personal information about other individuals, the local department may delay in providing the information until it can be given in a form which deletes those parts of the record



## Proposed Regulations

relating to other individuals pursuant to § 2.1-342.4 of the Code of Virginia.

7. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), and federal regulations (45 CFR Part 1340), the local department shall provide case-specific information about child abuse and neglect reports and investigations to citizen review panels when requested.

8. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), the department shall develop guidelines to allow for public disclosure in instances of child fatality or near fatality.

9. An individual's right to access information under the Privacy Protection Act is stayed during criminal prosecution pursuant to § 2.1-384.7 of the Code of Virginia.

10. The local department shall disclose and release to the United States Armed Forces Family Advocacy Program child protective services information as required pursuant to 22 VAC 40-720-20.

11. Child protective services shall, on request by the Division of Child Support Enforcement, supply information pursuant to § 63.1-274.6 of the Code of Virginia.

12. The local department shall release child protective services information to a court appointed special advocate pursuant to § 9-173.12 of the Code of Virginia.

B. The local department may use discretion in disclosing or releasing child protective services case record information, investigative and on-going services to parties having a legitimate interest when the local department deems disclosure to be in the best interest of the child. The local department may disclose such information without a court order and without a written release pursuant to § 63.1-209 A of the Code of Virginia.

C. The local department shall not release the identity of persons reporting incidents of child abuse or neglect, unless court ordered, in accordance with § 63.1-248.6:1 of the Code of Virginia, 42 USC § 5101 et seq., and federal regulations (45 CFR Part 1340).

D. Prior to disclosing information to any individuals or organizations, and to be consistent with § 63.1-209 of the Code of Virginia, pursuant to § 63.1-248 of the Code of Virginia, the local department must be satisfied that:

1. The information will be used only for the purpose for which it is made available;
2. Such purpose shall be related to the goal of child protective or rehabilitative services; and
3. The confidential character of the information will be preserved to the greatest extent possible.

22 VAC 40-705-170. Access to Central Registry.

A. The department will only complete a search of the Central Registry for purposes other than a request by a local department upon receipt of a notarized signature of the

individual whose name is being searched authorizing release of such information or a court order specifying a search of the Central Registry.

B. When the name being searched is found in the Central Registry, the department shall contact the local department responsible for the investigation to verify the information.

22 VAC 40-705-180. Training.

A. The department shall implement a uniform training plan for child protective services workers. The plan shall establish minimum standards for all child protective services workers in the Commonwealth of Virginia.

B. Workers shall complete skills and policy training specific to child abuse and neglect investigations within the first year of their employment.

22 VAC 40-705-190. Appeals

A. Appeal is the process by which the abuser and/or neglector may request amendment of the record when the investigation into the complaint has resulted in a founded disposition of child abuse and/or neglect.

B. If the alleged abuser and/or neglector elects not to participate in a predispositional consultation, or does not advise the local department of his decision within 10 days of receiving written notification of the local department's findings pursuant to 22 VAC 40-705-120 B, he will be deemed to have elected to proceed under 22 VAC 40-705-120 C 2.

If the alleged abuser and/or neglector is found to have committed abuse or neglect, that alleged abuser and/or neglector may, within 30 days of being notified of that determination, submit a written request for an amendment of the determination and the local department's related records, pursuant to § 63.1-248.6:1 A of the Code of Virginia. The local department shall conduct an informal conference in an effort to examine the local department's disposition and reasons for it, and consider additional information about the investigation and disposition presented by the alleged abuser and/or neglector. The local department shall notify the Child Abuse and Neglect Information System (CANIS) that an appeal is pending.

C. Whenever an appeal is requested and a criminal charge is also filed against the appellant for the same conduct involving the same victim child as investigated by the local department, the appeal process shall be stayed until the criminal prosecution in circuit court is completed pursuant to § 63.1-248.6:1 C of the Code of Virginia. During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in circuit court has been completed, the local department shall advise the appellant in writing of his right to resume his appeal within the time frames provided by law and regulation pursuant to § 63.1-248.6:1 C of the Code of Virginia.

D. The local department shall conduct an informal, local conference and render a decision on the appellant's request to amend the record within 45 days of receiving the request. If the local department either refuses the appellant's request for amendment of the record as a result of the local

conference, or if the local department fails to act within 45 days of receiving such request, the appellant may, within 30 days thereafter and in writing, request the commissioner for an administrative hearing pursuant to § 63.1-248.6:1 A of the Code of Virginia.

E. The appellant may request, in writing, an extension of the 45-day requirement for a specified period of time, not to exceed an additional 60 days. When there is an extension period, the 30-day time frame to request an administrative hearing from the Commissioner of the Department of Social Services shall begin on the termination of the extension period pursuant to § 63.1-248.6:1 A of the Code of Virginia.

F. Upon written request, the local department shall provide the appellant all information used in making its determination. Disclosure of the reporter's name or information which may endanger the well-being of a child shall not be released. The identity of collateral witnesses or any other person shall not be released if disclosure may endanger their life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released. In case of any information withheld, the appellant shall be advised of the general nature of the information and the reasons, of privacy or otherwise, that it is being withheld, pursuant to § 63.1-248.6:1 A of the Code of Virginia.

G. The director of the local department, or a designee of the director, shall preside over the local conference. With the exception of the director of the local department, no person whose regular duties include substantial involvement with child abuse and neglect cases shall preside over the local conference pursuant to § 63.1-248.6:1 A of the Code of Virginia.

1. The appellant may be represented by counsel pursuant to § 63.1-248.6:1 A of the Code of Virginia.

2. The appellant shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof pursuant to § 63.1-248.6:1 A of the Code of Virginia.

3. The director of the local department, or a designee of the director, shall notify the appellant, in writing, of the results of the local conference within 45 days of receipt of the written request from the appellant unless the time frame has been extended as described above. The director of the local department, or the designee of the director, shall have the authority to sustain, amend, or reverse the local department's findings. Notification of the results of the local conference shall be mailed, certified with return receipt, to the appellant. The local department shall notify the Child Abuse and Neglect Information System (CANIS) of the results of the local conference pursuant to § 63.1-248.6:1 A of the Code of Virginia.

H. If the appellant is unsatisfied with the results of the local conference, the appellant may, within 30 days of receiving notice of the results of the local conference, submit a written request to the commissioner for an administrative hearing pursuant to § 63.1-248.6:1 B of the Code of Virginia.

1. The commissioner shall designate a member of his staff to conduct the proceeding pursuant to § 63.1-248.6:1 B of the Code of Virginia.

2. A hearing officer shall schedule a hearing date within 45 days of the receipt of the appeal request unless there are delays due to subpoena requests, depositions or scheduling problems.

3. After a party's written motion and showing good cause, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing. The victim child and that child's siblings shall not be subpoenaed, deposed or required to testify, pursuant to § 63.1-248.6:1 B of the Code of Virginia.

4. Upon petition, the juvenile and domestic relations district court shall have the power to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision that is subject to judicial review pursuant to § 63.1-248.6:1 B of the Code of Virginia.

5. Upon providing reasonable notice to the other party and the hearing officer, a party may, at his own expense, depose a nonparty and submit that deposition at, or prior to, the hearing. The victim child and the child's siblings shall not be deposed. The hearing officer is authorized to determine the number of depositions that will be allowed pursuant to § 63.1-248.6:1 B of the Code of Virginia.

6. The local department shall provide the hearing officer a copy of the investigation record prior to the administrative hearing. By making a written request to the local department, the appellant may obtain a copy of the investigation record. The appellant shall be informed of the procedure by which information will be made available or withheld from him.

In any case of information withheld, the appellant shall be advised of the general nature of the information and the reasons that it is being withheld pursuant to § 63.1-248.6:1 B of the Code of Virginia.

7. The appellant and the local department may be represented by counsel at the administrative hearing.

8. The hearing officer shall administer an oath or affirmation to all parties and witnesses planning to testify at the hearing pursuant to § 63.1-248.6:1 B of the Code of Virginia.

9. The local department shall have the burden to show that the preponderance of the evidence supports the founded disposition. The local department shall be entitled to present the testimony of witnesses, documents, factual data or other submissions of proof.

10. The appellant shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof.

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## Proposed Regulations

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11. The hearing officer may allow either party to submit new or additional evidence at the administrative hearing if it is relevant to the matter being appealed.

12. The hearing officer shall not be bound by the strict rules of evidence. However, the hearing officer shall only consider that evidence, presented by either party, which is substantially credible or reliable.

13. The hearing officer may allow the record to remain open for a specified period of time, not to exceed 14 days, to allow either party to submit additional evidence unavailable for the administrative hearing.

14. In the event that new or additional evidence is presented at the administrative hearing, the hearing officer may remand the case to the local department for reconsideration of the findings. If the local department fails to act within 14 days or fails to amend the findings to the satisfaction of the appellant, then the hearing officer shall render a decision, pursuant to § 63.1-248.6:1 B of the Code of Virginia.

I. Within 60 days of the close of receiving evidence, the hearing officer shall render a written decision. The hearing officer shall have the authority to sustain, amend, or reverse the local department's findings. The written decision of the hearing officer shall state the findings of fact, conclusions based on regulation and policy, and the final disposition. The decision will be sent to the appellant by certified mail, return receipt requested. Copies of the decision shall be mailed to the appellant's counsel, the agency and the agency's counsel. The hearing officer shall notify the Child Abuse and Neglect Information System (CANIS) of the hearing decision. The local department shall notify all other prior recipients of the record or the findings of the hearing officer's decision.

J. The hearing officer shall notify the appellant of the appellant's further right of review in circuit court in the event that the appellant is not satisfied with the written decision of the hearing officer. Appeals are governed by Part 2A of the Rules of the Supreme Court of Virginia. The local department shall have no further right of review pursuant to § 63.1-248.6:1 B of the Code of Virginia.

K. In the event that the hearing officer's decision is appealed to circuit court, the department shall prepare a transcript for that proceeding. That transcript or narrative of the evidence shall be provided to the circuit court along with the complete hearing record. If a court reporter was hired by the appellant, the court reporter shall prepare the transcript and provide the court with a transcript.

VA.R. Doc. No. R97-426; Filed April 23, 1997, 9:12 a.m.

## STATE WATER CONTROL BOARD

Title of Regulation: 9 VAC 25-196-10 et seq. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Cooling Water Discharges.

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

Public Hearing Date:

June 16, 1997 - 11 a.m. (Woodbridge)

June 18, 1997 - 11 a.m. (Glen Allen)

June 27, 1997 - 11 a.m. (Virginia Beach)

Public comments may be submitted until July 15, 1997.

(See Calendar of Events section for additional information)

Basis: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the State Water Control Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters. Section 62.1-44.15(7) authorizes the board to adopt rules governing the procedures of the board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the board to adopt such regulations as it deems necessary to enforce the general water quality management program; § 62.1-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes; § 62.1-44.20 provides that agents of the board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations; and § 62.1-44.21 authorizes the board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC § 1251 et seq.) authorizes states to administer the National Pollutant Discharge Elimination System (NPDES) permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. Environmental Protection Agency (EPA) to administer a Virginia Pollutant Discharge Elimination System (VPDES) permit program. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a VPDES General Permit Program.

Purpose: The purpose of this proposed regulatory action is to adopt a General Virginia Pollutant Discharge Elimination System (VPDES) permit for cooling water discharges. This proposed regulatory action will set forth guidelines for the permitting of discharges of cooling water and cooling equipments blowdown to surface waters. Discharge to surface waters may be through a municipal separate storm sewer system. Section 402 (p)(3)(B) of the Clean Water Act requires that permits for discharges from municipal separate storm sewer systems "effectively prohibit" nonstorm water discharges into the municipal separate storm sewer system. The state VPDES Permit Regulation governing storm water discharges requires the permit for a municipal separate storm sewer system to contain a program to detect and remove nonstorm water discharges into the municipal separate storm sewer system or requires the discharger to the municipal separate storm sewer system to obtain a separate VPDES

permit for the nonstorm water discharge. The regulation also requires that the owner of the municipal separate storm sewer system have the legal authority to "prohibit through ordinance, order or similar means, nonstorm water discharges to the municipal separate storm sewer." A nonstorm water discharge is defined as "any discharge to a municipal separate storm sewer system that is not composed entirely of storm water except discharges pursuant to a VPDES permit." Discharges from cooling equipments to the municipal separate storm sewer system fall under this definition of nonstorm water discharge. The proposed action is necessary to provide for a more efficient and economical permitting process for both the regulated community and the board. It will provide for the protection of the health, safety and welfare of the citizens of the Commonwealth by allowing the Department of Environmental Quality (department) to devote more resources to the permitting of facilities with discharges of greater potential for adverse water quality impacts.

**Substance:** This proposed regulatory action will set forth guidelines for the permitting of discharges of cooling water and cooling equipments blowdown.

**Permit Number:** VAG25 **Name of Permittee:** Any owner of a cooling equipment in the Commonwealth of Virginia agreeing to be regulated under the terms of this general permit. **Facility Location:** Commonwealth of Virginia. **Receiving Waters:** Surface waters within the boundaries of the Commonwealth of Virginia, except Class V put and take trout waters, Class VI natural trout waters, and those specifically named in board regulations or policies which prohibit such discharges. Discharge to surface waters may be through a municipal separate storm sewer system.

On the basis of preliminary review and application of lawful standards and regulations, the State Water Control Board proposes to issue the general permit subject to certain conditions and has prepared a draft permit. The proposed general permit consists of limitations and monitoring requirements on discharges of cooling water to surface waters for the following parameters: flow, 0.05 MGD max; pH, 6.0 min, 9.0 max; total residual chlorine, nondetectable max; and temperature, max (based on Water Quality Standards). Monitoring requirements include the following parameters: chemical oxygen demand, hardness, total dissolved copper, and total dissolved zinc. In addition, depending upon the types of chemical used in the cooling equipment, the following monitoring parameters may be required: total dissolved chromium, hexavalent chromium, total dissolved silver, and total phosphorus. The regulation also sets forth the minimum information requirements for all requests for coverage under the general permit.

**Issues:** Public comments received following the publication of the Notice of Intended Regulatory Action include expansion of the coverage of the discharges to "surface waters" instead of "municipal separate storm sewer systems" only. Adoption of this general permit will address this concern. An advantage of a general VPDES permit is that it reduces the application costs and paperwork burden for the dischargers. It also reduces the administrative time and burden for the department in processing individual permits. Thus, it improves the administrative efficiency of the

department's permitting program and allows staff resources to be concentrated on individual VPDES permits which have more potential for impacting water quality.

The department does not believe any disadvantages to the public or the Commonwealth will result from the adoption of this proposed regulation.

**Affected Locality:** The regulation will be applicable statewide and will not affect any one locality disproportionately.

**Applicable federal requirements:** Section 402 of the Clean Water Act (33 USC § 1251 et seq.) authorizes states to administer the National Pollutant Discharge Elimination System permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA.

**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 § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 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. Under § 402 of the federal Clean Water Act and § 62.1-44.2 et seq. of the Code of Virginia, Virginia is authorized to administer the National Pollutant Discharge Elimination System (NPDES) permit program for discharges into or adjacent to state waters. The Virginia Pollutant Discharge Elimination System (VPDES) permit program is administered under a memorandum of understanding with the U.S. Environmental Protection Agency (EPA).

In many circumstances, federal and state law require the issuance of an individual VPDES permit to each establishment discharging wastes into state waters. However, the memorandum of understanding with EPA allows for the issuance, under certain conditions, of a generic VPDES permit to cover a category of discharger. Once the generic permit is issued, then qualifying facilities do not need to apply for a separate VPDES permit. Rather, they only need to certify that they meet the conditions set out in the general permit. The specific and general permits are the only alternatives available under the federal Clean Water Act.

It is the purpose of these regulations to replace the current, establishment-specific permit system for cooling water discharges with a general permit system. The Department of Environmental Quality (DEQ) suggests that the change will result in lower administrative and compliance costs without causing any material changes in water quality.

Estimated economic impact. This proposal will greatly reduce the firms' costs of obtaining a VPDES permit and

# Proposed Regulations

DEQ's costs of granting the permits. DEQ estimates that about 100 sources currently have permits for cooling water discharges. In addition, there are from 1,000 to 3,000 firms qualifying for VPDES permits in this industry. These firms would be required to obtain a VPDES permit in the next few years. Sources pay a \$2,200 permit fee every five years. At the current rates, the fees may cover as little as 10% of DEQ's cost of processing the permit.<sup>1</sup> The taxpayers must pay for the remainder. Given the five year life of the permits, the individual permits would cost this industry a total of \$1,515,000 per year on average and taxpayers would cover in excess of \$15,000,000. Under the general permit, fees would only add up to \$120,000 or less per year for the industry, and DEQ indicates that this is a reasonable estimate of the costs of processing applications for coverage under general permits. Permitting costs paid by taxpayers would be insignificant.

Firms will also save some money on the costs of developing the information necessary for the permit application. While reliable estimates of application costs were not available, DEQ indicates that firms will realize some savings.

At the same time, this regulation is not expected to have any significant impact on water quality. The idea behind general permits is that a group of firms are all subject to the same standards and conditions under individual permits and, hence, there is no loss to water quality in establishing the permit standards one time and then automatically applying them to all firms that meet the requirements for the standard set of permit conditions. Such is the case for the 1,000 to 3,000 sources that might be covered under this general permit. Thus, we would expect no change in water quality resulting from the shift towards a general permit for the cooling water discharges.

We conclude, then, that this regulation is likely to save the dischargers some \$1,400,000 per year. Taxpayers could save in excess of \$15,000,000 per year. Since there is not expected to be any impact on water quality, this annual savings is a net gain to Virginia's economy.

Businesses and entities affected. The businesses affected are the 1,000 to 3,000 sources that will be covered by the general permit.

Localities particularly affected. No localities will be particularly affected by this regulation.

Projected impact on employment. There will be no measurable change in employment due to this regulation. There is no reason to believe that the resources freed up by this proposal will result in any net change in the level of employment.

Effects on the use and value of private property. Any possible increase in the value of affected firms due to these cost savings would be too small to measure.

<sup>1</sup> Personal conversation with Richard Ayers, DEQ.

## Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:

### DEPARTMENT OF ENVIRONMENTAL QUALITY WATER DIVISION OFFICE OF WATER PERMIT SUPPORT MEMORANDUM

P. O. Box 10009 Richmond, VA 23240-0009

SUBJECT: 9 VAC 25-196-10 et seq. - General VPDES Permit for Cooling Water Discharges

TO: File

FROM: Lily Choi

DATE: April 23, 1997

On April 22, 1997, I received the attached Economic Impact Analysis prepared by the Department of Planning and Budget (DPB) for the subject proposed general permit regulation.

After reviewing this document, although I do not disagree with DPB's overall cost saving analysis, I believe that the numbers of facilities that would be permitted under this general permit could be overestimated, since the estimated 3,000 cooling equipment units do not necessarily equate to the numbers of facilities to be permitted.

#### Summary:

*The proposed regulation sets forth guidelines and requirements for the permitting of discharges of cooling water and cooling equipments blowdown. The proposed general permit contains limitations and monitoring requirements on discharges of cooling water to surface waters including those for the following parameters: flow, 0.05 MGD max; pH, 6.0 min, 9.0 max; total residual chlorine, nondetectable max; and temperature, max (based on Water Quality Standards). Monitoring requirements include the following parameters: chemical oxygen demand, hardness, total dissolved copper, and total dissolved zinc. In addition, depending upon the types of chemical used in the cooling equipment, the following monitoring parameters may be required: total dissolved chromium, hexavalent chromium, total dissolved silver, and total phosphorus. The regulation also sets forth the minimum information requirements for all requests for coverage under the general permit.*

#### CHAPTER 196. GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT FOR COOLING WATER DISCHARGES.

#### 9 VAC 25-196-10. Definitions.

*The words and terms used in this chapter shall have the meanings defined in § 62.1-44.2 et seq. of the Code of Virginia (State Water Control Law), and 9 VAC 25-31-10 et seq. (VPDES Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this chapter:*

*"Blowdown" means a discharge of recirculating water from any cooling equipment or cooling process in order to maintain*

# Proposed Regulations

a desired quality of the recirculating water. Boiler blowdown is excluded from this definition.

"Cooling water" means water used for cooling which does not come into direct contact with any raw product, intermediate product (other than heat) or finished product. For the purposes of this general permit, cooling water can be generated from any cooling equipment blowdown or produced as a result of any noncontact cooling process through either a single pass (once through) or recirculating system.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality, or an authorized representative.

"Municipal separate storm sewer" means a conveyance or system of conveyances that discharges to surface waters (including roads with drainage systems, municipal streets, catch basin, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, county, district, association or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the Clean Water Act; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW).

9 VAC 25-196-20. Purpose.

This general permit regulation governs the point source discharge of cooling water to surface waters.

9 VAC 25-196-30. Delegation of authority.

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

9 VAC 25-196-40. Effective date of the permit.

This general permit will become effective on . This general permit will expire five years from the effective date. This general permit is effective as to any covered owner upon compliance with all the provisions of 9 VAC 25-196-50 and the receipt of this general permit.

9 VAC 25-196-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner files and receives acceptance by the board of the registration statement of 9 VAC 25-196-60, files the required permit fee, complies with the effluent limitations and other requirements of 9 VAC 25-196-70, and provided that:

1. The owner shall not have been required to obtain an individual permit as may be required in the VPDES Permit Regulation.

2. The owner shall not discharge to Class V put and take trout waters, Class VI natural trout waters, or any state waters specifically named in other board regulations or policies which prohibit such discharges.

3. The owner shall not use tributyltin or any chemical additives containing tributyltin in the cooling water systems.

4. The owner shall not use groundwater remediation wells as the source of cooling water.

B. Receipt of this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

9 VAC 25-196-60. Registration statement.

The owner shall file a complete general VPDES permit registration statement for cooling water discharges. Any owner proposing a new discharge shall file a complete registration statement at least 30 days prior to the date planned for commencing construction or operation of the new discharge. Any owner of an existing discharge covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing discharge not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file a complete registration statement. The required registration statement shall contain the following information:

## VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT REGISTRATION STATEMENT FOR COOLING WATER DISCHARGES

### 1. APPLICANT INFORMATION

A. Name of Facility: \_\_\_\_\_

B. Facility Owner: \_\_\_\_\_

C. Owner's Mailing Address

a. Street or P.O. Box \_\_\_\_\_

b. City or Town \_\_\_\_\_ c. State \_\_\_ d. Zip Code \_\_\_\_\_

e. Phone Number \_\_\_\_\_

D. Facility Location: \_\_\_\_\_  
Street No., Route No., or Other Identifier

\_\_\_\_\_ County

E. Is the operator of the facility also the owner?  
\_\_\_ Yes \_\_\_ No

If No, complete F. & G.

F. Name of Operator: \_\_\_\_\_

G. Operator's Mailing Address

a. Street or P.O. Box \_\_\_\_\_

b. City or Town \_\_\_\_\_ c. State \_\_\_ d. Zip Code \_\_\_\_\_

e. Phone Number \_\_\_\_\_

# Proposed Regulations

## 2. FACILITY INFORMATION

A. Does this facility currently have a VPDES permit?  
Yes \_\_\_ No \_\_\_ If yes, give permit number. \_\_\_\_\_

B. List any point source discharges that are not composed entirely of cooling water \_\_\_\_\_

C. List type and size (tons) of cooling equipment or noncontact cooling water process:  
\_\_\_\_\_

D. Complete the following if any chemical and/or nonchemical treatment is employed in the cooling water system:

a. Describe the chemical and/or nonchemical treatment to be employed and its purpose;  
\_\_\_\_\_

If chemical additives other than chlorine are used, complete b, c, d and e below.

b. Provide name and manufacturer of each additive used;  
\_\_\_\_\_

c. Provide list of active ingredients and percent composition;  
\_\_\_\_\_

d. Give the proposed schedule and quantity of chemical usage, and estimate the concentration in the discharge; and  
\_\_\_\_\_

e. Attach available aquatic toxicity information for each additive proposed for use.  
\_\_\_\_\_

E. Describe any type of treatment or retention being provided to the wastewater before discharge (i.e., retention ponds, settling ponds, etc.)  
\_\_\_\_\_

## 3. FACILITY LINE DRAWING

Attach a line drawing of the facility which shows the source of the cooling water, its flow through the facility, and each cooling water discharge point.

## 4. MAP

Attach a topographic map extending to at least one mile beyond property boundary. The map must show the outline of the facility, and the location of each of its existing and proposed intake and discharge points. Include all springs, rivers and other surface water bodies.

## 5. DISCHARGE INFORMATION

A. List all cooling water discharges by a number that is the same as on the map required in Question 4. Identify the source of cooling water. Estimate the maximum daily discharge flow in gallons per day (gpd). Give the name of the waterbody receiving direct discharge or discharge through the municipal separate storm sewer system.

Outfall No.	Source	Max. Daily Flow (gpd)	Receiving Stream
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_____	_____	_____	_____
_____	_____	_____	_____

B. Identify the duration and frequency of the discharge for each separate discharge point:

a. Continuous: \_\_\_\_\_

b. Intermittent: (please describe) \_\_\_\_\_

c. Seasonal: \_\_\_\_\_

C. Give the name of the owner of the municipal separate storm sewer system that receives the discharge (if applicable):  
\_\_\_\_\_

## 6. CERTIFICATION:

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

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Name of person(s) signing above: \_\_\_\_\_  
(printed or typed)

Title(s): \_\_\_\_\_

## REQUIRED ATTACHMENTS

Aquatic Toxicity Information For Chemical Additives (if applicable)  
Facility Line Drawing  
Topographic Map

For Department Use Only:

Accepted/Not Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_  
Basin \_\_\_\_\_ Stream Class \_\_\_\_\_ Section \_\_\_\_\_  
Special Standards \_\_\_\_\_

9 VAC 25-196-70. General permit.

Any owner whose registration statement is accepted by the board will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the VPDES Permit Regulation.

# Proposed Regulations

General Permit No.: VAG25

Effective Date:  
Expiration Date:

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements, Part II - Monitoring and Reporting, and Part III - Management Requirements, as set forth herein.

## PART I.

### GENERAL PERMIT FOR COOLING WATER DISCHARGES

#### AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of cooling water discharges are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations or policies which prohibit such discharges.

#### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

During the period beginning on the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge cooling water. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location(s): outfall(s) serial number

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	0.05	NA	1/3 Months	Estimate
Temperature (°C)	(1)	NA	1/3 Months	Immersion Stabilization
pH (SU)	9 <sup>(2)</sup>	6 <sup>(2)</sup>	1/3 Months	Grab
Total Residual Chlorine <sup>(3)</sup> (mg/l)	Non-detectable	NA	1/3 Months	Grab
Chemical Oxygen Demand (mg/l)	NL	NA	1/3 Months	Grab
Hardness (mg/l CaCO <sub>3</sub> )	NL	NA	1/3 Months	Grab
Total Dissolved Copper (µg/l)	NL	NA	1/3 Months	Grab
Total Dissolved Zinc (µg/l)	NL	NA	1/3 Months	Grab
Total Dissolved Chromium <sup>(4)</sup> (µg/l)	NL	NA	1/3 Months	Grab
Hexavalent Chromium <sup>(4)</sup> (µg/L)	NL	NA	1/3 Months	Grab
Total Dissolved Silver <sup>(5)</sup> (µg/l)	NL	NA	1/3 Months	Grab
Total Phosphorus <sup>(6)</sup> (mg/l)	NL	NA	1/3 Months	Grab

NL = No limitation, monitoring required

NA = Not applicable

(1) The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.

The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.

(2) Where the Water Quality Standards (9 VAC 25-260-10 et seq.) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

(3) Chlorine limitation and monitoring are only required where the source water is chlorinated or where chlorine is added.

(4) Chromium monitoring is only required where additive containing chromium is used.

(5) Silver monitoring is only required where Cu/Ag anode is used.

(6) Phosphorous monitoring is only required where additive containing phosphorous is used.



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## B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.

2. No discharges other than cooling water, as defined, are permitted under this general permit.

3. The use of any chemical additives, except chlorine, without prior approval is prohibited under this general permit. Prior approval shall be obtained from the DEQ before any changes are made to the chemical and/or nonchemical treatment technology employed in the cooling water system. Requests for approval of the change shall be made in writing and shall include the following information:

a. Describe the chemical and/or nonchemical treatment to be employed and its purpose; if chemical additives are used, provide the information prescribed in subdivisions b, c, d and e below;

b. Provide name and manufacturer of each additive used;

c. Provide list of active ingredients and percentage of composition;

d. Give the proposed schedule and quantity of chemical usage, and estimate the concentration in the discharge; and

e. Attach available aquatic toxicity information for each additive proposed for use.

4. Where cooling water is discharged through a municipal storm sewer system to surface waters, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system of the existence of the discharge and provide the following information: the name of the facility; a contact person and phone number; and the location of the discharge.

5. This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard, limitation or prohibition for a pollutant which is promulgated or approved under § 307(a)(2) of the Clean Water Act, if the effluent standard, limitation or prohibition so promulgated or approved:

a. Is more stringent than any effluent limitation on the pollutant already in the permit; or

b. Controls any pollutant not limited in the permit.

6. The permittee shall at all times properly operate and maintain all cooling water systems. Inspection shall be conducted for each cooling water unit by the plant personnel at least once per year with reports maintained on site.

## PART II. MONITORING AND REPORTING.

### A. Sampling and analysis methods.

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

2. Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants promulgated at 40 CFR Part 136 (1995).

3. The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.

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

B. Recording of results. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

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

2. The person(s) who performed the sampling or measurements;

3. The dates analyses were performed;

4. The person(s) who performed each analysis;

5. The analytical techniques or methods used; and

6. The results of such analyses and measurements.

C. Records retention. All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be retained for three years from the date of the sample, measurement or report or until at least one year after coverage under this general permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

D. Additional monitoring by permittee. If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring. The board may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law, Clean Water Act or the board's regulations.

The permittee shall obtain and report such information if requested by the board. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the board.

## F. Reporting requirements.

1. The permittee shall submit original monitoring reports of each quarter's performance to the department's regional office not later than the 10th day of April, July, October and January.

2. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the department with the monitoring report at least the following information:

- a. A description and cause of noncompliance;
- b. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and
- c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The board may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information specified in Part II F 2 a through c regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses; (ii) upsets; (iii) spillage of materials resulting directly or indirectly from processing operations; (iv) breakdown of processing or accessory equipment; (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities; or (vi) flooding or other acts of nature.

The report shall be made to the Department of Environmental Quality regional office at (XXX) XXX-XXXX. For reports outside normal working hours, leave a message and this shall fulfill the reporting requirements. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

G. Signatory requirements. Any registration statement, report, or certification required by this permit shall be signed as follows:

## 1. Registration statement.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

## 2. Reports. All reports required by permits and other information requested by the board shall be signed by:

a. One of the persons described in subdivision 1 of this subsection; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision 1 of this subsection; and

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

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the department prior to or together with any separate information, or registration statement to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly

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## Proposed Regulations

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gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

### PART III. MANAGEMENT REQUIREMENTS.

#### A. Change in discharge of pollutants.

1. Any permittee proposing a new discharge shall submit a registration statement at least 30 days prior to commencing erection, construction, or expansion or employment of new processes at any facility. There shall be no construction or operation of said facilities prior to the issuance of a permit.

2. The permittee shall submit a new registration statement at least 30 days prior to any planned changes, including proposed facility alterations or additions, production increases, or process modifications when:

a. The planned change to a permitted facility may meet one of the criteria for determining whether a facility is a new source; or

b. The planned change could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are neither limited in the permit nor subject to the notification level requirements in Part III A 3; or

c. The planned change may result in noncompliance with permit requirements.

3. The permittee shall promptly provide written notice of the following:

a. Any reason to believe that any activity has occurred or will occur which would result in the discharge on a routine or frequent basis of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification level":

(1) One hundred micrograms per liter (100 µg/l);

(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) The level established in accordance with regulation under § 307(a) of the Clean Water Act and accepted by the board.

b. Any activity has occurred or will occur which would result in any discharge on a nonroutine or infrequent basis of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 µg/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) The level established by the board.

Such notice shall include information on: (i) the characteristics and quantity of pollutants to be introduced into or from such treatment works or pollutant management activities; (ii) any anticipated impact of such change in the quantity and characteristics of the pollutants to be discharged from such treatment works or pollutants managed at a pollutant management activity; and (iii) any additional information that may be required by the board.

#### B. Treatment works operation and quality control.

1. Design and operation of facilities and/or treatment works and disposal of all wastes shall be in accordance with the registration statement filed with the department and in conformity with the conceptual design, or the plans, specifications, and/or other supporting data accepted by the board. The acceptance of the treatment works conceptual design or the plans and specifications does not relieve the permittee of the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design and/or operational, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.

2. All waste collection, control, treatment, and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities shall be operated in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to state waters;

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit;

c. Maintenance of treatment facilities shall be carried out in such a manner that the monitoring and limitation requirements are not violated; and

d. Collected solids shall be stored and disposed of in such a manner as to prevent entry of those wastes (or runoff from the wastes) into state waters.

C. Adverse impact. The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation(s) or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation(s) or conditions.

#### D. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to

halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. *Structural stability.* The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. *Bypassing.* Any bypass ("Bypass" means intentional diversion of waste streams from any portion of a treatment works) of the treatment works herein permitted is prohibited unless:

1. *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, the permittee shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects the board may approve an anticipated bypass if:

a. The bypass is unavoidable to prevent a loss of life, personal injury, or severe property damage ("Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production); and

b. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment down-time. However, if a bypass occurs during normal periods of equipment down-time, or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

2. *Unplanned bypass.* If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in Part III F 1 above and in light of the information reasonably available to the permittee at the time of the bypass.

G. *Conditions necessary to demonstrate an upset.* A permittee may claim an upset as an affirmative defense to an action brought for noncompliance for only technology-based effluent limitations. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. The facility permitted herein was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. The permittee submitted a notification of noncompliance as required by Part II F; and

4. The permittee took all reasonable steps to minimize or correct any adverse impact to state waters resulting from noncompliance with the permit.

H. *Compliance with state and federal law.* Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act except for any toxic standard imposed under § 307(a) of the Clean Water Act.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act.

I. *Property rights.* The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

J. *Severability.* The provisions of this permit are severable.

K. *Duty to register.* If the permittee wishes to continue to discharge under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 120 days prior to the expiration date of this permit.

L. *Right of entry.* The permittee shall allow, or secure necessary authority to allow, authorized state and federal representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, or discharge(s) is located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, discharge, process stream, raw material or byproduct; and

5. To inspect at reasonable times any collection, treatment, or discharge facilities required under this permit.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained

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herein shall make an inspection time unreasonable during an emergency.

*M. Transferability of permits.* This permit may be transferred to another person by a permittee if:

1. The current permittee notifies the department 30 days in advance of the proposed transfer of the title to the facility or property;
2. The notice to the department includes a written agreement between the existing and proposed new permittee containing a specific date of transfer of permit responsibility, coverage and liability between them; and
3. The department does not within the 30-day time period notify the existing permittee and the proposed permittee of the board's intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

*N. Public access to information.* Any secret formulae, secret processes, or secret methods other than effluent data submitted to the department may be claimed as confidential by the submitter pursuant to § 62.1-44.21 of the Code of Virginia. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae, secret processes or secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia) and § 62.1-44.21 of the Code of Virginia.

Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee; and
2. Registration statements, permits, and effluent data.

Information required by the registration statement may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

*O. Permit modification.* The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;
2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of § 307(a) of the Clean Water Act (USC 33 1251 et seq.); or
3. When the level of discharge of a pollutant not limited in the permit exceeds applicable Water Quality Standards or the level which can be achieved by

technology-based treatment requirements appropriate to the permittee.

*P. Permit termination.* After public notice and opportunity for a public hearing, the general permit may be terminated for cause.

*Q. When an individual permit may be required.* The board may require any permittee authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The discharger(s) is a significant contributor of pollution;
2. Conditions at the operating facility change altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for a general permit;
3. The discharge violates the terms or conditions of this permit;
4. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
5. Effluent limitation guidelines are promulgated for the point sources covered by this permit; or
6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.

This permit may be terminated as to an individual permittee for any of the reasons set forth above after appropriate notice and an opportunity for a public hearing.

*R. When an individual permit may be requested.* Any permittee operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to a permittee the applicability of this general permit to the individual permittee is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to a permittee already covered by an individual permit, such permittee may request exclusion from the provisions of the general permit and subsequent coverage under an individual permit.

*S. Civil and criminal liability.* Except as provided in permit conditions on "bypassing" (Part III F), and "upset" (Part III G) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

*T. Oil and hazardous substance liability.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

*U. Unauthorized discharge of pollutants.* Except in compliance with this permit, it shall be unlawful for any permittee to:

1. *Discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances; or*
2. *Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.*

VA.R. Doc. No. R97-427; Filed April 23, 1997, 9:32 a.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 substantial change from the proposed text of the regulation.

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## DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

**Title of Regulation:** 6 VAC 15-20-10 et seq. Regulations Governing Certification and Inspection (amending 6 VAC 15-20-10, 6 VAC 15-20-30 through 6 VAC 15-20-120; adding 6 VAC 15-20-130 through 6 VAC 15-20-230; repealing 6 VAC 15-20-20).

**Statutory Authority:** §§ 53.1-5 and 53.1-68 of the Code of Virginia.

**Effective Date:** July 1, 1997.

### Summary:

*These regulations serve to enforce all facility and program standards promulgated by the board. The regulations provide uniform factors for evaluating all programs and establish the proper steps in the certification, appeal and waiver processes.*

*Through a regular board and departmental review, the amendments were adopted to (i) strengthen the regulations by tightening requirements for timeliness and communication of departmental information to the board, (ii) meet specific recommendations made by the Joint Legislative Audit and Review Commission, and (iii) comply with the requirements of § 53.1-68 of the Code of Virginia, which was amended by the 1995 Session of the General Assembly to require one unannounced annual inspection and one unannounced annual health inspection of local correctional facilities.*

**Summary of Public Comment 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 Woody Woodard, Department of Corrections, P.O. Box 26963, Richmond, VA 23261-6963, telephone (804) 674-3437.

## CHAPTER 20. RULES AND REGULATIONS GOVERNING THE CERTIFICATION PROCESS AND INSPECTION.

### PART I. [INTRODUCTION: DEFINITIONS.]

6 VAC 15-20-10. Definitions.

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

[ ~~"Affiliated agencies" means agencies not under the administrative control of the board or department but subject to board standards.~~

~~"Annual inspection" means an on-site official review of a local correctional facility by local facilities managers to assess compliance with life, health and safety standards promulgated by the board.~~

"Appeal" means the action taken by a facility or program administrator when there is disagreement with a compliance audit finding.

"Audit report" means the official report of compliance audit findings prepared by the Certification Unit [ ~~manager supervisor~~ ] for the department and submitted to the board.

"Board" means the State Board of Corrections.

"Certification [~~inspector analyst~~]" means a person assigned to the Certification Unit who serves as chairperson or team leader of the certification team.

"Certification team" means those persons appointed by the deputy director to conduct compliance audits.

"Certification Unit" means the organizational unit of the department responsible for scheduling and conducting compliance audits to board standards.

"Compliance" means that no deficiency was cited by the certification team or that cited deficiencies have been corrected through completion of the tasks identified in the plan of action.

"Compliance audit" or "audit" means an on-site official review of a facility or program by the certification team to evaluate compliance with standards promulgated by the board.

"Compliance documentation" means specific documents or information including records, reports, observations and verbal responses required to verify compliance with standards by a facility or program.

~~"Conditional certification" means a status granted by the board for a specific period of time to correct deficiencies beyond the control of the facility or program.~~

~~"Decertified" means the board has a status imposed by the board when it is determined that a facility or program has not met a minimum acceptable level of compliance with standards.~~

"Deficiency" means ~~a facility or program does not meet noncompliance with a specific board standard.~~

"Department" means the Department of Corrections.

"Deputy director" means the administrative head or designee of the ~~a division of Community Corrections or the Division of Institutions or designee the Department of Corrections.~~

"Director" means the Director of the Department of Corrections.

"Facility" means the physical plant of a state or, local or private correctional facility or community correctional facility.

"Facility or program administrator" means the individual responsible for the operation of a facility or program subject to standards, rules or regulations of the board.

[ "Inspection" means an on-site official review of a local correctional facility by local facilities managers to assess compliance with life, health and safety standards promulgated by the board. ]

"Interim compliance audit" means an on-site official review of a facility or program by the Certification Unit staff to evaluate compliance with standards promulgated by the board which occurs at an interval other than the regular schedule as provided in 6 VAC 15-20-20. The interim compliance audit may consist of a determination of compliance with all standards applicable to the facility or program or may be limited to specific standards as directed by the board.

"Life, health, safety alert" means a process by which the board is provided immediate notice by department staff of life, health and safety deficiencies identified in local facilities/programs.

"Life, health, safety standards" or "LHS standards" means those standards directly related to life, health or safety issues as identified by the board.

[ "Local correctional facility" means a jail, regional jail, or lockup. ]

"Plan of action" means a document stating what has been or will be done to bring all deficiencies into compliance with standards, including a description of the activities undertaken, staff responsibilities, and a time table for completion.

~~"Preparatory audit" means an unofficial review of the operation of a facility or program against appropriate standards by regional [ or central ] office staff to evaluate compliance with standards promulgated by the board.~~

"Private correctional facility" means a facility which is operated by an entity which has entered into a legal agreement to provide any correctional services to the Department of Corrections with respect to inmates under the custody of the Commonwealth.

"Probationary certification" means a status granted by the board for a specific period of time to correct deficiencies within the control of the facility or program.

"Program" means a system of services provided to clients offenders by ~~CDI and probation and parole officers offices and other community-based services.~~

"Region" means the geographic area in which a facility or program is located as established by the department.

~~"Regional administrator administrator/director" means the administrative head of a specific geographic region within the Division of Community Corrections or the Division of Institutions in the department.~~

"Regional office" means the administrative offices of a specific region within the department.

~~"Unconditional certification" means that a facility or program is in 100% compliance with life, health, safety, or supervision standards, and is in compliance with a minimum of 90% of the remaining all applicable standards [ based upon the receipt of the plan of action ].~~

"Variance" means a decision by the board to temporarily suspend the requirements of a specific standard for a specific period of time.

6 VAC 15-20-20. Legal basis. (Repealed.)

~~Section 53.1-5 of the Code of Virginia authorizes the board to develop and establish program and fiscal standards for state, local and community correctional facilities, lockups and community correctional services, to monitor the activities of the department in implementing the standards and to adopt such rules and regulations required to carry out the provisions of the Code of Virginia.~~

## PART II.

### GENERAL PROVISIONS CERTIFICATION PROCESS.

6 VAC 15-20-30. Frequency of audits.

A. All state, local, private and community correctional facilities and programs operated by or affiliated with the department shall be audited every three years.

~~1. A new facility or program shall undergo a compliance audit within 12 months of opening.~~

a. 1. The regional [ or local facilities ] office staff shall notify the Certification Unit staff in writing within 30 days after a new facility or program accepts the first client offender.

b. 2. The regional [ or central ] office staff shall conduct a preparatory audit of a new facility or program during the first six months of operation.

e. 3. The Certification Unit staff shall conduct a compliance audit during the second six months of operation and on a regular schedule thereafter as provided by this section.

B. The scheduled compliance audit may be postponed for up to six months due to [ ~~circumstances beyond the control of the facility or program bonafide security or emergency situations~~ ], such as natural or manmade disasters.

1. The facility or program administrator shall notify the certification [ ~~inspector analyst~~ ] and provide details of the circumstances requiring the postponement.

2. The certification [ ~~inspector analyst~~ ] shall complete a written notice of change and submit it to the Certification Unit [ ~~manager supervisor~~ ] for approval.

3. The certification [ ~~inspector analyst~~ ] shall send copies of the approved written notice of change to the board, facility or program administrator, the appropriate regional administrator administrator/director, and the team members.



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C. Any state, local, private or community correctional facility or program may be scheduled for an interim compliance audit at the direction of the board. An interim audit may be scheduled for a facility or program which has:

1. Undergone renovations or additions that have resulted in additional inmate capacity or significant changes to the numbers and duties of security staff;
2. Exhibited difficulty in maintaining compliance with the board's standards;
3. Been cited for noncompliance with the board's standards as a result of Department of Corrections inspections, Department of Health inspections or informal visits made by Department of Corrections staff; or
4. Been placed in probationary or decertified status.

6 VAC 15-20-40. Preparation for audit.

A. The Certification Unit staff shall develop a three-year annual audit schedule.

1. The schedule shall be submitted to the appropriate deputy director for review, comment and approval.
2. Upon approval, the Certification Unit staff shall:
  - a. Disseminate the final schedule to the regional offices, and
  - b. Review the schedule as necessary and make adjustments for additional audits.
3. Changes to the final audit schedule shall be agreed upon by the appropriate deputy director and the Certification Unit [ *manager supervisor* ].
4. The Certification Unit staff shall notify the facility or program administrator of the change. Changes shall not extend the audit date beyond the established frequency limits without board approval.

B. The deputy director shall appoint certification team members.

1. Team members shall have prior audit experience or have completed certification training.

[ 2. At least one person shall be a staff member of the same type of facility or program being audited. ]

~~3. At least one member [ 2. 3. ] All team members shall be from outside of the region.~~

4. [ ~~3. 4. ] The team leader shall coordinate and facilitate the audit.~~

5. [ ~~4. 5. ] The certification team auditing jails and lockups local correctional facilities shall consist of a certification [ *inspector analyst* ] and a regional local facilities manager from the Division of Community Corrections.~~

C. The Certification Unit staff shall notify the facility or program administrator in writing at least 60 30 days prior to a compliance audit. A copy of this chapter, a copy of the standards compliance form, and a list of the compliance

documentation required during an audit shall be enclosed with the notification.

D. A certification [ *inspector analyst* ] shall visit the facility or program administrator prior to an audit to discuss the audit process. Exceptions to the visit prior to an audit shall be documented and approved by the Certification Unit [ *manager supervisor* ].

6 VAC 15-20-50. On-site audit procedures.

The certification [ *inspector analyst* ] shall use on the first day of the audit to orient the team to the audit process and afford the facility or program administrator an opportunity to brief the team on aspects of the facility or program which may have a bearing on the audit.

1. The facility or program administrator shall grant the team access to all documents, staff and areas of the facility or program which are relevant to establishing compliance.

2. Data will *shall* be collected through documentation, interview and observation.

3. The certification [ *inspector analyst* ] shall brief the facility or program administrator daily on audit progress and preliminary findings.

4. The entire certification team shall make compliance decisions.

- a. When a team member finds an indication of noncompliance, the team member shall notify the entire team and provide all available information regarding the standard in question.

~~b. The team shall review the information available to determine if the deficiency is minor in nature.~~

(1) b. A majority vote of the team shall determine the compliance.

(2) c. If a majority vote cannot be obtained, the matter shall be referred to the appropriate deputy director by the Certification Unit [ *manager supervisor* ].

5. The team shall hold a meeting with the facility or program administrator to discuss the team's compliance audit findings. At this time the facility or program administrator shall *may* introduce additional data having a bearing on the team's findings.

6. At the request of the facility or program administrator, the certification [ *inspector analyst* ] shall report compliance audit findings to facility or program staff.

6 VAC 15-20-60. Audit findings.

The Certification Unit staff shall mail the audit findings to the facility or program administrator [ *and* , ] the regional office [ , *and the Board of Corrections* ] within 40 five working days following the compliance audit.

6 VAC 15-20-70. Development of a plan of action.

A plan of action shall be developed for all deficiencies noted in the compliance audit findings. The regional office [ *or Certification Unit* ] staff shall be available to assist the

facility or program administrator in developing the plan of action.

1. The plan of action must identify the following:
  - a. The tasks required to correct a noted deficiency;
  - b. The personnel responsible for completing the tasks; and
  - c. The actual or proposed date of task completion.

2. The facility or program administrator shall submit the plan of action to the regional office [ *or Certification Unit as appropriate* ] within 20 [ ~~seven~~ 10 ] working days of receipt of the notification of deficiencies.

3. The regional administrator *administrator/director* [ *or Certification Unit supervisor* ] shall review the plan of action. If approved, it shall be submitted to the deputy director within [ ~~five~~ 10 ] working days of receipt.

[ ~~4. If the regional administrator administrator/director does not approve the plan, a report indicating the review and reasons with a copy of the plan of action shall be submitted to the deputy director within five working days of receipt of the plan of action.~~ ]

[ ~~5. 4.~~ ] The deputy director shall either approve, amend or return the plan of action to the regional administrator *administrator/director* [ *or Certification Unit supervisor* ] for revision within 40 [ ~~five~~ 10 ] working days of receipt.

[ ~~6. 5.~~ ] The regional administrator *administrator/director* shall complete any revisions requested and return the plan to the deputy director within 40 [ ~~five~~ 10 ] working days of receipt.

[ ~~7. 6.~~ ] The deputy director may grant one 30-day extension to a facility or program administrator for the development of a plan of action. The deputy director shall notify the board of the extension and its justification. The board may grant additional extensions.

[ ~~8. 7.~~ ] If a facility or program administrator fails to submit a plan of action within the time specified, the department shall submit the audit report with recommendations to the board.

## 6 VAC 15-20-80. Variance requests.

A variance shall ~~may~~ be requested by a facility or program administrator when unable to comply with a standard.

1. Variance requests shall be submitted *along* with the plan of action *for any deficiencies cited during the audit*. [ *Local correctional facilities shall submit the variance request directly to the board with the plan of action. Variance requests from other facilities/programs shall follow the procedures listed below.* ]

2. The regional administrator *administrator/director* [ *or Certification Unit supervisor* ] shall make a recommendation on the variance request and submit it and the plan of action to the deputy director.

3. The deputy director shall review the variance request and plan of action and either submit them to the board *with a recommendation* or return them to the regional

*administrator administrator/director* for revision. [ *The deputy director shall forward all variance requests to the board with a recommendation.* ]

~~4. If a variance request is disapproved, the deputy director shall notify the board.~~

~~5. 4.~~ Variance requests shall include:

- a. Standard which cannot be met; [ ~~or and~~ ]
- b. Justification for variance;
- ~~c. Actions being taken to comply;~~
- ~~d. Estimated date of compliance; and~~
- ~~e. Individual responsible for the action.~~

~~6. 5.~~ A facility or program with an approved variance shall provide a ~~copy~~ *such documentation* to the certification team.

## 6 VAC 15-20-90. Appeal process and schedule.

A facility or program administrator may appeal a team decision of *noncompliance* from compliance audit findings using the following appeal levels and guidelines:

~~1. The appeal review levels for facilities and programs that are state operated are:~~

- a. Deputy director and chief deputy director;
- b. Director; and
- c. Board of Corrections (if a locally or privately operated facility or program).

~~2. The appeal review levels for facilities and programs that are locally operated are:~~

- a. Deputy director and chief deputy director;
- b. Director;
- c. Board of Corrections.

~~3. 2.~~ Appeals shall be submitted to the regional office [ *or Certification Unit* ] staff along with the plan of action within 20 [ ~~seven~~ 10 ] working days of receipt of the notification of deficiencies.

~~4. 3.~~ The regional administrator *administrator/director* [ *or Certification Unit supervisor* ] shall submit the appeal and the plan of action to the deputy director within five working days of receipt. Upon receipt of notification from the deputy director, the Certification Unit [ *manager supervisor* ] shall coordinate a review of the appeal issues with the persons identified in subsections ~~subdivision 1 and 2~~ of this section.

~~5. With the exception of the Board of Corrections, 4.~~ Each appeal level shall complete its review of the appeal and notify the Certification Unit [ *manager supervisor* ] of its decision within five working days of receipt of the appeal. ~~The Board of Corrections shall complete its review and notify the Certification Unit manager of its decision within 20 working days.~~

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~~6. The Certification Unit manager shall notify the facility or program administrator of the decision within three working days of receipt of the appeal response.~~

~~5. Upon completion of the board's review of the appeal, notification of its decision shall be forwarded no later than five days after the board meeting to the facility or program administrator.~~

~~7- 6. If the appeal is denied at any level, the facility or program administrator shall:~~

~~a. Submit a plan of action [ for the specific deficiency in question ] to the regional administrator administrator/director [ or Certification Unit supervisor ]; or~~

~~b. Request that the appeal be forwarded to the next level.~~

~~8- 7. If the appeal is ultimately denied by the Board of Corrections board or other level, the facility or program administrator shall submit a plan of action for the deficiency which was appealed within a time frame specified by the review level.~~

## 6 VAC 15-20-100. Board action on audit results.

A. The Certification Unit [ manager supervisor ] shall submit audit reports to the board no later than 90 [ ~~60~~ 75 ] days after completion of the audit. Audit reports shall include:

1. A list of deficiencies;
2. Plans of corrective action and completion status;
3. Similar deficiencies from the previous audit; and
4. Recommended action for consideration by the board.

B. Based upon the audit report the board shall take one of the following actions and issue a certificate:

~~1. A letter requesting corrective action on deficiencies within a specific time frame shall be issued to the facility or program.~~

~~4- 2. A Certificate of Unconditional Certification shall be issued to a facility or program that has: complied with all applicable standards.~~

~~a. Complied 100% with life, health, safety standards; or~~

~~b. Complied 100% with supervision standards, when life, health, safety standards do not apply; or~~

~~c. Complied with at least 90% of the remaining standards.~~

~~2- 3. A Certificate Letter of Probationary Certification indicates deficiencies within the control of the facility or program. It shall may be issued to a facility or program that has: not met all applicable standards if the board grants a specific period of time to correct deficiencies.~~

~~a. Complied with less than 100% of the life, health, safety standards; or~~

~~b. Complied with less than 100% of the supervision standards, when life, health, safety standards do not apply; or~~

~~c. Complied with less than 90% of the remaining standards.~~

~~A probationary certification shall be valid for not more than one year as approved by the board. The department shall provide periodic status reports to the board.~~

~~3- A Certificate of Conditional Certification indicates deficiencies beyond the control of the facility or program as determined by the board, for example, lack of legislative action or capital funding. It shall be issued to a facility or program that has:~~

~~a. Complied with less than 100% of the life, health, safety standards; or~~

~~b. Complied with less than 100% of the supervision standards, when life, health, safety standards do not apply; or~~

~~c. Complied with less than 90% of the remaining standards.~~

~~A conditional certification shall be valid for not more than one year as approved by the board. The board may grant one extension not to exceed one year. The department shall provide status reports to the board as requested.~~

~~4. A Letter of Decertification will be issued by the board when a facility or program with a conditional or probationary certification does not meet the requirements for certification within the time limits approved by the board. The department shall provide status reports to the board during this period and notify the board when all deficiencies have been corrected.~~

~~a. A decertified facility or program may request to be reaudited at any time.~~

~~b. The appropriate deputy director shall notify the Certification Unit manager to schedule a new audit.~~

~~C. A facility or program's certification status shall remain in effect until notified of a specific change by the subsequent board action.~~

## 6 VAC 15-20-110. Notifications.

The Certification Unit staff shall notify the facility or program administrator of a facility or program's certification status within four weeks after immediately following the board's action. Facilities or programs The facility or program administrator shall post the letter or certificate in a place conspicuous to the public.

6 VAC 15-20-120. Actions that can be taken when decertified.

When a facility or program is decertified the board may consider taking the following actions in compliance with statutes, policies, and procedures established by the board, the department or other state or federal agencies:

1. Board action for facilities or programs that are state or privately operated may include, but not be limited to, the following:

a. The facility or program director authorized to take action may bring about a reorganization of the facility or program structure or other personnel actions deemed necessary to bring it into compliance with standards; or

b. The facility or program may be closed in accordance with established procedures.

2. Board action for facilities and programs that are locally operated may include, but not be limited to, the following:

a. Recommend that the facility or program administrator authorized to take action bring about a reorganization of the facility or program structure or other personnel actions deemed necessary to bring it into compliance with standards; or

b. Recommend that the facility or program be closed or the ~~termination~~ of contractual agreements ~~terminated~~ in accordance with established procedures; or

c. Initiate proceedings for the withholding of funds under the appropriate sections of the Code of Virginia.

### PART III. INSPECTION PROCESS.

6 VAC 15-20-130. *Inspection method.*

[ A. Inspections shall be governed by § 53.1-68 of the Code of Virginia. ]

[ Annual B. ] Inspections shall be [ ~~unannounced to the facility being inspected~~ conducted to inspect ] for compliance with all life, health and safety standards in the Board of Corrections' Minimum Standards for Local Jails and Lockups (6 VAC 15-40-10 et seq.).

6 VAC 15-20-140. *Inspection schedule.*

A. All local correctional facilities shall undergo [ ~~at least one unannounced~~ ] life, health and safety [ ~~inspection annually~~ inspections ] by the Local Facilities Unit.

B. The Chief of Operations, Local Facilities Unit, shall prepare [ ~~the an annual~~ ] inspection schedule [ ~~annually~~ ].

1. The inspection schedule shall not be published outside the Board of Corrections, Department of Corrections and Virginia Department of Health.

2. The inspection schedule shall be prepared in conjunction with the [ ~~certification compliance~~ ] audit schedule.

3. [ ~~Jails which undergo certification audits in a given year shall be scheduled for an inspection at least three months apart from the audit date if scheduling permits. Upon recommendation by the chief of operations, the board may waive the requirement for an inspection in the year in which a local correctional facility undergoes a compliance audit except in which the local correctional facility administrator changes.~~ ]

C. New local correctional facilities shall be inspected only after the [ ~~regional~~ ] preparatory audit and first year [ ~~certification compliance~~ ] audit have been completed.

D. Local correctional facility inspections shall be postponed or rescheduled only upon approval of the Chief of Operations, Local Facilities Unit.

6 VAC 15-20-150. *Preparation for inspection.*

Inspections shall be conducted by a Local Facilities Unit manager on the basis of annual schedule assignment.

1. Larger local correctional facilities may require more than one staff to perform the inspection. In this event, the manager assigned the inspection may request assistance of other local facilities staff, Certification Unit, or regional office personnel.

2. The local facilities manager may coordinate the inspection with local health department officials.

6 VAC 15-20-160. *On-site inspection procedures.*

A. The local facilities manager shall announce the intent of the visit and produce official identification if required upon arrival at the local correctional facility.

B. The local correctional facility shall grant access to all documents, staff and areas of the facility necessary to complete the inspection and assess standards compliance.

C. Denial of access to the facility for any reasons other than bonafide security or emergency situations shall result in findings of noncompliance on all standards. In the event of denial of access, the local facilities manager will notify the chief of operations immediately. The inspection may be rescheduled if it is determined that denial of access was warranted.

D. Compliance data shall be gathered through documentation, interview and observation.

E. The local facilities manager assigned the inspection shall determine compliance in the event more than one staff conduct the inspection.

F. All life, health and safety standards shall be assessed for compliance at the time of the inspection using the inspection form to indicate a yes or no finding. Situations which prevent access to documentation, observation or interview to determine compliance shall result in a finding of noncompliance for the applicable standard.

G. A debriefing with the facility administrator or staff in charge shall be held upon inspection completion. If requested, the local facilities manager may debrief other jail personnel.

6 VAC 15-20-170. *Inspection findings.*

The inspection report shall be provided the facility upon completion of the inspection and a copy of the report mailed to the regional office within five working days.

6 VAC 15-20-180. *Correction of deficiencies.*

A. Facility administrators shall advise the chief of operations in writing of the correction of all cited deficiencies

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within seven days following the inspection. Adequate documentation to support deficiency corrections shall be provided.

B. The local facilities manager shall assist facilities in correcting deficiencies where necessary and monitor the submission of written notification of deficiency corrections.

C. The local facilities manager shall maintain copies of all inspection reports and provide a monthly report to the chief of operations on inspection results. Deficiencies not corrected within 30 days shall be reported as life, health and safety alerts.

## 6 VAC 15-20-190. Board action on inspection results.

A. Inspection results shall be reported by the chief of operations to the board on a monthly basis and deficiencies not corrected will be reported as life, health and safety alerts.

B. The results of all inspections conducted shall be reported to the board.

C. The board shall be notified immediately of all life, health and safety alerts, including denial of access. Upon review of alert deficiencies, the Board of Corrections chairman, or in his absence the vice chairman, may change the certification status of the facility in question.

D. Board actions taken in response to inspection results shall be as described in the section of this chapter relating to certification audits.

## 6 VAC 15-20-200. Health inspection schedule.

A. All local correctional facilities shall undergo [ ~~at least one annual inspection~~ inspections ] by the Virginia Department of Health [ in accordance with § 53.1-68 of the Code of Virginia ].

B. Virginia Department of Health environmental staff, under the delegated power of the State Health Commissioner and the district health director, shall be responsible for scheduling and administering local correctional facility inspections.

C. The Office of Environmental Health Services of the Virginia Department of Health shall provide the technical and administrative guidance to district and local health departments as necessary or requested. Local health departments may coordinate the inspections with the department's Local Facilities Unit.

## 6 VAC 15-20-210. On-site health inspection procedures.

A. Virginia Department of Health staff shall announce the intent of the visit and produce official identification if required upon arrival at the facility.

B. The facility shall grant access to all documents, staff and areas of the local correctional facility necessary to complete the inspection.

C. Virginia Department of Health staff shall evaluate jail kitchen facilities in accordance with the Rules and Regulations Governing Restaurants, 12 VAC 5-420-10 [ et seq. ]. A food establishment permit shall be issued to facilities which comply with the Rules and Regulations Governing Restaurants. No permit shall be issued to

facilities which are not in substantial compliance with the regulations.

D. Virginia Department of Health staff shall also inspect all areas of the facility necessary to determine compliance with standards for facility cleanliness and housing areas of local correctional facilities designated in the interagency letter of agreement between the Board of Corrections and the Virginia Department of Health.

E. Compliance data shall be gathered through documentation, interview and observation. Situations which prevent access to documentation, observation or interview to determine compliance shall result in a finding of noncompliance for the applicable standard.

F. If possible, food service and standards compliance inspections should occur on the same visit to the facility. In those cases where follow-up visits are necessary, those visits may be coordinated with appropriate facility staff.

G. At the conclusion of the inspection, the facility administrator or designee or both shall be briefed on the inspection findings.

## 6 VAC 15-20-220. Health inspection findings.

The inspection report shall be provided to the facility upon completion of the inspection and a copy shall be forwarded to the department's Certification Unit within 30 days. In a situation where sanitation and environmental conditions could pose a health hazard, the department shall be notified immediately.

## 6 VAC 15-20-230. Board action on health inspection results.

Inspection results which report sanitation and environmental hazards or evidence of noncompliance with standards shall be reported to the board by the Certification Unit staff on a monthly basis. Board action taken in response to inspection results shall be as described in the section of this chapter relating to [ ~~certification~~ compliance ] audits. Follow-up relative to standards shall be the responsibility of the board and the department.

VA.R. Doc. No. R97-424; Filed April 22, 1997, 3:28 p.m.

## DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: 12 VAC 5-370-10 et seq. Rules and Regulations for the Licensure of Nursing Homes (REPEALED).

VA.R. Doc. No. R97-422; Filed April 22, 1997, 1:09 p.m.

Title of Regulation: 12 VAC 5-371-10 et seq. Rules and Regulations for the Licensure of Nursing Facilities.

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Effective Date: July 1, 1997.

### Summary:

This regulation is a comprehensive revision of the Commonwealth's existing regulations addressing nursing facilities, which were adopted in 1980. The regulation

includes minimum standards for (i) the construction and maintenance of nursing facilities to assure the environmental protection and life safety of its patients and employees and the public; (ii) the operation, staffing and equipping of nursing facilities; and (iii) qualifications and training of staff of nursing facilities. This area of the health care field has changed dramatically since 1980, and the regulations are intended to assure safe, adequate and efficient nursing facility operation and to promote health safety and adequate care of residents in nursing facilities.

**Summary of Public Comment 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:** Carrie Eddy, Policy Analyst, Center for Quality Health Care Services and Consumer Protection, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2102.

## CHAPTER 371. REGULATIONS FOR THE LICENSURE OF NURSING [ AND HOMES FACILITIES ].

### PART I. [ GENERAL INFORMATION AND DEFINITIONS [ AND GENERAL INFORMATION ].

#### 12 VAC 5-371-10. Definitions.

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

"Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish, or deprivation by an individual, including caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. This includes verbal, sexual, physical or mental abuse [ , and involuntary seclusion ].

"Administrator" means the individual licensed by the Virginia Board of Nursing Home Administrators and who has the necessary authority and responsibility for management of the nursing [ home facility ].

"Admission" means the process of acceptance into a nursing [ home facility ], including orientation, rules and requirements, and assignment to appropriate staff. Admission does not include readmission to the facility after a temporary absence.

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia, or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provision of § 54.1-2983 of the Code of Virginia.

"Assessment" means the process of evaluating a resident for the purpose of developing a profile on which to base services. Assessment includes information gathering, both initially and on an ongoing basis, designed to assist the multi-

disciplinary staff in determining the resident's need for care, and the collection and review of resident-specific data.

"Attending physician" means a physician currently licensed by the Virginia Board of Medicine and identified by the resident, or legal representative, as having the primary responsibility in determining the delivery of the resident's medical care.

"Board" means the Board of Health.

[ "Center" means the Center for Quality Health Care Services and Consumer Protection of the Virginia Department of Health. ]

"Certified nurse aide" means the title that can only be used by individuals who have met the requirements to be certified, as defined by the Virginia Board of Nursing, and who are listed in the nurse aide registry.

"Chemical restraint" means a psychopharmacologic drug (a drug prescribed to control mood, mental status, or behavior) that is used for discipline or convenience and not required to treat medical symptoms or symptoms from mental illness or mental retardation that prohibit an individual from reaching his highest level of functioning.

"Clinical record" means the documentation of health care services, whether physical or mental, rendered by direct or indirect resident-provider interactions. An account compiled by physicians and other health care professionals of a variety of resident health information, such as assessments and care details, including testing results, medicines, and progress notes.

"Commissioner" means the State Health Commissioner.

[ "Complaint" means any allegation received by the Department of Health other than an incident reported by the facility staff. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal laws or regulations. ]

"Comprehensive plan of care" means a written action plan, based on assessment data, that identifies a resident's clinical and psychosocial needs, the interventions to meet those needs, treatment goals that are measurable and that documents the resident's progress toward meeting the stated goals.

"Construction" means the building of a new nursing [ home facility ] or the expansion, remodeling, or alteration of an existing nursing [ home facility ] and includes the initial and subsequent equipping of the facility.

"Department" means the Virginia Department of Health.

"Dignity" means staff, in their interactions with residents, carry out activities which assist a resident in maintaining and enhancing the resident's self-esteem and self-worth.

"Discharge" means the process by which the resident's services, delivered by the nursing [ home facility ], are terminated.

"Discharge summary" means the final written summary of the services delivered, goals achieved and post-discharge plan or final disposition at the time of discharge from the

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nursing [ home facility ]. The discharge summary becomes a part of the clinical record.

"Drug" means (i) articles or substances recognized in the official United States "Drug" Pharmacopoeia National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them; (ii) articles or substances intended for the use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animal; (iii) articles or substances, other than food, intended to affect the structure or any function of the body of man or other animal; and (iv) articles or substances intended for use as a component of any article specified in clause (i), (ii), or (iii). This does not include devices or their components, parts or accessories.

"Emergency preparedness plan" means a component of a nursing [ home's facility's ] safety management program designed to manage the consequences of natural disasters or other emergencies that disrupt the nursing [ home's facility's ] ability to provide care.

"Employee" means a person who performs a specific job function for financial remuneration on a full-time or part-time basis.

"Full-time" means a minimum of 35 hours or more worked per week in the nursing [ home facility ].

"Guardian" means a person legally invested with the authority and charged with the duty of taking care of the resident, managing his property and protecting the rights of the resident who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the resident in need of a guardian has been determined to be incapacitated.

[ "~~Involuntary seclusion~~" means the confinement, against a resident's wishes, alone in a room, from which the resident is physically prevented from leaving, for an extended period of time. ]

"Medication" means any substance, whether prescription or over-the-counter drug, that is taken orally or injected, inserted, topically applied, or otherwise administered.

"Neglect" means a failure to provide timely and consistent services, treatment or care to a resident or residents which are necessary to obtain or maintain the resident or residents' health, safety or comfort; or a failure to provide timely and consistent goods and services necessary to avoid physical harm, mental anguish, or mental illness.

"Nursing [ home facility ]" means any [ facility institution ] or any identifiable component of any [ facility institution ], as defined in § 32.1-123 [ (2) ] of the Code of Virginia, [ ~~in which the primary function is the provision, on a continuous basis, of nursing services and health-related services for the treatment and inpatient care of two or more nonrelated individuals over a period exceeding 24 hours with permanent facilities that include inpatient beds, whose primary function is the provision, on a continuing basis, of nursing and health related services for the treatment of individuals who may require various types of long-term care, including facilities~~

known by varying nomenclature or designation such as convalescent homes, nursing homes, nursing or nursing care facilities, skilled nursing or skilled care facilities, intermediate care facilities or extended care facilities ].

[ "~~OHFR~~" means the Office of Health Facilities Regulation of the Virginia Department of Health. ]

"Person" means any individual, corporation, partnership, association, trust, or other legal entity, whether governmental or private, owning, managing, or operating a nursing [ home facility ].

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's own body.

"Policy" means a written statement which describes the principles and guides and governs the activities, procedures and operations of the nursing [ home facility ].

"Procedures" means a series of activities designed to implement program goals or policy, which may or may not be written, depending upon the specific requirements within this chapter. For inspection purposes, there must be evidence that procedures are actually implemented.

"Progress note" means a written statement, signed and dated by the person delivering the care, consisting of a pertinent, chronological report of the resident's care. A progress note is a component of the clinical record.

[ "~~Qualified~~" means meeting current legal requirements of licensure, registration or certification in Virginia; having appropriate training and experience commensurate with assigned responsibilities; or, if referring to a professional, possessing an appropriate degree or having documented equivalent education, training or experience. ]

"Quality assurance" means systematic activities performed to determine the extent to which clinical practice meets specified standards and values with regard to such things as appropriateness of service assignment and duration, appropriateness of facilities and resources utilized, adequacy and clinical soundness of care given. Such activities should also assure changes in practice that do not meet accepted standards. Examples of quality assurance activities include the establishment of facility-wide goals for resident care, the assessment of the procedures used to achieve the goals, and the proposal of solutions to problems in attaining those goals.

"Readmission" means a planned return to the nursing [ home facility ] following a temporary absence for hospitalization, off-site visit or therapeutic leave, or a return stay or confinement following a formal discharge terminating a previous admission.

"Resident" means the primary service recipient, admitted to the nursing [ home facility ], whether that person is referred to as a client, consumer, patient, or other term.

"Responsible person or party" means an individual authorized by the resident to act for him as an official delegate or agent. The responsible person may be a guardian, payee, family member or any other individual who

has arranged for the care of the resident and assumed this responsibility. The responsible person or party may or may not be related to the resident. A responsible person or party is not a guardian unless so appointed by the court.

"Supervision" means the ongoing process of monitoring the skills, competencies and performance of the individual supervised and providing regular, face-to-face guidance and instruction.

"Volunteer" means a person who, without financial remuneration, provides services to the nursing [ home facility ].

## 12 VAC 5-371-20. Responsibility of the department.

A. The Department of Health is charged with the responsibility for ensuring that licensed nursing [ homes facilities ] provide residents with at least a minimum level of care according to standards prescribed by the Board of Health and any additional requirements that may be specified by the Code of Virginia.

B. The [~~Office of Health Facilities Regulation (OHFR)~~ Center for Quality Health Care Services and Consumer Protection (center) ] acts as agent for the Department of Health in administering the licensing program. In addition, the [~~OHFR center~~ ] also investigates complaints made by the public against nursing [ homes facilities ].

C. [ ~~OHFR Center~~ ] licensing representatives are available to answer questions and provide technical assistance throughout the licensing and inspection process.

D. The Code of Virginia requires the Board of Health to adopt standards and regulations for the licensure of nursing [ homes facilities ]. The Department of Health is the authorized agent for the Board of Health.

E. In developing or revising standards for licensed nursing [ homes facilities ], the department adheres to the requirements of the Administrative Process Act (§ 9-6.14:1 of the Code of Virginia) and the public participation process.

F. The department solicits input from licensees, associations of licensees, experts in related fields, advocacy organizations, consumers and the general public in the development or revision of licensing standards through informal and formal comment periods and public hearings.

## 12 VAC 5-371-30. License.

A. A license to operate a facility is issued to a person or organization. An organization may be a partnership, association, corporation, or public entity.

B. Each license and renewal thereof shall be issued for one year. A nursing [ home facility ] shall operate within the terms of its license, which include the:

1. Name of the facility;
2. Name of the operator;
3. Physical location of the nursing [ home facility ];
4. Maximum number of beds allowed; and
5. Date the license expires.

C. A separate license shall be required for nursing [ homes facilities ] maintained on separate premises, even though they are owned or are operated under the same management.

D. Every nursing [ home facility ] shall be designated by a permanent and appropriate name. The name shall not be changed without first notifying the [ ~~OHFR center~~ ].

E. The number of resident beds allowed in a nursing [ home facility ] shall be determined by the department. Requests to increase beds must be made in writing and must include an approved Certificate of Public Need.

F. Nursing facility units located in and operated by hospitals shall be licensed under Rules and Regulations for the Licensure of Hospitals (12 VAC 5-410-10 et seq.). Approval for such units shall be included on the annual license issued to each hospital.

G. Any person establishing, conducting, maintaining, or operating a nursing [ home facility ] without a license shall be guilty of a Class 6 felony.

## 12 VAC 5-371-40. Licensing process.

A. Upon request, the [ ~~OHFR center~~ ] will provide consultation to any person seeking information about obtaining a license. The purpose of such consultation is to:

1. Explain the standards and the licensing process;
2. Provide assistance in locating other sources of information;
3. Review the potential applicant's proposed program plans, forms, [ etc. and other documents ], as they relate to standards; and
4. Alert the potential applicant regarding the need to meet other state and local ordinances, such as fire and building codes and environmental health standards, where applicable.

B. Upon request, the [ ~~OHFR center~~ ] will provide an application form for a license to operate a nursing [ home facility ].

C. The [ ~~OHFR center~~ ] shall consider the application complete when all requested information and the application fee is submitted with the form required. If the [ ~~OHFR center~~ ] finds the application incomplete, the applicant will be notified of receipt of the incomplete application.

D. The applicant shall complete and submit the initial application to the [ ~~OHFR center~~ ] at least 30 days prior to a planned opening date to allow the [ ~~OHFR center~~ ] time to act on the application. [ ~~A request~~ An application ] for a license may be withdrawn at any time.

E. Prior to changes in operation which would affect the terms of the license, the licensee must secure a modification to the terms of the license from the [ ~~OHFR center~~ ].

F. Requests to modify a license must be submitted in writing, 30 working days in advance of any proposed changes, to the Director of the [~~Office of Health Facilities~~].



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G. The license shall be returned to the [ OHFR center ] following a correction or reissuance when there has been a change in:

1. Address;
2. Operator;
3. Name; or
4. Bed capacity.

H. The [ OHFR center ] will evaluate written information about any planned changes in operation which would affect either the terms of the license or the continuing eligibility for a license. A licensing representative may visit the facility during the process of evaluating a proposed modification.

I. If a modification can be granted, the [ OHFR center ] shall respond in writing with a modified license. In the event a new application is needed, the licensee will receive written notification. When the modification cannot be granted, the licensee shall be advised by letter.

J. The department shall send an application for renewal of the license to the licensee prior to the expiration date of the current license.

K. The licensee shall submit the completed renewal application form along with any required attachments and the application fee by the date indicated in the cover letter.

L. It is the licensee's responsibility to complete and return the application to assure timely processing. Should a current license expire before a new license is issued, the current license shall remain in effect provided the complete and accurate application was filed on time.

12 VAC 5-371-50. Functional design features.

A. In order to avoid costly errors and unnecessary redesign, applicants or licensees are required to present their building plans to the [ OHFR center ] after acceptance of the final plan layout by the owner. Precontract document approval of the plan ensures acceptance of the basic architectural footprint and serves as the basis for approval of "fast track" construction for nursing [ home facilities ] pursuing this approach.

The applicant or licensees shall notify the [ OHFR center ] of deviations in the contract documents from the approved preliminary plans. Contract documents containing deviations from approved preliminary plans are required to comply with these regulations and will be reviewed again to ensure compliance. Variances for out of compliance conditions as a result of deviations from the approved preliminary documents will not be granted.

B. When an application is for licensure of a building which has not previously been used for a nursing [ home facility ], or when renovations are made to an existing building, the [ OHFR center ] shall approve the functional design features of the building according to applicable regulations.

C. Prior to beginning construction or renovation, the applicant or licensee shall submit to the [ OHFR center ] for approval floor plans which clearly indicate the use of space and other plans for compliance with all requirements for the physical environment contained in the regulations. In addition, the transmittal letter shall contain the estimate of construction start, finish, and the desired occupancy date. Construction shall not begin without approval from the [ OHFR center ].

D. The [ OHFR center ] will notify the applicant or licensee of the receipt of the contract documents.

E. Upon completion of the review, the [ OHFR center ] will issue a letter indicating approval or disapproval of the plan, citing the regulation determining the "out of compliance" condition.

F. A valid Certificate of Use and Occupancy and Certificate of Public Need are prerequisites for licensure.

12 VAC 5-371-60. On-site inspections.

A. The licensing representative shall make unannounced on-site inspections of the nursing [ home facility ]. The licensee shall be responsible for correcting any deficiencies found during any on-site inspection. Compliance with all standards will be determined by the [ OHFR center ].

B. The licensee shall make available to the licensing representative any necessary records.

C. The licensee shall also allow the licensing representative to interview the agents, employees, residents, family members, and any person under its custody, control, direction or supervision.

D. After the on-site inspection, the licensing representative shall discuss the findings of the inspection with the administrator of record or designee.

E. As applicable, the administrator of record shall submit an acceptable plan for correcting any deficiencies found during an on-site inspection.

F. The administrator of record will be notified whenever any item in the plan of correction is determined to be unacceptable.

G. The administrator of record shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.

12 VAC 5-371-70. Complaint investigation.

A. The [ OHFR center ] has the responsibility to investigate any complaints regarding alleged violations of the standards or statutes and complaints of the abuse or neglect of persons in care. [ The Department of Social Services and the State Ombudsman are notified of complaints received. ]

B. Complaints may be received in written or oral form and may be anonymous.

C. When the investigation is complete, the licensee [ and the complainant, if known, ] will be notified of the findings of the investigation.

D. As applicable, the facility's administrator of record shall submit an acceptable plan for correcting any deficiencies found during [ an a ] complaint investigation.

E. The administrator of record will be notified whenever any item in the plan of correction is determined to be unacceptable.

F. The administrator of record shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.

12 VAC 5-371-80. Variances.

A. The [ OHFR center ] can authorize variances only to its own licensing standards, not to regulations of another agency or to any requirements in federal, state, or local laws.

B. A nursing [ home facility ] may request a variance to a particular standard or requirement contained in this chapter when the standard or requirement poses a special hardship and when a variance to it would not endanger the safety or well-being of residents, employees, or the public.

C. Upon finding that the enforcement of one or more of the standards would be clearly impractical, the [ OHFR center ] shall have the authority to waive, either temporarily or permanently, the enforcement of one or more of these standards, provided safety, resident care and services are not adversely affected.

D. [ OHFR The center ] may rescind or modify a variance if (i) conditions change; (ii) additional information becomes known which alters the basis for the original decision; (iii) the facility fails to meet any conditions attached to the variance; or (iv) results of the variance jeopardize the safety, comfort, or well-being of residents, employees and the public.

E. Consideration of a variance is initiated when a written request is submitted to the Director of the [ ~~Office of Health Facilities Regulation (OHFR)~~ Center for Quality Health Care Services and Consumer Protection ]. The [ OHFR center ] may provide consultation in the development of the written request and throughout the variance process.

F. The request for a variance must describe the special hardship to the existing program or to a planned innovative or pilot program caused by the enforcement of the requirements. When possible, the request should include proposed alternatives to meet the purpose of the requirements which will ensure the protection and well-being of residents, employees, and the public.

G. The [ OHFR center ] shall notify the facility of the receipt of the request for a variance. The [ OHFR center ] may attach conditions to the granting of the variance in order to protect persons in care.

H. When the decision is to deny a request for a variance, the reason shall be provided in writing to the licensee.

I. When a variance is denied, expires, or is rescinded, routine enforcement of the standard or portion of the standard shall be resumed. The nursing [ home facility ] may at any time withdraw a request for a variance.

12 VAC 5-371-90. Administrative sanctions.

A. Nothing in this part shall prohibit the department from exercising its responsibility and authority to enforce the regulation, including proceeding directly to imposition of administrative sanctions, when the quality of care or the quality of life has been severely compromised.

B. The commissioner may impose such administrative sanctions or take such actions as are appropriate for violation of any of the standards or statutes or for abuse or neglect of persons in care. Such sanctions include:

1. Restricting or prohibiting new admissions to any nursing [ home facility ];
2. Petitioning the court to impose a civil penalty or to appoint a [ receivership receiver ], or both; or
3. Revoking or suspending the license of a nursing [ home facility ].

C. The following reasons may be considered by the department for the imposition of administrative sanctions or the imposition of civil penalties:

1. Failure to demonstrate or maintain compliance with applicable standards or for violations of the provisions of the Code of Virginia;
2. Permitting, aiding, or abetting the commission of any illegal act in the nursing [ home facility ]; or
3. Deviating significantly from the program or services for which a license was issued without obtaining prior written approval from the [ OHFR center ], or failure to correct such deviations within a specified time.

D. Violations which in the judgment of the [ OHFR center ] jeopardize the health and safety of residents shall be sufficient cause for immediate imposition of this section.

E. The licensee will receive a notice of the department's intent to impose sanctions. The notice shall describe the reasons for imposing the sanction.

F. Upon receipt of the notice to impose a sanction, the licensee has the right and the opportunity to appeal according to the Administrative Process Act (§ 9.6-14:1 of the Code of Virginia). The procedures for filing an appeal shall be outlined in the notice.

12 VAC 5-371-100. Surrender of a license.

A. Upon revocation or suspension of a license, the licensee must surrender its license to a representative of the [ OHFR center ].

B. If a license is revoked, a new license may be issued by the commissioner after satisfactory evidence is submitted that the conditions upon which revocation was based have been corrected and after proper inspection has been made and compliance with this chapter and applicable state and federal law has been obtained.

C. Suspension of a license shall in all cases be for an indefinite time. The commissioner may completely or partially restore a suspended license when he determines that the conditions upon which suspension was based have been

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completely or partially corrected and that the interests of the public will not be jeopardized by resumption of operation.

D. Other circumstances under which a license must be surrendered include transfer of ownership and discontinuation of services. The licensee must notify the [ OHR center ], in writing, 30 days before discontinuing services.

## PART II. ADMINISTRATIVE SERVICES.

### 12 VAC 5-371-110. Management and administration.

A. No person shall own, establish, conduct, maintain, manage, or operate any nursing [ home facility ], as defined in § 32.1-123 of the Code of Virginia, without having obtained a license.

B. The nursing [ home facility ] must comply with:

1. These regulations (12 VAC 5-371-10 et seq.);
2. Other applicable federal, state or local laws and regulations; and
3. Its own policies and procedures.

C. The nursing [ home facility ] shall submit, or make available, reports and information necessary to establish compliance with these regulations and applicable statutes.

D. The nursing [ home facility ] shall submit, in a timely manner as determined by [ OHR the center ], and implement a written plan of action to correct any noncompliance with these regulations identified during an inspection. The plan shall include:

1. Description of the corrective action or actions to be taken;
2. Date of completion for each action; and
3. Signature of the person responsible for the operation.

E. The nursing [ home facility ] shall permit representatives from the [ OHR center ] to conduct inspections to:

1. Verify application information;
2. Determine compliance with this chapter;
3. Review necessary records; and
4. Investigate complaints.

F. The current license from the department shall be posted in a place clearly visible to the general public.

G. The nursing [ home facility ] shall not operate more resident beds than the number for which it is licensed.

H. The nursing [ home facility ] shall fully disclose its admission policies, including any preferences given, to applicants for admission [ and either the Board of Health or the commissioner ].

[ ~~1. The nursing home shall report to the Board of Health, on a quarterly basis:~~

- ~~1. The number of residents admitted by payment source;~~

~~2. The number of beds certified for Medicaid patients, if applicable; and~~

~~3. Information about its waiting list, including but not limited to, aggregate information by payment source. ]~~

[ ~~1. ] The nursing [ home facility ] shall identify its operating elements and programs, the internal relationship among these elements and programs, and the management or leadership structure.~~

### 12 VAC 5-371-120. Governing body.

A. The nursing [ home facility ] shall have a governing body that is legally responsible for the management of the operation.

B. The governing body shall adopt written bylaws that describe the organizational structure and establish authority and responsibility in accordance with applicable laws, including a:

1. Statement of purpose;
2. Description of the functions of the governing body members, officers and committees;
3. Description of the method of adoption, implementation, and periodic review of policies and procedures; and
4. Description of the methods to be utilized to assure compliance with this chapter.

C. The governing body shall disclose the names and addresses of any individual or entity that holds 5.0% or more ownership interest in the operation of the nursing [ home facility ].

D. When the governing body is not the owner of the physical plant, the governing body shall disclose the name and address of the individual or entity responsible for the alterations, modifications, maintenance and repairs to the building.

E. The governing body shall notify the [ OHR center ] in writing 30 days in advance of changes affecting the accuracy of the license. Changes affecting the accuracy of the license are:

1. Any proposed change in management contract or lease agreement to operate the nursing [ home facility ];
2. Implementing any proposed addition, deletion, or change in nursing [ home facility ] services whether or not licensure is required;
3. Selling the facility; or
4. A change in ownership.

### 12 VAC 5-371-130. Administrator.

A. The governing body shall appoint an individual, on a full-time basis, to serve as its on-site agent, responsible for the day-to-day administration and management.

B. The governing body shall provide the [ OHR center ] with evidence that the individual appointed as administrator is:

1. Currently licensed by the Virginia Board of Nursing Home Administrators; or

2. Holds a current administrator's license in another state and has filed an application for license with the Virginia Board of Nursing Home Administrators.

C. Within five working days of the effective date of termination of the administrator's employment, the governing body shall notify [ ~~OHFR~~ the center ], in writing, of the name and qualifications of the replacement administrator of record or the acting administrator.

D. The governing body shall appoint a qualified administrator within 90 days of the effective date of the termination of the previously qualified administrator, and shall provide [ ~~OHFR~~ the center ] with written notification of the administrator's name, license number, and effective date of employment.

An additional 30-day extension may be granted if a written request provides documentation that the individual designated as administrator is awaiting the final licensing decision of the Virginia Board of Nursing Home Administrators.

E. The governing body shall assure that administrative direction is provided at all times. The governing body, the administrator, or the chief executive officer shall designate, in writing, a qualified individual to act as the alternate nursing home administrator in the absence of the administrator of record.

12 VAC 5-371-140. Policies and procedures.

A. The nursing [ ~~home~~ facility ] shall implement written policies and procedures approved by the governing body.

B. All policies and procedures shall be reviewed at least annually, with recommended changes submitted to the governing body for approval.

C. A written record of the annual policy review, including at least the review dates, participants, recommendations and action dates of the governing body, shall be maintained.

D. Administrative and operational policies and procedures shall include, but are not limited to:

1. Administrative records;
2. Admission, transfer and discharge;
3. Medical direction and physician services;
4. Nursing direction and nursing services;
5. Pharmaceutical services, including drugs purchased outside the nursing [ ~~home~~ facility ];
6. Dietary services;
7. Social services;
8. Activities services;
9. Restorative and rehabilitative resident services;
10. Contractual services;
11. Clinical records;

12. Resident rights and grievances;

13. Quality assurance and infection control;

14. Safety and emergency preparedness procedures; and

15. Professional and clinical ethics, including:

- a. Confidentiality of resident information;
- b. Truthful communication with residents;
- c. Observance of appropriate standards of informed consent and refusal of treatment; and
- d. Preservation of resident dignity, with special attention to the needs of the aged, the cognitively impaired, and the dying.

E. Personnel policies and procedures shall include, but are not limited to:

1. Written job descriptions that specify authority, responsibility, and qualifications for each job classification;

2. An on-going plan for employee orientation, staff development, in-service training and continuing education;

3. An accurate and complete personnel record for each employee including:

- a. Verification of current professional license, registration, or certificate or completion of a required approved training course;
- b. Criminal record check;
- c. Verification that the employee has reviewed or received a copy of the job description;
- d. Orientation to the nursing [ ~~home~~ facility ], its policies and to the position and duties assigned;
- e. Completed continuing education program approved for the employee [ as determined by the outcome of the annual performance evaluation ];
- f. Annual employee performance evaluations; and
- g. Disciplinary action taken.

4. [ ~~Separate, accurate, and confidential employee health records~~ Employee health-related information retained in a file separate from personnel files ].

F. Financial [ ~~record~~ ] policies and procedures shall include, but not be limited to:

1. Admission agreements;
2. Methods of billing:
  - a. Services not included in the basic daily or monthly rate;
  - b. Services delivered by contractors of the nursing [ ~~home~~ facility ]; and
  - c. Third party payers;

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3. Resident or designated representative notification of changes in fees and charges;
4. Correction of billing errors and refund policy;
5. Collection of delinquent resident accounts; and
6. Handling of resident funds.

G. Policies shall be made available for review, upon request, to residents and their designated representatives.

H. Policies and procedures shall be readily available for staff use at all times.

## 12 VAC 5-371-150. Resident rights.

A. The nursing [ ~~home~~ facility ] shall develop and implement policies and procedures that ensure resident's rights as defined in §§ 32.1-138 and 32.1-138.1 of the Code of Virginia.

B. The procedures shall:

1. Not restrict any right a resident has under law;
2. Provide staff training to implement resident's rights; and
3. Include grievance procedures.

C. The name and telephone number of the complaint coordinator of the [ ~~OHFR center~~ ] and the toll-free telephone number for the State Ombudsman [ ~~and any local or county program serving the area~~ ] shall be conspicuously posted in a public place.

D. Copies of resident rights [ ~~policies and procedures~~ ] shall be given to residents upon admittance to the facility and made available to residents currently in residence, to any guardians, next of kin, or sponsoring agency or agencies, and to the public.

E. The nursing [ ~~home~~ facility ] shall have a plan to review resident rights with each resident annually, or with the responsible family member or responsible agent at least annually, and have a plan to advise each staff member at least annually.

F. The nursing [ ~~home~~ facility ] shall certify, in writing, that it is in compliance with the provisions of §§ 32.1-138 and 32.1-138.1 of the Code of Virginia, relative to resident rights, as a condition of license issuance or renewal.

## 12 VAC 5-371-160. Financial controls and resident funds.

A. All financial records, including resident funds, shall be kept according to generally accepted accounting principles (GAAP).

B. Nursing [ ~~homes~~ facilities ] choosing to handle resident funds shall:

1. Comply with § 32.1-138 A 6 of the Code of Virginia regarding resident funds;
2. Purchase a surety bond or otherwise provide assurance for the security of all personal funds deposited with the facility; and
3. Provide for separate accounting for resident funds.

C. In the event the facility is sold, the nursing [ ~~home~~ facility ] shall provide written verification that all resident funds have been transferred and shall obtain a signed receipt from the new owner. Upon receipt, the new owner shall provide an accounting of resident funds.

D. In the event of a resident's death or discharge with funds deposited with the facility, the nursing [ ~~home~~ facility ] shall, within 30 days, give a final accounting of those funds to the individual administering the resident's estate [ ~~and, if appropriate, refund any moneys due~~ ].

## 12 VAC 5-371-170. Quality assessment and assurance.

A. The nursing [ ~~home~~ facility ] shall maintain a quality assessment and assurance committee consisting of [ ~~at least the following individuals~~ ]:

1. The director of nursing services;
2. A physician designated by the facility; [ ~~and~~ ]
3. At least [ ~~two~~ three ] other members of the facility staff [ ~~; and~~ , one of whom demonstrates an ability to represent the rights and concerns of residents. ]
- [ ~~4. An individual with a demonstrated ability to represent the rights and concerns of residents, who may be a member of the facility staff, a resident, or a resident's family member.~~ ]

[ ~~B. In selecting members of this committee, consideration shall be given to candidates' abilities and sensitivity to issues relating to quality of care and services provided to residents.~~ ]

[ ~~C. B. ] The quality assessment and assurance committee shall:~~

1. Meet at least quarterly to identify issues which would improve quality of care and services provided to residents; and
2. Develop and implement appropriate plans of action to correct identified deficiencies.

[ ~~D. C. ] The nursing [ ~~home~~ facility ] shall document compliance with these requirements.~~

## 12 VAC 5-371-180. Infection control.

A. The nursing [ ~~home~~ facility ] shall establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to prevent the development and transmission of disease and infection.

B. The infection control program shall encompass the entire physical plant and all services.

C. The infection control program [ ~~addressing the surveillance, prevention and control of facility wide infections~~ ] shall include:

- [ ~~1. Surveillance, prevention and control of facility wide infections;~~ ]
2. 1. ] Procedures to isolate the infecting organism;
- [ ~~3. 2. ] Access to handwashing equipment for staff;~~

[ 4. 3. ] Training of staff in proper handwashing techniques, according to accepted professional standards, to prevent cross contamination;

[ 5. 4. ] Implementation of universal precautions by direct [ resident ] care staff;

[ 6. 5. ] Prohibiting employees with communicable diseases or infections from direct contact with residents or their food, if direct contact will transmit disease;

[ 7. 6. ] Monitoring staff performance of infection control practices;

[ 8. 7. ] Handling, storing, processing and transporting linens, supplies and equipment in a manner that prevents the spread of infection;

[ 9. 8. ] Handling, storing, processing and transporting regulated medical waste in accordance with applicable regulations;

[ 10. 9. ] Maintaining an effective pest control program; and

[ 11. 10. ] Staff education regarding infection risk-reduction behavior.

## 12 VAC 5-371-190. Safety and emergency procedures.

A. A written emergency preparedness plan shall be developed, reviewed, and implemented when needed. The plan shall address responses to natural disasters, as well as fire or other emergency which disrupts the normal course of operations. The plan shall address provisions for relocating residents and also address staff responsibilities for:

1. Alerting emergency personnel and sounding alarms;
2. Implementing evacuation procedures including the evacuation of residents with special needs;
3. Using, maintaining and operating emergency equipment;
4. Accessing resident emergency medical information; and
5. Utilizing community support services.

B. All staff shall participate in periodic emergency preparedness training.

C. Staff shall [ ~~be knowledgeable in~~ have documented knowledge of, ] and [ be ] prepared to implement [ , ] the emergency preparedness plan in the event of an emergency.

[ ~~D. Fire prevention training shall be conducted quarterly on each shift to assure that personnel are capable of performing assigned tasks or duties.~~

E. D. ] At least one telephone shall be available in each area to which residents are admitted and additional telephones or extensions as are necessary to ensure availability in case of need.

[ F. E. ] In the event of a disaster, fire, emergency or any other condition that may jeopardize the health, safety and well-being of residents, the organization shall notify the [

QHFR center ] of the conditions and status of the residents and the licensed facility as soon as possible.

[ ~~G. F. ] The nursing [ home facility ] shall have a policy on smoking [ in which consideration shall be given to the rights of nonsmoking residents and employees without unreasonably limiting the rights of smoking residents ].~~

## PART III. RESIDENT SERVICES.

### 12 VAC 5-371-200. Director of nursing.

A. Each nursing [ home facility ] shall employ a full-time director of nursing to supervise the delivery of nursing services. The individual hired shall be a registered nurse licensed by the Virginia Board of Nursing.

B. The duties and responsibilities of the director of nursing shall include, but are not limited to:

1. Developing and maintaining (i) nursing service objectives, (ii) standards of practice, (iii) policy and procedure manuals, and (iv) job descriptions for each level of nursing personnel;
2. Recommending to the administrator the resources needed to carry out nursing service, including but not limited to, equipment and supplies and the number and level of nursing personnel to be employed;
3. Participating in the employment of nursing personnel, including (i) recruitment, (ii) selection, (iii) position assignment, (iv) orientation, (v) in-service education, (vi) supervision, (vii) evaluation, and (viii) termination;
4. Participating with the medical director in developing and implementing policies for resident care;
5. Assuring that the [ comprehensive ] plan of care is maintained in conjunction with other disciplines;
6. Coordinating nursing services with other services such as medical, rehabilitative, and social services and the resident activity program;
7. Participating in quality assurance committee meetings to identify issues and to develop and implement appropriate plans of action to correct identified problems;
8. Making daily rounds on resident floors, unless this duty has been delegated to another licensed nurse; and
9. Recommending and coordinating the training needs of nursing staff with the individual responsible for in-service training.

C. A registered nurse, designated in writing by the administrator, shall serve in the temporary absence of the director of nursing so there is the equivalent of a full-time director of nursing on duty for a minimum of five days a week.

D. The director of nursing shall not function as a [ charge nurse nursing supervisor ] in facilities with 60 or more beds.

E. The nursing [ home facility ] shall notify the [ QHFR center ], in writing, within five days of a vacancy in the director of nursing position. The written notice shall give the name and Virginia license number of the individual appointed

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to serve as director of nursing, and whether the appointment is permanent or temporary.

F. The director of nursing position shall not be held by a temporary designate for more than 90 days. Temporary agency personnel shall not be utilized to fill the director of nursing position.

G. Written notification, giving the name and license number of the individual, shall be sent to the [ ~~QHR~~ center ] when a permanent appointment is made.

H. A license for a new nursing [ home facility ] or an increase in bed size in an existing nursing [ home facility ] shall not be issued if the director of nursing position is vacant.

12 VAC 5-371-210. Nurse staffing.

[ ~~A. A charge nurse, designated by the director of nursing, shall be assigned to each shift.~~

~~B. The charge nurse~~ A. A nursing supervisor, designated by the director of nursing, ] shall be responsible for [ supervising ] all nursing activities in the facility, or in the section to which assigned, including:

1. Making daily visits to [ assess determine ] resident physical, mental, and emotional status and implementing any required nursing intervention;
2. Reviewing medication records for completeness, accuracy in the transcription of physician orders, and adherence to stop-order policies;
3. Reviewing resident plans of care for appropriate goals and approaches, and making revisions based on individual needs;
4. Assigning to the nursing staff responsibility for nursing care;
5. Supervising and evaluating performance of all nursing personnel on the unit; and
6. Keeping the director of nursing services, or director of nursing designee, informed of the status of residents and other related matters.

[ ~~G. B. ]~~ The nursing [ home facility ] shall provide qualified nurses and certified nurse aides on all shifts, seven days per week, in sufficient number to meet the assessed nursing care needs of all residents.

[ ~~D. C. ]~~ Nursing personnel, including registered nurses, licensed practical nurses, and certified nurse aides shall be assigned duties consistent with their education, training and experience.

[ ~~E. Provisions shall be made for relief personnel during vacations, sick leave and other periods of temporary absence of permanent personnel.~~

~~F. Nursing personnel shall be assigned to each unit based on the needs of the residents.~~

G. D. ] Weekly time schedules shall be maintained and shall indicate the number and classification of nursing personnel who worked on each unit for each shift. Schedules shall be retained for one year.

[ ~~H. E. ]~~ Direct resident care duties shall not be performed by non-nursing employees.

[ ~~I. F. ]~~ Before allowing a [ ~~nonlicensed individual nurse aide~~ ] to perform resident care duties, the nursing [ home facility ] shall verify that the individual is:

1. A certified nurse aide in good standing;
2. Enrolled full-time in a nurse aide education program approved by the Virginia Board of Nursing; or
3. Has completed a nurse aide education program or competency testing, but has not yet been placed on the nurse aide registry.

[ ~~J. G. ]~~ Any person employed to perform the duties of a nurse aide on a permanent full-time, part-time, hourly, or contractual basis must be [ certified registered ] as a [ certified ] nurse aide within 120 days of employment.

[ ~~K. H. ]~~ Nurse aides employed or provided by a temporary personnel agency shall be certified to deliver nurse aide services.

[ ~~L. I. ]~~ The services provided or arranged with a temporary personnel agency shall meet professional standards of practice and be provided by qualified staff according to each resident's comprehensive plan of care.

12 VAC 5-371-220. Nursing services.

A. Each nursing [ home facility ] shall implement written resident care policies and procedures which support an active program of nursing care directed toward assisting all residents to achieve outcomes consistent with their highest level of self-care and independence.

B. All medications and treatments will be administered as prescribed in the resident's medical plan [ of care ].

C. Services shall be provided to prevent clinically avoidable complications, including, but not limited to:

1. Pressure ulcer development;
2. Contracture;
3. Loss of continence;
4. Dehydration; and
5. Malnutrition.

D. Each resident shall be given proper daily personal attention and care, including skin, nail, hair and oral hygiene, in addition to any specific care ordered by the attending physician. Provision of daily personal care shall be documented in the clinical record.

E. Each resident shall be dressed in clean clothing and be free of odors. Each resident shall be encouraged to wear day clothing when out of bed.

F. Each resident shall receive tub or shower baths as often as needed, but not less than twice weekly. Residents whose medical conditions prohibit tub or shower baths shall have a sponge bath daily.

G. Residents who are incontinent shall have a partial bath, clean clothing and linens each time their clothing or bed linen is soiled.

H. The attending physician, nurse practitioner or physician assistant [ and the resident's family or responsible party ] shall be notified of any changes in a resident's condition which indicate a need to alter medical treatment.

12 VAC 5-371-230. Medical direction.

A. Each nursing [ home facility ] shall have a written agreement with one or more physicians licensed by the Virginia Board of Medicine to serve as medical director.

B. The duties of the medical director shall include, but are not limited to:

1. Advising the administrator and the director of nursing on medical issues, including the criteria for residents to be admitted, transferred or discharged from the nursing [ home facility ];
2. Advising on the development and execution of policies and procedures that have a direct effect upon the quality of medical and nursing care delivered to residents;
3. Acting as liaison and consulting with the administrator and the attending physician on matters regarding medical and nursing care policies and procedures of the nursing [ home facility ];
4. Advising and providing consultation to the nursing [ home facility ] staff regarding communicable diseases, infection control and isolation procedures, and serving as liaison with local health officials;
5. Providing temporary physician services when the admitting physician is not the attending physician, in order to assure that the resident has temporary medical orders;
6. Providing physician services in case of emergency in the event that the resident's attending physician cannot be reached; and
7. Advising on the development and execution of an employee health program, which shall include provisions for determining that employees are free of communicable diseases according to current acceptable standards of practice.

12 VAC 5-371-240. Physician services.

A. Each resident shall be under the care of a physician licensed by the Virginia Board of Medicine. Nurse practitioners and physician assistants licensed to practice in Virginia may provide care in accordance with their practice agreements.

B. Prior to, or at the time of admission, each resident, his designated representative, or the entity responsible for his care shall designate an attending physician.

C. A complete medical plan of care must be provided at the time of admission, or within 48 hours after admission. The plan shall include:

1. Primary diagnosis;
  2. Identification of resident problems;
  3. Medical history and physical exam;
  4. Orders for medications;
  5. Treatments;
  6. Restorative services;
  7. Activity levels;
  8. Diet;
  9. Special procedures recommended for health and safety of the resident; [ and ]
  10. Advance directives, if known [ ~~and~~ . ]
- [ ~~11. Plans for continuing care. ]~~

D. The [ admission ] medical plan of care shall be prescribed and signed by the attending physician. Subsequent medical plans of care for the same resident may be prescribed and signed by [ ~~the a~~ ] nurse practitioner or physician assistant according to their practice agreements.

E. The physician, nurse practitioner or physician assistant shall review the resident's [ ~~treatment medical~~ ] plan [ of care ] at each visit and write a progress note.

F. Each resident shall be seen by his attending physician and the resident's total program of care shall be reviewed and appropriately revised as necessary.

G. All verbal orders shall be immediately recorded and signed by the individual receiving them, and shall be countersigned by the prescribing person [ ~~within 72 hours~~ ].

12 VAC 5-371-250. Resident assessment and care planning.

A. The nursing [ home facility ] shall conduct an initial and periodic assessment of each resident's needs. The assessment shall accurately describe the resident's capability to perform daily life functions and significant impairments in functional capacity. This comprehensive assessment shall include, but is not limited to:

1. Medically defined conditions and prior medical history;
2. Medical status;
3. Physical and mental functional status;
4. Sensory and physical impairments;
5. Nutritional status and requirements;
6. Special treatments or procedures;
7. Psychosocial status;
8. Discharge potential;
9. Dental condition;
10. Activities potential;
11. Rehabilitative potential;
12. Cognitive status; [ ~~and~~ ]



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13. Drug therapy [ ; and

14. Any known advance directives. ]

B. The nursing [ home facility ] shall conduct a complete assessment:

1. No later than 14 days after the date of admission;
2. Promptly after a significant change in the resident's physical or mental condition; and
3. In all cases, at least once every 12 months.

C. The nursing [ home facility ] shall review each resident's assessment at least once every three months and shall update the plan of care as indicated.

D. Each assessment shall be coordinated by a registered nurse who signs, dates and certifies completion of the assessment.

E. Each assessment shall be conducted or coordinated with the participation of health professionals [ , who . Each person completing a portion of the assessment ] shall sign and date that portion of the assessment.

F. The nursing [ home facility ] shall use the results of the assessment to develop, review, and revise the resident's comprehensive plan of care.

G. A comprehensive plan of care shall be developed for each resident. The plan shall include measurable objectives and timetables to meet the resident's medical, nursing, nutritional, and psychosocial needs identified in the comprehensive assessment. The plan shall also describe the services that are to be furnished to maintain or improve the resident's physical, mental, and psychosocial status.

H. The comprehensive plan of care shall be developed within seven days of completion of the comprehensive assessment.

I. The [ comprehensive ] plan of care shall be prepared by [ ~~an interdisciplinary~~ a multidisciplinary ] team [ ~~initiated from the physician's orders~~ ]. The [ interdisciplinary multidisciplinary ] team shall include a registered nurse, the attending physician, to the extent practicable, and other staff in disciplines as determined by the resident's needs. The resident, the resident's family or legal representative shall also be provided [ an a meaningful ] opportunity to participate in the care planning.

[ ~~J. A resident's treatment plan shall contain at least the following, as relevant to the resident:~~

- ~~1. Diagnosis, prognosis and rehabilitative potential;~~
- ~~2. Orders for:~~
  - ~~a. Specialized therapeutic or nursing services;~~
  - ~~b. Necessary medical supplies and equipment;~~
  - ~~c. Necessary medications and treatment;~~
  - ~~d. Nutritional needs;~~
  - ~~e. Medical diagnostic tests;~~
- ~~3. Activity levels; and~~

~~4. Any known advance directives. ]~~

12 VAC 5-371-260. Staff development and inservice training,

A. All full-time, part-time and temporary personnel shall receive orientation to the facility commensurate with their function or job-specific responsibilities.

B. All resident care staff shall receive annual inservice training [ ; ] commensurate with their function or job-specific responsibilities [ ; ] in at least the following:

1. Special needs of residents as determined by the facility staff;
2. Prevention and control of infections;
3. Fire prevention or control and emergency preparedness;
4. Safety and accident prevention;
5. [ Restraint use, including ] alternatives to physical and chemical restraints;
6. Confidentiality of [ patient resident ] information;
7. Understanding the needs of the aged and disabled;
8. Resident rights, including personal rights, property rights and the protection of privacy, and procedures for handling complaints;
9. Care of the cognitively impaired; [ and ]
10. Basic principles of cardiopulmonary resuscitation for licensed nursing staff and the Heimlich maneuver for nurse aides [ ; and
11. Prevention and treatment of pressure sores ].

C. The nursing [ home facility ] shall have an ongoing training program that is planned and conducted for the development and improvement of skills of all personnel.

D. The nursing [ home facility ] shall maintain written records indicating the content of and attendance at each orientation and inservice training program.

E. The nursing [ home facility ] shall provide inservice programs, based on the outcome of annual performance evaluations, for nurse aides.

F. Nurse aide inservice training shall consist of at least 12 hours per anniversary year.

12 VAC 5-371-270. Social services.

A. The nursing [ home facility ] shall provide a [ full-time comprehensive ] social services program [ to meet the psychosocial and medically related needs of each resident ].

B. There shall be at least one designated staff member responsible for coordinating resident social services.

C. This individual shall have [ one of the following qualifications ]:

- [ ~~1. A bachelor's degree in social work;~~
2. 1. ] A bachelor's degree in [ social work or ] human services [ , such as sociology, special education,

~~rehabilitation counseling, and psychology~~ appropriate to resident needs]; or

[ ~~3. Two years~~ 2. One year, within the last five years, supervised ] direct social work experience.

D. This individual shall be:

1. Trained in recognizing and assessing the emotional and social needs of residents; and
2. Knowledgeable of community agencies and resources available to meet those needs.

E. The social services coordinator shall assess each resident and participate in the development and implementation of the comprehensive plan of care.

F. Documentation of social services shall be included in the resident's clinical record.

12 VAC 5-371-280. Resident activities.

A. The nursing [ home facility ] shall provide activities, on a regularly scheduled basis, specifically suited to the needs and interests of each resident based on [ his the resident's ] comprehensive plan of care.

B. There shall be at least one staff member responsible for coordinating resident activities. The individual shall [ meet at least one of the following qualifications ]:

1. Be a qualified therapeutic recreation specialist or an activities professional;
2. Be eligible for certification as a therapeutic recreation specialist or activities professional by a recognized accrediting body;
3. Have [ ~~two years~~ one year full-time ] experience [ ~~in a social or recreational program~~ , ] within the last five years, [ ~~one of which was full-time~~ ] in a patient activities program in a health care setting;
4. Be a qualified occupational therapist or occupational therapy assistant; or
5. Have completed [ ~~90~~ 40 ] hours training in group activities and recognizing and assessing the activity needs of residents.

C. The activities coordinator shall assess each resident and participate in the development and implementation of the comprehensive plan of care.

D. The activities program shall make the fullest possible use of community social and recreational opportunities, including the involvement of volunteers and community groups.

E. Documentation of activities shall be included in the resident's clinical record.

12 VAC 5-371-290. Special rehabilitative services.

A. The nursing [ home facility ] shall provide, or arrange for under written agreement, specialized rehabilitative services, such as physical therapy, speech-language pathology services and occupational therapy.

B. Specialized rehabilitative services shall be provided in accordance with accepted standards of practice by qualified therapists, or by trained assistants under the supervision of a licensed or certified therapist.

C. Rehabilitative services shall be authorized by the attending physician and a written plan of care developed in consultation with the appropriate therapist.

12 VAC 5-371-300. Pharmaceutical services.

A. Provision shall be made for the procurement, storage, dispensing, and accounting of drugs and other pharmacy products. This may be by arrangement with an off-site pharmacy, but must include provisions for 24-hour emergency service.

B. The nursing [ home facility ] shall comply with the Virginia Board of Pharmacy regulations related to pharmacy services in [ ~~nursing homes~~ long-term care facilities (see Part XII (18 VAC 110-20-530 et seq.) of the Virginia Board of Pharmacy Regulations) ].

C. Each nursing [ home facility ] shall develop and implement policies and procedures for the handling of drugs and biologicals, including procurement, storage, administration, self-administration and disposal of drugs.

D. Each nursing [ home facility ] shall have a written agreement with a qualified pharmacist to provide consultation on all aspects of the provision of pharmacy services in the facility.

E. The consultant pharmacist shall make regularly scheduled visits, at least monthly, to the nursing [ home facility ] for a sufficient number of hours to carry out the function of the agreement.

F. Each prescription container shall be individually labeled by the pharmacist for each resident or provided in an individualized unit dose system.

G. No drug or medication shall be administered to any resident without a [ valid verbal order or a ] written, dated and signed order from a physician, dentist or podiatrist, nurse practitioner or physician assistant, licensed in Virginia.

H. Verbal orders for drugs or medications shall only be given to a licensed nurse, pharmacist or physician.

I. Drugs and medications not limited as to time or number of doses when ordered shall be automatically stopped, according to the written policies of the nursing [ home facility ], and the attending physician shall be notified.

J. Each resident's medication regimen shall be reviewed by a pharmacist licensed by the Virginia Board of Pharmacy. Any irregularities identified by the pharmacist shall be reported to the physician and the director of nursing, and their response documented.

K. Medication orders shall be reviewed at least every 60 days by the attending physician, nurse practitioner, or physician's assistant.

L. Prescription and nonprescription drugs and medications may be brought into the nursing [ home facility ] by a

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resident's family, friend or other person [ ~~under the following conditions provided~~ ]:

~~1. The drug or medication is obtained from a pharmacy licensed by the state or federal authority;~~

~~2. The individual delivering the resident's drugs and medications shall assure timely delivery in accordance with the nursing home's written policies, so that the resident's prescribed treatment plan is not disrupted;~~

~~3. Each drug or medication shall be in an individual container;~~

~~4. Each container shall be labeled by a licensed pharmacist indicating;~~

~~a. Prescription number, when applicable;~~

~~b. Resident's name;~~

~~c. Drug name and strength;~~

~~d. Number of dosage units;~~

~~e. Date filled;~~

~~f. Physician's name; and~~

~~g. Expiration date;~~

~~5. Each container shall be securely sealed, consistent with the policies of the nursing home, by a licensed pharmacist; and~~

~~6. In no instance shall delivery be made directly to the individual resident.~~

1. The individual delivering the drugs and medications assures timely delivery, in accordance with the nursing facility's written policies, so that the resident's prescribed treatment plan is not disrupted;

2. Each drug or medication is in an individual container; and

3. Delivery is not allowed directly to an individual resident.

In addition, prescription medications shall be:

1. Obtained from a pharmacy licensed by the state or federal authority;

2. Labeled by a licensed pharmacist indicating:

a. Prescription number, when applicable;

b. Resident's name;

c. Drug name and strength;

d. Number of dosage units;

e. Date filled;

f. Physician's name; and

g. Expiration date; and

3. Securely sealed, consistent with the policies of the nursing facility, by a licensed pharmacist. ]

12 VAC 5-371-310. Diagnostic services.

A. The nursing [ home facility ] shall provide, or arrange for under written agreement, laboratory, x-ray and other diagnostic services, as ordered by a physician.

B. The nursing [ home facility ] shall notify the attending physician of the results of diagnostic services.

12 VAC 5-371-320. Dental services.

A. Provisions shall be made to assist residents to obtain routine and emergency dental care.

B. Each nursing [ home facility ] shall make arrangements with a qualified dentist to provide consultation and recommend oral hygiene policies and practices for the care of residents.

12 VAC 5-371-330. Restraint usage.

A. A resident shall be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

B. Restraints shall only be used:

1. In accordance with the comprehensive assessment and plan of care, which includes a schedule or plan of rehabilitation training enabling the progressive removal or the progressive use of less restrictive restraints when appropriate; and

2. As a last resort, after completing, implementing, and evaluating the resident's comprehensive assessment and plan of care, when the nursing [ home facility ] has determined that less restrictive means have failed.

C. If a restraint is used in a nonemergency, the nursing [ home facility ] shall:

1. Explain the use of the restraint, including potential negative outcomes of restraint use, to the resident or his legal representative, as appropriate;

2. Explain the resident's right to refuse the restraint;

3. Obtain written consent of the resident. If the resident has been [ legally ] declared incompetent, obtain written consent from the legal representative; and

4. Include the use of restraint in the plan of care.

D. Restraints shall not be ordered on a standing or PRN basis.

E. Restraints shall be applied only by staff trained in their use.

F. At a minimum, for a resident placed in a restraint, the nursing [ home facility ] shall:

1. Check the resident at least every 30 minutes;

2. Provide an opportunity for motion, exercise and elimination for not less than 10 minutes each hour in which a restraint is [ applied administered ]; and

3. Document restraint usage, including outcomes, in accordance with facility policy.

G. Emergency orders for restraints shall not be in effect for longer than 24 hours and must be confirmed by a physician within one hour of [ application administration ]. Each application of emergency restraint shall be considered a single event and shall require a separate physician's order.

H. Temporary restraints [ shall may ] be used [~~only when necessary to conduct~~ for a brief period to allow ] a medical or surgical procedure [ , but shall not be used to impose a medical or surgical procedure which the resident has previously refused ].

[ I. The nursing facility shall notify a resident's legal representative, if any, or designated family member as soon as practicable, but no later than 12 hours after administration of a restraint. ]

[ J. Chemical restraint shall only be ordered in an emergency situation when necessary to ensure the physical safety of the resident or other individuals.

[ K. Orders for chemical restraint shall be in writing, signed by a physician, specifying the dose, frequency, duration and circumstances under which the chemical restraint is to be used. Verbal orders for chemical restraints shall be implemented when an emergency necessitates parenteral administration of psychopharmacologic drugs, but only until a written order can reasonably be obtained.

[ L. Emergency orders for chemical restraints shall:

1. Not be in effect for more than 24 hours; and
2. Be administered only if the resident is monitored continually for the first 15 minutes after each parenteral administration (or 30 minutes for nonparenteral administration) and every 15 minutes thereafter, for the first hour, and hourly for the next eight hours to ensure that any adverse side effects will be noticed and appropriate action taken as soon as possible.

[ ~~The nursing home shall notify a resident's legal representative, if any, or an interested family member, if known, within 12 hours when a chemical restraint is used. ]~~

## PART IV. SUPPORT SERVICES.

### 12 VAC 5-371-340. Dietary program.

A. The dietary service and all food service personnel shall meet all applicable sections of the Rules and Regulations Governing Restaurants (12 VAC 5-420-10 et seq.).

B. There shall be a qualified staff member responsible for the full-time management and supervision of the dietary service. The individual's qualifications, authority and duties shall be defined in a written job description [ ~~approved by the administrator~~ ].

C. The food service supervisor shall [ ~~be~~ meet one of the following qualifications ]:

1. [ ~~A registered dietitian who meets~~ Registered with the Commission on Dietetic Registration of ] the American Dietetic Association qualification standards;

2. A [ ~~graduate of an accredited college or university with a~~ ] baccalaureate degree with major studies in food and nutrition [ from an accredited college or university ] and at least two years of experience in a health care food or nutrition service;

3. [ ~~An individual who has~~ Have ] completed an approved program in food service supervision which includes major course work in food and nutrition;

4. [ ~~An individual who meets the~~ Certified by the Certifying ] Board of Dietary Managers [ ~~certification of the Dietary Managers Association~~ ] with major course work in food and nutrition;

5. [ ~~An individual who has~~ Have ] successfully completed a U.S. Armed Services course in food service supervision with an emphasis in nutrition; or

6. [ ~~An individual who has~~ Have ] documented evidence of at least two years satisfactory work experience in food service supervision and who is in an approved program within 60 days of accepting responsibility for the position and shall successfully complete the program within 12 months of the date of enrollment.

D. If the food service supervisor is not a registered dietitian who meets the American Dietetic Association qualification standards (subdivision C 1 of this section) or is not a graduate of an accredited college or university with a baccalaureate degree with major studies in food and nutrition and at least two years experience in a health care food or nutrition service (subdivision C 2 of this section), the nursing [ ~~home facility~~ ] shall have a written agreement for ongoing consultation from [ ~~an individual a~~ a registered dietitian ] who meets the qualifications to provide guidance to the food service supervisor on methods for maintaining the dietary service, [ planning of ] nutritionally balanced meals, and assessing the dietary needs of individual residents.

E. When the current food service supervisor is enrolled in an approved program and completing related course work, the registered dietitian serving as a preceptor must increase the consulting hours to include the number of hours dedicated to preceptor responsibilities.

F. The [ ~~dietary program~~ dietitian's duties ] shall include the following:

1. Developing all menus, including therapeutic diets prescribed by a resident's physician;
2. Developing, revising, and annually reviewing dietary policies, procedures and job descriptions;
3. Assisting in planning and conducting regularly scheduled inservice training that includes, but is not limited to:
  - a. Therapeutic diets;
  - b. Food preparation requirements; and
  - c. Principles of sanitation; and
4. Visiting residents on a regular basis to discuss nutritional problems, depending upon their needs and level of care, and recommending appropriate solutions.

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G. Menus shall meet the dietary allowances of the Food and Nutritional Board of the National Research Council, as adjusted for age, sex, and activity.

H. A copy of a diet manual containing acceptable practices and standards for nutrition must be kept current and on file in the dietary department.

12 VAC 5-371-350. Food service.

A. Food service shall be staffed for not less than 12 hours during the day and evening. Duty schedules shall be retained for at least 30 days.

B. At least three meals, served at regular intervals, shall be provided daily to each resident, unless contraindicated as documented by the attending physician in the resident's clinical record.

C. A between meal snack of nutritional value shall be available upon request to each resident or in accordance with their plan of care.

D. Therapeutic diets shall be prepared and served as prescribed by the attending physician.

E. Food shall be served in a palatable and attractive manner, with proper equipment provided, so that hot food will be hot (140°F or more) and cold food cold (41°F or less) when it leaves the kitchen or steam table.

F. Visitors or employees assigned to other duties in the nursing [ ~~home~~ facility ] shall not be allowed in the food preparation area during food preparation and resident meal service hours, except in cases of emergency.

G. Weekly menus, including therapeutic diets, substitutes, and copies of menus, as served, shall be retained on file for 12 months.

H. Each nursing [ ~~home~~ facility ] shall have sufficient quantities of trays, glassware, dishes and flatware for individual resident use.

I. Disposable dinnerware or tableware shall be used only for emergencies, for infection control, as part of special activities, or as indicated in a resident's plan of care.

J. All trays set up in advance of mealtime must be covered.

K. Suitable tray racks shall be provided.

12 VAC 5-371-360. Clinical records.

A. The nursing [ ~~home~~ facility ] shall maintain an organized clinical record system in accordance with recognized professional practices. Written policies and procedures shall be established specifying content and completion of clinical records.

B. Clinical records shall be confidential. Only authorized personnel shall have access as specified in § 8.01-413 of the Code of Virginia.

C. Records shall be safeguarded against destruction, fire, loss or unauthorized use.

D. Overall supervisory responsibility for assuring that clinical records are maintained, completed and preserved shall be assigned to an employee of the nursing [ ~~home~~ facility ]. The individual shall have work experience or training which is consistent with the nature and complexity of the record system and be capable of effectively carrying out the functions of the job.

E. An accurate and complete clinical record shall be maintained for each resident and shall include, but not be limited to:

1. Resident identification;
2. Designation of attending physician;
3. Admitting information, including [ ~~recent~~ ] resident [ medical ] history, physical examination and diagnosis;
4. Physician orders, including all medications, treatments, diets, restorative and special medical procedures required;
5. Progress notes written at the time of each visit;
6. Documented evidence of assessment of resident's needs, establishment of an appropriate treatment plan, and interdisciplinary plan of care;
7. Nurse's notes written in chronological order and signed by the individual making the entry;
8. All symptoms and other indications of illness or injury, including date, time, and action taken on each shift;
9. Medication and treatment record, including all medications, treatments and special procedures performed;
10. Copies of radiology, laboratory and other consultant reports; and
11. Discharge summary.

F. Verbal orders shall be immediately documented in the clinical record by the individual authorized to accept the orders, and shall be countersigned [ ~~within 72 hours by the person initiating the order~~ ].

G. Clinical records of discharged residents shall be completed within 30 days of discharge.

H. Clinical records shall be kept for a minimum of five years after discharge or death, unless otherwise specified by state or federal law.

I. Permanent information kept on each resident shall include:

1. Name;
2. Social security number;
3. Date of birth;
4. Date of admission and discharge; [ and ]
5. Name and address of guardian, if any.

J. Clinical records shall be available to residents and legal representatives, if they wish to see them.

K. When a nursing [ home facility ] closes, the owners shall make provisions for the safekeeping and confidentiality of all clinical records.

## 12 VAC 5-371-370. Maintenance and housekeeping.

A. The nursing [ home facility ] shall be maintained and equipped to provide a functional, sanitary, safe, and comfortable environment.

B. A written preventive maintenance program shall be established to ensure that equipment is operative and that the interior and exterior of the buildings are maintained in good repair and free from hazards and litter.

C. The administrator shall designate an employee responsible for carrying out these functions and for training and supervising housekeeping and maintenance personnel.

D. Hot water accessible to residents shall be maintained within a range of 100°F to 120°F.

E. The heating, ventilation and air conditioning (HVAC) system shall [~~maintain~~ be capable of maintaining ] temperatures [ ~~in the range of~~ between ] 70°F to 80°F throughout resident areas.

F. The nursing [ home facility ] shall have an effective pest control program provided either by maintenance personnel or by contract with a pest control company.

G. The nursing [ home facility ] shall provide adequate space, equipment and supplies for any special services to be offered.

H. All furniture shall be kept clean and safe for use.

I. Over bed tables shall be available as needed.

J. Stretchers and wheelchairs shall be stored out of the path of normal traffic.

K. A sufficient number of wheelchairs and chairs shall be provided for residents whose physical conditions indicate a need for such equipment.

L. Refuse containers shall be cleaned and emptied at frequent intervals.

[ ~~M. A separate room with appropriate equipment for hair care and grooming shall be provided.~~

~~N. M. ]~~ Hazardous cleaning solutions, compounds and substances shall be labeled, stored and kept under lock in a safe place separate from other materials.

## 12 VAC 5-371-380. Laundry services.

A. A quantity of linens shall be available at all times to provide for proper care and comfort of residents.

B. Linens and other laundry must be handled, stored and processed to control the spread of infection.

C. Clean linen shall be stored in a clean and dry area accessible to the nursing unit.

D. Soiled linen shall be stored in covered containers in separate, well ventilated areas and shall not accumulate in the facility.

E. Soiled linen shall not be sorted, laundered, rinsed or stored in bathrooms, resident rooms, kitchens or food storage areas.

F. Soiled linen shall not be placed on the floor.

G. Arrangement for laundering resident's personal clothing shall be provided. If laundry facilities are not provided on premises, commercial laundry services shall be utilized.

## 12 VAC 5-371-390. Transportation.

A. Provisions shall be made to obtain appropriate transportation in cases of emergency.

B. The nursing [ home facility ] shall assist in obtaining transportation when it is necessary to obtain medical, psychiatric, dental, diagnostic or other services outside the facility.

## 12 VAC 5-371-400. Unique design solutions.

A. All unique design solutions shall be described with outcome measures. This shall be reviewed in cooperation with the [ OHR center ].

B. The description and outcome measures shall be a part of the material used to review the design solution at the time of the facility survey.

C. All unique design solutions, unless specifically excluded by contract, shall comply with Parts II (12 VAC 5-371-110 et seq.) and III (12 VAC 5-371-200 et seq.) of this chapter.

## PART V.

### PHYSICAL ENVIRONMENT.

## 12 VAC 5-371-410. Architectural plans and specifications.

A. All construction of new buildings and additions, renovations or alterations of existing buildings for occupancy as a nursing [ home facility ] shall comply with applicable state and federal laws and regulations.

B. The nursing [ home facility ] shall be constructed and renovated in a manner that will minimize noise, steam, odors, hazards and unsightliness to resident bedrooms, dining rooms, and lounge areas.

C. Architectural drawings and specifications for all new construction or for additions, alterations or renovations to any existing building, shall be submitted to the [ OHR center ] for approval. Construction shall not commence prior to approval. Additional approval may include a Certificate of Public Need.

D. The owner of a nursing [ home facility ] shall notify the [ OHR center ] in writing, not later than 10 days prior to the date construction of a new nursing [ home facility ] commences, and when 90% complete.

E. Upon completion of the construction, the nursing [ home facility ] shall maintain a complete set of legible "as built" drawings showing all construction, fixed equipment, and mechanical and electrical systems, as installed or built.

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## 12 VAC 5-371-420. Building inspection and classification.

All buildings shall be inspected and approved as required by the appropriate building regulatory entity. Approval shall be a Certificate of Use and Occupancy indicating the building is classified for its proposed licensed purpose.

## 12 VAC 5-371-430. General physical plant requirements.

A. Nursing [ ~~homes~~ facilities ] constructed prior to [ ~~the effective date of this regulation July 1, 1997,~~ ] shall remain subject to the regulations under which they were constructed. When alterations are considered which affect the structural integrity of an existing building, the functional operation of the facility, fire safety, or the addition or relocation of beds:

1. The [ ~~OHFR~~ center ] shall be notified in writing of the proposed changes; and

2. Architectural drawings shall be submitted for alterations according to 12 VAC 5-371-410 C and the project approved in writing by the [ ~~OHFR~~ center ] before the changes are made.

Alterations in existing nursing [ ~~homes~~ facilities ] shall not be undertaken unless the changes meet the applicable standards of construction for new nursing [ ~~homes~~ facilities ].

B. Resident rooms, service rooms, or service areas shall not be used as passageways to other resident rooms, service areas or required exits.

C. Courtyard walls containing doors or windows of one or more resident rooms shall be 30 feet between facing walls.

D. Rooms containing heat-producing equipment, such as boiler or heater rooms and laundries, shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature of 10°F above the ambient room temperature.

E. Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved.

Floors in areas used for food preparation for food assembly shall be water resistant and grease resistant. Joints in tile and similar material in these areas shall be resistant to food acids and shall have a nonslip surface.

F. Wall bases in kitchens and other areas which are frequently subject to wet cleaning methods shall be made integral and coved with the floor.

G. Wall finishes shall be washable and, in the immediate area of plumbing fixtures, shall be smooth and moisture resistant.

H. Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed.

I. Ceilings throughout the building shall be cleanable.

Ceilings in the dietary and food preparation areas shall have a finished ceiling covering all overhead ductwork and piping.

Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces, unless required for fire-resistive purposes.

J. Noise absorption or noise reduction ceilings shall be provided in corridors in patient areas, nurses stations, dayrooms, recreation rooms, dining rooms, and waiting areas.

K. Windows or their openings shall be designed so that persons cannot accidentally fall out of them when they are open.

L. Facilities shall be provided to clean and sanitize carts serving the central supply, dietary, and laundry services.

M. All lounge, activity, dining and recreation areas shall be comfortable and suitably furnished.

N. Handrails shall be mounted 34 to 36 inches above the finished floor on both sides of all corridors used by residents.

O. Paper towel dispensers, soap dispensers, and waste receptacles shall be provided at all handwashing facilities.

P. There shall be storage areas for maintenance equipment to support and maintain the needs of the facility.

[ Q. A separate room with appropriate equipment for hair care and grooming shall be provided. ]

## 12 VAC 5-371-440. Elevators.

A. All buildings having facilities used by residents located on other than the main entrance floor shall have elevators.

B. At least one hospital-type elevator shall be installed where one to 60 resident beds are located on floors other than the main entrance floor, or where resident services are located on a floor other than those containing resident beds.

C. At least two hospital-type elevators shall be installed where 61 to 200 resident beds are located on floors other than the main entrance floor, or where resident services are located on a floor other than those containing resident beds.

D. At least three hospital-type elevators shall be installed where 201 to 350 resident beds are located on floors other than the main entrance floor, or where resident services are located on a floor other than those containing resident beds.

## 12 VAC 5-371-450. Janitor's closets.

A. Janitor's closets shall contain a floor receptor or service sink and storage for housekeeping supplies and equipment.

B. A janitor's closet shall be located in the following service areas:

1. Nursing unit;
2. Dietary or food service area; and
3. Laundry.

In addition, there shall be a sufficient number of janitor's closets located throughout the nursing [ ~~home~~ facility ] to assure a clean and sanitary environment.

## 12 VAC 5-371-460. Nursing units.

A. Resident rooms shall be located no more than 120 feet from the nurses' station, the clean workroom and the soiled workroom.

B. All resident corridors and open resident areas in the nursing unit shall be visible from the nurses' station or monitored by a suitable method or device.

C. The nursing unit shall contain the following service areas:

1. A nurses' station with space for nurses' charting, doctors' charting, storage for administrative supplies, and a handwashing lavatory, which may serve as the drug distribution station;
2. Nursing staff toilet rooms with a handwashing lavatory;
3. A clean utility room with a work counter, a handwashing lavatory, and storage facilities;
4. A soiled utility room with a clinical sink or equivalent flushing rim fixture, sink equipped for handwashing, work counter, sanitizer, waste receptacle, and linen receptacle;
5. A drug distribution station which may be a medicine preparation room, a self-contained unit, or other approved system. The facility medicine preparation room shall be under the nursing staff's visual control and contain a work counter, refrigerator, and locked storage for biologicals and drugs;
6. A separate closet or designated area within the clean utility room for clean linen storage. If a cart system is used, storage may be in an alcove;
7. A nourishment station containing a sink equipped for handwashing, equipment for serving nourishment between scheduled meals, refrigerator, ice maker and storage cabinets;
8. An equipment storage room for [ ~~I.V. stands, inhalators, air mattresses, and walkers~~ medical equipment and devices ]; and
9. At least one bathing unit accessible by lift, door, or swivel type tub.

D. Night lights shall be provided in resident rooms and corridors.

E. The number of beds on a nursing unit shall not exceed 60, unless otherwise approved by the [ OHR center ].

F. At least 60% of the beds shall be located in rooms designated for one or two beds.

G. At least two beds on each 60-bed unit shall be located in single bed rooms, each equipped with a private bath and toilet.

12 VAC 5-371-470. Resident rooms.

A. Minimum room areas exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, vestibules, door swings, heating units, columns or other projections shall be 100 square feet in single-bed rooms and 80 square feet per bed in multi-bed rooms. In multi-bed rooms, a clearance of 3 feet 8 inches shall be available at the foot of each bed to permit the passage of beds.

B. No more than four residents shall share a bedroom.

C. Visual privacy shall be provided for each resident in multi-bed rooms.

D. Multi-bed rooms shall be designed to permit no more than two beds side by side parallel to the window wall.

E. Each room shall be provided with natural light as a primary source of light. Windows shall be operable from the inside, without the use of special tools.

Window sills in resident rooms shall be above grade level and shall not be higher than three feet above the floor.

F. One handwashing lavatory shall be provided in each resident room except that it may be omitted from a single-bed room or a two-bed room, if a lavatory is located in an adjoining toilet room which serves that room only.

G. For each resident, the room shall contain:

1. A bed;
2. At least one pillow;
3. An enclosed bedside cabinet, with a drawer, hard surface and washable top;
4. A wardrobe, locker, or closet that is suitable for hanging full length garments and for storing personal effects; and
5. A bedside chair or geriatric chair.

12 VAC 5-371-480. Resident bathrooms.

A. There shall be one bathtub or shower for every 10 residents not otherwise served by bathing facilities within the resident rooms. Each resident shall have access to a toilet room with a water closet without entering the general corridor area.

B. Each tub or shower shall be in an individual room or enclosure which provides space for the private use of the bathing fixture, for drying and dressing, and for a wheelchair and an attendant.

C. One toilet room shall serve no more than four beds and no more than four resident rooms.

D. Rooms containing bathtubs, showers, and water closets used by residents shall be equipped with doors and hardware which will permit access from the outside. When such rooms have only one opening or are small in size, the doors shall be capable of opening outward or be designed to be opened without pushing against a resident collapsed within the room.

E. Grab bars shall be provided at all resident toilets, showers, and tubs. The bars shall have 1½ inch clearance to walls and shall have sufficient strength and anchorage to sustain a concentrated load of 250 pounds.

F. Soap dishes or soap dispensers shall be provided at showers and bath tubs.

G. Towel bars and robe hooks shall be provided at all bathing facilities.



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H. A nurse's call button shall be provided for resident use at each resident toilet, bath, and shower room.

12 VAC 5-371-490. Resident dining.

A. A total of 20 square feet per bed with a minimum size of not less than 225 square feet for resident dining shall be provided.

B. Nursing [ homes facilities ] with outpatient day care programs shall provide additional dining space to accommodate the additional number of persons to be served.

12 VAC 5-371-500. [ Nurses ] Calling system.

A. General resident areas and each bedroom shall be served by at least one calling station. Each bed shall be provided with a call button. Two call buttons serving adjacent beds may be served by one calling station.

B. Calls shall register audibly and visibly at the nurses station, in the clean workroom, in the soiled workroom, and in the nourishment station of the nursing unit.

C. A visible signal shall register in the corridor at the resident room.

D. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections.

E. In rooms containing two or more calling stations, indicating lights shall be provided at each station.

F. [ Nurses ] Calling systems which provide two-way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating.

12 VAC 5-371-510. Food service facilities.

A. Food service facilities shall consist of an on-site conventional food preparation system, a convenience food service system, or an appropriate combination of the two.

B. The following [ facilities resources ] shall be provided in the size required to [ implement support ] the type of food service selected:

1. Control station for receiving food supplies;
2. Storage space for three days supply of food including food requiring cold storage;
3. At least two cubic feet of refrigerated storage per bed and two square feet of dry food storage per bed;
4. Space and equipment for thawing, preparing, cooking, baking, and portioning;
5. Meal service facilities such as tray assembly and distribution space;
6. Potwashing facilities;
7. Sanitizing facilities and storage areas for [ garbage and trash ] cans, carts and mobile tray [ conveyors racks ]; and
8. Easily cleanable ice making facilities that may be in an area separate from food preparation but must be convenient to dietary facilities.

C. Handwashing lavatories shall be available in the food preparation area. Toilets with handwashing lavatories for dietary staff shall be conveniently accessible, but shall not open directly into food service areas.

D. The dietitian or food service supervisor shall have an office or suitable work space.

E. Warewashing space, located in a room or an alcove separate from the food preparation and serving area, shall contain:

1. Space for receiving, scraping, sorting, and stacking soiled tableware;
2. Space for transferring clean tableware to the using area; and
3. A handwashing lavatory.

F. Commercial type dishwashing equipment shall be provided.

12 VAC 5-371-520. Laundry facilities.

A. Laundry facilities shall include:

1. A soiled laundry receiving, holding, and sorting room with handwashing lavatory; and
2. A clean laundry storage, issuing, and holding room or area.

B. On-premise laundry service facilities shall include:

1. A laundry processing room with commercial-type equipment capable of processing seven days needs within a regularly scheduled work week and a handwashing lavatory;
2. A storage space for laundry supplies; and
3. A clean laundry inspection and mending room or area.

12 VAC 5-371-530. Waste processing services.

A. Space and facilities shall be provided for the sanitary handling, storage and disposal of waste. Disposal may be by incineration, mechanical destruction, compaction, containerization, removal, contractual arrangement or by a combination of these techniques.

B. Waste storage facilities shall be located in a separate room which is outside or easily accessible to the outside for direct pickup or disposal.

C. The use of an incinerator shall require a permit from the Department of Environmental Quality.

12 VAC 5-371-540. Resident recreation.

A. A total of 10 square feet per bed with a minimum of not less than 225 square feet shall be provided.

B. In multi-story buildings, a minimum of 225 square feet shall be provided on each floor.

C. Storage space shall be provided for equipment and supplies.

D. Nursing [ ~~homes~~ facilities ] with outpatient day care programs shall provide additional recreational space. Day care space will not infringe upon inpatient services.

E. Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated shall not be located directly over resident bed areas, unless special provisions are made to minimize such noise.

12 VAC 5-371-550. Physical and occupational therapy.

Therapy areas [ ~~, required by the nursing home programs,~~ ] shall include, but are not limited to:

1. Treatment and exercise areas with sufficient space and equipment for individual resident privacy;
2. Handwashing lavatory;
3. Facilities for the collection of soiled linen, supplies and waste products;
4. Storage for clean linen, supplies, and equipment;
5. Toilet rooms designed for the physically handicapped equipped with water closet and handwashing lavatory; and
6. Wheelchair and stretcher storage.

12 VAC 5-371-560. Administrative, public and employee facilities.

A. The entrance to the nursing [ ~~home~~ facility ] shall be at grade level, sheltered from the weather, and able to accommodate wheelchairs.

B. The following shall be available in areas accessible to the public:

1. Storage space for wheelchairs;
2. Reception and information counter or desk;
3. Seating space;
4. Public toilet facilities;
5. Public telephones;
6. Drinking fountain;
7. Space for private interviews;
8. General or individual offices; and
9. Storage for office equipment and supplies.

C. Facilities such as locker rooms, lounges, and toilet facilities shall accommodate the needs of all employees and volunteers.

#### Documents Incorporated By Reference

Dietary Manager Credentialing Exam, Information and Application, Certifying Board for Dietary Manager, 1996

The American Dietetic Association Knowledge and Performance Requirements for Entry-Level Dietitians, EDT 9/94

**NOTICE:** The forms used in administering the Rules and Regulations for the Licensure of Nursing Facilities (12 VAC 5-371-10 et seq.) are listed below. Any amended forms are reflected in the listing and are published following the list. The forms are available for review at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia, and at the Department of Health, 3600 West Broad Street, Richmond, Virginia.

Application for License Renewal: Nursing Homes for Year Ending December 31, [ ~~1996~~ 1997 ]

Annual Survey of Nursing Homes: [ ~~1996~~ 1996 ]

Application for License: Hospitals and Nursing Homes

VA.R. Doc. No. R97-423, Filed April 22, 1997, 1:09 p.m.

VIRGINIA STATE DEPARTMENT OF HEALTH

I. APPLICATION FOR LICENSE RENEWAL- NURSING HOMES  
for year ending December 31, 1997

In accordance with the provisions of Chapter 5, Article 1, Title 32.1, Code of Virginia of 1950, all non-federal medical and nursing facilities desiring licensure as a hospital or nursing home in Virginia must submit the following information to the Virginia Department of Health.

**ANY CHANGES DURING THE YEAR WHICH WOULD AFFECT THE ACCURACY OF THE FOLLOWING INFORMATION MUST BE REPORTED PROMPTLY, IN WRITING, TO THE VIRGINIA DEPARTMENT OF HEALTH.**

NAME OF FACILITY: \_\_\_\_\_

NUMBER & STREET: \_\_\_\_\_

CITY OR TOWN: \_\_\_\_\_, VIRGINIA \_\_\_\_\_ (Zip Code)

COUNTY: \_\_\_\_\_ (Telephone Number) \_\_\_\_\_ (Fax Number)

MAILING ADDRESS: \_\_\_\_\_ (if different)

ADMINISTRATOR OF RECORD: \_\_\_\_\_ (Name) \_\_\_\_\_ (Title)

IS ANY PART OF THE FACILITY LICENSED BY ANOTHER STATE AGENCY? YES \_\_\_\_\_ NO \_\_\_\_\_

If yes, \_\_\_\_\_ (Licensing Agency) \_\_\_\_\_ (Number of Beds)

NURSING HOMES AND LONG-TERM CARE UNITS OF HOSPITALS

I hereby certify that the above named facility is in compliance with the provisions of the Code of Virginia, 1950, as amended, Title 32.1, Chapter 5, Article 2, Rights and Responsibilities of Patients in Nursing Homes.

\_\_\_\_\_  
(SIGNATURE OF ADMINISTRATOR) (Nursing Home Administrator's Certificate Number)

I hereby certify that the information contained in the Application for License Renewal is, to the best of my knowledge, accurate and true.

\_\_\_\_\_  
(SIGNATURE OF ADMINISTRATOR/CHIEF EXECUTIVE OFFICER) (Date of Completion)

If there are questions about your responses to this form, who should be contacted?  
\_\_\_\_\_  
(Name - Please Type or Print) \_\_\_\_\_ (Telephone Number)

NOTICE: A LISTING OF LICENSED ROOMS AND NUMBER OF BEDS PER ROOM MUST ACCOMPANY THIS APPLICATION. PLEASE SIGN BELOW TO INDICATE THAT YOU HAVE ATTACHED THE LISTING.

\_\_\_\_\_  
(SIGNATURE OF ADMINISTRATOR) \_\_\_\_\_ (Telephone Number)

SERVICE CHARGE ACCORDING TO THE NUMBER OF BEDS: (Check One)

( ) 0 - 50 beds (\$75) ( ) 51 - 333 beds (\$1.50 per bed) ( ) 334 beds and over (\$500)

MAIL TO:  
Virginia Department of Health  
Office of Health Facilities Regulation  
3600 Centre - Suite 216  
3600 West Broad Street  
Richmond, Virginia 23290

Make Check or Money Order Payable to:  
VIRGINIA DEPARTMENT OF HEALTH

II. LICENSING CLASSIFICATION OF NURSING HOME FACILITIES AND BED CAPACITY BY SERVICE

NAME OF FACILITY:	Current Bed Capacity	Licensed Beds Requested	FOR OFFICE USE ONLY
			Total Licensed Beds Approved
TYPES OF BEDS BY LICENSE CLASSIFICATION			Date: _____
A. Nursing Homes			
TOTAL BED CAPACITY (Excluding Day Care)	_____	_____	_____
# Beds Certified for Medicare only (Title 18)	_____	_____	
# Beds Certified for Medicare/Medicaid (Title 18/19)	_____	_____	
# Beds Certified for Medicaid only (Title 19)	_____	_____	
# of non-certified beds (exclude HFA beds)	_____	_____	
Other beds (specify, i.e. HFA)	_____	_____	
Do you have a Nurse Aide training program on your premises? YES _____ NO _____			
If yes, as it a certified Nursing Assistant Program approved by the Board of Nursing? YES _____ NO _____			
Adult Day Care facilities - Number of accommodations _____			
Child Day Care facilities - Number of accommodations _____			
Are the day care facilities required to be licensed by the Department of Social Services? YES _____ NO _____			
B. Name of Director of Nursing Service _____			
C. Name of In-Service Training Director _____			
D. Name of Social Services Director _____			
E. Name of Activities Director _____			
F. Name of Food Service Supervisor _____			
G. Name and address of Medical Director/Advisory Physician(s) _____			
H. Name and address of Dietary Consultant _____			
I. Name and address of Pharmacy Consultant _____			
J. Name and address of Physical Therapy Consultant _____			
K. Name and address of Dental Consultant _____			

Virginia Register of Regulations  
2024

NAME OF FACILITY: \_\_\_\_\_

**III. OWNERSHIP AND OPERATION OF NURSING HOMES**

In accordance with the provisions of Chapter 5, Article 1, Title 32.1, Code of Virginia of 1950, all non-federal facilities desiring licensure as a hospital or nursing home in Virginia must annually submit the following information to the Virginia Department of Health. The application for renewal of license will not be accepted unless ALL of the following information is appropriately completed.

ANY CHANGES DURING THE YEAR WHICH WOULD AFFECT THE ACCURACY OF THE FOLLOWING INFORMATION MUST BE REPORTED PROMPTLY, IN WRITING, TO THE VIRGINIA DEPARTMENT OF HEALTH.

A. LEGAL NAME OF THE OPERATOR: \_\_\_\_\_  
 DOING BUSINESS AS: \_\_\_\_\_  
 OPERATOR'S BUSINESS ADDRESS: \_\_\_\_\_  
 (Number and Street)  
 \_\_\_\_\_  
 (City or Town) (State) (Zip)

B. TYPE OF OWNERSHIP AND CONTROL Is the facility operated by the owner of the building?  
 YES \_\_\_ NO \_\_\_

If the facility IS owner-operated, complete only Column A below.

If the facility IS NOT operated by the owner, complete both Column A and Column B.

(A) OWNER ( one)	(B) OPERATOR ( one)	
_____	_____	<u>State or Local Government:</u>
_____	_____	(11) State
_____	_____	(12) County
_____	_____	(13) City(ies)
_____	_____	(14) Multijurisdictional
_____	_____	(15) Hospital District/Authority
_____	_____	<u>Non-Profit</u>
_____	_____	(20) Church Related
_____	_____	(21) Non-Profit Corporation
_____	_____	(22) Other Non-Profit
_____	_____	<u>Proprietary:</u>
_____	_____	(23) Single Proprietorship
_____	_____	(24) Partnership
_____	_____	(25) Corporation

Is there any person other than those listed on this form (owner, operator, administrator of record) who is authorized to make administrative management decisions regarding the facility? YES \_\_\_ NO \_\_\_

If yes, please identify the person and their relationship to the facility \_\_\_\_\_

NAME OF FACILITY: \_\_\_\_\_

**C. INFORMATION REQUIRED ON THE OPERATOR/MANAGER OF THE FACILITY:** For licensure purposes, the operator is defined as any individual, partnership, association, trust, corporation, municipality, county, government agency or any other legal or commercial entity WHICH MANAGES OR OPERATES THE FACILITY.

1. If the operator is a corporation, association, trust, municipality, county or governmental agency, list the following information:

(a) Name(s) and address(es) of the officers of the governing body.

President/Chairman \_\_\_\_\_  
 \_\_\_\_\_  
 Vice President/Chairman \_\_\_\_\_  
 \_\_\_\_\_  
 Secretary \_\_\_\_\_  
 \_\_\_\_\_  
 Treasurer \_\_\_\_\_  
 \_\_\_\_\_

(b) If any officer, director, trustee or any member of the governing body or any other individual, partnership, association, trust, corporation, or other legal or commercial entity owns, holds or has a financial interest of 5 percent or more in the operating/management entity, list the name and percentages of ownership below:

NAME	OWNERSHIP %
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

2. If the operator/manager has a lease or management agreement with the legal entity or individual who owns the physical plant/buildings list the name and address of the owner.

\_\_\_\_\_  
 (Name)  
 \_\_\_\_\_  
 (Address)

3. If the operator/manager has a lease or management agreement with a legal entity or individual who is not the owner of the physical plant/buildings list the name and address of the lessor.

\_\_\_\_\_  
 (Name)  
 \_\_\_\_\_  
 (Address)

4. If the operator/manager has a lease or management agreement with an owner or a lessor, does the owner or the lessor have a 5 percent or more ownership interest in the legal entity that operates/manages the facility?

YES \_\_\_ NO \_\_\_

# Final Regulations

## NAME OF FACILITY:

**D. STAFFING REPORT** (Please refer to definitions on back) (Please ignore computer markings in left and right margins).  
 Columns A & B: Report the number of FULL-TIME and PART-TIME PERSONNEL ON THE PAYROLL CURRENTLY.  
 Column C: Report the TOTAL PART-TIME HOURS worked during an AVERAGE WEEK by all the part-time employees in each occupation, e.g., 10 part-time RNs, each working an average of 20 hours per week, worked a total of 200 hours.  
 Column D: FOR CONSULTANT OR CONTRACTUAL PERSONNEL, PLEASE INDICATE THE NUMBER OF THESE TYPES OF PERSONNEL THAT WORK IN YOUR FACILITY AT LEAST ONCE A MONTH.

CURRENT AS OF	(A) FULL-TIME PERSONNEL (65 hrs/wk or more)	(B) PART-TIME PERSONNEL (less than 35 hrs/wk)	(C) TOTAL PART-TIME HOURS (total hrs in an avg. wk)	(D) CONTRACTUAL PERSONNEL/CONSULTANTS
Month / Day / Year				
<b>OCCUPATIONAL CATEGORIES</b>				
<b>TOTAL PERSONNEL</b>				
1. Administrator/Assistant Administrators	01			
2. Physicians				
3. Dentists				
4. Registered Nurse, Director of Nursing	02			
5. Licensed Practical Nurse, Director of Nursing				
6. Licensed Nurse Practitioner				
7. Registered Nurses, Staff	03			
8. Licensed Practical Nurses, Staff				
9. Nursing Assistants				
10. Pharmacists, Licensed				
11. Dietitians	04			
12. Food Service Supervisors				
13. Food Service Helpers				
14. Occupational Therapists				
15. Occupational Therapy Assistants/Aides				
16. Physical Therapists	05			
17. Physical Therapy Assistants/Aides				
18. Speech Therapists				
19. Recreational/Activities Director	06			
20. Recreational/Activities Aides				
21. Social Workers/Social Services Director				
22. Social Service Assistants/Aides				
23. All Other Health Professional and Technical Personnel	07			
24. Housekeeping Personnel				
25. Maintenance Personnel				
26. All Other Non-Health and Non-Technical Personnel				
Number of Registered Nurse Positions vacant*				
Number of Licensed Practical Nurse Positions vacant*				
Number of Nursing Assistant Positions vacant*				

\*Please count the numbers of unfilled positions for which your facility is actively recruiting.

## D. STAFFING REPORT DEFINITIONS:

**Total Personnel:** include owners, managers, temporarily absent employees, trainees (if on the payroll), and members of religious orders whether paid or unpaid. Exclude contractors or attending staff, persons not on your payroll who provide services on the fee-for-service or contract, or relieve temporarily absent employees, private duty nurses, volunteer workers. Report consultants separately in Column D.

**1. Administrator:** the top-level position in the facility. The person currently licensed as an administrator in the State, who is in charge of policy development, coordination, procedural development, and planning of the institution.

**Assistant Administrator:** a person who works under the supervision of the facility administrator as department administration assistant for the areas of finance, education, personnel, physical plant, and volunteer services.

**2. Dentist:** dentists paid directly by the facility. Report consultants in Column D.

**3. Physician:** dentists paid directly by the facility. Report consultants in Column D.

**4. Licensed Nurse Practitioner:** registered nurses who have successfully completed a formal program of study designed to prepare registered nurses to provide primary health care through diagnosis, clinical judgment, and management abilities to restore, maintain and improve the health status of patients. These nurses are jointly licensed by the Board of Nursing and Board of Medicine. Included are nurse anesthetists, nurse-educators, and primary nurse practitioners.

**5. Registered Nurses:** nurses who have graduated from approved schools of nursing who are currently registered by a State. They are responsible for the nature and quality of all nursing care that patients or residents receive.

**6. Licensed Practical Nurse/Assistant:** persons who have graduated from an approved school of practical (vocational) nursing who are currently licensed by the State.

**7. Nursing Assistants:** persons who, under the direct supervision of a registered/licensed nurse, assist the nursing staff by performing routine duties in caring for patients or residents.

**8. Pharmacists, Licensed:** persons licensed within the State, who are concerned with the preparation and distribution of medicated products. Remember to report consultants in Column D.

**9. Dietitians:** persons who apply the principles of nutrition and management in administering institutional food service programs, plan special diets at the physician's request, and counsel individuals and groups in the application of nutrition principles to the selection of food. Remember to report consultants in Column D.

**10. Occupational Therapist:** an individual trained in the procurement, presentation, and analysis of food, as well as in the supervision and management of food service. (If this individual is not a professional dietitian, then the person so designated shall receive regularly scheduled consultation (at least monthly) from a dietitian or other person with suitable training.)

**11. Food Service Helpers:** members of the dietary staff who prepare and serve the food under the direction of the food service supervisor.

**12. Occupational Therapists:** persons who evaluate the self-care, work, and play/leisure time task performance skills of well and disabled clients of all ages; assess, plan and implement programs and social and interpersonal activities designed to restore, develop, and/or maintain the client's ability to satisfactorily accomplish those daily living tasks required of his specific age and necessary to the particular occupational role adjustment. Remember to report consultants in Column D.

**13. Occupational Therapy Assistants:** persons who work under the supervision of an occupational therapist in evaluating clients, planning and implementing programs and services for them.

**Occupational Therapy Aides (or Assistants):** persons who assist occupational therapists in administering medically oriented occupational programs to assist in rehabilitating patients or residents.

**14. Physical Therapists:** therapists who use physical agents, bio-mechanical and neurophysiological principles and devices to assist in relieving pain, restoring maximum function, and preventing disability following disease, injury or loss of bodily parts. Remember to report consultants in Column D.

**15. Physical Therapy Assistants/Aides:** persons who assist the physical therapist by assembling equipment, carrying out specified treatment programs, and helping with complex treatment procedures. Other duties include responsibility for the personal care of patients, safety precautions, routine clerical and maintenance work.

**16. Social Workers/Social Services Director:** therapists concerned with evaluation and treatment of speech disorders. Remember to report consultants in Column D.

**17. Social Workers/Social Services Aides:** persons who plan, organize and direct medically approved recreation programs such as sports, trips, dramatics, and are and work to help clients in recovery from illness or in coping with temporary or permanent disability.

**18. Recreational/Activities Director:** persons who assist the recreational/activities director in approved programs or activity for the patients and residents.

**19. Social Workers/Social Services Director:** persons educated or trained to identify and understand the social and emotional factors underlying a patient/resident's illness and to communicate these factors to the health team. They assist patients/residents and their families in understanding and accepting the treatment necessary to maximize medical benefits and their adjustment to permanent and temporary effects of illness; moreover, they utilize resources, such as family and community agencies, in assisting patients/residents to recovery.

**20. Social Service Assistants/Aides:** persons who assist the social worker in identifying and understanding the social and emotional factors underlying a patient/resident's illness and to communicate these factors to the health team. They assist patients/residents and their families in understanding and accepting the treatment necessary to maximize medical benefits and their adjustment to permanent and temporary effects of illness; moreover, they utilize resources, such as family and community agencies, in assisting patients/residents to recovery.

**21. All Other Health Professional and Technical Personnel:** medically related social needs of the clients. Furthermore, they are in charge of formulating a plan of care for the patient/resident.

**22. All Other Health Professional and Technical Personnel:** persons not previously included who work in occupations requiring special education and training to allow them to function in a health setting.

**23. Housekeeping Personnel:** include maids, laundry personnel, unskilled janitor, etc.

**24. Maintenance Personnel:** personnel who perform routine and/or non-routine repairs and upkeep to the building and grounds of your facility.

**25. All Non-Health Professional and Non-Technical Personnel:** persons not previously counted in any of the categories above.

IV. SELECTED DEFINITIONS FOR ANNUAL SURVEY OF NURSING FACILITIES

(Definitions are lettered/numbered to coincide with questions in Section V)

C. BEDS:

1. **Licensed Beds** - refers to the number of beds a facility is licensed to operate by the State licensing authority.
2. **Staffed Beds** - beds with supporting services (such as personnel, food, laundry, and housekeeping), for patients or residents who stay in excess of 24 hours.
3. **Certification of Nursing Home Beds:**
  - (a) **Certified for Medicare Only** - refers to beds which are certified under Title 18.
  - (b) **Certified for Medicare/Medicaid** - refers to beds which are certified under Title 18/19.
  - (c) **Certified for Medicaid Only** - refers to beds which are certified under Title 19.
  - (d) **Non-Certified Beds** - refers to nursing home beds that are not certified for either Medicare or Medicaid. (Exclude any Home for Adults beds).

NOTE: Home for Adults beds, if any, are those beds licensed by the Department of Social Services.

D. UTILIZATION FOR REPORT PERIOD

This section gathers basic utilization information. It is designed to handle nursing homes as well as nursing home/home for adults combinations; please give the information requested for both facilities regardless of the licensure status of the two. Column 2 gathers statistics for homes for adults and is, therefore, not applicable to those facilities without a home for adults section. The definitions for each data item are given on page 9.

E. SELECTED STATISTICS ON PATIENTS/RESIDENTS

1. Please answer this question in regard to your nursing home unit only.
2. Please answer this question in regard to your entire facility. These data are to reflect the situation of the last day of the report period. Please check your addition.

A **life care contract** is a written agreement guaranteeing, for the life of the contract holder, that at least board, lodging, and nursing home services will be provided to the contract holder when and as needed in consideration of either the payment of fixed periodic charges adjustable at most annually, or an entrance fee, or both.

A **life care contract holder** is a person with a valid life care contract.

- F. 1. **Life Care Community** - a place used for group living, whose arrangements for residential occupancy are provided under life care contracts. (See definitions above).

Note: If your facility has more than one LCC entrance fee or monthly charge give the fee or charge taken by the majority of your residents. Please round the nearest dollar.

THIS FORM IS DESIGNED TO FACILITATE THE COMPUTER PROCESSING OF DATA. PLEASE IGNORE THE SMALL NUMBERS IN PARENTHESES AND/OR UNIDENTIFIED LINES IN THE MARGINS.

V. ANNUAL SURVEY OF NURSING HOMES: 1996

NAME OF FACILITY: \_\_\_\_\_

PERSON TO CONTACT IF FOLLOW-UP TO THIS SURVEY IS NECESSARY:

\_\_\_\_\_  
(Name) (Title) (Area code, Phone No.)

A. REPORT PERIOD: OCTOBER 1, 1995 through SEPTEMBER 30, 1996

NOTE: It is important that the data reported for your facility are accurate, current, and in conformity with the report periods used by other facilities. We, therefore, urge that you report data for the 12-month period ending September 30, 1996. Only use an earlier 12-month period if more accurate data can be reported. In no case should a 12-month period ending earlier than June 30, 1996 be used.

1. Check the report period actually used:
 

_____ October 1, 1995 - September 30, 1996	(PREFERRED)	
_____ September 1, 1995 - August 31, 1996		
_____ August 1, 1995 - July 31, 1996		<u>08</u> (1-12)
_____ July 1, 1995 - June 30, 1996		

Facility was in operation less than 12 months

2. If facility was in operation less than 12 months, or if none of the above report periods are available, indicate below the report period used: (Base the report period on those months in which the facility was actually operating.)

Beginning Date: \_\_\_\_\_ Ending Date: \_\_\_\_\_ (Preferably 09/30/96)  
Month / Day / Year Month / Day / Year

EXCEPT WHERE INSTRUCTED OTHERWISE, ALL DATA REPORTED IN PAGES 8 THROUGH 13 SHOULD BE BASED ON THE 12-MONTH REPORT PERIOD YOU INDICATED ABOVE. ENTER "0" WHEREVER "ZERO" IS APPROPRIATE.

B. PRIMARY TYPE OF FACILITY:

1. Nursing home \_\_\_\_\_ (11-24)
2. Home for adults with nursing unit on the premises \_\_\_\_\_ (25-27)

C. BEDS: (Please refer to definitions)

1. TOTAL LICENSED BED CAPACITY on LAST DAY of report period \_\_\_\_\_ TOTAL \_\_\_\_\_ (28-32)
  - (a) Licensed nursing home/unit beds \_\_\_\_\_ (33-36)
  - (b) Home for adults beds \_\_\_\_\_ (37-40)
2. BEDS SET UP AND STAFFED FOR USE on LAST DAY of report period \_\_\_\_\_ TOTAL \_\_\_\_\_ (41-44)
  - (a) Nursing home/unit beds \_\_\_\_\_ (45-48)
  - (b) Home for adults beds \_\_\_\_\_ (49-52)
3. CERTIFICATION OF LICENSED NURSING HOME BEDS on LAST DAY of report period. (Please refer to attached definitions. Also note that a, b, c and d do not overlap.)
  - (a) Certified Medicare only (Title 18) \_\_\_\_\_ (53-56)
  - (b) Certified Medicare/Medicaid (Title 18/19) \_\_\_\_\_ (57-60)
  - (c) Certified Medicaid only (Title 19) \_\_\_\_\_ (61-64)
  - (d) Non-certified beds (exclude any Home for Adults beds) \_\_\_\_\_ (65-68)

**D. UTILIZATION for report period:**

This section gathers basic utilization information and is designed to handle nursing homes as well as nursing home/home for adults combinations. If your facility is a nursing home/home for adults combination, please give the information on both facilities regardless of the licensure status of the two. Column 2 is not applicable to those facilities without a home for adults section. If you need any assistance on this section, please call Mr. Calvin Reynolds at (804)786-3698 or Betty Essex at (804)371-8678.

**INSTRUCTIONS AND DEFINITIONS**

- ADMISSIONS** - Report the number of people initially admitted during the report period by their unit of initial admission. You may count in this total those people returning to your facility from elsewhere, if you considered them a formal admission for records.
- FORMAL DISCHARGES** - Please include those discharged due to death or in a manner requiring a new admission to return. Exclude those patients or residents who went to a hospital or elsewhere if you officially held the beds for these people until they returned, and you therefore did not officially discharge them.  
Deaths - Report the number of people who died while they were at your facility. Include these in your formal discharge figures.
- INPATIENT/RESIDENT DAYS OF CARE** - Report the sum of the daily patient censuses for the entire report period. Please do not count held bed days here.
- DISCHARGE DAYS** - Report the sum of the lengths of stay, by unit of service, for each patient discharged during the report period. Remember, the length of stay for a particular discharge may extend outside the report period. If they are separable, do not count held bed days here. If you do not wish to compute the discharge days, please provide us with the admission and discharge dates and type unit of each patient or resident discharged during the report period so that we may calculate it. This year, discharge days are to be calculated on the nursing home or nursing unit in total, without regard to any transferring between units of the nursing home.

**EXAMPLE:** Three patients/residents in total were discharged during the report period.  
 Patient #1 - admitted to nursing home unit on 6/23/94 and remained there until being discharged on 8/9/96.  
 Total = 778 nursing home discharge days.  
 Patient #2 - admitted to nursing home unit 8/30/95; died in nursing unit on 10/30/95.  
 Total = 62 nursing home discharge days.  
 Patient #3 - admitted to home for adults unit on 10/1/94; transferred to nursing care unit on 10/10/95; transferred to the hospital on 11/30/95 with held bed; returned to nursing care unit on 12/15/95; died there on 2/15/96.  
 Total = 375 home for adults discharge days and 114 nursing home discharge days.

From the above short example, summing the totals, the discharge days would be 954 nursing home discharge days and 375 home for adults discharge days.

OR

If you choose not to calculate discharge days but to give us the dates so that we can calculate it, we would like the listing to look like this:

PATIENT	NURSING HOME UNIT			HOME FOR ADULTS UNIT		
	IN	OUT	DAYS	IN	OUT	DAYS
1	06/23/94	08/09/96				
2	08/30/95	10/30/95				
3	10/10/95	11/30/95		10/01/94	10/10/95	
	12/15/95	02/15/96				

From this, we would calculate discharge days.

- HELD BED DAYS** - The sum of beds times days, if any, on which beds were officially held in reserve for patients or residents during their temporary absence. Exclude these figures from the inpatient/resident days of care figures and discharge days figures.
- RESPITE CARE** - The temporary housing and care of a patient in your nursing home unit or home for adults unit, typically for a period of six weeks or less, during which time the patient's usual caregivers are relieved of that responsibility (an example would be a short stay while the patient/resident's family is on vacation).

NAME OF FACILITY:

**D. UTILIZATION for report period (continued):**

FOR OFFICE USE ONLY	UTILIZATION STATISTICS	(1)	(2)	(3)
		Nursing Home or Nursing Unit	Home For Adults Unit	GRAND TOTAL
09 (1-10) (11-12)	1. NEW ADMISSIONS			(13-24)
	2. FORMAL DISCHARGES			
	a) Live Discharges			(25-34)
	b) Deaths			(37-45)
	c) TOTAL			(44-57)
	3. INPATIENT/RESIDENT DAYS OF CARE			(58-75)
10 (1-10) (11-12)	4. DISCHARGE DAYS			(13-30)
	5. HELD BED DAYS Do not include in items 3 & 4			(31-54)
	6. RESPITE CARE (Include in items 1, 2 & 3 above)			
	a) Admissions			(35-44)
	b) Discharges			(47-58)
	c) Days of care			(59-76)
11 (1-10) (11-12)	7. Referring to Item 3 above and to the Nursing Home/Nursing Unit Total, what portion of these Inpatient Days are reimbursed by:			
	a) MEDICARE (Title 18)			(13-15)
	b) MEDICAID (Title 19)			(19-24)
	c) PRIVATE PAY			(25-30)
	d) OTHER METHODS			(31-36)
	e) UNKNOWN			(37-42)

(NOTE: These categories should add to the total for Item 3 column 1 and should be given as inpatient days and not percentages).

NAME OF FACILITY:

E. SELECTED STATISTICS ON PATIENTS/RESIDENTS:

1. Number of PATIENTS in NURSING HOME/UNIT on LAST DAY of report period by SOURCE OF PAYMENT.  
 NOTE: This question applies to nursing home patients only. If several payment sources are applicable to a single patient (e.g., Medicare and commercial insurance), please indicate the source which represents the majority of the payment. DO NOT DOUBLE COUNT SOURCES.

- (a) Medicare (skilled) \_\_\_\_\_ (43-45)
  - (b) Medicaid (in skilled or nursing care bed) \_\_\_\_\_ (46-48)
  - (c) Veterans Administration \_\_\_\_\_ (49-51)
  - (d) Supplemental Security Income (SSI) \_\_\_\_\_ (52-54)
  - (e) Commercial Insurance \_\_\_\_\_ (55-57)
  - (f) Self-Pay \_\_\_\_\_ (58-60)
  - (g) Other (specify) \_\_\_\_\_ (61-63)
  - (h) Unknown \_\_\_\_\_ (64-66)
- Total nursing home unit \_\_\_\_\_ (67-69)

2. Does this facility serve a Life Care Community? (As defined on page 7). (If no, then please ignore the columns below that pertain to life care contract holders, and answer the columns marked "ALL OTHERS") YES \_\_\_\_\_ NO \_\_\_\_\_ (70)

Number of patients/residents in your facility on the LAST DAY of your report period by age, contract status, and bed type.  
 NOTE: DO NOT report here on the census of Life Care apartments that do not involve licensed beds.

	AGE	CENSUS OF ALL NURSING HOME BEDS		CENSUS OF HOME FOR ADULTS BEDS		TOTAL CENSUS FOR ENTIRE FACILITY	
		LIFE CARE CONTRACT HOLDERS	ALL OTHERS	LIFE CARE CONTRACT HOLDERS	ALL OTHERS	LIFE CARE CONTRACT HOLDERS	ALL OTHERS
		(1)	(2)	(3)	(4)	(5)	(6)
(1-10)	12 (11-12)	a) Under 65	_____	_____	_____	_____	(13-34)
		b) 65-74	_____	_____	_____	_____	(37-40)
(1-10)	13 (11-12)	c) 75-84	_____	_____	_____	_____	(13-34)
		d) 85+	_____	_____	_____	_____	(37-40)
(1-10)	14 (11-12)	e) Unknown	_____	_____	_____	_____	(13-34)
		f) TOTAL	(4)	(4)	(4)	(4)	(37-40)

NAME OF FACILITY:

F. SPECIAL CHARGES AND SERVICES

(1-10) 15 (11-12)

1. If this nursing home serves a life care community, please provide the following:

- (a) Current entrance fee to obtain a life care contract.  
 (1) minimum \$ \_\_\_\_\_ (2) average \$ \_\_\_\_\_ (3) maximum \$ \_\_\_\_\_ (13-30)
- (b) Current monthly charge to life care contractholders.  
 (1) minimum \$ \_\_\_\_\_ (2) average \$ \_\_\_\_\_ (3) maximum \$ \_\_\_\_\_ (31-45)
- (c) Number of life care contract holders on LAST DAY of report period by principal source of payment. (Exclude apartment holders that do not have licensed nursing home or adult home beds).  
 (1) Self-pay \_\_\_\_\_ (46-49)  
 (2) Medicare \_\_\_\_\_ (50-53)  
 (3) Medicaid \_\_\_\_\_ (54-57)  
 (4) Other \_\_\_\_\_ (58-61)

2. Does this facility have:

- (a) A Special Care Unit (SCU) for individuals with Alzheimer's Disease (AD) dementia? YES \_\_\_\_\_ NO \_\_\_\_\_ (62)
- (b) Special Program for individuals with AD/dementia? YES \_\_\_\_\_ NO \_\_\_\_\_ (63)
- (c) Specialized services for individuals with AD/dementia? YES \_\_\_\_\_ NO \_\_\_\_\_ (64)
- (d) Specify the total capacity of the Special Care Unit (number of beds, if applicable) \_\_\_\_\_ (65-67)

If you offer any other special programs for nursing home inpatients with particular conditions or needs (such as AIDS or ventilator dependency), please list them below.

NOTE: Special program means separate and distinct services as opposed to generally serving these types of patients.

			Number of indicated beds, if any
(1-10)	16 (11-12)	(e)	_____
		(f)	_____
(1-10)	17 (11-12)	(g)	_____
		(h)	_____
		(31)	(3)



NAME OF FACILITY:

3. Support services for persons who are NOT nursing home inpatients.

(1-10) 18 (11-12)

		If not provided?	
		Direct	Indirect
YES	NO	(14)	(14)
YES	NO	(15)	(15)
YES	NO	(17)	(17)
YES	NO	(18)	(18)
YES	NO	(21)	(21)
YES	NO	(22)	(22)
YES	NO	(23)	(23)
YES	NO	(24)	(24)
YES	NO	(25)	(25)
YES	NO	(27)	(27)
YES	NO	(28)	(28)
OTHER SERVICES (Please specify):			
YES	NO	(31)	(31)
YES	NO	(33)	(33)
YES	NO	(35)	(35)
YES	NO	(37)	(37)

\*\*Direct means provided by employees of your facility; Indirect means provided by others through arrangement with your facility.

## BOARD OF MEDICINE

Title of Regulation: 18 VAC 85-80-10 et seq. Regulations for the Certification of Occupational Therapists (amending 18 VAC 85-80-10, 18 VAC 85-80-40, 18 VAC 85-80-50, 18 VAC 85-80-60, 18 VAC 85-80-80, [ 18 VAC 85-80-100 ], 18 VAC 85-80-110, and 18 VAC 85-80-120; repealing 18 VAC 85-80-30).

Statutory Authority: §§ 54.1-2400 and 54.1-2956.1 through 54.1-2956.5 of the Code of Virginia.

Effective Date: June 11, 1997.

Summary:

*The final amendments repeal language in which requirements are already stated in the Code of Virginia, update definitions, and clarify that supervision of uncertified persons is to be performed by a certified occupational therapist. The board also acted to lower the initial application fee from \$150 to \$100.*

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Warren W. Koontz, M.D., Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

**18 VAC 85-80-10. Definitions.**

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

"Advisory board" means the Advisory Board of Occupational Therapy.

"AOTA" means the American Occupational Therapy Association, Inc.

[ ~~"AOTCB" means the American Occupational Therapy Certification Board, Inc., under which the national examination for certification is developed and implemented. ]~~

~~"AMA" means the American Medical Association.~~

"ACOTE" means the Accreditation Council for Occupational Therapy Education.

"Board" means the Virginia Board of Medicine.

"Certification examination" means the national examination approved and prescribed by [ AOTCB NBCOT ] for certification as an occupational therapist.

[ ~~"NBCOT" means the National Board for Certification in Occupational Therapy, under which the national examination for certification is developed and implemented. ]~~

~~"Occupational therapist" means a person who is qualified by education and training to administer an occupational therapy program current and valid certification by the board.~~

"Occupational therapy personnel" means persons who provide occupational therapy services under the supervision of a certified occupational therapist.

~~"TOEFL" means the Test of English as a Foreign Language.~~

~~"World Federation of Occupational Therapists" means the association of member nations outside of the United States; its possessions or territories whose academic and clinical fieldwork requirements are in accordance with the American Occupational Therapy Association Essentials of an accredited educational program for an occupational therapist.~~

**18 VAC 85-80-30. General requirements. Repealed.**

~~A. No person shall practice as an occupational therapist in the Commonwealth except as provided in this chapter.~~

~~B. Certification by the board to practice as an occupational therapist shall be by examination as prescribed in this chapter.~~

**18 VAC 85-80-40. Educational requirements.**

A. An applicant for certification who has received his professional education in the United States, its possessions or territories, must *shall* successfully complete all academic and fieldwork requirements of an AMA/AOTA accredited educational program as verified by the candidate's program director ACOTE.

~~B. An applicant who does not meet the educational requirements as prescribed in subsection A of this section but who holds certification by the AOTCB as an occupational therapist shall provide verification of his education, training and work experience acceptable to the board.~~

~~C. B. An applicant who has received his professional education outside the United States, its possessions or territories, must *shall* successfully complete all academic and clinical fieldwork requirements of a program approved by a member association of the World Federation of Occupational Therapists as verified by the candidate's occupational therapy program director and approved by the [ AOTCB NBCOT ] and submit proof of proficiency in the English language by passing the *Test of English as a Foreign Language (TOEFL)* with a grade of not less than 560, the *Test of English as a Foreign Language (TOEFL)*; or an equivalent examination approved by the board. TOEFL may be waived upon evidence of English proficiency.~~

~~D. C. An applicant who does not meet the educational requirements as prescribed in subsection C subsections A or B of this section but who holds certification by the [ AOTCB NBCOT ] as an occupational therapist shall be eligible for certification in Virginia and shall provide the board verification of his education, training and work experience acceptable to the board.~~

**18 VAC 85-80-50. Certification by Examination requirements.**

A. An applicant for certification to practice as an occupational therapist must *shall* submit evidence to the board that he holds current and valid certification from the [ AOTCB NBCOT ].

B. An applicant must submit the application, credentials and prescribed fees as required by the board for certification.

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# Final Regulations

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C. An applicant who has graduated ~~received a degree~~ from a duly accredited educational program in occupational therapy shall be allowed to practice as an occupational therapist for one year from the date of graduation or until he has taken and received a passing grade of the certification examination, whichever occurs sooner.

D. An applicant who fails to successfully pass the examination within one year after graduation may practice occupational therapy under the supervision of a certified occupational therapist until successful completion of the certification examination and the filing of the required application, credentials, and fee.

E. An applicant who does not qualify by education for the [ AOTCB NBCOT ] Certification Examination and who does not hold a valid certificate from the [ AOTCB NBCOT ] but who is currently practicing occupational therapy may submit, for review and recommendation of the advisory board and the approval by the board, evidence of his education, training, and experience along with a request to take the examination for certification as an occupational therapist in Virginia. A person who does not take the certification examination may continue to practice occupational therapy under the supervision of an occupational therapist.

## 18 VAC 85-80-60. Practice requirements.

An applicant who has met [ ~~education educational~~ ] and examination requirements but who has not practiced occupational therapy for a period of six years shall serve a board approved supervised practice of 160 hours which is to be completed in two consecutive months *under the supervision of a certified occupational therapist.*

## 18 VAC 85-80-80. Reinstatement.

A. An occupational therapist who allows his certification to lapse for a period of two years or more and chooses to resume his practice shall make a new application to the board and payment of the fee for reinstatement of his certification as prescribed in 18 VAC 85-80-120 B of this chapter.

B. An occupational therapist who has allowed his certification to lapse for six years or more, ~~must and who has been professionally inactive,~~ shall serve a board approved, supervised practice of 160 hours to be completed in two consecutive months *under the supervision of a certified occupational therapist.*

C. An occupational therapist whose certification has been revoked by the board and who wishes to be reinstated ~~must~~ shall make a new application to the board and payment of the fee for reinstatement of his certification as prescribed in 18 VAC 85-80-120 F of this chapter *pursuant to § 54.1-2921 of the Code of Virginia.*

## [ 18 VAC 85-80-100. Individual responsibilities.

A. An occupational therapist provides assessment by determining the need for, the appropriate areas of, and the estimated extent and time of treatment. His responsibilities include an initial screening of the patient to determine need for services and the collection, evaluation and interpretation of data necessary for treatment.

B. An occupational therapist provides program planning by identifying the goals and the methods necessary to achieve those goals for the patient. The therapist analyzes the tasks and activities of the program, documents the progress, and coordinates the plan with other health, community or educational services, the family and the patient. The services may include but are not limited to education and training in activities of daily living (ADL); the design, fabrication, and application of orthoses (splints); guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaptation of physical environments for the *handicapped individuals who have disabilities.*

C. An occupational therapist provides the specific activities or therapeutic methods to improve or restore optimum functioning, to compensate for dysfunction, or to minimize disability of patients impaired by physical illness or injury, emotional, congenital or developmental disorders, or by the aging process. ]

## 18 VAC 85-80-110. Supervisory responsibilities.

A. An occupational therapist shall be responsible for supervision of occupational therapy personnel who work under his direction.

B. The supervising occupational therapist *providing clinical supervision* shall meet with the occupational therapy personnel to review and evaluate treatment and progress of the individual patients at least once every fifth treatment session or 21 calendar days, whichever occurs first.

C. An occupational therapist shall not ~~supervise~~ provide *clinical supervision* for more than six occupational therapy personnel.

D. An occupational therapist shall be responsible for any *action the direct treatment actions* of persons providing occupational therapy under his *clinical* supervision.

## 18 VAC 85-80-120. Fees.

The following fees have been established by the board:

1. The initial fee for the occupational therapist certification shall be ~~\$450~~ \$100.
2. The fee for reinstatement of the occupational therapist certification shall be \$150.
3. The fee for certification renewal shall be \$85 and shall be due in the birth month of the certified therapist in each even-numbered year.
4. The additional fee to cover administrative costs for processing a late application shall be \$25 for each renewal cycle.
5. The fee for a letter of good standing/verification to another state for a license or certification shall be \$10.
6. The fee for reinstatement of revoked certification shall be \$500.

**EDITOR'S NOTICE:** The forms used in administering the Regulations for the Certification of Occupational Therapists (18 VAC 85-80-10 et seq.) are listed below. Added and amended forms are reflected on the listing. The forms are available for review at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia, and at the Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, Virginia.

Application for Certification to Practice Occupational Therapy, DHP-030-060 (eff. 3/94) DHP-030-080 (rev. 11/95).

Verification of Certification - American Occupational Therapy Certification Board (eff. 7/93).

Employment Verification (eff. 7/93).

Clearance from Other State Board or Regulatory Authority - Occupational Therapy (eff. 7/93).

Instructions for Completing an Application for Certification as an Occupational Therapist [ (rev. 3/97) ].

[ *Renewal Notice and Application.* ]

**COMMONWEALTH OF VIRGINIA**  
Board of Medicine

Department of Health Professions  
6606 West Broad Street, 4th Floor  
Richmond, Virginia 23230-1717 (804) 662-7664



DHP-030-080  
REV. 11/95

**Application for Certification to Practice Occupational Therapy**

To the Board of Medicine of Virginia:

I hereby make application for a license to practice Occupational Therapy in the Commonwealth of Virginia and submit the following statements:

SECURELY PASTE A  
PASSPORT-TYPE  
PHOTOGRAPH IN  
THIS SPACE

PLEASE SIGN PHOTO

1. Name in Full (Please Print or Type)

Last	First	Middle/Maiden	ZIP Code
Street	City	State	
Date of Birth	Place of Birth	Social Security Number	
Mo ___ Day ___ Yr ___			
Graduation Date	Prof. School Degree	School, City, State	
Mo ___ Day ___ Yr ___			

Please submit address changes in writing immediately.  
Please attach check or money order. Applications will not be processed without the appropriate fee.  
Do not submit fee without an application. It will be returned.

**APPLICANTS DO NOT USE SPACES BELOW THIS LINE—FOR OFFICE USE ONLY**

APPROVED BY _____	Date _____					
CLASS	LICENSE NUMBER	SUFFIX	SCHOOL CODE	FEE	HOW REG.	BASE STATE
LICENSE NUMBER		EXPIRATION DATE			DATE ISSUED	

2. List in chronological order all professional activities since graduation (e.g. hospital department, outpatient centers, etc.). Also list all periods of absences from work and non-professional activity or employment for more than three months. Please account for all time. If engaged in private practice, list hospitals and other professional practice.

From	To	Location and Complete Address	Position Held

ALL QUESTIONS MUST BE ANSWERED.  
 IF ANY OF THE FOLLOWING QUESTIONS IS ANSWERED YES, EXPLAIN AND SUBSTANTIATE WITH DOCUMENTATION.

3. List all jurisdictions in which you have been issued a license to practice Occupational Therapy; active, inactive, or expired:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- |   |       |       |
|---|-------|-------|
|   | Yes   | No    |
| 4. Have you ever been denied the privilege of taking an Occupational Therapy examination for licensure or certification examination?  | _____ | _____ |
| 5. Have you ever taken the American Occupational Therapy Certification examination? If so, provide date _____   | _____ | _____ |
| 6. Have you ever been denied an Occupational Therapy license or certificate?  | _____ | _____ |
| 7. Have you ever been convicted of a violation of or pled Nolo Contendere to any Federal, State, or local statute, regulation or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor?(Excluding traffic violations, except convictions for driving under the influence.) | _____ | _____ |
| 8. Have you ever been censured, warned, or requested to withdraw from or otherwise disciplined by any hospital, nursing home, or other health care facility?  | _____ | _____ |
| 9. Have you ever had any of the following disciplinary actions taken against your license or certificate to practice Occupational Therapy, or are any such actions pending?<br>(a) suspension/revocation (b) probation (c) reprimand/cease and desist (d) had your practice monitored                   | _____ | _____ |
| 10. Have you ever had any membership in a state or local professional society revoked, suspended, or involuntarily withdrawn?   | _____ | _____ |
| 11. Have you had any malpractice suits brought against you in the last ten years? If so, how many? _____<br>Provide a letter from your attorney explaining each case.   | _____ | _____ |
| 12. Have you ever been treated by, consulted with, or been under care of a professional for substance abuse within the last two years? If so, provide a letter from the treating professional which includes diagnosis, treatment, and prognosis.   | _____ | _____ |
| 13. Do you have a physical disease, a mental disorder, or any condition which could affect your performance of professional duties? If so, provide a letter from your treating professional to include diagnosis, treatment, prognosis and fitness to practice.   | _____ | _____ |

Department of Health Professions  
COMMONWEALTH OF VIRGINIA

# RENEWAL NOTICE AND APPLICATION

Board of	CURRENT EXPIRATION	RENEWAL PERIOD FROM	TO
Telephone			
TYPE OF RENEWAL	CURRENT AMOUNT DUE \$	LATE PAYMENT PAY ONLY, I.E. AFTER	

**INSTRUCTIONS**

1. Complete Item 1 below if you do not wish to renew.
2. Make any address changes on this application when renewing.
3. Make any name changes on this application and enclose a copy of your marriage license or court order.
4. Note name and license number on all enclosures.
5. Return this application in the enclosed envelope.

1.  Check here if you do not wish to renew, and sign below.

\_\_\_\_\_ Signature

NUMBER:  
MAKE CHECKS PAYABLE TO THE "TREASURER OF VIRGINIA"

C-371-28

Page 4

14. AFFIDAVIT OF APPLICANT  
(THIS SECTION MUST BE NOTARIZED)

I, \_\_\_\_\_, being first duly sworn, depose and say that I am the person referred to in the foregoing application and supporting documents. I hereby authorize all hospitals, institutions, or organizations, my references, personal physicians, employers (past and present), business and professional associates (past and present), and all governmental agencies and instrumentalities (local, state, federal, or foreign) to release to the Virginia Board of Medicine any information, files, or records requested by the Board in connection with the processing of individuals and groups listed above, any information which is material to me and my application.

I have carefully read the questions in the foregoing application and have answered them completely, without reservations of any kind, and I declare under penalty of perjury that my answers and all statements made by me herein are true and correct. Should I furnish any false information in this application, I hereby agree that such act shall constitute cause for the denial, suspension or revocation of my certificate to practice Occupational Therapist in the Commonwealth of Virginia.

RIGHT THUMB PRINT

\_\_\_\_\_  
Signature of Applicant

City/County of \_\_\_\_\_ State of \_\_\_\_\_  
Subscribed to and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
My commission expires \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

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**CERTIFICATE OF PROFESSIONAL EDUCATION**

It is hereby certified that \_\_\_\_\_  
matriculated in \_\_\_\_\_ on \_\_\_\_\_ Date \_\_\_\_\_ and received  
or will receive a diploma from \_\_\_\_\_ Institution \_\_\_\_\_  
confering the degree of \_\_\_\_\_ Degree \_\_\_\_\_ on \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Dean, Program Director, or Chairman

**SCHOOL SEAL**

INSTRUCTIONS FOR COMPLETING AN APPLICATION  
FOR CERTIFICATION AS AN  
OCCUPATIONAL THERAPIST

REQUIREMENTS FOR CERTIFICATION AS AN OCCUPATIONAL THERAPIST

The Board may accept for certification a candidate as an Occupational Therapist who has submitted evidence that he/she has successfully completed all academic and fieldwork requirements of an AMA/NBCOT accredited educational program as prescribed by the Board. Each applicant must submit the completed four-page application to the Virginia Board of Medicine.

THE FEE The application must be accompanied by a fee of ONE HUNDRED DOLLARS(100.00). APPLICATIONS WILL NOT BE PROCESSED UNLESS THE FEE IS ATTACHED. FEES SENT PRIOR TO RECEIPT OF AN APPLICATION WILL BE RETURNED. CHECK OR MONEY ORDER MUST BE MADE PAYABLE TO: TREASURER OF VIRGINIA. EACH APPLICANT SHALL FURNISH THE BOARD HIS CURRENT BUSINESS ADDRESS. ANY CHANGE OF ADDRESS SHALL BE FURNISHED TO THE BOARD WITHIN 30 DAYS OF SUCH CHANGE, AND MUST BE DONE IN WRITING.

CERTIFICATION OF PROFESSIONAL EDUCATION This section of the application form(on page 4) must be completed by your occupational therapy school; the entire application form must be forwarded to the school. WE WILL NOT ACCEPT A SEPARATED SECTION OF THE FORM.

TRANSCRIPT OF GRADES FROM YOUR PROFESSIONAL SCHOOL Provide the office with an official transcript.

NOTE: IF A GRADUATE OF A FOREIGN OCCUPATIONAL THERAPY PROGRAM, A CERTIFIED COPY OF THE ORIGINAL DEGREE WITH AN ENGLISH TRANSLATION MAY BE SUBMITTED TO THE BOARD OFFICE.

OTHER DOCUMENTS REQUIRED:

CERTIFICATION OF CREDENTIALS FROM NBCOT Certification should be requested from the National Board for Certification in Occupational Therapy, Inc., P.O. Box 64971, Baltimore, MD 21264-4971

EMPLOYMENT QUESTIONNAIRE Forward one questionnaire to each place of employment for the last five years, or since graduation whichever applies. PLEASE NOTE THAT YOUR SIGNATURE MUST BE ON THE FRONT SIDE OF EACH QUESTIONNAIRE. IF YOU HAVE A PRIVATE PRACTICE AND/OR SELF-EMPLOYED, PLEASE HAVE ANOTHER OCCUPATIONAL THERAPIST VERIFY THIS TO US IN WRITING INCLUDING THE DATE WHEN YOU BEGAN THIS PRACTICE.

STATE LICENSURE/CERTIFICATION QUESTIONNAIRE - Forward one questionnaire to those states which you held or currently hold a license/certification. PLEASE NOTE THAT YOUR SIGNATURE MUST BE ON THE FRONT SIDE OF EACH QUESTIONNAIRE.

NOTE: ONE EMPLOYMENT AND ONE STATE LICENSURE/CERTIFICATION QUESTIONNAIRE IS ENCLOSED. YOU MAY DUPLICATE THESE FORMS FOR YOUR CONVENIENCE.

APPLICATION APPROVAL - Your application will be acknowledged upon receipt and you will be provided with a list of those documents which are outstanding. Applications completed and approved prior to the first and the fifteenth of the month will be issued a certification to practice as an occupational therapist at that time.

FAX INFORMATION IS NOT ACCEPTABLE. ALL DOCUMENTS MUST BE HARD COPIES.

OCCUPATIONAL THERAPIST SHALL RENEW HIS/HER CERTIFICATION BIENNIALY DURING HIS BIRTH MONTH IN EACH EVEN NUMBERED YEAR.

An Occupational Therapist who has been inactive in the field of occupational therapy for six years or more shall be unable to obtain Virginia Certification until he/she serves a board approved supervised practice of 160 hours which is to be completed in two consecutive months. The Supervised Practice is available upon request.

VA.R. Doc. No. R97-409, Filed April 15, 1997, 1:16 p.m.

## DEPARTMENT OF THE TREASURY

**REGISTRAR'S NOTICE:** The Department of the Treasury has claimed an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of the Treasury will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 1 VAC 75-30-10 et seq. Regulations Governing Escheats (amending 1 VAC 75-30-40).

**Statutory Authority:** § 55-200.1 of the Code of Virginia.

**Effective Date:** June 11, 1997.

**Summary:**

*As a result of a joint legislative subcommittee study, the 1996 Session of the General Assembly passed certain amendments (House Bill 1078) to the Escheats Generally statute, § 55-168 et seq. of the Code of Virginia. One of these statutory amendments more narrowly defines real property that can be escheated to the Commonwealth; consequently, the description of such property in the existing Regulations Governing Escheats also needs to be amended to reflect this change. This description is currently included in 1 VAC 75-30-40. In adapting to the amended statutory language, the State Treasurer has chosen to amend the regulation by completely deleting the regulatory description and relying solely on reference to the statutory description of such property.*

**Agency Contact:** Copies of the regulation may be obtained from J. Braxton Powell, Department of the Treasury, P.O. Box 1879, Richmond, VA 23218, telephone (804) 225-3131.

**1 VAC 75-30-40. Annual reporting requirement for local government treasurers.**

An Annual Escheat Report shall be submitted by each local government treasurer, director of finance, or other designated local government official to the appointed escheator for that locality and to the agency by May 31 of each year for the calendar year just ended. This report is required even if there are no real property parcels to be reported. The report shall be prepared on the appropriate form, or in an approved format, and shall be submitted on either hard copy or an acceptable diskette in a file layout and format approved by the agency. The report shall be certified as to its accuracy by the commissioner of revenue or designated local official prior to the May 31 submission date.

The local government treasurer, director of finance, or other designated local government official shall include in the Annual Escheat Report all real properties: ~~(i) of which no one is known by that official to be the owner, or (ii) which appear to be abandoned under any of the following criteria: (a) property which the owner has communicated in writing to the designated local government official an intent to abandon; (b) property on which no property taxes have been paid for 10~~

~~years or more, unless the property is actually occupied by the owner, in which case a proceeding pursuant to § 58-1-3005 of the Code of Virginia is appropriate; (c) property on which the local government has had to abate a nuisance (e.g., cutting of weeds, boarding up or razing of abandoned structure, etc.) and on which no property taxes have been paid for five or more years; and (d) property of which other evidence of abandonment may be relevant, including instances where heirs of an owner may be known, but none have taken an active role in the management or maintenance, or both, of the property, resulting in its deterioration pursuant to § 55-171 of the Code of Virginia.~~

VA.R. Doc. No. R97-410; Filed April 17, 1997, 10:43 a.m.



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# EMERGENCY REGULATIONS

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## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: 22 VAC 40-680-10 et seq. Virginia Energy Assistance Program (amending 22 VAC 40-680-65).

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

Effective Dates: April 11, 1997, through March 14, 1998.

Statement of Need:

*The amendment deletes the eligibility requirement that households determined eligible to receive services through the weatherization assistance component must have an energy burden of 100%. Deletion of this requirement will allow the eligible population to increase. Services can be provided preventing the immediate threat to the health and safety of the public who find themselves with faulty and inoperable heating equipment.*

### 22 VAC 40-680-65. Eligibility criteria; benefits.

A. The purpose of the weatherization assistance component is to improve or enhance the energy efficiency of the residence of eligible households and attempt to lessen dependency on the energy assistance program.

This component is intended to help the household meet specific energy needs that cannot be met through other resources.

B. In order to be eligible for weatherization assistance, a household shall meet the following criteria:

1. All of the fuel assistance criteria as defined in Part II (22 VAC 40-680-20 et seq.) of this chapter.
2. The household must have an energy burden of 100% or higher and include one or more individuals with a vulnerability factor.
3. Other resources cannot meet the need.

C. Services will be provided through the Virginia Department of Housing and Community Development weatherization network.

D. The U.S. Department of Energy average maximum benefit guidelines will be used for each type of assistance based on the availability of funding. The following forms of assistance shall be provided:

1. Repair of inoperable or unsafe heating equipment including necessary maintenance cost of heating equipment and the purchase of supplemental equipment.
2. Purchase of heating equipment.
3. Cost-effective energy-related home repairs to include duct repair, air sealing, attic sealing and insulation with venting, and dense pack sidewall insulation in accordance with U.S. Department of Energy approved measures.

/s/ Clarence H. Carter  
Commissioner  
Date: February 14, 1997

/s/ Robert C. Metcalf  
Secretary of Health and Human Resources  
Date: March 27, 1997

/s/ George Allen  
Governor  
Date: April 9, 1997

VA.R. Doc. No. R97-408; Filed April 11, 1997, 2:38 p.m.

# STATE LOTTERY DEPARTMENT

## DIRECTOR'S ORDER NUMBER FIVE (97)

### VIRGINIA'S INSTANT GAME LOTTERY 305; "LUCKY BINGO," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1B(15) and 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's instant game lottery (Number 0305), "Lucky Bingo." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle  
Director  
Date: March 14, 1997

VA.R. Doc. No. R97-397; Filed April 10, 1997, 9:54 a.m.

## DIRECTOR'S ORDER NUMBER SIX (97)

### "WINTER BLITZ," VIRGINIA LOTTERY RETAILER PROMOTIONAL PROGRAM RULES; REVISED.

In accordance with the authority granted by Sections 9-6.14:4.1B(15) and 58.1-4006A of the Code of Virginia, I hereby give notice that "Winter Blitz," the Virginia Lottery Retailer Promotion for the lottery retailer incentive program will be conducted from Monday, January 20, 1997 through Friday, April 18, 1997. This notice amplifies and conforms to the duly adopted State Lottery Board regulations.

This order is available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order supersedes Director's Order Number Thirty-Nine (96), issued December 27, 1996. This Order becomes effective on the date of its signing and shall remain in full force and effect until April 30, 1997, unless otherwise extended by the Director.

/s/ Penelope W. Kyle  
Director  
Date: March 14, 1997

VA.R. Doc. No. R97-398; Filed April 10, 1997, 9:54 a.m.

## DIRECTOR'S ORDER NUMBER SEVEN (97)

### CERTAIN DIRECTOR'S ORDERS RESCINDED.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby rescind the following Director's Orders:

Order Number	Date Issued	Subject
07(89)	04/24/89	Appointment of Equal Employment Opportunity Officer.
03(90)	01/25/90	On-Line Game Drawings.
33(94)	08/24/94	Virginia's Forty-Fourth Instant Game Lottery; "Money Bags," Final Rules for Game Operation.
47(94)	12/18/94	Virginia's Forty-Sixth Instant Game Lottery; "One-Eyed Jack," Final Rules for Game Operation.
07(95)	04/04/95	Virginia's Forty-Eighth Instant Game Lottery; "High Stakes," Final Rules for Game Operation.
11(95)	05/16/95	Virginia's Forty-Ninth Instant Game Lottery; "High Roller," Final Rules for Game Operation.
12(95)	05/31/95	Virginia's Instant Game Lottery 303; "Bonus Bingo," Final Rules for Game Operation.
17(95)	08/02/95	Virginia's Instant Game Lottery; "Full House," Final Rules for Game Operation.
28(95)	10/25/95	Virginia's Fifty-Third Instant Game Lottery; "Football Fever," Final Rules for Game Operation.
31(95)	12/15/94	Virginia's Fifty-Fourth Instant Game Lottery; "Winner Take All," Final Rules for Game Operation.
02(96)	02/06/96	"Kicker," Virginia Lottery Retailer Sales Promotional Program Rules; Revised.
08(96)	02/25/96	"Virginia Gold Cup Lottery"; Final Rules for Game Operation.
14(96)	05/06/96	"Pick 3 Race Trip Contest"; Final Rules for Game Operation.
18(96)	06/28/96	Virginia's Forty-Eighth Instant Game Lottery, "High Stakes"; Forty-Ninth Instant Game Lottery, "High Roller"; Instant Game 303, "Bonus Bingo"; and Instant Game 402, "Full House"; End of Game; Revised.
19(96)	07/03/96	Virginia's Forty-Fourth Instant Game Lottery, "Money Bags"; Forty-Sixth Instant Game Lottery, "One-Eyed Jack"; Fifty-Third Instant Game Lottery, "Football Fever"; and Fifty-Fourth

# State Lottery Department

Instant Game Lottery, "Winner Take All"; End of Game.

Date: March 29, 1997

VA.R. Doc. No. R97-400; Filed April 10, 1997, 9:55 a.m.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

## DIRECTOR'S ORDER NUMBER NINE (97)

VIRGINIA'S INSTANT GAME LOTTERY 408; "WEEKLY GRAND FOR LIFE," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1B(15) and 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's instant game lottery (Number 0408), "Weekly Grand for Life." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle  
Director  
Date: March 20, 1997

VA.R. Doc. No. R97-401; Filed April 10, 1997, 9:55 a.m.

## DIRECTOR'S ORDER NUMBER TEN (97)

VIRGINIA'S SEVENTY-SECOND INSTANT GAME LOTTERY; "RED HOT MONEY," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1B(15) and 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's seventy-second instant game lottery, "Red Hot Money." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle  
Director  
Date: March 29, 1997

VA.R. Doc. No. R97-402; Filed April 10, 1997, 9:55 a.m.

VA.R. Doc. No. R97-399; Filed April 10, 1997, 9:55 a.m.

## DIRECTOR'S ORDER NUMBER EIGHT (97)

VIRGINIA'S FIFTY-SIXTH INSTANT GAME LOTTERY, "MONTE CARLO"; FIFTY-SEVENTH INSTANT GAME LOTTERY, "INSTANT CASH"; FIFTY-EIGHTH INSTANT GAME LOTTERY, "\$25,000 DERBY"; FIFTY-NINTH INSTANT GAME LOTTERY, "VIRGINIA'S RICHES"; SIXTIETH INSTANT GAME LOTTERY, "\$10,000 CASH REWARD"; SIXTY-SECOND INSTANT GAME LOTTERY, "STATE FAIR SHOOTING GALLERY"; SIXTY-FOURTH INSTANT GAME LOTTERY, "MONSTER CASH"; INSTANT GAME LOTTERY 304, "DOUBLE BONUS BINGO"; AND INSTANT GAME LOTTERY 406, \$2 "BLACK JACK"; END OF GAME.

In accordance with the authority granted by Sections 58.1-4006A and 9-6.14:4.1B(15) of the Code of Virginia, I hereby give notice that Virginia's Fifty-Sixth Instant Game, "Monte Carlo"; Fifty-Seventh Instant Game, "Instant Cash"; Fifty-Eighth Instant Game, "\$25,000 Derby"; Fifty-Ninth Instant Game, "Virginia's Riches"; Sixtieth Instant Game, "\$10,000 Cash Reward"; Sixty-Second Instant Game, "State Fair Shooting Gallery"; Sixty-Fourth Instant Game, "Monster Cash"; Instant Game 304, "Double Bonus Bingo"; and Instant Game 406, "Black Jack," will officially end at midnight on Friday, April 18, 1997. The last day for lottery retailers to return for credit unsold tickets from any of these games will be Friday, May 23, 1997. The last day to redeem winning tickets for any of these games will be Wednesday, October 15, 1997, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims which are mailed and received in an envelope bearing a United States Postal Service postmark of October 15, 1997, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

This order is available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia; and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle  
Director

DIRECTOR'S ORDER NUMBER ELEVEN (97)

VIRGINIA'S SEVENTY-SIXTH INSTANT GAME LOTTERY; "MONTE CARLO," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1B(15) and 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Seventy-Sixth instant game lottery, "Monte Carlo," by incorporation herein of the final rules for game operation in Virginia's Fifty-Sixth instant game lottery, "Monte Carlo," issued by Director's Order Number Nine (96) on April 1, 1996. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle  
Director  
Date: March 29, 1997

VA.R. Doc. No. R97-403; Filed April 10, 1997, 9:55 a.m.

DIRECTOR'S ORDER NUMBER TWELVE (97)

VIRGINIA'S SEVENTY-SEVENTH INSTANT GAME LOTTERY; "\$10,000 CASH REWARD," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1B(15) and 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Seventy-Seventh instant game lottery, "\$10,000 Cash Reward," by incorporation herein of the final rules for game operation in Virginia's Sixtieth instant game lottery, "\$10,000 Cash Reward," issued by Director's Order Number Twenty (96) on July 23, 1996. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle  
Director  
Date: March 29, 1997

VA.R. Doc. No. R97-404; Filed April 10, 1997, 9:56 a.m.

DIRECTOR'S ORDER NUMBER THIRTEEN (97)

VIRGINIA'S SEVENTY-EIGHTH INSTANT GAME LOTTERY; "INSTANT CASH," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1B(15) and 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Seventy-Eighth instant game lottery, "Instant Cash," by incorporation herein of the final rules for game operation in Virginia's Fifty-Seventh instant game lottery, "Instant Cash," issued by Director's Order Number Twelve (96) on May 5, 1996. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle  
Director  
Date: March 29, 1997

VA.R. Doc. No. R97-405; Filed April 10, 1997, 9:56 a.m.

DIRECTOR'S ORDER NUMBER FOURTEEN (97)

VIRGINIA'S SEVENTY-NINTH INSTANT GAME LOTTERY; "\$25,000 DERBY," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1B(15) and 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Seventy-Ninth instant game lottery, "\$25,000 Derby," by incorporation herein of the final rules for game operation in Virginia's Fifty-Eighth instant game lottery, "\$25,000 Derby," issued by Director's Order Number Sixteen (96) on June 7, 1996. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle  
Director

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# State Lottery Department

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Date: March 29, 1997

VA.R. Doc. No. R97-406; Filed April 10, 1997, 9:56 a.m.

## DIRECTOR'S ORDER NUMBER FIFTEEN (97)

VIRGINIA'S INSTANT GAME LOTTERY 409; "BLACK JACK,"  
FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1B(15) and 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's instant game lottery 409, "Black Jack," by incorporation herein of the final rules for game operation in Virginia's instant game lottery 406, "Black Jack," issued by Director's Order Number Twenty-One (96) on July 23, 1996. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle  
Director  
Date: March 29, 1997

VA.R. Doc. No. R97-407; Filed April 10, 1997, 9:56 a.m.

# FORMS

## DEPARTMENT OF MINES, MINERALS AND ENERGY

**EDITOR'S NOTICE:** The following forms have been issued by the Department of Mines, Minerals and Energy. Copies of the forms may be obtained from Cheryl Cashman, Department of Mines, Minerals and Energy, Ninth Street Office Building, 202 North 9th Street, Richmond, VA 23219, telephone (804) 692-3213.

### Forms Implementing Chapters 14.2 through 14.4 of Title 45.1 of the Code of Virginia Regarding Coal Mine Safety

Request for Release of Mine Map, DM-MR-1/DMM-155, rev. 3/97



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MINES, MINERALS AND ENERGY  
DIVISION OF MINES  
U.S. ROUTE 23 SOUTH  
P. O. DRAWER 900  
BIG STONE GAP, VA 24219  
TELEPHONE: (540) 523-8100

### REQUEST FOR RELEASE OF MINE MAP

Please Print

Requester Name \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Name of Mine \_\_\_\_\_

Permit Number/Mine Index Number \_\_\_\_\_

Reason for request under the Virginia Mine Safety Act:

- I own, lease, reside on or have equitable interest in the surface areas; or I have mineral interest within 1,000 feet of the mine. Attached are copies of documents, such as a deed and a plat, proving equitable or mineral interest and showing the location of the interest.
- I am a representative of the city, county or town of \_\_\_\_\_ in which the mine is located. Attached is a copy of an official document from the locality requesting the mine map or sections thereof. The city, county or town named above must abide by the provision of § 45.1-161.64.F the Virginia Mine Safety Act regarding the release of the mine map or sections thereof to other parties.
- I have written consent from the operator or his agent of the above named mining operation. By the signature below, the operator of this mine or his agent consents to the release of the requested mine map or sections thereof.

According to the Virginia Mine Safety Act, DMME must have written consent of the operator or his agent of a mine to release copies of a mine map or sections thereof to any person who does not own, lease, reside on or have other equitable interest in the surface areas, or who does not have mineral interests within 1,000 feet of the mining operation.

Operator/Agent (signature) \_\_\_\_\_

Address \_\_\_\_\_

I certify that all of the information on this form is correct, and that the required documents are attached.

Signature \_\_\_\_\_ Date \_\_\_\_\_

DMME USE ONLY

Approved  Denied By \_\_\_\_\_

Mailed/delivered to \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_

DM-MR-1/DMM-155  
REV. 3/97

# Forms

## Forms Implementing the Minerals Other than Coal Surface Mining Regulations (4 VAC 25-30-10 et seq.) and the Safety and Health Regulations for Mineral Mining (4 VAC 25-40-10 et seq.)

Request for Release of Mine Map, DMM-155/DM-MR-1, rev. 3/97



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MINES, MINERALS AND ENERGY  
DIVISION OF MINERAL MINING  
900 NATURAL RESOURCES DRIVE  
P. O. BOX 2737  
CHARLOTTESVILLE, VA 22903  
TELEPHONE: (804) 961-5000

### REQUEST FOR RELEASE OF MINE MAP

Please Print

Requester Name \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Name of Mine \_\_\_\_\_

Permit Number/Mine Index Number \_\_\_\_\_

Reason for request under the Virginia Mine Safety Act:

- I own, lease, reside on or have equitable interest in the surface areas; or I have mineral interest within 1,000 feet of the mine. Attached are copies of documents, such as a deed and a plat, proving equitable or mineral interest and showing the location of the interest.
- I am a representative of the city, county or town of \_\_\_\_\_ in which the mine is located. Attached is a copy of an official document from the locality requesting the mine map or sections thereof. The city, county or town named above must abide by the provision of § 45.1-161.64.F the Virginia Mine Safety Act regarding the release of the mine map or sections thereof to other parties.
- I have written consent from the operator or his agent of the above named mining operation. By the signature below, the operator of this mine or his agent consents to the release of the requested mine map or sections thereof.

According to the Virginia Mine Safety Act, DMME must have written consent of the operator or his agent of a mine to release copies of a mine map or sections thereof to any person who does not own, lease, reside on or have other equitable interest in the surface areas, or who does not have mineral interests within 1,000 feet of the mining operation.

Operator/Agent (signature) \_\_\_\_\_

Address \_\_\_\_\_

I certify that all of the information on this form is correct, and that the required documents are attached.

Signature \_\_\_\_\_ Date \_\_\_\_\_

DMME USE ONLY

Approved  Denied By \_\_\_\_\_

Mailed/delivered to \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_

DMM-155/DM-MR-1  
REV. 3/97

# GOVERNOR

## GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

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### BOARD OF JUVENILE JUSTICE

Title of Regulation: 6 VAC 35-40-10 et seq. Predispositional and Postdispositional Group Home Standards (REPEALING).

Title of Regulation: 6 VAC 35-70-10 et seq. Standards for Juvenile Correctional Centers (REPEALING).

Title of Regulation: 6 VAC 35-90-10 et seq. Standards for Post Dispositional Confinement for Secure Detention and Court Service Units (REPEALING).

Title of Regulation: 6 VAC 35-100-10 et seq. Standards for Secure Detention (REPEALING).

Title of Regulation: 6 VAC 35-120-10 et seq. Standards for Family Group Homes (REPEALING).

Title of Regulation: 6 VAC 35-140-10 et seq. Standards for Juvenile Residential Facilities.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen  
Governor  
Date: March 31, 1997

VA.R. Doc. No. R97-413; Filed April 16, 1997, 9:44 a.m.

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Title of Regulation: 6 VAC 35-60-10 et seq. Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen  
Governor  
Date: March 31, 1997

VA.R. Doc. No. R97-414; Filed April 16, 1997, 9:44 a.m.

Title of Regulation: 6 VAC 35-80-10 et seq. Holdover Standards (REPEALING).

Title of Regulation: 6 VAC 35-110-10 et seq. Minimum Standards for Court Services in Juvenile and Domestic Relations District Courts (REPEALING).

Title of Regulation: 6 VAC 35-130-10 et seq. Standards for Outreach Detention (REPEALING).

Title of Regulation: 6 VAC 35-150-10 et seq. Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen  
Governor  
Date: March 26, 1997

VA.R. Doc. No. R97-415; Filed April 16, 1997, 9:44 a.m.

### BOARD OF NURSING

Title of Regulation: 18 VAC 90-50-10 et seq. Regulations Governing the Certification of Massage Therapists.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen  
Governor  
Date: April 15, 1997

VA.R. Doc. No. R97-417; Filed April 18, 1997, 11:21 a.m.



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# GENERAL NOTICES/ERRATA

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## Symbol Key

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

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### SECRETARY OF THE COMMONWEALTH

#### Notice to Counties, Cities, Towns, Authorities, Commission, Districts and Political Subdivisions of the Commonwealth--Filing of Bond Obligations

Notice is hereby given that pursuant to § 2.1-71 of the Code of Virginia, each county, city and town and each authority, commission, district or other political subdivision of the Commonwealth to which any money is appropriated by the Commonwealth or any of the above which levies any taxes or collects any fees or charges for the performance of public services or issues bonds, notes or other obligations, shall annually file with the Secretary of the Commonwealth a list of all bond obligations, the date and amount of the obligation and the outstanding balance therein, on or before June 30 of each year. The following form for use herein described may be obtained from the contact person identified below.

**Contact:** Tanya Stevens, Conflict of Interest and Appointments Specialist, P.O. Box 2454, Richmond, VA 23218, Old Finance Building, Capitol Square, Richmond, VA 23219, telephone (804) 786-2441.

Filing form per §2.1-71 of the *Code of Virginia-1997*  
Office of the Secretary of the Commonwealth

OFFICIAL TITLE OF POLITICAL SUBDIVISION: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

<u>Type of Obligation</u>	<u>Date Issued</u>	<u>Amount of Issue</u>	<u>Balance Outstanding</u>	<u>Type of Project Financed</u>
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**STATE BOARD OF HEALTH AND DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**† Legal Notice of Proposed Request for Certificate of Public Need Applications**

Pursuant to the authority vested in the State Board of Health (board) and the Department of Medical Assistance Services (DMAS) by § 32.1-102.3:2 of the Code of Virginia, notice is hereby given of a public comment period on a proposed Request For Applications (RFA). This RFA is a request for certificate of public need (COPN) applications for projects which will result in an increase in the number of beds in which nursing home facility services are provided in the Commonwealth of Virginia. The RFA issuance process is outlined in the *Virginia Medical Care Facilities COPN Rules and Regulations* at 12 VAC 5-220-320.

Any person objecting to the contents of this proposed RFA may notify, by May 26, 1997, the board and the State Health Commissioner (commissioner) of his objection and the objection's regulatory basis. Objections to the proposed RFA will be accepted in the office of the Director, Center for Quality Health Care Services and Consumer Protection, 3600 West Broad Street, Room 216, Richmond, Virginia 23230, until 5 p.m. on May 27, 1997.

**Eligible Planning Districts and the Total Nursing Home Facility Beds Available for Authorization**

In the review cycles established by this RFA, the commissioner will consider requests for COPNs which propose increases in nursing home facility (NHF) beds in the following listed planning districts. COPN requests which propose increases in NHF beds in planning districts not found on the following list will not be accepted. Only COPN requests which propose a total number of NHF beds equal to or less than the total number of beds identified below as available for authorization in the applicable planning district will be accepted for review.

1. **Planning District 12** also known as the West Piedmont Planning District, consisting of the counties of Franklin, Henry, Patrick and Pittsylvania and the cities of Danville and Martinsville.

Total NHF Beds Available for Authorization: 240

2. **Planning District 13** also known as the Southside Planning District, consisting of the counties of Brunswick, Halifax and Mecklenburg.

Total NHF Beds Available for Authorization: 240

3. **Planning District 16** also known as the Radco Planning District, consisting of the counties of Caroline, King George, Spotsylvania and Stafford and the city of Fredericksburg.

Total NHF Beds Available for Authorization: 120

4. **Planning District 17** also known as the Northern Neck Planning District, consisting of Lancaster,

Northumberland, Richmond, and Westmoreland counties.

Total NHF Beds Available for Authorization: 60

5. **Planning District 18** also known as the Middle Peninsula Planning District, consisting of the counties of Essex, Gloucester, King and Queen, King William, Matthews, and Middlesex.

Total NHF Beds Available for Authorization: 30

6. **Planning District 19** also known as the Crater Planning District, consisting of the counties of Dinwiddie, Greenville, Prince George, Surry, and Sussex and the cities of Colonial Heights, Emporia, Hopewell, and Petersburg.

Total NHF Beds Available for Authorization: 60

7. **Planning District 22** also known as the Accomack-Northampton Planning District, consisting of Accomack and Northampton counties.

Total NHF Beds Available for Authorization: 30

**Basis for Selection of Eligible Planning Districts and Determination of Total NHF Beds Available for Authorization**

The Nursing Home Services component of the *Virginia State Medical Facilities Plan* (12 VAC 5-360) contains a NHF bed need forecasting method (12 VAC 5-360-40 C). This method has been employed by the Virginia Department of Health to compute a Year 2000 forecast of needed NHF beds in each of 22 planning districts. The following table displays, by planning district, these Year 2000 NHF bed need forecasts, the current licensed and authorized inventory of NHF beds, and the net bed need forecast for Year 2000.

Planning District	Year 2000 Bed Need Forecast	Existing and Authorized Beds	Net Bed Need - Year 2000
1	663	580	83
2	589	547	42
3	1,476	1,437	39
4	860	781	79
5	2,471	2,309	162
6	1,671	1,554	117
7	994	901	93
8	4,912	4,231	681
9	800	702	98
10	979	1,025	-46

## General Notices/Errata

11	1,519	1,313	206
12	1,962	1,691	271
13	796	611	185
14	749	635	114
15	4,333	3,917	416
16	791	611	180
17	448	402	46
18	584	544	40
19	1,087	1,015	72
20	5,051	5,607	444
21	2,122	1,889	233
22	422	389	33

Sources: Virginia State Medical Facilities Plan (12 VAC 5-360)

Virginia Employment Commission (population projections, 1993 series)

1994 Virginia Nursing Home Patient Survey, A Report by Virginia's Regional Health Planning Agencies (for age-specific nursing home use rates)

Center for Quality Health Care Services and Consumer Protection, VDH (for bed inventory)

Consistent with the Virginia State Medical Facilities Plan (12 VAC 5-360-40 A), no planning district is considered to have a need for additional NHF beds unless the estimated average annual occupancy of all existing nonfederal Medicaid-certified NHF beds in the planning district was at least 95% for the most recent three years for which bed utilization has been reported to the Virginia Department of Health. (The inventory and utilization of the Virginia Veterans Care Center is excluded from consideration in the determination of NHF bed need. For purposes of this RFA, utilization data for reporting years 1994 to 1996 are considered to be the most recent three years.) Additionally, no planning district will be considered to have a need for additional nursing home beds if there are uncompleted NHF beds authorized for the planning district that will be Medicaid-certified beds. The following table displays the estimated average annual occupancy rate of Medicaid-certified NHF beds in Virginia's planning districts for the reporting years of 1994 through 1996 and identifies the status of these planning districts with respect to authorized but uncompleted NHF beds.

Planning District	Estimated Average Annual Occupancy - Medicaid NHF Beds, 1994-1996	Authorized but Uncompleted Medicaid NHF Beds (as of 2/28/97)
1	97.6%	YES
2	94.9%	NO
3	96.5%	YES
4	94.2%	YES
5	94.4%	NO
6	93.8%	NO
7	95.1%	YES
8	91.8%	NO
9	94.7%	NO
10	94.3%	NO
11	94.3%	NO
12	97.1%	NO
13	96.7%	NO
14	97.6%	YES
15	93.7%	YES
16	95.6%	NO
17	96.3%	NO
18	96.0%	NO
19	97.1%	NO
20	92.9%	NO
21	94.4%	NO
22	95.2%	NO

Source: Center for Health Statistics, Virginia Department of Health

Center for Quality Health Care Services and Consumer Protection, Virginia Department of Health

**Methodological Note:** The estimated average annual occupancy rate of Medicaid-certified nursing home beds in facilities with a combination of Medicaid-certified nursing home beds and beds not certified for Medicaid was assumed to be equivalent to the average annual occupancy rate for all beds in the facility unless the "ending census" of Medicaid patients reported by each facility on the last day of the annual reporting period, divided by the number of Medicaid-certified

beds in the facility, yielded a higher occupancy rate, in which case, this higher occupancy rate estimate was assumed.

Finally, the Virginia State Medical Facilities Plan bed need forecasting method (12 VAC 5-360-40 C) rounds bed need projections in accordance with a schedule established in the regulation. Thus, only seven planning districts are identified by the standards of the Virginia State Medical Facilities Plan as having an "effective" forecasted need for nursing home beds by Year 2000 by virtue of: (i) having a positive formula-generated need projection; (ii) having an estimated average annual occupancy rate of Medicaid-certified beds over the last three years of 95% or higher; and (iii) having no outstanding authorized NHF beds which will be Medicaid-certified beds. The board and DMAS have chosen to include all of these qualifying planning districts in this RFA. They are profiled in the following table.

Planning District	Net Bed Need - Year 2000	Average Annual Occupancy of Medicaid Beds 1994-1996	Approved but Uncompleted Beds (as of 2/28/97)	Rounded Bed Need Forecast
12	271	97.1%	0	240
13	185	96.7%	0	240
16	180	95.6 <sup>A</sup>	0	120
17	46	96.3%	0	60
18	40	96.0%	0	30
19	72	97.1%	0	60
22	33	95.2%	0	30

Projection of Potential Fiscal Impact

The Department of Medical Assistance Services projects the potential for total additional Medicaid expenditures of approximately \$13,174,617 in the state fiscal year (SFY) ending June 30, 2000, if all the beds included in this proposed RFA are authorized and available for occupancy by June 30, 1999. This projection is based on the following key assumptions.

Average percentage of beds filled during SFY 2000:	85%
Assumed Medicaid proportion of bed days:	70%
Average estimated ceiling rate (direct and indirect):	\$73.22
Estimated patient pay portion:	\$18.95
Estimated capital per diem of new construction:	\$25.00
Estimated capital cost per day of converted beds:	\$10.00
Assumed mix of new construction/conversion:	90/10

Schedule for Review

COPN requests filed in response to this RFA shall be filed in accordance with the provisions of 12 VAC 5-220-355. The following review schedule will be applicable to COPN requests filed in response to this RFA. Both letters of intent and applications must be received by both the applicable regional health planning agency and the Division of COPN of the Virginia Department of Health by the indicated dates in order to qualify for consideration in the specified review cycle.

Planning District 12, Planning District 13, Planning District 16, and Planning District 17

- Letter of intent must be received by September 1, 1997.
- Application must be received by October 1, 1997.
- Review cycle will begin November 10, 1997.

Planning District 18 and Planning District 19

- Letter of intent must be received by October 1, 1997.
- Application must be received by October 31, 1997.
- Review cycle will begin December 10, 1997.

Planning District 22

- Letter of intent must be received by November 1, 1997.
- Application must be received by December 1, 1997.
- Review cycle will begin January 10, 1998.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**Notice Regarding Proposed Regulations Concerning Methods and Standards for Establishing Payment Rates--Inpatient Hospital Care (Diagnosis Related Groupings (DRGs))**

The Department of Medical Assistance Services published its proposed regulations for Methods and Standards for Establishing Payment Rates--Inpatient Hospital Care (Diagnosis Related Groupings (DRGs)) in the Virginia Register on December 23, 1996 (Volume 13, Issue 7). In several Virginia Administrative Code (VAC) sections, reference was made in the filed regulations to "DME." In publishing the agency's proposed regulations for Article 2 comment period, this reference to "DME" was inadvertently spelled out to mean "durable medical equipment." In the context of this particular reimbursement regulation, DMAS intended for "DME" to mean "direct medical education." DMAS regrets any confusion this oversight may have caused.

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# General Notices/Errata

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## MOTOR VEHICLE DEALER BOARD

### † Delegation of Authority

The following resolution was adopted at the March 18, 1997, Motor Vehicle Dealer Board meeting.

#### Resolution

Whereas, § 46.2-1508 of the Code of Virginia provides that it shall be unlawful to engage in business in the Commonwealth as a motor vehicle dealer or salesperson without first obtaining a license; and

Whereas, § 46.2-1507 of the Code of Virginia provides that the board may assess a civil penalty not to exceed \$1,000 for any single violation of Chapter 15 of Title 46.2; and

Whereas, § 46.2-1500 of the Code of Virginia provides, in pertinent part, that a motor vehicle dealer shall include a person who offers to sell, sells, displays, or permits the display for sale of five or more motor vehicles within any 12 consecutive months; and

Whereas, it has come to the board's attention that certain persons are selling motor vehicles in violation of the Code of Virginia; and

Whereas, prior to assessing a civil penalty under §§ 46.2-1507, 9-6.14:11 of the Code of Virginia requires that the board have informal fact finding; and

Whereas, pursuant to § 2.1-20.01:2 of the Code of Virginia tasks required to be performed by supervisory boards may be delegated; and

Whereas, it is the desire of the board that the authority to hold informal fact finding proceedings, and to make decisions resulting from these proceedings regarding the civil penalty to be assessed for violations of the Code of Virginia by persons selling vehicles without being properly licensed, be delegated to the executive director of the board.

Now, therefore, be it resolved, that the authority to hold informal fact finding proceedings, and to make decisions resulting from those proceedings regarding the civil penalty to be assessed for violations of the Code of Virginia by persons selling vehicles without being properly licensed, be delegated to the executive director of the board.

## STATE WATER CONTROL BOARD

### † Enforcement Action

#### Proposed Consent Special Orders

##### Callaway Elementary School

##### City of Clifton Forge

##### Ferrum Water & Sewerage Authority

#### Proposed Amendments to Consent Special Orders

##### Alleghany County

##### Seaboard Farms

The State Water Control Board and the Department of Environmental Quality propose to issue Consent Special Orders for:

1. Callaway Elementary School, Franklin County Public Schools (VA0088561). The order provides a schedule for installation of chlorination and requires proper monitoring and reporting. Franklin County Public Schools have agreed to pay a civil charge of \$1,000, with \$500 suspended pending satisfactory completion of the work items under the order.

2. City of Clifton Forge Sewage Treatment Plant (VA0022772). The order requires correction of excessive inflow and infiltration, upgrade of sewers and pump stations, and evaluation and possible upgrade or expansion of the sewage treatment plant. The schedule is closely coordinated with that in the proposed consent order amendment for Alleghany County. Clifton Forge has agreed to pay a civil charge of \$50,000 with the charge suspended pending satisfactory completion of all work items under the order.

3. Ferrum Water & Sewerage Authority (FWSA), Ferrum Sewage Treatment Plant (VA0029254). The order requires correction of excessive inflow and infiltration, control of flows to the sewage treatment plant from the water treatment plant, upgrade to meet ammonia final effluent limits, and possibly expansion of the plant. FW&SA has agreed to pay a civil charge of \$15,000 with the charge suspended pending satisfactory completion of all work items under the amendment.

The State Water Control Board and the Department of Environmental Quality propose to amend Consent Special Orders for:

4. Alleghany County (no permit number). The amendment revises the county's schedule for correcting excessive inflow and infiltration and eliminating overflows from pump stations at Cliftondale Park and Selma. The new schedule is closely coordinated with that in the proposed Clifton Forge order. Alleghany County has agreed to pay a civil charge of \$50,000 with the charge suspended pending satisfactory completion of all work items under the amendment.

5. Seaboard Farms, ISE America, Inc. In settlement of violations of the 1996 consent order, this amendment revises the schedule for initiating land application of groundwater to remediate nitrate and ammonium

contamination at the site on Bent Mountain in Roanoke County. It also requires submission of long-term site management and risk management plans. Seaboard Farms has agreed to pay a civil charge of \$10,000.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the proposed action until June 11, 1997. Comments should be addressed to James F. Smith, West Central Regional Office, Department of Environmental Quality, 3019 Peters Creek Road, N.W., Roanoke, VA 24019, or FAX 540-562-6725, and should refer to Callaway, Clifton Forge, Ferrum, Alleghany County, or Seaboard.

The proposed order may be examined at the Department of Environmental Quality, Office of Enforcement, 629 East Main Street, P.O. Box 10009, Richmond, VA 23240-0009, or at the Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, N.W., Roanoke, VA 24019. Copies of the orders and amendments may be obtained in person or by mail from these offices.

#### **Enforcement Action**

#### **Proposed Amendments to Consent Special Orders Erath Veneer Corporation of Virginia Ronile, Incorporated Montgomery County Public Service Authority**

The State Water Control Board and the Department of Environmental Quality propose to amend Consent Special Orders for:

1. Erath Veneer Corporation of Virginia for its Rocky Mount plant, VPA Permit No. VPA02064. The amendment revises the schedule to close a wastewater treatment lagoon and the requirements for monitoring groundwater.
2. Ronile, Incorporated, for its Rocky Mount plant, VPDES Permit No. VA0079015. The amendment revises the construction completion and final compliance dates for upgrading Ronile's wastewater treatment plant. It also adjusts the toxicity management program biological and chemical test schedule to allow for plant reconstruction.
3. Montgomery County Public Service Authority for its Shawsville sewage treatment plant, VPDES Permit No. VA0024031. The amendment extends the construction schedule and interim limits for a plant expansion.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the proposed action until May 14, 1997. Comments should be addressed to James F. Smith, West Central Regional Office, Department of Environmental Quality, 3019 Peters Creek Road, N.W., Roanoke, VA 24019, or FAX 540-562-6725, and refer to Erath, Ronile, or Shawsville Special Consent Order.

The proposed order may be examined at the Department of Environmental Quality, Office of Enforcement, 629 East Main Street, P.O. Box 10009, Richmond, VA 23240-0009 or at the Department of Environmental Quality, West Central Regional

Office, 3019 Peters Creek Road, N.W., Roanoke, VA 24019. Copies of the orders and amendments may be obtained in person or by mail from these offices.

#### **† Enforcement Action Proposed Consent Special Order Norfolk & Western Railway Company**

The State Water Control Board proposes to take an enforcement action against Norfolk & Western Railway Company located at 2200 Redgate Avenue in Norfolk, VA. The enforcement action will be a Consent Special Order that will require the company to come into compliance with appropriate Virginia laws and regulations and pay a civil charge of \$16,000.

The Department of Environmental Quality will receive written comments relating to the board's proposed Consent Special Order until June 11, 1997. Comments should be addressed to David S. Gussman, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia 23462, and should refer to the Consent Special Order. The proposed order may be examined at the above address and copies of the order may be obtained in person or by mail.

#### **VIRGINIA CODE COMMISSION**

#### **Notice to State Agencies**

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

#### **Forms for Filing Material on Dates for Publication in The Virginia Register of Regulations**

All agencies are required to use the appropriate forms when furnishing material and dates 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/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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# CALENDAR OF EVENTS

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## Symbol Key

- † Indicates entries since last publication of the *Virginia Register*  
♿ Location accessible to handicapped  
☎ Telecommunications Device for Deaf (TDD)/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.

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) 786-6530.

VIRGINIA CODE COMMISSION

## EXECUTIVE

### BOARD FOR ACCOUNTANCY

† June 5, 1997 - 8:30 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Richmond, Virginia.♿  
(Interpreter for the deaf provided upon request)

An open meeting to discuss privatization of accountancy and possible changes to the laws governing the practice of public accounting and any other matters requiring board action. All meetings are subject to cancellation. The meeting time is subject to change. Call the board at least 24 hours in advance of the meeting. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board 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:** Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

† June 20, 1997 - 9 a.m. -- Open Meeting

† July 11, 1997 - 9 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Richmond, Virginia.♿  
(Interpreter for the deaf provided upon request)

A meeting of the three-member Regulatory Review Committee to further discuss regulatory review. This is a work session and no other business will be discussed at this meeting. All meetings are subject to cancellation. The meeting time is subject to change. Call the board at least 24 hours in advance of the meeting. No public comment will be held. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board 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:** Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Board of Agriculture and Consumer Services

May 14, 1997 - 9 a.m. -- Open Meeting  
Department of Agriculture and Consumer Services,  
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.♿

The board will hold an orientation for new members.

**Contact:** Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 211, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3535.

May 15, 1997 - 9 a.m. -- Open Meeting  
Department of Agriculture and Consumer Services,  
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.♿

A regular meeting of the board. The board will entertain public comment for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Roy E. Seward at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 211, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3535.

#### Virginia Farmers' Market Board

† May 20, 1997 - 1:30 p.m. -- Open Meeting  
Virginia State University, Cooperative Extension Service Pavilion, River road, Small Board Room, Ettrick, Virginia.♿

The board's spring board meeting to hear reports from two shipping point farmers' markets, the Eastern Shore of Virginia Farmers' Market and the Southwest Virginia Farmers' Market. In addition, the board will hear plans from interested producer organizations concerning the proposed construction of two additional shipping point markets in the system, the Southeast Virginia Farmers' Market and the Northern Neck of Virginia Farmers' Market. The two additional markets will bring the total to four markets in the Virginia farmers' market system. Board members will hear and approve minutes of the last meeting and the board's financial statement. 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 accommodations in order to participate at the meeting should contact Susan K. Simpson at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Susan K. Simpson, Special Programs Manager, Virginia Farmers' Market Board, Washington Bldg., 1100 Bank St., Room 1002, Richmond, VA 23219, telephone (804) 786-2112 or FAX (804) 371-7786.

## Virginia Small Grains Board

**July 22, 1997 - 8 a.m.** -- Open Meeting  
Richmond Airport Hilton, 5501 Eubank Road, Sandston, Virginia. ☒

A meeting to hear FY 1996-97 project reports and receive 1997-98 project proposals. The board will allocate funding for FY 1997-98 projects. Additionally, action will be taken on any other new business that comes 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 accommodations in order to participate at the meeting should contact Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Philip T. Hickman, Program Director, Virginia Small Grains Board, Washington Bldg., 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

## Virginia Sweet Potato Board

**June 3, 1997 - 8 p.m.** -- Open Meeting  
Eastern Shore Agricultural Research and Extension Center, Research Drive, Painter, Virginia. ☒

A meeting to discuss (i) programs regarding promotion, research and education, (ii) the annual budget, and (iii) other business that may come 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 accommodations in order to participate at the meeting should contact J. William Mapp at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** J. William Mapp, Program Director, Virginia Sweet Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867 or FAX (757) 787-1041.

## STATE AIR POLLUTION CONTROL BOARD

**June 11, 1997 - 9 a.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia.

**June 27, 1997** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: (i) 9 VAC 5-10-10 et seq. Regulations for the Control and Abatement of Air Pollution: General Definitions, (ii) 9 VAC 5-20-10 et seq. Regulations for the Control and Abatement of Air Pollution: General Provisions, (iii) 9 VAC 5-91-10 et seq. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area, (iv) 9 VAC 5-120-10 et seq. Regulations for the Control of Emissions from Fleet Vehicles, (v) 9 VAC 5-150-10 et seq. Regulation for Transportation Conformity, and (vi) 9 VAC 5-160-10 et seq. Regulation for General Conformity; and adopt regulations entitled: 9 VAC 5-170-10 et seq. Regulation for General Administration. The proposed regulation contains provisions covering general administration, specifically the applicability, establishment, and enforcement of regulations and orders; the administration of associated hearings and proceedings; the approval of local ordinances; the appeal of board decisions; the right of entry upon public and private property; the approval of items with conditions; the availability of procedural information and guidance; the approval of certain items requiring specific considerations; the availability of information to the public; the delegation of authority; and public participation in regulation development.

Because the provisions of the proposed regulation are intended to replace similar provisions in existing regulations, those similar provisions will be repealed. The affected provisions are as follows:

Regulations for the Control and Abatement of Air Pollution (9 VAC 5 Chapters 10 and 20)

9 VAC 5-10-20. Terms Defined. The following definitions:

Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, special order, variance, and Virginia Register Act.

Appendix E Public Participation Procedures  
Appendix F Delegation of Authority



# Calendar of Events

9 VAC 5-20-20.	Establishment of regulations and orders.	9 VAC 5-120-120.	Availability of information.
9 VAC 5-20-30.	Enforcement of regulations, permits and orders.	Regulation for Transportation Conformity (9 VAC 5 Chapter 150)	
9 VAC 5-20-40.	Hearings and proceedings.	9 VAC 5-150-20.	Terms Defined. The following definitions:
9 VAC 5-20-50 A.	Variations (general).	Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, public hearing, special order, variance, and Virginia Register Act.	
9 VAC 5-20-60.	Local ordinances.	9 VAC 5-150-50.	Establishment of regulations and orders.
9 VAC 5-20-90.	Appeals.	9 VAC 5-150-60.	Enforcement of regulations and orders.
9 VAC 5-20-100.	Right of entry.	9 VAC 5-150-70.	Hearings and proceedings.
9 VAC 5-20-110.	Conditions on approvals.	9 VAC 5-150-90.	Appeals.
9 VAC 5-20-120.	Policy and procedural information and guidance.	9 VAC 5-150-100.	Availability of information.
9 VAC 5-20-130.	Delegation of authority.	Regulation for General Conformity (9 VAC 5 Chapter 160)	
9 VAC 5-20-140.	Considerations for approval actions.	9 VAC 5-160-20.	Terms Defined. The following definitions:
9 VAC 5-20-150.	Availability of information.	Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, public hearing, special order, variance, and Virginia Register Act.	
Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area (9 VAC 5 Chapter 91)		9 VAC 5-160-50.	Establishment of regulations and orders.
9 VAC 5-91-20.	Terms Defined. The following definitions:	9 VAC 5-160-60.	Enforcement of regulations and orders.
Administrative Process Act, confidential information, public hearing, variance, and Virginia Register Act.		9 VAC 5-160-70.	Hearings and proceedings.
9 VAC 5-91-40.	Establishment of regulations and orders.	9 VAC 5-160-90.	Appeals.
9 VAC 5-91-60.	Hearings and proceedings.	9 VAC 5-160-100.	Availability of information.
9 VAC 5-91-80.	Variations.	Regulation for the Control of Emissions from Fleet Vehicles (9 VAC 5 Chapter 120)	
9 VAC 5-91-100.	Conditions on approvals.	9 VAC 5-120-20.	Terms Defined. The following definitions:
9 VAC 5-91-110.	Procedural information and guidance.	Administrative Process Act, confidential information, consent agreement, consent order, formal hearing, order, party, public hearing, variance, and Virginia Register Act.	
9 VAC 5-91-150.	Availability of information.	9 VAC 5-120-40.	Hearings and proceedings.
Regulation for the Control of Emissions from Fleet Vehicles (9 VAC 5 Chapter 120)		9 VAC 5-120-50.	Appeal of case decisions.
9 VAC 5-120-20.	Terms Defined. The following definitions:	9 VAC 5-120-60.	Variations.
Administrative Process Act, confidential information, consent agreement, consent order, formal hearing, order, party, public hearing, variance, and Virginia Register Act.		9 VAC 5-120-90.	Procedural information and guidance.
9 VAC 5-120-40.	Hearings and proceedings.	<u>Request for Comments:</u> The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.	
9 VAC 5-120-50.	Appeal of case decisions.	<u>Localities Affected:</u> 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.	
9 VAC 5-120-60.	Variations.	<u>Location of Proposal:</u> The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and	
9 VAC 5-120-90.	Procedural information and guidance.		

comparison with federal requirements, and a discussion of alternative approaches), and any other supporting documents may be examined by the public at the department's Office of Air Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office  
Department of Environmental Quality  
355 Deadmore Street  
Abingdon, Virginia  
Ph: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
Executive Office Park, Suite D  
5338 Peters Creek Road  
Roanoke, Virginia  
Ph: (540) 561-7000

Lynchburg Satellite Office  
Department of Environmental Quality  
7705 Timberlake Road  
Lynchburg, Virginia  
Ph: (804) 582-5120

Valley Regional Office  
Department of Environmental Quality  
116 North Main Street  
Bridgewater, Virginia 22812  
Ph: (540) 828-2595

Fredericksburg Satellite Office  
Department of Environmental Quality  
300 Central Road, Suite B  
Fredericksburg, Virginia  
Ph: (540) 899-4600

Piedmont Regional Office  
Department of Environmental Quality  
4900-A Cox Road  
Innsbrook Corporate Center  
Glen Allen, Virginia  
Ph: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
5636 Southern Blvd.  
Virginia Beach, VA 23462  
Ph: (757) 518-2000

Northern Regional Office  
Department of Environmental Quality  
13901 Crown Court  
Woodbridge, Virginia 22193  
Ph: (703) 583-3800

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

Public comments may be submitted until 4:30 p.m., Friday, June 27, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia 23240.

**Contact:** Dr. Kathleen Sands, Policy Analyst, Office of Air Program 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/TDD ☎

## State Advisory Board on Air Pollution

**May 14, 1997 - 9 a.m.** -- Open Meeting  
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

A regular meeting.

**Contact:** Kathy Frahm, Senior Policy Analyst, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4376.

## ALCOHOLIC BEVERAGE CONTROL BOARD

† **May 12, 1997 - 9:30 a.m.** -- Open Meeting

† **May 29, 1997 - 9:30 a.m.** -- Open Meeting

† **June 9, 1997 - 9:30 a.m.** -- Open Meeting

† **June 23, 1997 - 9:30 a.m.** -- Open Meeting

Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☎

A meeting to receive and discuss reports and activities from staff members.

**Contact:** W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409 or FAX (804) 213-4442.

## BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

### Board for Interior Designers

† **May 16, 1997 - 9 a.m.** -- Open Meeting

**May 23, 1997 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board 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, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

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# Calendar of Events

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## Board for Land Surveyors

**May 15, 1997 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board 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, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

## BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

**May 15, 1997 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Richmond, Virginia. ☎

A general board meeting. Public comment will be received prior to the beginning of the meeting for 15 minutes.

**Contact:** Senita Booker, Program Support Technician Senior, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7390, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

## DEPARTMENT OF AVIATION

### Advisory Committee for the Eastern Virginia Airport System

† **May 21, 1997 - 10 a.m.** -- Open Meeting  
Virginia Port Authority, 600 World Trade Center, Board Room, Norfolk, Virginia. ☎

A consultant briefing on Eastern Virginia Regional Study Phase I and II, and to establish a Technical Advisory Committee.

**Contact:** Cherry Evans, Department of Aviation, 5702 Gulfstream Rd., Sandston, VA 23250-2422, telephone (804) 236-3631.

## BOARD FOR BARBERS

† **June 2, 1997 - 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 general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact

the department at least two weeks prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8509, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

### Regulatory Committee and Regulation Advisory Committee

**May 21, 1997 - 10 a.m.** -- Open Meeting  
Department of Social Services, 730 East Broad Street, Lower Level, Conference Room 3, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A joint meeting of the board's Regulatory Committee and Regulation Advisory Committee, composed of stakeholders, to discuss amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 et seq.).

**Contact:** Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219-1924, telephone (804) 225-3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TDD ☎

## VIRGINIA STATE CHILD FATALITY REVIEW TEAM

† **May 28, 1997 - 10 a.m.** -- Open Meeting  
Tyler Building, 1300 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. ☎

A meeting to (i) discuss the status of ongoing studies; (ii) review data collection and analysis issues; and (iii) update the team on any administrative matters. The second part of this meeting will be closed for confidential case review.

**Contact:** Suzanne J. Keller, Coordinator, Virginia State Child Fatality Review Team, 9 N. 14th St., Richmond, VA 23219, telephone (804) 786-1048, FAX (804) 371-8595, or toll-free 1-800-447-1706.

## DEPARTMENT OF CONSERVATION AND RECREATION

### Falls of the James Scenic River Advisory Board

**June 5, 1997 - Noon** -- Open Meeting  
City Hall, 900 East Broad Street, 5th Floor, Planning Commission Conference Room, Richmond, Virginia.

A meeting to review river issues and programs.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD ☎

## Rappahannock Scenic River Advisory Board

**May 21, 1997 - 7 p.m.** -- Open Meeting  
Virginia Deli, 101 William Street, Fredericksburg, Virginia.

A meeting to review river issues.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD ☎

## Virginia State Parks Foundation

**May 29, 1997 - 10 a.m.** -- Open Meeting  
**June 5, 1997 - 10 a.m.** -- Open Meeting  
Department of Conservation and Recreation, 203 Governor Street, Suite 200, Richmond, Virginia.

A regular business meeting of the foundation's Board of Directors.

**Contact:** Leon E. App, Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570 or FAX (804) 786-6141.

## BOARD FOR CONTRACTORS

**May 19, 1997 - 8:30 a.m.** -- Open Meeting  
National Assessment Institute, 3813 Gaskins Road, Richmond, Virginia. ☎

A meeting of several board members and invited subject matter experts to conduct an examination workshop. A public comment period will be held at the beginning of the workshop. After the public comment period, the workshop will be conducted in executive session under authority of § 2.1-342 A 11 of the Code of Virginia due to the confidential nature of the examination. The public will not be admitted to the executive session.

**Contact:** George O. Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8572 or (804) 367-9753/TDD ☎

## Recovery Fund Committee

**June 18, 1997 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to consider claims against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in executive session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Holly Erickson at least two weeks prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Holly Erickson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8561.

## BOARD OF CORRECTIONAL EDUCATION

† **May 16, 1997 - 10 a.m.** -- Open Meeting  
Department of Correctional Education, James Monroe Building, 101 North 14th Street, 7th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

† **June 20, 1997 - 10 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A monthly meeting to discuss general business.

**Contact:** Patty Ennis, Board Clerk, Department of Correctional Education, James Monroe Bldg., 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-3314.

## DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

† **May 14, 1997 - 10 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☎

A meeting to discuss matters which may be presented to the board.

**Contact:** Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

## Administration Committee

† **May 14, 1997 - 8:30 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. ☎

A meeting to discuss administrative matters which may be presented to the full board.

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## Calendar of Events

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**Contact:** Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

### Correctional Services Committee

† **May 13, 1997 - 9:30 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ♿

A meeting to discuss correctional services matters which may be presented to the full board.

**Contact:** Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

### DEPARTMENT OF EDUCATION (STATE BOARD OF)

**May 17, 1997** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to repeal regulations entitled: **8 VAC 20-130-10 et seq. Regulations Establishing Standards for Accrediting Public Schools in Virginia** and adopt regulations entitled: **8 VAC 20-131-10 et seq. Regulations Establishing Standards for Accrediting Public Schools in Virginia**. The proposed regulations establish standards for accreditation of public schools to ensure an effective educational program is maintained in Virginia's public schools. Registration for those wishing to speak at a public hearing begins at 6:30 p.m. Speakers are requested to limit their remarks to three minutes each. In the event of a large number of persons signing up to speak, the hearing chairman may request that the time limit for each speaker be shortened to less than three minutes. A written copy of remarks is requested, but not required.

Statutory Authority: §§ 22.1-16, 22.1-19 and 22.1-353.13:3 of the Code of Virginia.

**Contact:** Charles W. Finley, Policy Analyst, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2092, toll-free 1-800-292-3820, or e-mail cfinley@pen.k12.va.us

### LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER COUNTY

**May 28, 1997 - 6:30 p.m.** -- Open Meeting  
Gloucester County Administration Building, Conference Room, Gloucester, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss the annual exercise, receive a briefing on the updated County Emergency Operations Plan, and receive a status report on the Public Information campaign.

**Contact:** Tracy A. Proctor, Executive Lieutenant, P.O. Box 597, Gloucester, VA 23061, telephone (804) 693-1411 or (804) 693-3890/TDD ♿

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Work Group on Ammonia, Mercury, Lead and Copper with Respect to Water Quality Standards

**June 19, 1997 - 10 a.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street, Conference Room 505, Richmond, Virginia. ♿

The department has established a work group on four topics with respect to the water quality standards program: mercury, ammonia, lead, and copper. The work group will, upon completion, advise the Director of Environmental Quality. Other meetings of the work group have been tentatively scheduled for July 17, August 21, September 18, and October 16, 1997. Persons interested in the meetings should confirm meeting date, time and location with the contact person below.

**Contact:** Alan J. Anthony, Chairman, Work Group on Ammonia, Mercury, Lead and Copper, 629 E. Main St., P.O. Box 10009, Room 205, Richmond, VA 23240-0009, telephone (804) 698-4114, FAX (804) 698-4522, or toll-free 1-800-592-5482.

#### Virginia Ground Water Protection Steering Committee

**May 20, 1997 - 9 a.m.** -- Open Meeting  
State Corporation Commission, 1300 East Main Street, 8th Floor Conference Room, Richmond, Virginia. ♿

A regularly scheduled meeting. Anyone interested in ground water protection issues is encouraged to attend. To obtain a meeting agenda contact Mary Ann Massie at (804) 698-4042.

**Contact:** Mary Ann Massie, Environmental Program Planner, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4042 or FAX (804) 698-4032.

### STATE EXECUTIVE COUNCIL

† **May 30, 1997 - 9 a.m.** -- Open Meeting  
Department of Social Services, 730 East Broad Street, Lower Level, Room 2, Richmond, Virginia.

The council is established under § 2.1-746 of the Code of Virginia. The monthly meeting is to discuss and make decisions; set policies; and review and act appropriately on Comprehensive Services Act related issues as they pertain to at-risk youth and their families. The council provides interagency programmatic and fiscal policies, oversees the administration of funds appropriated under

the Comprehensive Service Act, and advises the Governor.

**Contact:** Alan G. Saunders, Director, State Executive Council, 730 E. Broad St., 5th Floor, Richmond, VA 23219, telephone (804) 786-5394.

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

**May 28, 1997 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☎

An informal conference hearing. No public comment will be received.

**Contact:** Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

**June 12, 1997 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☎

A general board meeting. Public comments will be received at the beginning of the meeting for 15 minutes.

**Contact:** Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

### DEPARTMENT OF GENERAL SERVICES

#### Design/Build Construction Management Review Board

**May 16, 1997 - 10 a.m.** -- Open Meeting  
Department of General Services, 805 East Broad Street, Room 116, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of the board to continue development of guidelines/procedures and review any requests which may have been submitted. The board meets the third Friday of each month.

**Contact:** Nathan I. Broocke, Director, Division of Engineering and Buildings, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6152/TDD ☎

### BOARD FOR GEOLOGY

† **May 29, 1997 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact

the department at least two weeks prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** William H. Ferguson, II, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2406, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

### GEORGE MASON UNIVERSITY

#### Board of Visitors

**May 14, 1997 - 4:30 p.m.** -- Open Meeting  
George Mason University, Mason Hall, Room D23, Fairfax, Virginia. ☎

A regular meeting to hear reports of the standing committees, and to act on those recommendations presented by the standing committees. An agenda will be available seven days prior to the board meeting for those individuals or organizations who request it.

**Contact:** Ann Wingblade, Administrative Assistant, or Carole Richardson, Administrative Staff Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8701 or FAX (703) 993-8707.

### STATE HAZARDOUS MATERIALS TRAINING ADVISORY COMMITTEE

**May 13, 1997 - 10 a.m.** -- Open Meeting  
Department of Emergency Services, 310 Turner Road, Training Room, Richmond, Virginia. ☎

A meeting to discuss curriculum course development and to review existing hazardous materials courses. Individuals with a disability, as defined in the Americans with Disabilities Act, desiring to attend should contact the Department of Emergency Services at (804) 674-2489 10 days prior to the meeting so appropriate accommodations can be provided.

**Contact:** George B. Gotschalk, Jr., Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-6001.

### DEPARTMENT OF HEALTH (STATE BOARD OF)

† **June 18, 1997 - 7 p.m.** -- Public Hearing  
Vinton War Memorial Building, 814 East Washington Avenue, Vinton, Virginia.

† **June 19, 1997 - 7 p.m.** -- Public Hearing  
James City County Administration Building, Board of Supervisors, Meeting Room, Kings Mill Offices, Mounts Bay Road, Williamsburg, Virginia.

† **June 20, 1997 - 7 p.m.** -- Public Hearing  
Spotsylvania County, Board of Supervisors, Meeting Room, 9105 Courthouse Road, Spotsylvania, Virginia.

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## Calendar of Events

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† **July 14, 1997** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-585-10 et seq. Biosolids Use Regulations**. The proposed amendments have been recommended by the Regulations Advisory Committee in response to the public comments received on certain provisions of the regulations subjected to an additional comment period (published in the Virginia Register on July 10, 1995). These amendments address three trace element concentration values and the requirements for reporting on distribution or marketing of exceptional quality biosolids. Additional amendments are being proposed that address nutrient management, land application rates, monitoring frequency, submission of reports, Class III treatment standards, and certain technical clarifications.

Statutory Authority: § 32.1-164.5 of the Code of Virginia.

**Contact:** C. M. Sawyer, Division Director, Department of Health, Office of Water Programs, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5567 or (804) 371-2891, or e-mail csawyer@vdh.state.va.us

### DEPARTMENT OF HEALTH PROFESSIONS

#### Ad Hoc Committee on Criteria

**June 2, 1997 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review the material gathered to date pursuant to § 54.1-2409.2 of the Code of Virginia and to formulate recommendations regarding criteria for the regulation of health care providers. Brief public comment will be received at the beginning of the meeting.

**Contact:** Carol Stamey, Administrative Assistant, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910, FAX (804) 662-9943 or (804) 662-7197/TDD

#### Regulatory Research Committee

† **May 13, 1997 - 2 p.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A public hearing pursuant to House Joint Resolution 553 of the 1997 General Assembly studying trends in the funeral industry. Information is being sought regarding trends in ownership, costs, consumer complaints, and competition. Brief public comment will be received at the beginning of the meeting.

**Contact:** Robert A. Nebiker, Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9919, FAX (804) 662-9943 or (804) 662-7197/TDD

#### Advisory Board on Rehabilitation Providers

† **May 27, 1997 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss recommendations for emergency regulations to implement changes in statutes pertaining to the certification of rehabilitation providers. Public comment will be received at the beginning of the meeting.

**Contact:** Janet Delorme, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9575, FAX (804) 662-9943 or (804) 662-7197/TDD

#### BOARD FOR HEARING AID SPECIALISTS

**May 12, 1997 - 8:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 2, Richmond, Virginia.

A routine business meeting. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact David Dick 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:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD

#### STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **June 9, 1997 - 1 p.m.** -- Open Meeting  
State Council of Higher Education, James Monroe Building, 101 North 14th Street, Council Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting. The council's committees will meet in the morning. For more information and specific committee meeting times, contact the council.

**Contact:** Michael McDowell, Director of Public Information, State Council of Higher Education, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2637 or FAX (804) 786-0572.

## Executive Committee

**May 12, 1997 - 9 a.m.** -- Open Meeting  
State Council of Higher Education, James Monroe Building,  
101 North 14th Street, Council Conference Room, Richmond,  
Virginia. (Interpreter for the deaf provided upon request)

A general business meeting. For more information  
contact the council.

**Contact:** Michael McDowell, Director of Public Information,  
State Council of Higher Education, James Monroe Bldg., 101  
N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804)  
225-2637 or FAX (804) 786-0572.

## VIRGINIA HIV PREVENTION COMMUNITY PLANNING COMMITTEE

† **June 13, 1997 - 8:30 a.m.** -- Open Meeting  
† **June 14, 1997 - 8:30 a.m.** -- Open Meeting  
Holiday Inn Crossroads, 2000 Staples Mill Road, Richmond,  
Virginia. (Interpreter for the deaf provided upon request)

A meeting to continue HIV prevention planning for  
Virginia.

**Contact:** Elaine G. Martin, Coordinator, STD/AIDS  
Education, Bureau of STD/AIDS, Department of Health, P.O.  
Box 2448, Room 112, Richmond, VA 23218, telephone (804)  
786-0877 or toll-free 1-800-533-4148.

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

### State Building Code Technical Review Board

† **May 16, 1997 - 10 a.m.** -- Open Meeting  
The Jackson Center, 501 North 2nd Street, 1st Floor  
Conference Room, Richmond, Virginia. (Interpreter for the  
deaf provided upon request)

The board hears administrative appeals concerning  
building and fire codes and other regulations of the  
department. The board also issues interpretations and  
formalizes recommendations to the Board of Housing  
and Community Development concerning future changes  
to the regulations.

**Contact:** Vernon W. Hodge, Building Code Supervisor, State  
Building Code Office, Department of Housing and Community  
Development, 501 N. 2nd St., Richmond, VA 23219-1321,  
telephone (804) 371-7170 or (804) 371-7089/TDD

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **May 20, 1997 - 11 a.m.** -- Open Meeting  
Virginia Housing Development Authority, 601 South Belvidere  
Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the Board of Commissioners to (i)  
review and, if appropriate, approve the minutes from the  
prior monthly meeting; (ii) consider for approval and

ratification mortgage loan commitments under its various  
programs; (iii) review the authority's operations for the  
prior month; and (iv) consider such other matters and  
take such other actions as it may deem appropriate.  
Various committees of the Board of Commissioners may  
also meet before or after the regular meeting and  
consider matters within their purview. The planned  
agenda of the meeting will be available at the offices of  
the authority one week prior to the date of the meeting.

**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia  
Housing Development Authority, 601 S. Belvidere Street,  
Richmond, VA 23220, telephone (804) 782-1986.

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**June 3, 1997 - 9 a.m.** -- Open Meeting  
Hopewell Community Center, Second and City Point Road,  
Hopewell, Virginia. (Interpreter for the deaf provided upon  
request)

Local Emergency Preparedness Committee meeting on  
emergency preparedness as required by SARA Title III.

**Contact:** Robert Brown, Emergency Services Coordinator,  
300 N. Main St., Hopewell, VA 23860, telephone (804) 541-  
2298.

## COUNCIL ON INFORMATION MANAGEMENT

**May 16, 1997 - 10 a.m.** -- Open Meeting  
Council on Information Management, 1100 Bank Street, Suite  
901, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular bimonthly meeting.

**Contact:** Linda Hening, Administrative Assistant, Council on  
Information Management, 1100 Bank St., Suite 901,  
Richmond, VA 23219, telephone (804) 225-3622 or 1-800-  
828-1120/TDD

## STATE BOARD OF JUVENILE JUSTICE

**May 14, 1997 - 10 a.m.** -- Public Hearing  
**June 11, 1997 - 10 a.m.** -- Public Hearing  
Department of Juvenile Justice, 700 East Franklin Street,  
Board Room, Richmond, Virginia.

**June 13, 1997** -- Public comments may be submitted until  
this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of  
the Code of Virginia that the Board of Juvenile Justice  
intends to repeal regulations entitled: 6 VAC 35-40-10  
et seq. Pre-Dispositional and Post-Dispositional  
Group Home Standards; 6 VAC 35-70-10 et seq.  
Standards for Juvenile Correctional Centers; 6 VAC  
35-90-10 et seq. Standards for Post-Dispositional  
Confinement for Secure Detention and Court Service  
Units; 6 VAC 35-100-10 et seq. Standards for Secure  
Detention; and 6 VAC 35-120-10 et seq. Standards  
for Family Group Homes; and adopt regulations



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## Calendar of Events

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entitled: **6 VAC 35-140-10 et seq. Standards for Juvenile Residential Facilities.** The proposed regulation revises and replaces existing regulations governing secure detention homes, post-dispositional confinement in secure detention, pre-dispositional and post-dispositional group home, family group homes and juvenile correctional centers. Additional new standards in the proposed regulation address juvenile boot camps, work camps, independent living programs and juvenile industries projects.

**Statutory Authority:** §§ 16.1-309.9 and 66-10 of the Code of Virginia.

**Contact:** Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre Building, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

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**June 13, 1997 --** Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Juvenile Justice intends to amend regulations entitled: **6 VAC 35-60-10 et seq. Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs.** The proposed amendments will simplify and streamline operating requirements for Virginia's offices on youth, reducing mandates to encourage local autonomy and flexibility, and defining a closer working relationship between offices on youth and court service units.

**Statutory Authority:** §§ 66-10, 66-27 and 66.28 of the Code of Virginia.

**Contact:** Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre Building, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

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**May 14, 1997 - 10 a.m. --** Public Hearing

**June 11, 1997 - 10 a.m. --** Public Hearing

Department of Juvenile Justice, 700 East Franklin Street, Board Room, Richmond, Virginia.

**June 13, 1997 --** Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Juvenile Justice intends to repeal regulations entitled: **6 VAC 35-80-10 et seq. Holdover Standards; 6 VAC 35-110-10 et seq. Standards for Court Services in Juvenile and Domestic Relations Courts; and 6 VAC 35-130-10 et seq. Standards for Outreach Detention; and adopt regulations entitled: 6 VAC 35-150-10 et seq. Standards for Nonresidential Services Available to**

**Juvenile and Domestic Relations District Courts.** The proposed regulation replaces existing standards for court service units, standards for outreach detention, and holdover standards. In addition, this regulation and the proposed Consolidated Standards for Juvenile Residential Facilities will replace standards for post-dispositional confinement for secure detention and court service units.

**Statutory Authority:** §§ 16.1-233, 16.1-309.9 and 66-10 of the Code of Virginia.

**Contact:** Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre Building, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

**May 14, 1997 - 9 a.m. --** Open Meeting

**June 11, 1997 - 9 a.m. --** Open Meeting

700 Centre Building, 700 East Franklin Street, 4th Floor, Richmond, Virginia. ☎

Board committees meet at 9 a.m. to hear reports on secure and nonsecure programs. The full board meets at 10 a.m. to approve certifications of residential programs and nonresidential services, receive public comments on proposed regulations, and take up such other matters as are brought before it.

**Contact:** Donald R. Carignan, Policy Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

## DEPARTMENT OF LABOR AND INDUSTRY

### Virginia Apprenticeship Council

**May 22, 1997 - 9 a.m. --** Open Meeting

Virginia Highlands Community College, Building #2, Instruction Room 220, Abingdon, Virginia. ☎ (Interpreter for the deaf provided upon request)

A quarterly meeting of the council.

**Contact:** Fred T. Yontz, Program Manager, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-0295, FAX (804) 786-9877 or (804) 786-2376/TDD ☎

### Migrant and Seasonal Farmworkers Board

† **June 11, 1997 - 10 a.m. --** Open Meeting

State Capitol, Capitol Square, House Room 1, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting of the board.

**Contact:** Patti C. Bell, Board Administrator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 225-3083, FAX (804) 371-8418, or (804) 786-2376/TDD ☎

## LIBRARY BOARD

† June 16, 1997 - Time to be announced -- Open Meeting  
† June 17, 1997 - Time to be announced -- Open Meeting  
Location to be announced.

A meeting to discuss matters related to The Library of Virginia and its board.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

## Archival and Information Services Committee

† June 16, 1997 - Time to be announced -- Open Meeting  
† June 17, 1997 - Time to be announced -- Open Meeting  
Location to be announced.

A meeting to discuss archival and information services at The Library of Virginia.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

## Automation and Networking Committee

† June 16, 1997 - Time to be announced -- Open Meeting  
† June 17, 1997 - Time to be announced -- Open Meeting  
Location to be announced.

A meeting to discuss automation and networking matters.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

## Executive Committee

† June 16, 1997 - Time to be announced -- Open Meeting  
† June 17, 1997 - Time to be announced -- Open Meeting  
Location to be announced.

A meeting to discuss matters related to The Library of Virginia and its board.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

## Facilities Committee

† June 16, 1997 - Time to be announced -- Open Meeting  
† June 17, 1997 - Time to be announced -- Open Meeting  
Location to be announced.

A meeting to discuss matters pertaining to the new Library of Virginia building, the status of the records center, and the former Library of Virginia facility.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

## Legislative and Finance Committee

† June 16, 1997 - Time to be announced -- Open Meeting  
† June 17, 1997 - Time to be announced -- Open Meeting  
Location to be announced.

A meeting to discuss legislative and financial matters.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

## Nominating Committee

† June 16, 1997 - Time to be announced -- Open Meeting  
† June 17, 1997 - Time to be announced -- Open Meeting  
Location to be announced.

A meeting to finalize nominations for consideration for the slate of officers for The Library of Virginia Board.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

## Publications and Education Committee

† June 16, 1997 - Time to be announced -- Open Meeting  
† June 17, 1997 - Time to be announced -- Open Meeting  
Location to be announced.

A meeting to discuss matters related to the Publications and Educational Services Division and The Library of Virginia.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

## Public Library Development Committee

† June 16, 1997 - Time to be announced -- Open Meeting  
† June 17, 1997 - Time to be announced -- Open Meeting  
Location to be announced.

A meeting to discuss matters pertaining to public library development and The Library of Virginia.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

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## Calendar of Events

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### Records Management Committee

† June 16, 1997 - Time to be announced -- Open Meeting  
† June 17, 1997 - Time to be announced -- Open Meeting  
Location to be announced.

A meeting to discuss matters pertaining to records management.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

### LITTER CONTROL AND RECYCLING FUND ADVISORY BOARD

May 29, 1997 - 10 a.m. -- Open Meeting  
Strawberry Hill, 600 East Laburnum Avenue, Administration Building, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A work session of the board to review and make recommendations on the competitive applications for litter prevention and recycling educational programs. For details, call Mike Murphy.

**Contact:** Michael P. Murphy, Director, Intergovernmental Affairs, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4003, FAX (804) 698-4319, or (804) 698-4021/TDD

### COMMISSION ON LOCAL GOVERNMENT

June 2, 1997 - 10:30 a.m. -- Open Meeting  
Pearisburg Town Hall, 112 Tazewell Street, Pearisburg, Virginia.

Oral presentations regarding the Town of Pearisburg - Giles County amended Voluntary Settlement Agreement. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

**Contact:** Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 Eighth Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TDD

June 2, 1997 - 7 p.m. -- Public Hearing  
Giles County High School, Route 460, Auditorium, Pearisburg, Virginia.

A public hearing regarding the Town of Pearisburg - Giles County amended Voluntary Settlement Agreement. Persons desiring to participate in the proceedings and requiring special accommodations or interpreter services should contact the commission.

**Contact:** Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 Eighth Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TDD

### MARINE RESOURCES COMMISSION

† May 27, 1997 - 9:30 a.m. -- Open Meeting  
† June 24, 1997 - 9:30 a.m. -- Open Meeting  
Marine Resources Commission, 2600 Washington Avenue, Newport News, Virginia. (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.; permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues. The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing. Meetings are open to the public. Testimony will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

**Contact:** LaVerne Lewis, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (757) 247-2261, toll-free 1-800-541-4646 or (757) 247-2292/TDD

### VIRGINIA MANUFACTURED HOUSING BOARD

May 21, 1997 - 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 monthly meeting of the board.

**Contact:** Curtis L. McIver, Associate Director, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160 or (804) 371-7089/TDD

### MATERNAL AND CHILD HEALTH COUNCIL

† May 21, 1997 - 1 p.m. -- Open Meeting  
General Assembly Building, 910 Capitol Square, Speaker's Conference Room, 6th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to focus on improving the health of the Commonwealth's mothers and children by promoting and improving programs and service delivery systems related to maternal and child health, including prenatal care, school health, and teenage pregnancy.

**Contact:** Janice M. Hicks, Policy Analyst, Department of Health, Office of Family Health Services, 1500 E. Main St., Room 104-B, Richmond, VA 23219, telephone (804) 371-0478 or FAX (804) 692-0184.

## Perinatal/Early Childhood Subcommittee

**May 21, 1997 - 9:30 a.m. -- Open Meeting**  
General Assembly Building, 910 Capitol Square, 6th Floor, Senate Room 6B, Richmond, Virginia

A meeting to address issues regarding the health care of pregnant women and their young children. Topics to be discussed relate to access to obstetrical care in underserved rural areas of Virginia, provider availability, and the development of a statewide plan to improve access to perinatal care.

**Contact:** Joan Corder-Mabe, Nurse Consultant, Department of Health, 1500 E. Main St., Room 135, Richmond, VA 23219, telephone (804) 371-4103 or FAX (804) 371-6032.

## School Health Subcommittee

**† May 22, 1997 - 10 a.m. -- Open Meeting**  
Park Place Multi-Service Center, 606 West 29th Street, Norfolk, Virginia. (Interpreter for the deaf provided upon request)

A meeting to focus on improving the health of the Commonwealth's children and adolescents by promoting and improving programs and service delivery systems related to school health programs.

**Contact:** Nancy Ford, School Health Nurse Consultant, Department of Health, Division of Child and Adolescent Health, 1500 E. Main St., Suite 137, Richmond, VA 23219, telephone (804) 786-7367.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

### REPROPOSED

**May 28, 1997--** Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-120-70 et seq. Part II: Home and Community Based Services for Technology Assisted Individuals.** The purpose of this revised proposal is to amend the Technology Assisted Waiver Program to update the definition of those eligible to receive services and to conform the financial eligibility criteria to correspond to the current HCFA interpretation. Also, this revised package addresses comments made to the prior proposed regulation as well as addressing problems identified since the initial comment period.

**Statutory Authority:** § 32.1-325 of the Code of Virginia.

Public comments may be submitted until May 28, 1997, to Regina Anderson-Cloud, Division of Policy and Budget, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jones, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

**May 30, 1997 --** Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled **12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates for Inpatient Hospital Care, and 12 VAC 30-90-10 et seq. Methods and Standards for Establishing Payment Rates for Long-Term Care,** relating to specialized care services payment methodology. The purpose of this proposal is to implement the reimbursement changes recommended in the study of specialized care services as directed by the 1996 General Assembly. The remainder of the recommendations of the study will be implemented through a separate regulatory package. The purpose of the proposed changes in cost report filing requirements is to conform the Department of Medical Assistance Services' filing time frames to those recently instituted by the Health Care Financing Administration for Medicare cost reports. Some additional technical changes are being made to correct the names of specific divisions within the department.

**Statutory Authority:** § 32.1-325 of the Code of Virginia and Item 322(D)(2) of Chapter 912 of the 1996 Acts of Assembly.

Public comments may be submitted until May 30, 1997, to Scott Crawford, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jones, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

**June 17, 1997 - 10 a.m. -- Open Meeting**  
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia

A meeting of the board to discuss medical assistance services policy and to take action on issues pertinent to the board.

**Contact:** Cynthia Klisz, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8099 or FAX (804) 371-4981.

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## Calendar of Events

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### Virginia Medicaid Drug Utilization Review Board

**May 15, 1997 - 2 p.m.** -- Open Meeting

Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

A meeting to conduct routine business including the amendment of bylaws.

**Contact:** Marianne R. Rollings, Registered Pharmacist, Pharmacy Services Unit, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8057 or FAX (804) 786-0414.

### Virginia Medicaid Prior Authorization Advisory Committee

**May 15, 1997 - 1 p.m.** -- Open Meeting

Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

A meeting to conduct routine business including the adoption of bylaws.

**Contact:** Marianne R. Rollings, Registered Pharmacist, Pharmacy Services Unit, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8057 or FAX (804) 786-0414.

### BOARD OF MEDICINE

**† May 22, 1997 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A panel of the board will convene, pursuant to §§ 54.1-2400 and 9-6.14:12 of the Code of Virginia, to inquire into allegations that a practitioner may have violated laws governing the practice of medicine. The panel will meet in open and closed sessions pursuant to § 2.1-344, A 7 and A 15 of the Code of Virginia. Public comment will not be received.

**Contact:** Karen W. Perrine, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

### Informal Conference Committee

**May 13, 1997 - 9 a.m.** -- Open Meeting

Sheraton Inn, 2801 Plank Road, Fredericksburg, Virginia.

**† May 22, 1997 - 9:30 a.m.** -- Open Meeting

Fort Magruder Inn-Conference Center, Route 60, Williamsburg, Virginia.

**† June 27, 1997 - 9:30 a.m.** -- Open Meeting

Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

The 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 § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

**Contact:** Karen W. Perrine, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

### Legislative Committee

**† May 23, 1997 - 1 p.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to (i) discuss legislative issues related to board activities and regulation, (ii) review any pending regulations pursuant to regulatory review or legislative action, and (iii) consider any other information that may come before the committee. The committee will entertain public comments during the first 15 minutes on agenda items.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

### DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

#### Facility Work Group

**† May 28, 1997 - 10 a.m.** -- Open Meeting

Western State Hospital, Jeffreys Building, Staunton, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to discuss the facility models presented at the April 22, 1997, meeting, review the consensus points, and work to develop a consensus orientation. David Goodrick, Ph.D. is scheduled to attend the meeting to offer consultation to participants.

**Contact:** Marion Greenfield, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23236, telephone (804) 786-6431 or FAX (804) 371-0092.

**† June 19, 1997 - 10 a.m.** -- Open Meeting

Henrico Community Services, 10299 Woodman Road, Glen Allen, Virginia. ☎ (Interpreter for the deaf provided upon request)

A tentatively scheduled meeting to discuss the final report to the HJR 240 Legislative Subcommittee.

## Calendar of Events

**Contact:** Marion Greenfield, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23236, telephone (804) 786-6431 or FAX (804) 371-0092.

### Pilot Leadership Team

**May 22, 1997 - 10:30 a.m. -- Open Meeting**  
Department for the Visually Handicapped, 397 Azalea Avenue, Library, Richmond, Virginia.

A meeting to continue the development of plans for mental health, mental retardation and substance abuse system reform pilot projects. The team will hear the reports of the Priority Populations/Case Rate Funding Subcommittee; the Consumer and Family Involvement Subcommittee; and the POMS Subcommittee.

**Contact:** Cheryl Crawford, Administrative Staff Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-5682 or FAX (804) 371-6638.

### STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **May 20, 1997 - Time to be announced -- Open Meeting**  
† **May 21, 1997 (tentative) - Time to be announced -- Open Meeting**  
DeJarnette Center, Staunton, Virginia. (Interpreter for the deaf provided upon request)

The regular convening of the board to discuss business and promulgate policy and regulations and to continue work on finalization of response to HJR 240. The agenda will include a public comment period. The agenda will be available two week in advance of the meeting.

**Contact:** Marlene Butler, State Board Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-7945 or FAX (804) 371-2308.

### VIRGINIA MILITARY INSTITUTE

#### Board of Visitors

**May 14, 1997 - 8:30 a.m. -- Open Meeting**  
Virginia Military Institute, Smith Hall Board Room, Lexington, Virginia. (Interpreter for the deaf provided upon request)

The finals meeting of the Board of Visitors to (i) hear committee reports; (ii) approve the budget; (iii) approve awards, distinctions, and diplomas; (iv) discuss personnel changes; and (v) elect president pro tem. There will not be an opportunity for public comment at this meeting.

**Contact:** Colonel Edwin L. Dooley, Jr., Secretary to the Board, Virginia Military Institute, Superintendent's Office,

Lexington, VA 24450, telephone (540) 464-7206 or FAX (540) 464-7600.

### MOTOR VEHICLE DEALER BOARD

**May 20, 1997 - 10 a.m. -- Open Meeting**  
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

**Contact:** Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

### Advertising Committee

**May 19, 1997 - 3 p.m. -- Open Meeting**  
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general business of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

**Contact:** Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

### Dealer Licensing Committee

**May 19, 1997 - 10 a.m. -- Open Meeting**  
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general business of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services

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## Calendar of Events

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should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

**Contact:** Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

### Dealer Practices Committee

**May 19, 1997 - 1 p.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general business of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

**Contact:** Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

### Finance Committee

**May 20, 1997 - 9 a.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general business of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

**Contact:** Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104,

Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

### Franchise Review and Advisory Committee

**May 20, 1997 - 9 a.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, 7th Floor, Executive Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general business of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

**Contact:** Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

### Transaction Recovery Fund Committee

**May 19, 1997 - 9:15 a.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general business of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

**Contact:** Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

### DEPARTMENT OF MOTOR VEHICLES

**May 19, 1997** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to repeal regulations entitled: **24 VAC 20-20-10 et seq. Privacy Protection Act Rules and**

**Regulations.** The purpose of the proposed action is to repeal the existing regulation, which was originally promulgated in 1977 and last amended in 1984. Changes adopted by the 1994 Session of the General Assembly to §§ 46.2-204 through 46.2-210 have made these regulations obsolete. The Department of Motor Vehicles does not intend to hold a public hearing on the proposed repeal of these regulations. The purpose of this notice is to solicit input and comments from the public and any other interested parties. The Department of Motor Vehicles encourages you to share this information with others you feel may have an interest in this action. Any industry or professional association or other group receiving this notice is requested to publish this information in newsletters or journals or use any other means available to them to disseminate this notice to their memberships.

Statutory Authority: §§ 46.2-203 and 46.2-208 of the Code of Virginia.

Public comments may be submitted until May 19, 1997, to Marc Copeland, Legislative Analyst, Department of Motor Vehicles, Room 724, P. O. Box 34712, Richmond, Virginia 23269-0001.

**Contact:** Karen Chappell, Administrator, Motorist Record Services, Department of Motor Vehicles, Room 311, P.O. Box 24712, Richmond, VA 23269-0001, telephone (804) 367-0146, FAX (804) 367-6631, or toll-free 1-800-272-9268/TDD ☎

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**May 19, 1997 --** Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to repeal regulations entitled: **24 VAC 20-130-10 et seq. International Registration Plan Virginia Rules and Regulations.** The purpose of the proposed action is to repeal the regulation. This regulation was first published in 1975 when Virginia and 13 other jurisdictions were members of the International Registration Plan (Plan). The regulation was used by Virginia primarily as a tool to educate the motor carrier industry to the workings of the plan. Today, there are 49 jurisdictions that are members of the International Registration Plan. The plan has been changed many times in the intervening years, making the regulation published in 1975 obsolete. The current plan, along with various other related national policies and procedures, provides the necessary guidance to the member jurisdictions and the motor carrier industry alike. The agency does not intend to hold a public hearing on the proposed regulation after publication. The purpose of this notice is to solicit input and comments from the public and any other interested parties. The Department of Motor Vehicles encourages you to share this information with others you feel may have an interest in this action. Any industry or professional association or other group receiving this notice is requested to publish

this information in newsletters or journals or use any other means available to them to disseminate this notice to their memberships.

Statutory Authority: §§ 46.2-203 and 46.2-703 of the Code of Virginia.

Public comments may be submitted until May 19, 1997, to Marc Copeland, Legislative Analyst, Department of Motor Vehicles, Room 724, P. O. Box 34712, Richmond, Virginia 23269-0001.

**Contact:** Jerry Fern, Manager, IRP and Tax Licensing, Department of Motor Vehicles, Room 607, P.O. Box 24712, Richmond, VA 23269-0001, telephone (804) 367-8487, FAX (804) 367-6631, or toll-free 1-800-272-9268/TDD ☎

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**May 19, 1997 --** Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to repeal regulations entitled: **24 VAC 20-30-10 et seq. Virginia Driver Improvement Rules and Regulations.** The purpose of the proposed action is to repeal the existing regulation, which was originally promulgated in 1975 and last amended in 1978. As such, the regulation has no substantive relationship to either the current statute or program. The Department of Motor Vehicles does not intend to hold a public hearing on the proposed repeal of these regulations. The purpose of this notice is to solicit input and comments from the public and any other interested parties. The Department of Motor Vehicles encourages you to share this information with others you feel may have an interest in this action. Any industry or professional association or other group receiving this notice is requested to publish this information in newsletters or journals or use any other means available to them to disseminate this notice to their memberships.

Statutory Authority: §§ 46.2-203 and 46.2-489 of the Code of Virginia.

**Contact:** Marc Copeland, Legislative Analyst, Department of Motor Vehicles, Room 724, P.O. Box 24712, Richmond, VA 23269-0001, telephone (804) 367-1875, FAX (804) 367-6631, or toll-free 1-800-272-9268.

**VIRGINIA MUSEUM OF FINE ARTS**

**Collections Committee**

**May 13, 1997 - 11 a.m. --** Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue,  
Auditorium, Richmond, Virginia. ☎

☎ A meeting to consider gift offers, purchase consideration and loans of art works. Public comment will not be received at the meeting.



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## Calendar of Events

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**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

### Executive Committee

**June 19, 1997 - Noon** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. ☒

A meeting to ratify the 1997-1998 budget recommended by the Finance Committee. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

### Finance Committee

**May 15, 1997 - 11 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ☒

A meeting to review the budget. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

**June 19, 1997 - 11 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ☒

A meeting to consider and approve the 1997-1998 budget. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

### Board of Trustees

**May 15, 1997 - Noon** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. ☒

A meeting to review staff activities and to receive committee reports and a budget update. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

**June 3, 1997 - 8 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ☒

A briefing of the president and vice president of the Board of Trustees by the director and deputy director. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

### BOARD OF NURSING

† **May 19, 1997 - 1 p.m.** -- Open Meeting  
† **May 22, 1997 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A panel of the Board of Nursing 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 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD

† **May 20, 1997 - 9 a.m.** -- Open Meeting  
† **May 21, 1997 - 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 regular meeting to consider matters relating to education programs, discipline of licensees, licensure by examination and other matters under the jurisdiction of the board. Public comment will be received during an open forum beginning at 11 a.m. on Tuesday, May 20, 1997. Public comment will also be received on May 20, 1997, during a public hearing on proposed massage therapy regulations. On May 21, 1997, the board will conduct formal hearings and 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 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD

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**May 20, 1997 - 1 p.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

**June 13, 1997** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to adopt regulations entitled: **18 VAC 90-50-10 et seq. Regulations Governing the Certification of Massage Therapists.** The proposed regulations establish an application process and requirements for certification in accordance with provisions of § 54.1-3029 of the Code of Virginia, fees for administration of the regulatory program, a schedule of renewal and reinstatement, and standards of conduct, which will protect the health, welfare and safety of the citizens of the Commonwealth.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

**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) 662-9943.

**Education Special Conference Committee**

† **May 19, 1997 - 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 proposals and reports and prepare recommendations for the board. 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 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD

**Special Conference Committee**

† **May 19, 1997 - 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 Special Conference Committee will conduct informal conferences with licensees or certificate holders or both. 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 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD

**BOARD OF NURSING HOME ADMINISTRATORS**

**Legislative/Regulatory Committee**

† **June 17, 1997 - 10 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 discuss proposed changes to regulations. No public comment will be received.

**Contact:** Senita Booker, Program Support Technician Senior, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9943 or (804) 662-7197/TDD

**BOARD FOR OPTICIANS**

**June 7, 1997 - 9 a.m. -- Open Meeting**  
 Location to be announced.

A meeting of the Ad Hoc Committee to discuss a legislative proposal to be presented to the board for the 1998 General Assembly Session. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD

**BOARD OF OPTOMETRY**

**May 15, 1997 - 8 a.m. -- Open Meeting**  
 The Holiday Inn 1776, 725 Bypass Road, Williamsburg, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the board to consider amendments to its general regulations pursuant to Executive Order 15(94). The board will also continue its discussion of needed legislative changes and will be reviewing requests for licensure reinstatement, licensure by endorsement, and continuing education waiver or extension. In addition, the board will consider the need to update the current listing of CPT codes approved for use by Virginia licensed optometrists. Committee reports will be given to include an update for the board on NERCOATS' transition. Brief public comment will be received at the beginning of the meeting.

**Contact:** Carol Stamey, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD

**May 15, 1997 - 1 p.m. -- Open Meeting**  
 The Holiday Inn 1776, 725 Bypass Road, Williamsburg, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences. This is a public meeting; however, public comment will not be received.

**Contact:** Carol Stamey, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD

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# Calendar of Events

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## PESTICIDE CONTROL BOARD

† **May 23, 1997 - 10 a.m.** -- Open Meeting  
Washington Building, 1100 Bank Street, Board Room, Room 400, Richmond, Virginia. ♿

A committee meeting to discuss posting and notification of pesticide applications in schools. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, 1100 Bank St., Room 401, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6558 or toll-free 1-800-552-9963.

## BOARD OF PHARMACY

† **May 29 1997 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿  
(Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences. Public comment 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 or FAX (804) 662-9313.

## POLYGRAPH EXAMINERS ADVISORY BOARD

† **June 17, 1997 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿  
(Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action. In addition, the Polygraph Examiners Licensing Examination will be administered to eligible polygraph examiner interns. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ♿

## BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

**May 15, 1997 - 1 p.m.** -- Open Meeting  
The Hotel Roanoke, 110 Shenandoah Avenue, Roanoke, Virginia. ♿

A meeting to plan and set goals and objectives for future activities of the board. Public comments will be received at the beginning of the meeting.

**Contact:** Evelyn Brown, Executive Director, or Joyce Williams, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912 or FAX (804) 662-9943.

**May 16, 1997 - 9 a.m.** -- Open Meeting  
The Hotel Roanoke, 110 Shenandoah Avenue, Roanoke, Virginia. ♿

A continuation of the May 15 meeting. The board will conduct general business, consider committee reports and correspondence, conduct regulatory review, and discuss any other matters under the jurisdiction of the board. The board will adopt the final Regulations Governing the Practice of Marriage and Family Therapists. Public comments will be received at the beginning of the meeting.

**Contact:** Evelyn Brown, Executive Director, or Joyce Williams, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912 or FAX (804) 662-9943

## BOARD OF PROFESSIONAL AND OCCUPATIONAL REGULATION

**May 19, 1997 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board 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:** Debra L. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ♿

## BOARD OF PSYCHOLOGY

**June 10, 1997 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

A meeting to conduct general board business. Public comment will be received.

**Contact:** LaDonna Duncan, Administrative Assistant, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913 or FAX (804) 662-9943.

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May 12, 1997-- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to amend regulations entitled: **18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology.** The purpose of the proposed amendments is to replace emergency regulations which were necessary to conform regulations to 1996 statutory changes requiring the transfer of licensure of clinical psychologists to the Board of Psychology and establishment of three types of psychology licensure. Fees and renewal schedules have been amended to be less burdensome for licensees.

Statutory Authority: §§ 54.1-2400 and 54.1-3600 et seq. of the Code of Virginia.

Contact: Janet Delorme, Deputy Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575 or FAX (804) 662-9943.

**Regulatory/Legislative Committee**

† June 10, 1997 - 8:30 a.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

A meeting to discuss Executive Order 15(94) recommendations for amendments to the Regulations Governing the Practice of Psychology. Public comment will be received at the beginning of the meeting.

Contact: Janet Delorme, Deputy Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-9943, or (804) 662-7197/TDD

**REAL ESTATE APPRAISER BOARD**

May 13, 1997 - 10 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039, FAX (804) 367-2475, or (804) 367-9753/TDD

**REAL ESTATE BOARD**

† June 5, 1997 - 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 general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8526, FAX (804) 367-2475, or (804) 367-9753/TDD

**Education Committee**

† June 5, 1997 - 8 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8526, FAX (804) 367-2475, or (804) 367-9753/TDD

**Fair Housing Committee**

† June 5, 1997 - 8 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8526, FAX (804) 367-2475, or (804) 367-9753/TDD

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## Calendar of Events

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### STATE REHABILITATION ADVISORY COUNCIL

**May 19, 1997 - 10 a.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting.

**Contact:** Kay Magill, SRAC Liaison, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7527, FAX (804) 662-7696, toll-free 1-800-552-5019/TDD and Voice, or (800) 464-9950/TDD ♿

### BOARD OF REHABILITATIVE SERVICES

**May 22, 1997 - 10 a.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly business meeting.

**Contact:** John R. Vaughn, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019/TDD and Voice or (804) 662-9040/TDD ♿

### VIRGINIA RESOURCES AUTHORITY

**May 13, 1997 - 9:30 a.m.** -- Open Meeting  
The Mutual Building, 909 East Main Street, Suite 607, Richmond, Virginia.

The board will meet to approve minutes of the meeting of the prior month, to review the authority's operations for the prior month, and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

**Contact:** Shockley D. Gardner, Executive Director, Virginia Resources Authority, P.O. Box 1300, Richmond, VA 23218, telephone (804) 644-3100 or FAX (804) 644-3109.

### RICHMOND HOSPITAL AUTHORITY

#### Board of Commissioners

**† May 29, 1997 - 5 p.m.** -- Open Meeting  
Richmond Nursing Home, 1900 Cool Lane, 2nd Floor, Classroom, Richmond, Virginia. ♿

A monthly board meeting to discuss nursing home operations and related matters.

**Contact:** Marilyn H. West, Chairman, Richmond Hospital Authority, P.O. Box 548, 700 E. Main St., Suite 904, Richmond, VA 23219-0548, telephone (804) 782-1938.

### VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

#### Loan Committee

**May 27, 1997 - 10 a.m.** -- Open Meeting  
Department of Business Assistance, 901 East Byrd Street, 19th Floor, Main Board Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to review applications for loans submitted to the authority for approval. Contact the authority for possible change in meeting time.

**Contact:** Cathleen Surface, Executive Director, Virginia Small Business Financing Authority, 901 E. Byrd St., 19th Floor, Richmond, VA 23219, telephone (804) 371-8256, FAX (804) 225-3384, or (804) 371-0327/TDD ♿

### DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

**† May 20, 1997 - 9 a.m.** -- Public Hearing  
Omni Hotel-Newport News, Newport News, Virginia.

**† May 20, 1997 - 3 p.m.** -- Public Hearing  
Department of Social Services Central Regional Office, Koger Executive Center, West End, 1604 Santa Rosa Road, Wythe Building, Richmond, Virginia.

**† May 21, 1997 - 10 a.m.** -- Public Hearing  
Department of Social Services Northern Regional Office, 320 Hospital Hill, Suite 31, Warrenton, Virginia.

**† May 21, 1997 - 4 p.m.** -- Public Hearing  
Ramada Inn, Wytheville, Virginia.

**† July 11, 1997-** Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **22 VAC 40-705-10 et seq. Child Protective Services.** The purpose of the proposed regulation is to satisfy the need to provide direction for how best to protect children from child abuse and neglect balanced with the right of parents and family integrity.

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

**Contact:** Jesslyn Cobb, Human Services Program Consultant, Child Protective Services Unit, Department of Social Services, Theater Row Bldg., 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1255, FAX (804) 692-2209 or (804) 692-2215, or toll-free 1-800-828-1120/TDD ♿

**BOARD OF SOCIAL WORK**

**Regulatory/Legislative Committee**

† **July 11, 1997 - 8:15 a.m.** -- Open Meeting  
 Department of Health Professions, 6606 West Broad Street,  
 5th Floor, Conference Room 3, Richmond, Virginia. ☎

A meeting to discuss recommendations for amendments to definitions governing the practice of social work. Public comment will be received at the beginning of the meeting.

**Contact:** Janet Delorme, Deputy Executive Director, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9575, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

**VIRGINIA SOIL AND WATER CONSERVATION BOARD**

**May 15, 1997 - 9 a.m.** -- Open Meeting  
 Colonial Farm Credit, 6526 Mechanicsville Turnpike,  
 Mechanicsville, Virginia.

A regular bimonthly business meeting.

**Contact:** Linda J. Cox, Administrative Staff Assistant, Virginia Soil and Water Conservation Board, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2123 or FAX (804) 786-6141.

**May 15, 1997 - 7 p.m.** -- Open Meeting  
 General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A public meeting to receive comments on the Watershed Improvement District Referenda Regulations (see Notices of Intended Regulatory Action section for additional information). For interpreter services for the deaf, please notify Leon App by 4 p.m. on May 8, 1997.

**Contact:** Leon App, Agency Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141, or (804) 786-2121/TDD ☎

**May 29, 1997 - 1 p.m.** -- Open Meeting  
 Natural Resources Conservation Service, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia. ☎

A meeting to continue review and revision of board policies.

**Contact:** Leon App, Agency Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570 or (804) 786-2121/TDD ☎

**COMMONWEALTH TRANSPORTATION BOARD**

**May 14, 1997 - 2 p.m.** -- Open Meeting  
 Augusta County Government Center, Route 11, Verona, Virginia. ☎ (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.

**Contact:** Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

**May 15, 1997 - 10 a.m.** -- Open Meeting  
 Augusta County Government Center, Route 11, Verona, Virginia. ☎ (Interpreter for the deaf provided upon request)

A monthly meeting of the board 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 Department of Transportation Public Affairs at (804) 786-2715 for schedule.

**Contact:** Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

**TREASURY BOARD**

**May 21, 1997 - 9 a.m.** -- Open Meeting  
 † **June 18, 1997 - 9 a.m.** -- Open Meeting  
 † **July 23, 1997 - 9 a.m.** -- Open Meeting  
 James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ☎

A regular business meeting.

**Contact:** Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

**BOARD FOR THE VISUALLY HANDICAPPED**

† **July 16, 1997 - 1:30 p.m.** -- Open Meeting  
 Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The board is responsible for advising the Governor, the Secretary of Health and Human Resources, the Commissioner, and the General Assembly on the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on

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## Calendar of Events

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policies, budgets and requests for appropriations for the department. At this regular quarterly meeting, the board members will receive information regarding department activities and operations, review expenditures from the board's institutional fund, and discuss other issues raised by board members.

**Contact:** Katherine C. Proffitt, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

### Vocational Rehabilitation Advisory Council

**May 17, 1997 - 10 a.m. -- Open Meeting**

Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The council meets quarterly to advise the Department for the Visually Handicapped on matters related to vocational rehabilitation services for blind and visually impaired citizens of the Commonwealth.

**Contact:** James G. Taylor, Vocational Rehabilitation Program Director, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

### VIRGINIA VOLUNTARY FORMULARY BOARD

**May 29, 1997 - 10:30 a.m. -- Open Meeting**

Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia.

A meeting to review the public hearing record and product data for products being considered for inclusion in the Virginia Voluntary Formulary.

**Contact:** James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary, James Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

### VIRGINIA WASTE MANAGEMENT BOARD

**May 19, 1997 - 10 a.m. -- Public Hearing**

State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

**May 22, 1997 - 1 p.m. -- Public Hearing**

Roanoke County Administration Center, 5204 Bernard Drive, Board Meeting Room, Roanoke, Virginia.

**June 16, 1997 - Public comments may be submitted until this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-70-10 et seq. Financial Assurance Regulations for Solid Waste Facilities.** The proposed amendment incorporates new regulatory requirements for financial

assurance by the solid waste facilities owned or operated by the local governments as required by the 1993 amendment to § 10.1-1410 of the Code of Virginia. Extensive changes are also proposed to conform the Virginia requirements to the federal requirements of 40 CFR Part 258. These changes include elimination of the third-party liability requirements.

**Statutory Authority:** § 10.1-1400 et seq. of the Code of Virginia.

**Contact:** Wladimir Gulevich, Assistant Division Director, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4218, FAX (804) 698-4327, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

### STATE WATER CONTROL BOARD

**† June 16, 1997 - 11 a.m. -- Public Hearing**

Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Training Room, Woodbridge, Virginia.

**† June 18, 1997 - 11 a.m. -- Public Hearing**

Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Training Room, Glen Allen, Virginia.

**† June 27, 1997 - 11 a.m. -- Public Hearing**

Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Training Room, Virginia Beach, Virginia.

**† July 15, 1997 - Public comments may be submitted until this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **9 VAC 25-196-10 et seq. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Cooling Water Discharges.** The purpose of the proposed action is to adopt a regulation for the issuance of a general permit for cooling water discharges.

**Statutory Authority:** § 62.1-44.15 of the Code of Virginia.

**Contact:** Lily Choi, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23240, telephone (804) 698-4054.

### BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

**June 18, 1997 - 8:30 a.m. -- Open Meeting**

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of the Ad Hoc Committee to discuss a legislative proposal to be presented to the board for the 1998 General Assembly Session. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and

requiring special accommodations or interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD

## LEGISLATIVE

### VIRGINIA CODE COMMISSION

**May 16, 1997 - 10 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Square, Speaker's Conference Room, 6th Floor, Richmond, Virginia

A regular meeting.

**Contact:** E. M. Miller, Jr., Director, or Jane D. Chaffin, Deputy Registrar, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 or FAX (804) 692-0625.

### JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

**May 12, 1997 - 9:30 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia

Staff briefing on VRS oversight and staff status report on information technology.

**Contact:** Phillip A. Leone, Director, Joint Legislative Audit and Review Commission, General Assembly Building, 910 Capitol St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

**May 12**  
† Alcoholic Beverage Control Board  
Hearing Aid Specialists, Board for Higher Education, State Council of  
- Executive Committee  
Legislative Audit and Review Commission, Joint

**May 13**  
† Corrections, Board of  
- Correctional Services Committee  
Hazardous Materials Training Advisory Committee, State Medicine, Board of  
- Informal Conference Committee  
Museum of Fine Arts, Virginia

- Collections Committee  
Real Estate Appraiser Board  
Resources Authority, Virginia

**May 14**  
Agriculture and Consumer Services, Board of  
Air Pollution, State Advisory Board on  
† Corrections, Board of  
- Administration Committee  
George Mason University  
- Board of Visitors  
Juvenile Justice, State Board of  
Military Institute, Virginia  
- Board of Visitors  
Transportation Board, Commonwealth

**May 15**  
Agriculture and Consumer Services, Board of  
Architects, Professional Engineers, Land Surveyors, and Landscape Architects, Board for  
- Board for Land Surveyors  
Audiology and Speech-Language Pathology, Board of  
Medical Assistance Services, Department of  
- Virginia Medicaid Drug Utilization Review Board  
- Virginia Medicaid Prior Authorization Advisory Committee  
Museum of Fine Arts, Virginia  
- Finance Committee  
- Board of Trustees  
Optometry, Board of  
Professional Counselors and Marriage and Family  
Soil and Water Conservation Board, Virginia  
Therapists, Board of  
Transportation Board, Commonwealth

**May 16**  
Architects, Professional Engineers, Land Surveyors, and Landscape Architects, Board for  
- Board for Interior Designers  
Code Commission, Virginia  
† Correctional Education, Board of  
General Services, Department of  
- Design Build/Construction Management Review Board  
† Housing and Community Development, Department of  
- State Building Code Technical Review Board  
Information Management, Council on  
Professional Counselors and Marriage and Family  
Therapists, Board of

**May 17**  
Visually Handicapped (Board for the), Department for the  
- Vocational Rehabilitation Advisory Council

**May 19**  
Contractors, Board for  
Motor Vehicle Dealer Board  
- Advertising Committee  
- Dealer Licensing Committee  
- Dealer Practices Committee  
- Transaction Recovery Fund Committee  
† Nursing, Board of  
- Special Conference Committee  
- Education Special Conference Committee



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## Calendar of Events

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Professional and Occupational Regulation, Board for  
Rehabilitation Advisory Council, State

### May 20

† Agriculture and Consumer Services, Department of  
- Virginia Farmers' Market Board  
Environmental Quality, Department of  
- Virginia Groundwater Protection Steering Committee  
† Housing Development Authority, Virginia  
† Mental Health, Mental Retardation and Substance  
Abuse Services Board, State  
Motor Vehicle Dealer Board  
- Finance Committee  
- Franchise Review and Advisory Committee  
† Nursing, Board of

### May 21

† Aviation, Department of  
- Advisory Committee for the Eastern Virginia Airport  
System  
Chesapeake Bay Local Assistance Board  
- Regulatory and Regulation Committees  
Conservation and Recreation, Department of  
- Rappahannock Scenic River Advisory Board  
Manufactured Housing Board, Virginia  
† Maternal and Child Health Council  
- Perinatal/Early Childhood Subcommittee  
† Mental Health, Mental Retardation and Substance  
Abuse Services Board, State  
† Nursing, Board of  
Treasury Board

### May 22

Labor and Industry, Department of  
- Apprenticeship Council  
† Maternal and Child Health Council  
- School Health Subcommittee  
† Medicine, Board of  
- Informal Conference Committee  
Mental Health, Mental Retardation and Substance Abuse  
Services, Department of  
- Pilot Leadership Team  
† Nursing, Board of  
Rehabilitative Services, Board of

### May 23

† Agriculture and Consumer Services, Department of  
Architects, Professional Engineers, Land Surveyors, and  
Landscape Architects, Board for  
- Board for Interior Designers  
† Medicine, Board of  
- Legislative Committee  
† Pesticide Control Board

### May 27

† Marine Resources Commission  
† Health Professions, Department of  
- Board on Rehabilitation Providers  
Small Business Financing Authority, Virginia  
- Loan Committee

### May 28

† Child Fatality Review Team, State  
Emergency Planning Committee, Local - Gloucester  
County

Funeral Directors and Embalmers, Board of  
† Mental Health, Mental Retardation and Substance  
Abuse Services, Department of  
- Facility Work Group

### May 29

† Alcoholic Beverage Control Board  
Conservation and Recreation, Department of  
- Virginia State Parks Foundation  
† Geology, Board for  
Litter Control and Recycling Fund Advisory Board  
† Pharmacy, Board of  
† Richmond Hospital Authority  
- Board of Commissioners  
Soil and Water Conservation Board, Virginia  
Voluntary Formulary Board, Virginia

### May 30

† Executive Council, State

### June 2

† Barbers, Board for  
Health Professions, Board of  
- Ad Hoc Committee on Criteria  
Local Government, Commission on

### June 3

Agriculture and Consumer Services, Department of  
- Virginia Sweet Potato Board  
Hopewell Industrial Safety Council  
Museum of Fine Arts, Virginia  
- Board of Trustees

### June 5

† Accountancy, Board for  
Conservation and Recreation, Department of  
- Falls of the James Scenic River Advisory Board  
- Virginia State Parks Foundation  
† Real Estate Board  
- Education Committee  
- Fair Housing Committee

### June 7

Opticians, Board for

### June 9

† Alcoholic Beverage Control Board  
† Higher Education for Virginia, State Council of

### June 10

† Psychology, Board of  
- Regulatory/Legislative Committee

### June 11

Juvenile Justice, State Board of  
† Labor and Industry, Department of  
- Migrant and Seasonal Farmworkers Board

### June 12

Funeral Directors and Embalmers, Board of

### June 13

† HIV Community Planning Committee, Virginia

### June 14

† HIV Community Planning Committee, Virginia

# Calendar of Events

## June 16

- † Library Board
  - Archival and Information Services Committee
  - Automation and Networking Committee
  - Executive Committee
  - Facilities Committee
  - Legislative and Finance Committee
  - Nominating Committee
  - Publications and Educational Services Committee
  - Public Library Development Committee
  - Records Management Committee

## June 17

- † Library Board
  - Archival and Information Services Committee
  - Automation and Networking Committee
  - Executive Committee
  - Facilities Committee
  - Legislative and Finance Committee
  - Nominating Committee
  - Publications and Educational Services Committee
  - Public Library Development Committee
  - Records Management Committee
- Medical Assistance Services, Board of
- † Nursing Home Administrators, Board of
- † Polygraph Examiners Advisory Board

## June 18

- Contractors, Board for
- † Treasury Board
- Waterworks and Wastewater Works Operators

## June 19

- Environmental Quality, Department of
  - Work Group on Ammonia, Mercury, Lead and Copper
- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
  - Facility Work Group
- Museum of Fine Arts, Virginia
  - Executive Committee
  - Finance Committee

## June 20

- † Accountancy, Board for
- † Correctional Education, Board of

## June 23

- † Alcoholic Beverage Control Board

## June 24

- † Marine Resources Commission

## June 27

- † Medicine, Board of
  - Informal Conference Committee

## July 11

- † Accountancy Board for
- † Social Work, Board of
  - Regulatory/Legislative Committee

## July 16

- † Visually Handicapped, Board for the

## July 22

- Agriculture and Consumer Services, Department of
  - Virginia Small Grains Board

## July 23

- † Treasury Board

## PUBLIC HEARINGS

## May 13

- † Health Professions, Department of
  - Regulatory Research Committee

## May 14

- Juvenile Justice, Board of

## May 19

- Waste Management Board, Virginia

## May 20

- Nursing, Board of
- † Social Services, Board of

## May 21

- † Social Services, Board of

## May 22

- Waste Management Board, Virginia

## June 2

- Local Government, Commission on

## June 11

- Juvenile Justice, Board of

## June 16

- † Water Control Board, State

## June 18

- † Health, Board of
- † Water Control Board, State

## June 19

- † Health, Board of

## June 20

- † Health, Board of

## June 27

- † Water Control Board, State

