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# THE VIRGINIA REGISTER

OF REGULATIONS

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# THE VIRGINIA REGISTER INFORMATION PAGE

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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) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation; and (ii) file the proposed regulation with the Registrar 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.

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# PUBLICATION DEADLINES AND SCHEDULES

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This schedule is available on the *Register's* Internet home page (<http://legis.state.va.us/codecomm/regindex.htm>).

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## May 1998 through March 1999

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| 14:18                          | May 6, 1998                            | May 25, 1998                |
| 14:19                          | May 20, 1998                           | June 8, 1998                |
| 14:20                          | June 3, 1998                           | June 22, 1998               |
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| 14:22                          | July 1, 1998                           | July 20, 1998               |
| 14:23                          | July 15, 1998                          | August 3, 1998              |
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| 14:25                          | August 12, 1998                        | August 31, 1998             |
| 14:26                          | August 26, 1998                        | September 14, 1998          |
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| 15:2                           | September 23, 1998                     | October 12, 1998            |
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| 15:6                           | November 17, 1998 (Tuesday)            | December 7, 1998            |
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| 15:13                          | February 24, 1999                      | March 15, 1999              |
| 15:14                          | March 10, 1999                         | March 29, 1999              |
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| SECTION NUMBER                                     | ACTION   | CITE             | EFFECTIVE DATE |
|--|----------|------------------|----------------|
| <b>Title 2. Agriculture</b>                        |          |                  |                |
| 2 VAC 5-390-180                                    | Amended  | 14:14 VA.R. 2136 | 3/1/98         |
| <b>Title 4. Conservation and Natural Resources</b> |          |                  |                |
| 4 VAC 15-290-140                                   | Amended  | 14:16 VA.R. 2357 | 7/1/98         |
| 4 VAC 20-260-20                                    | Amended  | 14:15 VA.R. 2231 | 3/13/98        |
| 4 VAC 20-280-10                                    | Amended  | 14:16 VA.R. 2357 | 3/31/98        |
| 4 VAC 20-345-10                                    | Added    | 14:15 VA.R. 2236 | 3/1/98         |
| 4 VAC 20-345-20                                    | Added    | 14:15 VA.R. 2236 | 3/1/98         |
| 4 VAC 20-345-30                                    | Added    | 14:15 VA.R. 2236 | 3/1/98         |
| 4 VAC 20-345-40                                    | Added    | 14:15 VA.R. 2237 | 3/1/98         |
| 4 VAC 20-380-30                                    | Amended  | 14:16 VA.R. 2357 | 3/31/98        |
| 4 VAC 20-380-60                                    | Amended  | 14:16 VA.R. 2358 | 3/31/98        |
| 4 VAC 20-500-40                                    | Amended  | 14:14 VA.R. 2137 | 3/1/98         |
| 4 VAC 20-620-50                                    | Amended  | 14:16 VA.R. 2358 | 4/1/98         |
| 4 VAC 20-620-60                                    | Amended  | 14:16 VA.R. 2358 | 4/1/98         |
| 4 VAC 20-880-40                                    | Amended  | 14:14 VA.R. 2137 | 3/1/98         |
| 4 VAC 20-880-50                                    | Amended  | 14:14 VA.R. 2138 | 3/1/98         |
| 4 VAC 20-910-45                                    | Amended  | 14:12 VA.R. 1915 | 1/30/98        |
| 4 VAC 20-950-30                                    | Amended  | 14:16 VA.R. 2358 | 4/1/98         |
| 4 VAC 20-950-45                                    | Added    | 14:12 VA.R. 1915 | 1/30/98        |
| 4 VAC 20-950-45                                    | Amended  | 14:16 VA.R. 2359 | 4/1/98         |
| 4 VAC 20-960-30                                    | Amended  | 14:16 VA.R. 2359 | 4/1/98         |
| 4 VAC 20-960-45                                    | Added    | 14:16 VA.R. 2359 | 4/1/98         |
| 4 VAC 20-1000-10                                   | Added    | 14:12 VA.R. 1916 | 1/30/98        |
| 4 VAC 20-1000-20                                   | Added    | 14:12 VA.R. 1916 | 1/30/98        |
| 4 VAC 20-1000-30                                   | Added    | 14:12 VA.R. 1916 | 1/30/98        |
| 4 VAC 20-1000-40                                   | Added    | 14:12 VA.R. 1916 | 1/30/98        |
| 4 VAC 25-40-10                                     | Amended  | 14:17 VA.R. 2428 | 7/1/98         |
| 4 VAC 25-40-20                                     | Repealed | 14:17 VA.R. 2430 | 7/1/98         |
| 4 VAC 25-40-25                                     | Added    | 14:17 VA.R. 2430 | 7/1/98         |
| 4 VAC 25-40-30                                     | Repealed | 14:17 VA.R. 2430 | 7/1/98         |
| 4 VAC 25-40-40                                     | Amended  | 14:17 VA.R. 2430 | 7/1/98         |
| 4 VAC 25-40-50                                     | Amended  | 14:17 VA.R. 2430 | 7/1/98         |
| 4 VAC 25-40-60                                     | Repealed | 14:17 VA.R. 2431 | 7/1/98         |
| 4 VAC 25-40-70                                     | Amended  | 14:17 VA.R. 2431 | 7/1/98         |
| 4 VAC 25-40-80                                     | Repealed | 14:17 VA.R. 2431 | 7/1/98         |
| 4 VAC 25-40-90                                     | Amended  | 14:17 VA.R. 2431 | 7/1/98         |
| 4 VAC 25-40-100                                    | Amended  | 14:17 VA.R. 2431 | 7/1/98         |
| 4 VAC 25-40-110                                    | Amended  | 14:17 VA.R. 2432 | 7/1/98         |
| 4 VAC 25-40-120                                    | Amended  | 14:17 VA.R. 2432 | 7/1/98         |
| 4 VAC 25-40-130                                    | Amended  | 14:17 VA.R. 2432 | 7/1/98         |
| 4 VAC 25-40-140                                    | Amended  | 14:17 VA.R. 2432 | 7/1/98         |
| 4 VAC 25-40-145                                    | Added    | 14:17 VA.R. 2432 | 7/1/98         |

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| 4 VAC 25-40-180  | Amended  | 14:17 VA.R. 2432 | 7/1/98         |
| 4 VAC 25-40-200  | Amended  | 14:17 VA.R. 2432 | 7/1/98         |
| 4 VAC 25-40-210  | Amended  | 14:17 VA.R. 2432 | 7/1/98         |
| 4 VAC 25-40-220  | Amended  | 14:17 VA.R. 2432 | 7/1/98         |
| 4 VAC 25-40-250  | Amended  | 14:17 VA.R. 2432 | 7/1/98         |
| 4 VAC 25-40-270  | Amended  | 14:17 VA.R. 2432 | 7/1/98         |
| 4 VAC 25-40-300  | Amended  | 14:17 VA.R. 2432 | 7/1/98         |
| 4 VAC 25-40-310  | Amended  | 14:17 VA.R. 2432 | 7/1/98         |
| 4 VAC 25-40-320  | Repealed | 14:17 VA.R. 2432 | 7/1/98         |
| 4 VAC 25-40-350  | Amended  | 14:17 VA.R. 2432 | 7/1/98         |
| 4 VAC 25-40-385  | Added    | 14:17 VA.R. 2433 | 7/1/98         |
| 4 VAC 25-40-388  | Added    | 14:17 VA.R. 2433 | 7/1/98         |
| 4 VAC 25-40-390  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-400  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-440  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-450  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-460  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-490  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-500  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-510  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-520  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-530  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-540  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-550  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-590  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-630  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-660  | Amended  | 14:17 VA.R. 2434 | 7/1/98         |
| 4 VAC 25-40-670  | Amended  | 14:17 VA.R. 2435 | 7/1/98         |
| 4 VAC 25-40-690  | Amended  | 14:17 VA.R. 2435 | 7/1/98         |
| 4 VAC 25-40-710  | Amended  | 14:17 VA.R. 2435 | 7/1/98         |
| 4 VAC 25-40-720  | Amended  | 14:17 VA.R. 2435 | 7/1/98         |
| 4 VAC 25-40-730  | Repealed | 14:17 VA.R. 2435 | 7/1/98         |
| 4 VAC 25-40-750  | Repealed | 14:17 VA.R. 2435 | 7/1/98         |
| 4 VAC 25-40-770  | Amended  | 14:17 VA.R. 2435 | 7/1/98         |
| 4 VAC 25-40-780  | Amended  | 14:17 VA.R. 2435 | 7/1/98         |
| 4 VAC 25-40-790  | Amended  | 14:17 VA.R. 2436 | 7/1/98         |
| 4 VAC 25-40-800  | Amended  | 14:17 VA.R. 2436 | 7/1/98         |
| 4 VAC 25-40-810  | Amended  | 14:17 VA.R. 2437 | 7/1/98         |
| 4 VAC 25-40-820  | Amended  | 14:17 VA.R. 2437 | 7/1/98         |
| 4 VAC 25-40-830  | Amended  | 14:17 VA.R. 2438 | 7/1/98         |
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| 4 VAC 25-40-880  | Amended  | 14:17 VA.R. 2438 | 7/1/98         |
| 4 VAC 25-40-890  | Amended  | 14:17 VA.R. 2438 | 7/1/98         |
| 4 VAC 25-40-895  | Added    | 14:17 VA.R. 2438 | 7/1/98         |
| 4 VAC 25-40-900  | Amended  | 14:17 VA.R. 2438 | 7/1/98         |
| 4 VAC 25-40-910  | Amended  | 14:17 VA.R. 2438 | 7/1/98         |
| 4 VAC 25-40-920  | Amended  | 14:17 VA.R. 2439 | 7/1/98         |
| 4 VAC 25-40-930  | Amended  | 14:17 VA.R. 2439 | 7/1/98         |
| 4 VAC 25-40-940  | Repealed | 14:17 VA.R. 2439 | 7/1/98         |
| 4 VAC 25-40-960  | Repealed | 14:17 VA.R. 2439 | 7/1/98         |
| 4 VAC 25-40-970  | Amended  | 14:17 VA.R. 2439 | 7/1/98         |
| 4 VAC 25-40-1030 | Amended  | 14:17 VA.R. 2439 | 7/1/98         |
| 4 VAC 25-40-1100 | Amended  | 14:17 VA.R. 2439 | 7/1/98         |

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| SECTION NUMBER   | ACTION   | CITE             | EFFECTIVE DATE |
|------------------|----------|------------------|----------------|
| 4 VAC 25-40-1130 | Amended  | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1140 | Amended  | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1180 | Amended  | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1210 | Amended  | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1220 | Amended  | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1250 | Amended  | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1260 | Amended  | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1280 | Amended  | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1300 | Repealed | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1310 | Repealed | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1320 | Amended  | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1340 | Amended  | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1370 | Amended  | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1490 | Repealed | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1540 | Amended  | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1550 | Amended  | 14:17 VA.R. 2440 | 7/1/98         |
| 4 VAC 25-40-1560 | Amended  | 14:17 VA.R. 2441 | 7/1/98         |
| 4 VAC 25-40-1580 | Amended  | 14:17 VA.R. 2441 | 7/1/98         |
| 4 VAC 25-40-1590 | Amended  | 14:17 VA.R. 2441 | 7/1/98         |
| 4 VAC 25-40-1670 | Amended  | 14:17 VA.R. 2441 | 7/1/98         |
| 4 VAC 25-40-1685 | Added    | 14:17 VA.R. 2441 | 7/1/98         |
| 4 VAC 25-40-1690 | Amended  | 14:17 VA.R. 2441 | 7/1/98         |
| 4 VAC 25-40-1740 | Amended  | 14:17 VA.R. 2441 | 7/1/98         |
| 4 VAC 25-40-1780 | Amended  | 14:17 VA.R. 2441 | 7/1/98         |
| 4 VAC 25-40-1785 | Added    | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-1810 | Amended  | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-1880 | Amended  | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-1940 | Repealed | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-2010 | Amended  | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-2015 | Added    | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-2040 | Amended  | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-2080 | Amended  | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-2100 | Amended  | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-2140 | Amended  | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-2170 | Amended  | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-2180 | Amended  | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-2210 | Amended  | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-2220 | Amended  | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-2250 | Amended  | 14:17 VA.R. 2442 | 7/1/98         |
| 4 VAC 25-40-2260 | Repealed | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2270 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2280 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2300 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2340 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2390 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2400 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2410 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2420 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2440 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2450 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2480 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2490 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2500 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |



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| SECTION NUMBER   | ACTION   | CITE             | EFFECTIVE DATE |
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| 4 VAC 25-40-2510 | Repealed | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2530 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2540 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2550 | Amended  | 14:17 VA.R. 2443 | 7/1/98         |
| 4 VAC 25-40-2590 | Amended  | 14:17 VA.R. 2444 | 7/1/98         |
| 4 VAC 25-40-2610 | Amended  | 14:17 VA.R. 2444 | 7/1/98         |
| 4 VAC 25-40-2650 | Amended  | 14:17 VA.R. 2444 | 7/1/98         |
| 4 VAC 25-40-2660 | Amended  | 14:17 VA.R. 2444 | 7/1/98         |
| 4 VAC 25-40-2680 | Amended  | 14:17 VA.R. 2444 | 7/1/98         |
| 4 VAC 25-40-2700 | Amended  | 14:17 VA.R. 2444 | 7/1/98         |
| 4 VAC 25-40-2720 | Amended  | 14:17 VA.R. 2444 | 7/1/98         |
| 4 VAC 25-40-2750 | Amended  | 14:17 VA.R. 2444 | 7/1/98         |
| 4 VAC 25-40-2760 | Amended  | 14:17 VA.R. 2444 | 7/1/98         |
| 4 VAC 25-40-2770 | Amended  | 14:17 VA.R. 2444 | 7/1/98         |
| 4 VAC 25-40-2790 | Amended  | 14:17 VA.R. 2444 | 7/1/98         |
| 4 VAC 25-40-2800 | Amended  | 14:17 VA.R. 2445 | 7/1/98         |
| 4 VAC 25-40-2810 | Amended  | 14:17 VA.R. 2445 | 7/1/98         |
| 4 VAC 25-40-2820 | Amended  | 14:17 VA.R. 2445 | 7/1/98         |
| 4 VAC 25-40-2850 | Amended  | 14:17 VA.R. 2445 | 7/1/98         |
| 4 VAC 25-40-2870 | Amended  | 14:17 VA.R. 2445 | 7/1/98         |
| 4 VAC 25-40-2880 | Amended  | 14:17 VA.R. 2445 | 7/1/98         |
| 4 VAC 25-40-2910 | Amended  | 14:17 VA.R. 2445 | 7/1/98         |
| 4 VAC 25-40-2915 | Added    | 14:17 VA.R. 2445 | 7/1/98         |
| 4 VAC 25-40-2920 | Amended  | 14:17 VA.R. 2445 | 7/1/98         |
| 4 VAC 25-40-2930 | Amended  | 14:17 VA.R. 2445 | 7/1/98         |
| 4 VAC 25-40-2980 | Amended  | 14:17 VA.R. 2445 | 7/1/98         |
| 4 VAC 25-40-3000 | Amended  | 14:17 VA.R. 2445 | 7/1/98         |
| 4 VAC 25-40-3030 | Amended  | 14:17 VA.R. 2446 | 7/1/98         |
| 4 VAC 25-40-3050 | Amended  | 14:17 VA.R. 2446 | 7/1/98         |
| 4 VAC 25-40-3070 | Amended  | 14:17 VA.R. 2446 | 7/1/98         |
| 4 VAC 25-40-3080 | Amended  | 14:17 VA.R. 2446 | 7/1/98         |
| 4 VAC 25-40-3110 | Amended  | 14:17 VA.R. 2446 | 7/1/98         |
| 4 VAC 25-40-3120 | Amended  | 14:17 VA.R. 2446 | 7/1/98         |
| 4 VAC 25-40-3160 | Amended  | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3170 | Amended  | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3220 | Amended  | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3230 | Repealed | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3240 | Amended  | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3280 | Amended  | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3290 | Amended  | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3300 | Amended  | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3310 | Amended  | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3320 | Amended  | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3325 | Added    | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3328 | Added    | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3330 | Amended  | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3340 | Amended  | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3350 | Amended  | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3420 | Amended  | 14:17 VA.R. 2447 | 7/1/98         |
| 4 VAC 25-40-3430 | Amended  | 14:17 VA.R. 2448 | 7/1/98         |
| 4 VAC 25-40-3450 | Amended  | 14:17 VA.R. 2448 | 7/1/98         |
| 4 VAC 25-40-3460 | Amended  | 14:17 VA.R. 2448 | 7/1/98         |
| 4 VAC 25-40-3475 | Added    | 14:17 VA.R. 2448 | 7/1/98         |

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| 4 VAC 25-40-3478 | Added    | 14:17 VA.R. 2448 | 7/1/98         |
| 4 VAC 25-40-3595 | Added    | 14:17 VA.R. 2448 | 7/1/98         |
| 4 VAC 25-40-3620 | Amended  | 14:17 VA.R. 2448 | 7/1/98         |
| 4 VAC 25-40-3660 | Amended  | 14:17 VA.R. 2448 | 7/1/98         |
| 4 VAC 25-40-3690 | Amended  | 14:17 VA.R. 2448 | 7/1/98         |
| 4 VAC 25-40-3700 | Amended  | 14:17 VA.R. 2448 | 7/1/98         |
| 4 VAC 25-40-3710 | Amended  | 14:17 VA.R. 2448 | 7/1/98         |
| 4 VAC 25-40-3720 | Amended  | 14:17 VA.R. 2448 | 7/1/98         |
| 4 VAC 25-40-3830 | Amended  | 14:17 VA.R. 2448 | 7/1/98         |
| 4 VAC 25-40-3840 | Amended  | 14:17 VA.R. 2449 | 7/1/98         |
| 4 VAC 25-40-3855 | Added    | 14:17 VA.R. 2449 | 7/1/98         |
| 4 VAC 25-40-3890 | Amended  | 14:17 VA.R. 2449 | 7/1/98         |
| 4 VAC 25-40-3930 | Amended  | 14:17 VA.R. 2449 | 7/1/98         |
| 4 VAC 25-40-3955 | Added    | 14:17 VA.R. 2449 | 7/1/98         |
| 4 VAC 25-40-3958 | Added    | 14:17 VA.R. 2450 | 7/1/98         |
| 4 VAC 25-40-3980 | Amended  | 14:17 VA.R. 2450 | 7/1/98         |
| 4 VAC 25-40-3990 | Amended  | 14:17 VA.R. 2450 | 7/1/98         |
| 4 VAC 25-40-4060 | Amended  | 14:17 VA.R. 2450 | 7/1/98         |
| 4 VAC 25-40-4090 | Amended  | 14:17 VA.R. 2450 | 7/1/98         |
| 4 VAC 25-40-4100 | Amended  | 14:17 VA.R. 2450 | 7/1/98         |
| 4 VAC 25-40-4110 | Amended  | 14:17 VA.R. 2451 | 7/1/98         |
| 4 VAC 25-40-4140 | Amended  | 14:17 VA.R. 2451 | 7/1/98         |
| 4 VAC 25-40-4160 | Amended  | 14:17 VA.R. 2451 | 7/1/98         |
| 4 VAC 25-40-4220 | Amended  | 14:17 VA.R. 2451 | 7/1/98         |
| 4 VAC 25-40-4230 | Amended  | 14:17 VA.R. 2451 | 7/1/98         |
| 4 VAC 25-40-4260 | Amended  | 14:17 VA.R. 2451 | 7/1/98         |
| 4 VAC 25-40-4280 | Amended  | 14:17 VA.R. 2451 | 7/1/98         |
| 4 VAC 25-40-4290 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4320 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4330 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4350 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4430 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4440 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4460 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4540 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4590 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4650 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4750 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4770 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4910 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4920 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4970 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-4980 | Amended  | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-5040 | Repealed | 14:17 VA.R. 2452 | 7/1/98         |
| 4 VAC 25-40-5050 | Repealed | 14:17 VA.R. 2453 | 7/1/98         |
| 4 VAC 25-40-5060 | Amended  | 14:17 VA.R. 2453 | 7/1/98         |
| 4 VAC 25-40-5070 | Amended  | 14:17 VA.R. 2453 | 7/1/98         |
| 4 VAC 25-40-5120 | Amended  | 14:17 VA.R. 2453 | 7/1/98         |
| 4 VAC 25-40-5170 | Amended  | 14:17 VA.R. 2453 | 7/1/98         |
| 4 VAC 25-40-5180 | Amended  | 14:17 VA.R. 2453 | 7/1/98         |
| 4 VAC 25-40-5200 | Amended  | 14:17 VA.R. 2453 | 7/1/98         |
| 4 VAC 25-40-5210 | Amended  | 14:17 VA.R. 2453 | 7/1/98         |
| 4 VAC 25-40-5230 | Amended  | 14:17 VA.R. 2454 | 7/1/98         |

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| 4 VAC 25-40-5290                                 | Amended  | 14:17 VA.R. 2454 | 7/1/98         |
| 4 VAC 25-40-5310                                 | Amended  | 14:17 VA.R. 2454 | 7/1/98         |
| 4 VAC 25-40-5320                                 | Amended  | 14:17 VA.R. 2454 | 7/1/98         |
| 4 VAC 25-40-5330                                 | Amended  | 14:17 VA.R. 2454 | 7/1/98         |
| 4 VAC 25-40-5340                                 | Amended  | 14:17 VA.R. 2454 | 7/1/98         |
| 4 VAC 25-40-5370                                 | Amended  | 14:17 VA.R. 2454 | 7/1/98         |
| 4 VAC 25-40-5400                                 | Amended  | 14:17 VA.R. 2454 | 7/1/98         |
| 4 VAC 25-40-5450                                 | Amended  | 14:17 VA.R. 2454 | 7/1/98         |
| 4 VAC 25-40-5470                                 | Amended  | 14:17 VA.R. 2454 | 7/1/98         |
| 4 VAC 25-40-5550                                 | Amended  | 14:17 VA.R. 2454 | 7/1/98         |
| 4 VAC 25-40-5580                                 | Amended  | 14:17 VA.R. 2454 | 7/1/98         |
| 4 VAC 25-40-5590                                 | Amended  | 14:17 VA.R. 2455 | 7/1/98         |
| 4 VAC 25-40-5630                                 | Amended  | 14:17 VA.R. 2455 | 7/1/98         |
| 4 VAC 25-40-5660                                 | Amended  | 14:17 VA.R. 2455 | 7/1/98         |
| 4 VAC 25-40-5670                                 | Amended  | 14:17 VA.R. 2455 | 7/1/98         |
| 4 VAC 25-40-5680                                 | Repealed | 14:17 VA.R. 2455 | 7/1/98         |
| 4 VAC 25-40-5690                                 | Repealed | 14:17 VA.R. 2455 | 7/1/98         |
| 4 VAC 25-40-5710                                 | Amended  | 14:17 VA.R. 2455 | 7/1/98         |
| 4 VAC 25-40-5720                                 | Repealed | 14:17 VA.R. 2455 | 7/1/98         |
| 4 VAC 25-40-5730                                 | Repealed | 14:17 VA.R. 2455 | 7/1/98         |
| 4 VAC 25-40-5740                                 | Repealed | 14:17 VA.R. 2456 | 7/1/98         |
| 4 VAC 25-40-5750                                 | Added    | 14:17 VA.R. 2456 | 7/1/98         |
| 4 VAC 25-40-5760                                 | Added    | 14:17 VA.R. 2456 | 7/1/98         |
| 4 VAC 25-40-5770                                 | Added    | 14:17 VA.R. 2457 | 7/1/98         |
| 4 VAC 25-40-5780                                 | Added    | 14:17 VA.R. 2457 | 7/1/98         |
| <b>Title 6. Criminal Justice and Corrections</b> |          |                  |                |
| 6 VAC 15-60-10 through<br>6 VAC 15-60-100        | Repealed | 14:17 VA.R. 2457 | 9/1/98         |
| 6 VAC 15-61-10 through<br>6 VAC 15-61-300        | Added    | 14:17 VA.R. 2457 | 9/1/98         |
| <b>Title 9. Environment</b>                      |          |                  |                |
| 9 VAC 5-20-203                                   | Amended  | 14:11 VA.R. 1804 | 4/1/98         |
| 9 VAC 5-20-204                                   | Amended  | 14:11 VA.R. 1804 | 4/1/98         |
| 9 VAC 5-20-205                                   | Amended  | 14:11 VA.R. 1805 | 4/1/98         |
| 9 VAC 5-20-220                                   | Added    | 14:11 VA.R. 1812 | 4/1/98         |
| 9 VAC 5-20-230                                   | Added    | 14:11 VA.R. 1812 | 4/1/98         |
| 9 VAC 5-50-400                                   | Amended  | 14:11 VA.R. 1807 | 4/1/98         |
| 9 VAC 5-60-60                                    | Amended  | 14:11 VA.R. 1807 | 4/1/98         |
| 9 VAC 5-60-90                                    | Amended  | 14:11 VA.R. 1807 | 4/1/98         |
| 9 VAC 5-60-100                                   | Amended  | 14:11 VA.R. 1808 | 4/1/98         |
| 9 VAC 5-80-40                                    | Repealed | 14:11 VA.R. 1813 | 4/1/98         |
| 9 VAC 5-80-800                                   | Added    | 14:11 VA.R. 1820 | 4/1/98         |
| 9 VAC 5-80-810                                   | Added    | 14:11 VA.R. 1820 | 4/1/98         |
| 9 VAC 5-80-820                                   | Added    | 14:11 VA.R. 1822 | 4/1/98         |
| 9 VAC 5-80-830                                   | Added    | 14:11 VA.R. 1823 | 4/1/98         |
| 9 VAC 5-80-840                                   | Added    | 14:11 VA.R. 1823 | 4/1/98         |
| 9 VAC 5-80-850                                   | Added    | 14:11 VA.R. 1823 | 4/1/98         |
| 9 VAC 5-80-860                                   | Added    | 14:11 VA.R. 1825 | 4/1/98         |
| 9 VAC 5-80-870                                   | Added    | 14:11 VA.R. 1825 | 4/1/98         |
| 9 VAC 5-80-880                                   | Added    | 14:11 VA.R. 1825 | 4/1/98         |
| 9 VAC 5-80-890                                   | Added    | 14:11 VA.R. 1826 | 4/1/98         |
| 9 VAC 5-80-900                                   | Added    | 14:11 VA.R. 1826 | 4/1/98         |
| 9 VAC 5-80-910                                   | Added    | 14:11 VA.R. 1826 | 4/1/98         |
| 9 VAC 5-80-920                                   | Added    | 14:11 VA.R. 1826 | 4/1/98         |

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| SECTION NUMBER                                      | ACTION  | CITE             | EFFECTIVE DATE |
|---|---------|------------------|----------------|
| 9 VAC 5-80-930                                      | Added   | 14:11 VA.R. 1826 | 4/1/98         |
| 9 VAC 5-80-940                                      | Added   | 14:11 VA.R. 1826 | 4/1/98         |
| 9 VAC 5-80-950                                      | Added   | 14:11 VA.R. 1826 | 4/1/98         |
| 9 VAC 5-80-960                                      | Added   | 14:11 VA.R. 1826 | 4/1/98         |
| 9 VAC 5-80-970                                      | Added   | 14:11 VA.R. 1827 | 4/1/98         |
| 9 VAC 5-80-980                                      | Added   | 14:11 VA.R. 1827 | 4/1/98         |
| 9 VAC 5-80-990                                      | Added   | 14:11 VA.R. 1828 | 4/1/98         |
| 9 VAC 5-80-1000                                     | Added   | 14:11 VA.R. 1828 | 4/1/98         |
| 9 VAC 5-80-1010                                     | Added   | 14:11 VA.R. 1828 | 4/1/98         |
| 9 VAC 5-80-1020                                     | Added   | 14:11 VA.R. 1829 | 4/1/98         |
| 9 VAC 5-80-1030                                     | Added   | 14:11 VA.R. 1830 | 4/1/98         |
| 9 VAC 5-80-1040                                     | Added   | 14:11 VA.R. 1831 | 4/1/98         |
| 9 VAC 5-190-80                                      | Erratum | 14:12 VA.R. 1937 | --             |
| 9 VAC 25-31-800                                     | Erratum | 14:12 VA.R. 1937 | --             |
| 9 VAC 25-31-800                                     | Erratum | 14:17 VA.R. 2477 | --             |
| 9 VAC 25-31-840                                     | Erratum | 14:12 VA.R. 1937 | --             |
| 9 VAC 25-31-900                                     | Erratum | 14:17 VA.R. 2477 | --             |
| 9 VAC 25-31-920                                     | Amended | 14:16 VA.R. 2360 | 5/27/98        |
| 9 VAC 25-196-50                                     | Erratum | 14:12 VA.R. 1937 | --             |
| 9 VAC 25-196-70                                     | Erratum | 14:12 VA.R. 1937 | --             |
| 9 VAC 25-260-20                                     | Erratum | 14:12 VA.R. 1937 | --             |
| 9 VAC 25-260-110                                    | Erratum | 14:12 VA.R. 1937 | --             |
| 9 VAC 25-260-140                                    | Erratum | 14:12 VA.R. 1937 | --             |
| 9 VAC 25-260-350                                    | Erratum | 14:12 VA.R. 1937 | --             |
| 9 VAC 25-260-370                                    | Erratum | 14:12 VA.R. 1937 | --             |
| 9 VAC 25-260-390                                    | Erratum | 14:12 VA.R. 1937 | --             |
| 9 VAC 25-260-400                                    | Erratum | 14:12 VA.R. 1937 | --             |
| 9 VAC 25-260-450                                    | Erratum | 14:12 VA.R. 1937 | --             |
| 9 VAC 25-260-540                                    | Erratum | 14:12 VA.R. 1937 | --             |
| <b>Title 10. Finance and Financial Institutions</b> |         |                  |                |
| 10 VAC 5-60-40                                      | Amended | 14:14 VA.R. 2139 | 3/10/98        |
| 10 VAC 5-60-50                                      | Amended | 14:14 VA.R. 2139 | 3/10/98        |
| 10 VAC 5-70-20                                      | Amended | 14:14 VA.R. 2140 | 3/10/98        |
| 10 VAC 5-70-30                                      | Amended | 14:14 VA.R. 2140 | 3/10/98        |
| 10 VAC 5-70-50                                      | Amended | 14:14 VA.R. 2140 | 3/10/98        |
| <b>Title 11. Gaming</b>                             |         |                  |                |
| 11 VAC 10-70-20                                     | Amended | 14:11 VA.R. 1831 | 3/19/98        |
| 11 VAC 10-70-30                                     | Amended | 14:11 VA.R. 1831 | 3/19/98        |
| 11 VAC 10-70-40                                     | Amended | 14:11 VA.R. 1831 | 3/19/98        |
| 11 VAC 10-70-50                                     | Amended | 14:11 VA.R. 1831 | 3/19/98        |
| 11 VAC 10-70-60                                     | Amended | 14:11 VA.R. 1832 | 3/19/98        |
| 11 VAC 10-70-70                                     | Amended | 14:11 VA.R. 1832 | 3/19/98        |
| 11 VAC 10-70-80                                     | Amended | 14:11 VA.R. 1833 | 3/19/98        |
| 11 VAC 10-70-110                                    | Amended | 14:11 VA.R. 1833 | 3/19/98        |
| 11 VAC 10-70-170                                    | Amended | 14:11 VA.R. 1833 | 3/19/98        |
| 11 VAC 10-70-180                                    | Amended | 14:11 VA.R. 1833 | 3/19/98        |
| 11 VAC 10-90-10                                     | Amended | 14:11 VA.R. 1835 | 3/19/98        |
| 11 VAC 10-90-20                                     | Amended | 14:11 VA.R. 1835 | 3/19/98        |
| 11 VAC 10-90-30                                     | Amended | 14:11 VA.R. 1835 | 3/19/98        |
| 11 VAC 10-90-40                                     | Amended | 14:11 VA.R. 1835 | 3/19/98        |
| 11 VAC 10-90-50                                     | Amended | 14:11 VA.R. 1835 | 3/19/98        |
| 11 VAC 10-90-60                                     | Amended | 14:11 VA.R. 1836 | 3/19/98        |

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

| SECTION NUMBER                        | ACTION   | CITE             | EFFECTIVE DATE |
|---------------------------------------|----------|------------------|----------------|
| <b>Title 12. Health</b>               |          |                  |                |
| 12 VAC 5-210-10                       | Amended  | 14:15 VA.R. 2237 | 6/1/98         |
| 12 VAC 5-210-20                       | Amended  | 14:15 VA.R. 2243 | 6/1/98         |
| 12 VAC 5-220-10                       | Amended  | 14:12 VA.R. 1917 | 4/2/98         |
| 12 VAC 5-220-105                      | Added    | 14:12 VA.R. 1920 | 4/2/98         |
| 12 VAC 5-220-150                      | Amended  | 14:12 VA.R. 1920 | 4/2/98         |
| 12 VAC 5-220-180                      | Amended  | 14:12 VA.R. 1920 | 4/2/98         |
| 12 VAC 5-220-200                      | Amended  | 14:12 VA.R. 1921 | 4/2/98         |
| 12 VAC 5-220-230                      | Amended  | 14:12 VA.R. 1923 | 4/2/98         |
| 12 VAC 5-220-280                      | Amended  | 14:12 VA.R. 1924 | 4/2/98         |
| 12 VAC 5-220-290                      | Amended  | 14:12 VA.R. 1925 | 4/2/98         |
| 12 VAC 5-220-385                      | Amended  | 14:12 VA.R. 1925 | 4/2/98         |
| 12 VAC 5-220-500                      | Amended  | 14:12 VA.R. 1926 | 4/2/98         |
| 12 VAC 30-50-140                      | Amended  | 14:12 VA.R. 1926 | 4/1/98         |
| 12 VAC 30-50-150                      | Amended  | 14:12 VA.R. 1927 | 4/1/98         |
| 12 VAC 30-60-40                       | Amended  | 14:12 VA.R. 1928 | 4/1/98         |
| 12 VAC 30-60-90                       | Repealed | 14:17 VA.R. 2465 | 6/10/98        |
| 12 VAC 30-60-120                      | Amended  | 14:12 VA.R. 1929 | 4/1/98         |
| 12 VAC 30-70-440                      | Repealed | 14:15 VA.R. 2248 | 6/1/98         |
| 12 VAC 30-70-441                      | Added    | 14:15 VA.R. 2248 | 6/1/98         |
| 12 VAC 30-80-30                       | Amended  | 14:12 VA.R. 1933 | 4/1/98         |
| <b>Title 13. Housing</b>              |          |                  |                |
| 13 VAC 10-10-20                       | Amended  | 14:17 VA.R. 2466 | 5/1/98         |
| 13 VAC 10-20-20                       | Amended  | 14:17 VA.R. 2467 | 5/1/98         |
| 13 VAC 10-40-100                      | Amended  | 14:11 VA.R. 1838 | 1/28/98        |
| 13 VAC 10-40-110                      | Amended  | 14:11 VA.R. 1839 | 1/28/98        |
| 13 VAC 10-40-120                      | Amended  | 14:11 VA.R. 1839 | 1/28/98        |
| 13 VAC 10-40-130                      | Amended  | 14:11 VA.R. 1839 | 1/28/98        |
| 13 VAC 10-40-140                      | Amended  | 14:11 VA.R. 1841 | 1/28/98        |
| 13 VAC 10-40-190                      | Amended  | 14:11 VA.R. 1842 | 1/28/98        |
| 13 VAC 10-40-210                      | Amended  | 14:11 VA.R. 1843 | 1/28/98        |
| 13 VAC 10-40-230                      | Added    | 14:11 VA.R. 1843 | 1/28/98        |
| 13 VAC 10-130-30                      | Amended  | 14:17 VA.R. 2468 | 5/1/98         |
| 13 VAC 10-140-20                      | Amended  | 14:17 VA.R. 2469 | 5/1/98         |
| 13 VAC 10-180-50                      | Amended  | 14:14 VA.R. 2141 | 3/4/98         |
| 13 VAC 10-180-60                      | Amended  | 14:14 VA.R. 2142 | 3/4/98         |
| <b>Title 16. Labor and Employment</b> |          |                  |                |
| 16 VAC 25-90-1910.94                  | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.111                 | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.134                 | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.139                 | Added    | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.156                 | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.252                 | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.261                 | Erratum  | 14:17 VA.R. 2477 | 6/1/98         |
| 16 VAC 25-90-1910.1001                | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.1003                | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.1017                | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.1018                | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.1025                | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.1027                | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.1028                | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.1029                | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.1043                | Amended  | 14:15 VA.R. 2250 | 6/1/98         |

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| SECTION NUMBER   | ACTION   | CITE             | EFFECTIVE DATE |
|--|----------|------------------|----------------|
| 16 VAC 25-90-1910.1044                                   | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.1045                                   | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.1047                                   | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.1048                                   | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.1050                                   | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.1051                                   | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| 16 VAC 25-90-1910.1052                                   | Amended  | 14:14 VA.R. 2151 | 5/1/98         |
| 16 VAC 25-90-1910.1052                                   | Amended  | 14:15 VA.R. 2250 | 6/1/98         |
| <b>Title 18. Professional and Occupational Licensing</b> |          |                  |                |
| 18 VAC 25-21-70  | Amended  | 14:11 VA.R. 1845 | 4/1/98         |
| 18 VAC 30-20-10  | Amended  | 14:14 VA.R. 2155 | 4/29/98        |
| 18 VAC 30-20-20  | Repealed | 14:14 VA.R. 2156 | 4/29/98        |
| 18 VAC 30-20-30  | Repealed | 14:14 VA.R. 2156 | 4/29/98        |
| 18 VAC 30-20-40  | Repealed | 14:14 VA.R. 2156 | 4/29/98        |
| 18 VAC 30-20-45  | Added    | 14:14 VA.R. 2156 | 4/29/98        |
| 18 VAC 30-20-50  | Amended  | 14:14 VA.R. 2156 | 4/29/98        |
| 18 VAC 30-20-60  | Repealed | 14:14 VA.R. 2156 | 4/29/98        |
| 18 VAC 30-20-70  | Amended  | 14:14 VA.R. 2156 | 4/29/98        |
| 18 VAC 30-20-80  | Amended  | 14:14 VA.R. 2157 | 4/29/98        |
| 18 VAC 30-20-90  | Repealed | 14:14 VA.R. 2157 | 4/29/98        |
| 18 VAC 30-20-100   | Repealed | 14:14 VA.R. 2157 | 4/29/98        |
| 18 VAC 30-20-110   | Repealed | 14:14 VA.R. 2157 | 4/29/98        |
| 18 VAC 30-20-120   | Repealed | 14:14 VA.R. 2157 | 4/29/98        |
| 18 VAC 30-20-130   | Repealed | 14:14 VA.R. 2157 | 4/29/98        |
| 18 VAC 30-20-140   | Repealed | 14:14 VA.R. 2157 | 4/29/98        |
| 18 VAC 30-20-150   | Amended  | 14:14 VA.R. 2157 | 4/29/98        |
| 18 VAC 30-20-160   | Amended  | 14:14 VA.R. 2157 | 4/29/98        |
| 18 VAC 30-20-170   | Amended  | 14:14 VA.R. 2157 | 4/29/98        |
| 18 VAC 30-20-180   | Amended  | 14:14 VA.R. 2159 | 4/29/98        |
| 18 VAC 30-20-190   | Repealed | 14:14 VA.R. 2159 | 4/29/98        |
| 18 VAC 30-20-200   | Repealed | 14:14 VA.R. 2159 | 4/29/98        |
| 18 VAC 30-20-210   | Repealed | 14:14 VA.R. 2159 | 4/29/98        |
| 18 VAC 30-20-220   | Repealed | 14:14 VA.R. 2159 | 4/29/98        |
| 18 VAC 30-20-240   | Amended  | 14:14 VA.R. 2159 | 4/29/98        |
| 18 VAC 30-20-250   | Repealed | 14:14 VA.R. 2160 | 4/29/98        |
| 18 VAC 30-20-260   | Repealed | 14:14 VA.R. 2160 | 4/29/98        |
| 18 VAC 30-20-270   | Repealed | 14:14 VA.R. 2160 | 4/29/98        |
| 18 VAC 30-20-280   | Amended  | 14:14 VA.R. 2160 | 4/29/98        |
| 18 VAC 76-10-10  | Amended  | 14:11 VA.R. 1845 | 1/22/98        |
| 18 VAC 110-20-210  | Amended  | 14:15 VA.R. 2253 | 5/13/98        |
| 18 VAC 120-30-100  | Amended  | 14:11 VA.R. 1846 | 4/1/98         |
| 18 VAC 125-20-30   | Amended  | 14:11 VA.R. 1851 | 4/1/98         |
| <b>Title 19. Public Safety</b>                           |          |                  |                |
| 19 VAC 30-20-10  | Amended  | 14:11 VA.R. 1853 | 3/18/98        |
| 19 VAC 30-20-70  | Amended  | 14:11 VA.R. 1853 | 3/18/98        |
| 19 VAC 30-20-80  | Amended  | 14:11 VA.R. 1854 | 3/18/98        |
| 19 VAC 30-20-140   | Amended  | 14:11 VA.R. 1854 | 3/18/98        |
| 19 VAC 30-20-150   | Amended  | 14:11 VA.R. 1854 | 3/18/98        |
| 19 VAC 30-20-160   | Amended  | 14:11 VA.R. 1854 | 3/18/98        |
| <b>Title 20. Public Utilities and Telecommunications</b> |          |                  |                |
| 20 VAC 5-310-10  | Amended  | 14:15 VA.R. 2253 | 3/24/98        |
| <b>Title 21. Securities and Retail Franchising</b>       |          |                  |                |
| 21 VAC 5-85-10   | Amended  | 14:13 VA.R. 1976 | 2/17/98        |

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| SECTION NUMBER                  | ACTION  | CITE             | EFFECTIVE DATE |
|---------------------------------|---------|------------------|----------------|
| 21 VAC 5-85-10                  | Amended | 14:15 VA.R. 2259 | 3/24/98        |
| <b>Title 24. Transportation</b> |         |                  |                |
| 24 VAC 30-71-160                | Erratum | 14:13 VA.R. 2011 | --             |
| 24 VAC 30-71-170                | Erratum | 14:13 VA.R. 2028 | --             |
| 24 VAC 30-170-10                | Amended | 14:13 VA.R. 1992 | 4/15/98        |
| 24 VAC 30-380-10                | Amended | 14:13 VA.R. 1992 | 2/24/98        |
| 24 VAC 30-390-10                | Amended | 14:13 VA.R. 1992 | 2/24/98        |

# FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

**REGISTRAR'S NOTICE:** The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 15 of the Code of Virginia, which exempts general wetlands permits developed and issued by the Marine Resources Commission pursuant to § 28.2-1307 B if the commission: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 9-6.14:7.1 B; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 9-6.14:7.1 F; and (iv) conducts at least one public hearing on the proposed general permit.

**Title of Regulation:** 4 VAC 20-345-10 et seq. **General Wetlands Permit for Emergency Situations (amending 4 VAC 20-345-20 and 4 VAC 20-345-40).**

**Statutory Authority:** §§ 28.2-103 and 28.2-1307 of the Code of Virginia.

**Effective Date:** May 4, 1998.

#### Summary:

*This regulation describes the qualifications, procedures and manner of applying for a general wetlands permit to address catastrophic erosional situations which are attributable to a specific storm event or natural calamity. The amendments (i) add adjacent erosion control structures to the definition of structure, (ii) clarify that projects must not impact vegetated tidal wetlands, and (iii) specify that on-site inspections must be performed by at least two members of the wetlands board.*

**Agency Contact:** Copies of the regulation may be obtained from Robert W. Grabb, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (757) 247-2250.

#### 4 VAC 20-345-20. Definitions.

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

*"Chairman"* means the chairman of a local wetland board.

*"Commission"* means the Marine Resources Commission.

*"Commissioner"* means the Commissioner of Marine Resources.

*"Emergency"* means that a significant man-made structure is in clear and imminent danger from continued erosion or storm damage due to severe wave action or storm surge [ ~~and, or~~ ] the existing condition is a direct result of catastrophic erosion or other rapid or unusual loss of land attributable to a specific storm event or natural calamity.

*"Structure"* means a man-made permanent construction installed in or on the property (e.g., dwellings, garages, commercial buildings [ ~~er~~ , ] septic systems [ , or adjacent erosion control structures ]).

*"Wetlands board"* or *"board"* means a local wetlands board created pursuant to § 28.2-1303 of the Code of Virginia.

#### 4 VAC 20-345-40. Procedures for issuing permit.

A. The commissioner or his designee, Chief, Habitat Management Division, will oversee administration of the provisions of the general wetlands permit.

B. An approved Local-State-Federal Permit Application form, or the abbreviated General Permit #4 Application form, must be completed and filed in accordance with the instructions contained therein. This application may be submitted directly to the chairman or board in those localities that have adopted and are locally administering the local wetlands zoning ordinance.

C. The board chairman, or vice-chairman in his absence, is empowered to issue the general wetlands permit upon a finding by the local wetlands board that:

1. An emergency exists and vegetated wetlands [ ~~are not involved~~ would not be impacted by the project ]. This finding shall be verified by a subsequent site inspection of the property [ *by at least two members of the board* ].

2. The environmental impacts associated with issuance of the general wetlands permit are minimal and fall below a predetermined threshold or level of resource impacted. This level of impact will be an average of one square foot per running foot of shoreline.

3. The activities authorized under the general wetlands permit will have minimal impact on any adjoining property owner. In the event potential impacts are deemed to exceed this minimum, written concurrence by the adjoining property owner will be required.

4. The proposed structure, and its placement, meet standard regulatory guidelines and would, in the opinion



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# Final Regulations

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of the chairman, likely be authorized or approved by the other state and federal regulatory agencies.

5. The proposed stabilization, materials and the encroachment sought are the minimum necessary to address the situation.

D. If the chairman determines that issuance of the general wetlands permit is in the public interest, the requirement for advertisement and public hearing will be satisfied.

E. Within 48 hours of his determination, the chairman shall notify the commissioner of his finding and intent to issue the general wetlands permit.

F. The commissioner shall review all decisions of the chairman. If within five days of receiving the chairman's notification, the commissioner believes that the decision does not conform with the standards prescribed in § 28.2-1308 of the Code of Virginia, the guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia, or the purpose and intent of this chapter, he may request that the decision be reviewed by the full board at one of its regularly scheduled public hearings.

[ G. After public hearing, the commission may revoke the general permit in any locality where it finds that the board's decisions have failed to conform with the standards and guidelines of the Code of Virginia or the purpose and intent of this chapter. ]

[ ~~G. H.~~ ] The general permit will be valid for a maximum period of 90 days from date of issuance. Failure to commence the project within that time will necessitate submittal of a new application and reevaluation.

[ ~~H. I.~~ ] In the event the waterfront property owner fails to qualify for the general wetlands permit, he may submit the standard joint Local-State-Federal Application form and proceed through the normal public interest review process.

[ ~~I. J.~~ ] A nonrefundable fee may be assessed for each general wetlands permit issued. The permit issuing fee shall be set by the applicable governing body with due regard for the services rendered.

[ ~~J. K.~~ ] The general wetlands permit shall be in writing and must accurately describe the project, including appropriate drawings with sufficient tie-down reference points to enable follow-up compliance checks, and be signed by the chairman.

[ ~~K. L.~~ ] The general wetlands permit may not be used to authorize any new groin or jetty structures.

VA.R. Doc. No. R98-242; Filed May 4, 1998, 8:50 a.m.

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| <b>REGISTRAR'S NOTICE:</b> The Marine Resources Commission is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 F of the Code of Virginia. |
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**Title of Regulation:** 4 VAC 20-560-10 et seq. Pertaining to Shellfish Management Areas (amending 4 VAC 20-560-10, 4 VAC 20-560-20, 4 VAC 20-560-40 and 4 VAC 20-560-50).

**Statutory Authority:** §§ 28.2-201 and 28.2-503 of the Code of Virginia.

**Effective Date:** May 1, 1998.

**Summary:**

*The amendment establishes the Middle Ground Light Broodstock Management Area and time of day and harvest restrictions for the Middle Ground Light Broodstock Management Area.*

**Agency Contact:** Copies of the regulation may be obtained from Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

CHAPTER 560.

~~PERTAINING TO THE YORK RIVER, POQUOSON RIVER, BACK RIVER, AND NEWPORT NEWS SHELLFISH MANAGEMENT AREAS AND THE JAMES RIVER BROODSTOCK MANAGEMENT AREAS.~~

**4 VAC 20-560-10. Purpose.**

The purpose of this chapter is to protect and promote the hard clam resource within the designated areas of the York River, Poquoson River, Back River and James River.

**4 VAC 20-560-20. Shellfish management areas.**

A. The York River Shellfish Management Area shall consist of all public grounds located inshore of a line beginning at the entrance to the Virginia Institute of Marine Science boat basin at Gloucester Point, running northwesterly to Buoy No. 30, thence northwesterly to Buoy No. 32, thence northwesterly to Buoy No. 34, then northwesterly to Pages Rock Buoy, thence northwesterly and ending at Clay Bank Wharf.

B. The Poquoson River Shellfish Management Area shall consist of all public grounds bounded by a line beginning at Hunts Point Survey Taylor and running northwesterly to Survey Station Spit, thence northeasterly to Survey Station Cabin North, thence east to Survey Station Cabin South, thence southeasterly following the general shoreline (not to include any creeks or canals) to the flag pole near Survey Station 80 at York Point, thence 175 degrees to Day Marker No. 14 and returning to Hunts Point Survey Taylor.

C. The Back River Shellfish Management Area shall consist of all current public clamming grounds bounded by a line from corner 3 on Shell Plant 115 through corner 17, a daymarker, on Shell Plant 115, 237.42 feet to a point being

the point of beginning; thence southeasterly to corner number 1 Public Clamming Ground (PCG#12); thence southeasterly to corner number 3A Public Clamming Ground (PCG#12); thence northeasterly to corner number 3 Public Clamming Ground (PCG#12); thence northwesterly to corner number 2 Public Clamming Ground (PCG#12); thence southwesterly to the POB. Also, for a period of one year, throughout 1994, Shell Plant 115 will also be included in the Back River Shellfish Management Area.

D. The James River Broodstock Management Area is located inside Public Ground No. 1, Warwick County, south of the James River Bridge, further described as follows: Beginning at a corner number 611 (State Plane Coordinates North 249766.12 East 2596017.56); thence Grid Azimuth 308-39-51, 1074.35' to a corner number 613 (State Plane Coordinates North 250437.32 East 2595178.68); thence Grid Azimuth 28-15-00, 366.30' to a corner number 614 (State Plane Coordinates North 250759.99 East 2595352.06); thence Grid Azimuth 132-36-45, 1114.51' to a corner number 612 (State Plane Coordinates North 250005.43 East 2596172.28); thence Grid Azimuth 212-53-03, 284.97' to a corner number 611, being the point of beginning, containing 8.04 acres.

E. The York River Broodstock Management Area shall consist of the area under any portion of the George P. Coleman Memorial Bridge, in addition to the area within 300 feet of the eastern, or downstream, side of the George P. Coleman Memorial Bridge and the area within 300 feet of the western, or upstream, side of the George P. Coleman Memorial Bridge.

F. The Newport News Shellfish Management Area shall consist of all current public clamming grounds bounded by a line beginning at the intersection of the James River Bridge and Public Ground No. 1, Warwick County, downstream side; thence east southeasterly along the boundary to corner #5, Public Ground No. 1, Warwick County; thence southeast along the boundary to a corner (249,066.55/2,595,681.74); thence northeast along the boundary to the intersection of a line between the James River Bridge and the northwest corner of Newport News Shipbuilding and Drydock Company shipyard near station "HELO," said line being perpendicular to the James River Bridge; thence southeast along the defined line to the northwest corner of the shipyard; thence downstream to the offshore end of the floating drydock; thence to the offshore end of shipyard pier #6 just south of "Stack"; thence to the offshore end of pier #2 (F R Priv); thence to FI Y "A" off the end of the pier just south of 23rd Street; thence to the offshore end of pier #9 (2 F Y siren); thence to the offshore end of the old coal pier downstream of pier #9; thence to navigational aid FI G "13"; thence to the northeast corner of the Fan Building on the south island of the Monitor Merrimac Bridge Tunnel; thence southerly along the downstream side of the Monitor Merrimac Bridge Tunnel to the first overhead light structure on the bridge tunnel north of the small boat channel hump; thence ~~northwesterly~~ northwesterly to corner #3, lease #10091 (Hazelwood); thence northwesterly along the boundary to corner #2, lease

#10091 (Hazelwood); thence southwesterly to corner #1, Public Ground No. 2, Nansemond County; thence northwesterly along the boundary to corner #6, at the intersection of Public Ground No. 2, Nansemond County, and Public Ground No. 6, Isle of Wight County; thence north northwesterly along the boundary to corner #614, Public Ground No. 6, Isle of Wight County; thence north northwesterly along the boundary to corner #2, Public Ground No. 6, Isle of Wight County; thence northwesterly along the boundary to the intersection of the James River Bridge and Public Ground No. 6, Isle of Wight County; thence northeasterly along the downstream side of the James River Bridge to the intersection with Public Ground No. 1, Warwick County, at the point of beginning.

G. The Back River Reef Broodstock Management Area shall consist of the area within a 2000' radius of the center buoy, with a position of 37 08' 12" north, 76 13' 54" west.

H. The Hampton Roads Shellfish Relay Area shall consist of all condemned clamming grounds bounded by a line beginning at the upstream side of the large fishing pier on the southeast side of Old Point Comfort; thence upstream along the shoreline to Newport News Creek; thence to the southeast corner of the Monitor Merrimac Bridge Tunnel island along the downstream side, thence to F1 R "12"; thence to the northeast corner of the Fan Building on the southern island of the bridge tunnel; thence southerly along the downstream side of the bridge tunnel to the south line of Public Ground Number 1, Nansemond County; then easterly along the Public Ground to Craney Island Disposal Area; thence clockwise around the boundaries of the disposal area to its intersection with the shore; thence along the shore to the northeast corner of Craney Island; thence through navigational aid F1 G "21" to the point where it intersects a line drawn from the shoreward end of pier number 6 at Lamberts Point to the southeast corner of Tanner Point; thence along the shore to the point of intersection with the ripped shoreline of the Hampton Roads Bridge-Tunnel island at Fort Wool; thence easterly around this island to its easternmost point; thence north northwesterly to the intersection of the shoreline and the upstream side of the large fishing pier on the east side of Old Point Comfort at the point of beginning.

I. The Hampton Roads Broodstock Management Area will consist of not less than 100 acres and shall be established within the Hampton Roads Shellfish Relay Area. *The Middle Ground Light Broodstock Management Area shall consist of the area within a 1000' radius of the navigational light, with a position of 36°56.7' north, 76°23.5' west.*

#### 4 VAC 20-560-40. Patent tong season.

A. The lawful season for the harvest of clams by patent tong from the York River, Poquoson River and Back River Shellfish Management Areas shall be January 1 through March 31.

B. It shall be unlawful for any person to harvest clams by patent tong from either the York River, Poquoson River, or

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Back River Shellfish Management Area from April 1 through December 31.

C. Shell planting area 115 in Back River will be closed at the end of the 1994 season for evaluation by the VMRC Fisheries Management Division.

D. The lawful season for the harvest of clams by patent tong from the Newport News Shellfish Management Area shall be December 1 through May 31.

E. It shall be unlawful for any person to harvest clams by patent tong from the Newport News Shellfish Management Area from April 1 through November 30.

#### 4 VAC 20-560-50. Time of day and harvest restrictions.

A. It shall be unlawful for any person to harvest clams by patent tong from either the York River or Poquoson River Shellfish Management Area before sunrise or after 2 p.m.

B. It shall be unlawful for any person to harvest clams by patent tong from the Back River Shellfish Management Area before sunrise or after 4 p.m.

C. It shall be unlawful for any person to harvest clams by patent tong from either the York River, Poquoson River, Newport News or Back River Shellfish Management Area on Saturday or Sunday.

D. It shall be unlawful for any person to harvest any shellfish from the James River, Back River Reef, Hampton Roads Middle Ground Light, or York River Broodstock Management Area at any time.

E. It shall be unlawful for any person to harvest clams by patent tong from the Newport News Shellfish Management Area before sunrise or after 2 p.m.

F. It shall be unlawful for any person to possess any amount of hard clams from the Newport News Shellfish Management Area or the Hampton Roads Shellfish Relay Area which consists of more than 2.0% by number of clams, which can be passed through a 1-1/4" -inch inside diameter culling ring. The 2.0% allowance shall be measured by the marine patrol officer from each container or pile of clams.

VA.R. Doc. No. R98-241; Filed May 1, 1998, 3:49 p.m.

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Title of Regulation: 4 VAC 20-880-10 et seq. Pertaining to Hard Crab and Peeler Pot License Sales (amending 4 VAC 20-880-40 and 4 VAC 20-880-50).

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: May 1, 1998.

#### Summary:

The amendments to this regulation (i) rescind the exception provisions for the limit on the sale of licenses and establish the commission as the authority to grant hardship exceptions; (ii) establish license eligibility, in

that one who transfers a license in any year since 1995 shall not be eligible for that license in the current year; (iii) establish criteria pertaining to the eligibility for fishermen to supplement their 100 crab pot license; and (iv) modify the procedures for the transfer of licenses to conform with transfer procedures of other VMRC regulations.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

#### 4 VAC 20-880-40. Limit on sale of licenses.

A. Sale of hard crab pot or peeler pot licenses for the calendar year 1998 and each year thereafter shall be limited to the following individuals:

1. Any registered commercial fisherman who held a Virginia hard crab pot license in any calendar year since 1995 shall be eligible for a hard crab pot license during the current calendar year. Any registered commercial fisherman who held a Virginia peeler pot license in any calendar year since 1995 shall be eligible for a peeler pot license during the current calendar year. Registered commercial fishermen who held both a Virginia hard crab pot license and a Virginia peeler pot license in any calendar year since 1995 shall be eligible for both types of licenses during the current calendar year.

~~2. Any registered commercial fisherman who held one or more of the following licenses, crab pot, peeler pot or hard crab pot, during at least two years during the calendar years 1990 through 1994, and who is in compliance with all provisions of 4 VAC 20-610-10 et seq., Pertaining to Commercial Fishing and Mandatory Harvest Reporting.~~

~~3. Any registered commercial fisherman who can document to the satisfaction of the commissioner that he was regularly employed as a mate or crew member on a vessel engaged in Virginia's commercial hard crab pot or peeler pot fisheries in 1995.~~

~~Exceptions to the above conditions may be granted by the commissioner to a commercially registered fisherman if he finds significant hardship exists for the license applicant. Any applicant denied an exception may appeal the decision to the commission. The applicant shall provide a request to appeal to the commission 30 days in advance of the meeting at which the commission will hear the request.~~

~~Under no circumstances shall an exception be granted solely on the basis of economic hardship.~~

2. Any registered commercial fisherman who transferred a Virginia hard crab pot or peeler pot license in any year since 1995 shall not be eligible for that license in the current year.

3. The commission may grant licenses to any registered commercial fisherman based upon conditions of

significant hardship, as evidenced by participation in the fishing of a significant amount of crab gear in two of the last five years, for the crab pot or peeler pot fishery. Applicants for an exception shall apply during the month of January on forms provided by the commission and shall attend the February meeting of the commission to present testimony in support of their request.

B. Individuals shall be limited to the previous calendar year's hard crab pot license category in which they held a license, except as provided in subdivision 4 of this subsection.

1. Hard crab pot licensees who held a hard crab pot license in Virginia in the previous calendar year for up to 100 pots shall be limited to a maximum of 100 hard crab pots in the current calendar year. It shall be unlawful for any person so licensed to place, set or fish more than 100 hard crab pots during the current calendar year.

2. Hard crab pot licensees who held a hard crab pot license in Virginia in the previous calendar year for up to 300 pots shall be limited to a maximum of 300 hard crab pots in the current calendar year. It shall be unlawful for any person so licensed to place, set or fish more than 300 hard crab pots during the current calendar year.

3. Hard crab pot licensees who held a hard crab pot license in Virginia in the previous calendar year for up to 500 pots shall be limited to a maximum of 500 hard crab pots in the current calendar year. It shall be unlawful for any person so licensed to place, set or fish more than 500 hard crab pots during the current calendar year.

4. Hard crab pot licensees who held a 1995 hard crab pot license in Virginia for up to 100, 300 or 500 pots, but who did not hold a hard crab license in Virginia in subsequent years, shall be limited to the same maximum amount of crab pots in the current calendar year as established for those who held a hard crab pot license in the previous calendar year as described by subdivisions 1, 2 and 3 of this subsection. In addition, hard crab pot licensees who held a 1995 hard crab pot license in Virginia for over 500 pots shall be limited to a maximum of 500 hard crab pots in the current calendar year. It shall be unlawful for any person so licensed to place, set or fish more than 500 hard crab pots during the current calendar year.

C. ~~Individuals who did not hold a hard crab pot license in Virginia during any previous calendar year since 1995 and who are licensed in the current calendar year under the provisions of subsection A of this section shall be limited to 100 hard crab pots during the current calendar year. However,~~ Any person eligible under the provisions of this chapter for a hard crab pot license for up to 100 pots may receive a license for up to 300 hard crab pots provided that person held a hard crab pot license for crab pots with one or more assistants or a 300 hard crab pot license, for at least six years, from 1987 through 1994.

D. Any person eligible under the provisions of this chapter for a hard crab pot license for up to 100 pots may receive a license for up to 200 pots provided that person held a hard crab pot license for crab pots with one or more assistants or a 300 crab pot license for four or five years from 1987 through 1994, and, as of April 1998, harvested seafood during at least six months of the previous 16 months as documented by the commission's mandatory harvest reporting system.

E. Any person eligible under the provisions of this chapter for a hard crab pot license for up to 100 pots may receive a license for up to 150 pots provided that person held a hard crab pot license for crab pots with one or more assistants or a 300 crab pot license for one to three years from 1987 through 1994, and, as of April 1998, harvested seafood during at least six months of the previous 16 months, as documented by the commission's mandatory harvest reporting system.

**4 VAC 20-880-50. Transfers of hard crab pot and peeler pot licenses.**

~~A current commercial hard crab or peeler pot licensee may transfer his license to a member of his immediate family provided that the family member holds a current commercial registration license. A member of the immediate family shall mean a father, mother, daughter, son, brother, sister, or spouse. A current hard crab or peeler pot licensee also may transfer his license to the buyer of his boat and crab pot or peeler pot gear provided that the buyer holds a current commercial registration license. Any transfer of a hard crab pot or peeler pot license shall be in writing and shall be validated by a marine patrol officer. Any person holding a current crab pot or peeler pot license may transfer that license to any registered commercial fisherman provided such transfer is documented on the form provided by the commission and is approved by the commissioner or his designee. The transferee shall purchase the appropriate crab license in his name.~~

VA.R. Doc. No. R98-240; Filed May 1, 1998, 3:49 p.m.

**TITLE 9. ENVIRONMENT**

**STATE WATER CONTROL BOARD**

Title of Regulation: 9 VAC 25-90-10 et seq. Oil Discharge Contingency Plans and Administrative Fees for Approval (REPEALED).

VA.R. Doc. No. R97-742; Filed May 4, 1998, 11:44 a.m.

Title of Regulation: 9 VAC 25-130-10 et seq. Facility and Aboveground Storage Tank Registration Requirements (REPEALED).

VA.R. Doc. No. R97-741; Filed May 4, 1998, 11:44 a.m.

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Title of Regulation: 9 VAC 25-140-10 et seq. Aboveground Storage Tank Pollution Prevention Requirements (REPEALED).

VA.R. Doc. No. R97-740; Filed May 4, 1998, 11:44 a.m.

Title of Regulation: 9 VAC 25-91-10 et seq. Facility and Aboveground Storage Tank (AST) Regulation.

Statutory Authority: §§ 62.1-44.2, 62.1-44.15, 62.1-44.34:15, 62.1-44.34:15.1 and 62.1-44.34:19.1 of the Code of Virginia.

Effective Date: June 24, 1998.

Summary:

This new State Water Control Board regulation, 9 VAC 25-91-10 et seq., consolidates three repealed regulations ((i) 9 VAC 25-90-10 et seq. (formerly VR 680-14-07), Oil Discharge Contingency Plans and Administrative Fees for Approval, (ii) 9 VAC 25-130-10 et seq. (formerly VR 680-14-12), Facility and Aboveground Storage Tank Registration Requirements, and (iii) 9 VAC 25-140-10 et seq. (formerly VR 680-14-13), Aboveground Storage Tank Pollution Prevention Requirements), relating to facilities and ASTs located in the Commonwealth that have an aboveground storage capacity of 25,000 gallons or more of oil. Concurrently with this new regulation's adoption, the board repealed the three existing regulations.

The new regulation modifies each of the three repealed regulations. Administrative changes are made to the Oil Discharge Contingency Planning section. Also, federally approved oil discharge contingency plans will be allowed to satisfy portions of Virginia's requirements. The oil contingency discharge plan renewal process is streamlined and renewal fees are eliminated. Subdivision 5 of § 62.1-44.34:15.1 of the Code of Virginia mandates the board to establish criteria for granting variances from the AST pollution prevention requirements (9 VAC 25-140-10 et seq.). This new regulation incorporates statutory amendments and makes additional changes to the pollution prevention requirement for ASTs.

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

Agency Contact: Copies of the regulation may be obtained from L. Samuel Lillard, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4276.

## CHAPTER 91.

### FACILITY AND ABOVEGROUND STORAGE TANK (AST) REGULATION.

#### PART I.

#### PROGRAM ADMINISTRATION.

#### 9 VAC 25-91-10. Definitions.

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

"Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the federal [ ~~Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App § 2001 et seq.)~~ or the ~~federal Natural Gas Pipeline Safety Act of 1968 (49 USC App § 1671 et seq.)~~, as amended Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 et seq.)].

"Board" means the State Water Control Board.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Corrosion professional" means a person who by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Department" means the Department of Environmental Quality (DEQ).

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil and includes a pipeline.

"Flow-through process tank" means (as defined in 40 CFR Part 280) a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Local building official" means the person authorized by the Commonwealth to enforce the provisions of the Uniform Statewide Building Code (USBC).

"Local director or coordinator of emergency services" means any person appointed pursuant to § 44-146.19 of the Code of Virginia.

"Major repair" means alterations that refer to operations that require cutting, additions, removal or replacement of the annular plate ring, the shell-to-bottom weld or a sizable portion of the AST shell.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils, and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters by demise, rents, or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.

"Person" means an individual; trust; firm; joint stock company; corporation, including a government corporation; partnership; association; any state or agency thereof; municipality; county; town; commission; political subdivision of a state; any interstate body; consortium; joint venture; commercial entity; the government of the United States or any unit or agency thereof.

"Pipes" or "piping" means ~~[ that piping directly associated with the operation of an AST, or emanating from or feeding ASTs, but does not include (i) pipelines and (ii) piping which connects an AST with production process tanks or production process equipment beyond the first connection with the AST~~ a pressure-tight cylinder used to convey a fluid or to transmit a fluid pressure and is ordinarily designated "pipe" in applicable material specifications. Materials designated "tube" or "tubing" in the specifications are treated as pipe when intended for pressure service. This term includes piping and associated piping which is utilized in the operation of an AST, or emanating from or feeding ASTs or transfers oil from or to an AST (e.g., dispensing systems, including airport hydrant fueling systems, supply systems, gauging systems, auxiliary systems etc.). This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the federal ~~[ Hazardous Liquid Pipeline Safety Act of 1979 (49 USC A.P. § 2001 et seq.) or the federal Natural Gas Pipeline Safety Act of 1968 (49 USC A.P. § 1671 et seq.)~~, as amended Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 et seq.).

"Pipeline" means all new and existing pipe, rights of way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe; pumping units; fabricated assemblies associated with pumping units; metering and delivery stations and fabricated assemblies therein; and breakout tanks.

["Release prevention barrier (RPB)" means a nonearthen barrier that is impermeable; is composed of material

compatible with oil stored in the AST; meets proper engineering strength and elasticity standards; and functions to prevent the discharge of stored oil to state lands, waters and storm drains. It must contain and channel any leaked oil in a manner that provides for early release detection through the required daily and weekly inspections.]

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

"Storage capacity" means the total capacity of an AST or a container, whether ~~[ the AST is ]~~ filled in whole or in part with oil, a mixture of oil, or mixtures of oil with nonhazardous substances, or ~~[ is ]~~ empty. ~~[ The term does not include the capacity of any An ]~~ AST that has been permanently closed in accordance with this chapter ~~[ has no storage capacity ]~~.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280.

"Tank vessel" means any vessel used in the transportation of oil as bulk cargo.

"Upgrade" means an alteration of the performance, design, equipment or appurtenances of an AST or facility to meet a higher, new, or current standard.

"Vaulted tank" means any tank situated upon or above the surface of the floor in an underground area (such as an underground room, basement, cellar, mine-working, drift, shaft, tunnel or vault) providing enough space for physical inspection of the exterior of the tank.

"Vehicle" means any motor vehicle, rolling stock, or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

## 9 VAC 25-91-20. Applicability.

A. [The operator shall comply with all applicable requirements pursuant to this chapter. The operator as defined in this chapter can be more than one person and each operator shares joint responsibility for compliance.

B. The requirements of this chapter may vary in their applicability to any given AST or facility depending on the part in which the requirement appears. The applicability of Parts II, III, IV, and V are differentiated as follows:

1. ] The provisions of Part II (9 VAC 25-91-100 et seq., Registration, notification and closure requirements) of this chapter apply to: (i) an individual AST located within the Commonwealth of Virginia with an aboveground storage capacity greater than 660 gallons of oil, unless otherwise specified within this chapter; and (ii) all

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facilities in the Commonwealth of Virginia with an aggregate aboveground storage capacity greater than 1,320 gallons of oil, unless otherwise specified within this chapter.

[ ~~B. 2.~~ ] The provisions of Part III (9 VAC 25-91-130 et seq., Pollution prevention requirements) [ ~~and Part IV (9 VAC 25-91-170, Oil discharge contingency plan (ODCP) requirements)~~ ] of this chapter apply to: (i) an individual AST located within the Commonwealth of Virginia with an aboveground storage capacity of 25,000 gallons or greater of oil, unless otherwise specified within this chapter; and (ii) all facilities in the Commonwealth of Virginia with an aggregate aboveground storage capacity of 25,000 gallons or greater of oil, unless otherwise specified within this chapter.

[ 3. ] The provisions of Part IV (9 VAC 25-91-170 et seq., Oil Discharge Contingency Plan (ODCP) requirements) of this chapter apply to: (i) an individual AST located within the Commonwealth of Virginia with an aboveground storage capacity of 25,000 gallons or greater of oil, unless otherwise specified within this chapter and (ii) all facilities in the Commonwealth of Virginia with an aggregate aboveground storage capacity of 25,000 gallons or greater of oil, unless otherwise specified within this chapter. ]

[ ~~C. 4.~~ ] The provisions of Part V (9 VAC 25-91-180 et seq., Groundwater characterization study and monitoring requirements) of this chapter apply to: (i) an individual AST located within the Commonwealth of Virginia with an aboveground storage capacity of one million gallons or greater of oil, unless otherwise specified within this regulation; and (ii) all facilities in the Commonwealth of Virginia with an aggregate aboveground storage capacity of one million gallons or greater of oil, unless otherwise specified within this chapter.

[ ~~D. The operator shall comply with all requirements pursuant to this regulation unless the context of the requirement clearly indicates otherwise. ]~~

## 9 VAC 25-91-30. Exclusions.

A. The requirements of this chapter do not apply to:

1. Vessels;
2. Licensed motor vehicles, unless used solely for the storage of oil;
3. An AST with a storage capacity of 660 gallons or less of oil;
4. An AST containing petroleum, including crude oil or any fraction thereof, which is liquid at standard temperature and pressure (60°F at 14.7 pounds per square inch absolute) subject to and specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of § 101(14) of the federal Comprehensive Environmental Response,

Compensation, and Liability Act (CERCLA) (42 USC § 9601 et seq.);

5. A wastewater treatment tank system that is part of a wastewater treatment facility regulated under § 402 or § 307(b) of the federal Clean Water Act (33 USC § 1251 et seq.);

6. An AST that is regulated by the Department of Mines, Minerals and Energy under Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia;

7. An AST used for the storage of products that are regulated pursuant to the federal Food, Drug, and Cosmetic Act (21 USC § 301 et seq.);

8. An AST that is used to store hazardous wastes listed or identified under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (Solid Waste Disposal Act) (42 USC § 6901 et seq.), or a mixture of such hazardous wastes and other regulated substances;

9. An AST that is used to store propane gas, butane gas or other liquid petroleum gases;

10. An AST used to store nonpetroleum hydrocarbon-based animal and vegetable oils;

11. A liquid trap or associated gathering lines directly related to oil or gas production, or gathering operations;

12. A surface impoundment, pit, pond, or lagoon;

13. A stormwater or wastewater collection system;

14. Equipment or machinery that contains oil for operational purposes, including but not limited to lubricating systems, hydraulic systems, and heat transfer systems;

15. An AST used to contain oil for less than 120 days when: (i) used in connection with activities related to the containment and cleanup of oil; (ii) used by a federal, state or local entity in responding to an emergency; or (iii) used temporarily on-site to replace permanent capacity storage;

16. Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers or capacitors;

17. A flow-through process tank;

18. Oily water separators;

19. An AST containing dredge spoils; [ ~~or~~ ]

20. An AST located on a farm or residence used for storing motor fuel for noncommercial purposes with an aggregate storage capacity of 1,100 gallons or less [ ; or

21. Pipes or piping beyond the first valve from the AST that connects an AST with production process tanks or production process equipment ] .

B. In addition to the complete exclusions listed in subsection A of this section, the following are partially excluded from this regulation in that they need not comply

with the requirements contained in Part III (9 VAC 25-91-130 et seq., Pollution prevention requirements) of this chapter:

1. An AST with a capacity of 5,000 gallons or less used for storing heating oil for consumptive use on the premises where stored;
2. An AST storing asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure (60°F at 14.7 pounds per square inch absolute); and
3. Line pipe and breakout tanks of an interstate pipeline regulated under the [~~Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended~~ Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 et seq.)].

C. In addition to the exclusions listed in subsections A and B of this section, asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure (60°F at 14.7 pounds per square inch absolute) are excluded for the purposes of any requirement to install groundwater monitoring wells or groundwater protection devices or to conduct groundwater characterization studies under Part IV (9 VAC 25-91-170, Oil discharge contingency plan (ODCP) requirements) and Part V (9 VAC 25-91-180 et seq., Groundwater characterization study [ (GCS) ] and [ (GCS well ) monitoring requirements) of this chapter.

#### 9 VAC 25-91-40. Compliance dates.

A. Every operator shall comply with this regulation on its effective date unless a later date is otherwise specified.

B. Operators of facilities exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., facilities not engaged in the resale of oil [ ]) having an aboveground storage capacity of [~~more than~~] 25,000 gallons [ or greater ] of oil [ ] shall comply with Part III (9 VAC 25-91-130 et seq., Pollution prevention requirements) of this chapter within 120 days after the effective date of this chapter unless otherwise specified in this chapter. If compliance with Part III of this chapter necessitates extensive upgrades to the existing facility design, these exempted operators may submit a proposed extended compliance schedule and supporting explanation to the board no later than 90 days after the effective date of this chapter. The board may approve an extended compliance schedule where the circumstances so warrant.

C. Operators of existing ASTs and facilities [~~that have~~] previously [~~met the registration requirement~~ registered in accordance with the requirements] of § 62.1-44.34:19.1 of the Code of Virginia shall not have to resubmit the registration form until five years from the date of the initial registration unless title to [~~an~~ that] AST or facility is transferred ([i.e.,] change of ownership) or the AST is converted or brought back into use after permanent closure, whichever occurs first.

D. Operators of facilities subject to Part IV (9 VAC 25-91-170, Oil discharge contingency plan (ODCP) requirements) of this chapter that are brought into use after the effective date

of this chapter shall submit a complete application meeting all applicable requirements of this chapter no later than [ ~~420~~ 90 ] days prior to commencement of operations.

1. The operator must receive approval of the ODCP by DEQ prior to commencement of facility operations.

2. The operators of facilities that have previously met the provisions of § 62.1-44.34:15 of the Code of Virginia for ODCP submittal shall not be required to resubmit the ODCP until [ 90 days prior to the date ] that plan's approval expires. [~~Upon~~ Ninety days prior to the] expiration of approval of the ODCP, the facility operator shall submit an updated plan or certification of renewal of an existing plan according to 9 VAC 25-91-170 F.

E. As of July 1, 1997, an operator having obtained approval of the ODCP shall operate, maintain, monitor, and keep records pertaining to 9 VAC 25-91-170 A 18 of Part IV, Oil discharge contingency plan (ODCP) requirements, of this chapter and under the provisions of Part III, Pollution Prevention Requirements (9 VAC 25-91-130 et seq.) of this chapter.

#### 9 VAC 25-91-50. Statement of purpose.

The purpose of this chapter is to (i) establish requirements for registration of facilities and individual ASTs located within the Commonwealth; (ii) provide the board with the information necessary to identify and inventory facilities with an aggregate storage capacity of greater than 1,320 gallons of oil or individual ASTs with a storage capacity of greater than 660 gallons of oil; (iii) develop standards and procedures for operators of facilities with an aggregate aboveground storage capacity of 25,000 gallons or greater of oil relating to the prevention of pollution from new and existing aboveground storage tanks; (iv) provide requirements for the development of facility oil discharge contingency plans for facilities with an aggregate aboveground storage capacity of 25,000 gallons or greater of oil that will ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of an oil discharge, and to contain, clean up and mitigate an oil discharge within the shortest feasible time, where plans must address concerns for the effect of oil discharges on the environment as well as considerations of public health and safety; and (v) provide requirements for facilities and individual ASTs with an aggregate aboveground storage capacity of one million gallons or greater of oil to conduct a groundwater characterization study (GCS) within the geographic boundaries of a facility; to submit the GCS as part of the oil discharge contingency plan; to conduct a monthly gauging and inspection of GCS monitoring wells, monitoring of well head space and sampling and laboratory analysis of GCS monitoring wells; and to gather all observations and data maintained at the facility and compile and submit them as an annual report to the board.



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## 9 VAC 25-91-60. Administrative fees.

~~A. [ This section establishes application fees for approval of contingency plans and for registration of a facility and aboveground storage tanks. Fees shall be paid in United States currency by check, draft or postal money order made payable to the Treasurer, Commonwealth of Virginia, P.O. Box 10150, Richmond, VA 23240. The required application for approval of an oil discharge contingency plan or the form for registration of a facility and aboveground storage tanks as required will be accepted only when the fees established by this section have been paid. Overpayments of application fees are refundable upon written request. Fees are assessed for review of oil discharge contingency plans and for registration of an AST or a facility according to the schedules contained in subsections B and C of this section. A registration form or an application for review of a contingency plan will not be accepted unless the required fee has been received by the department.~~

1. Fees shall be paid in United States currency by check, draft, or postal money order made payable to the Treasurer of Virginia.

2. The fee, together with the form or plan, shall be sent to the department at the following mailing address:

Department of Environmental Quality  
Office of Financial Management  
P.O. Box 10150  
Richmond, VA 23240

3. Notifications and correspondence for which a fee is not applicable should be mailed to the department as specified in 9 VAC 25-91-70. ]

### B. Facility and AST registration.

1. Registration fees shall be submitted for the following:

- a. Initial registration;
- b. New installations;
- c. Conversion [ (i.e., UST to an AST, storing a nonoil to an oil product, etc.) ];
- d. AST brought back into use after permanent closure;
- e. Registration renewal (every five years); or
- f. When title to a facility or AST is transferred (change of ownership).

2. Registration fees are as follows:

- a. [ An ] individual AST [ : ( ) new, existing, replaced or brought back into use after permanent closure ( ) ] = \$25;
- b. One facility with one AST = \$25;
- c. One facility with two or more ASTs = \$50;
- d. Two facilities with one AST at each facility = \$50;

e. Two facilities with one AST at the first facility and two or more at the other = \$ 75;

f. Two or more facilities with two or more ASTs each = \$100;

g. Three facilities with one AST each = \$75; or

h. Three facilities with two or more ASTs at the first facility and one AST at each other facility = \$100.

3. An operator of an AST subject to the registration requirements of this regulation shall submit a fee of \$25 to the board for each such AST up to a maximum of \$50 per facility. An operator of a single facility shall submit a maximum of \$50 for the facility and all ASTs. An operator of multiple facilities shall submit a maximum fee of \$100 to the board to register all of their facilities and ASTs.

4. Registration forms will not be accepted by the board as complete unless the applicable fee has been paid. No fee is required for a "notification" of an AST replacement ([i.e.,] relocation of existing AST), upgrade, repair, or closure.

### C. ODCP application.

1. [ ~~Fee schedules~~ ODCP application fees ] are as follows:

a. For a facility with an aggregate aboveground maximum storage or handling capacity from 25,000 gallons up to and including 100,000 gallons of oil the fee is \$718;

b. For a facility with an aggregate aboveground maximum storage or handling capacity from 100,001 gallons up to [ ~~and including~~ ] one million gallons of oil the fee is \$2,155;

c. For a facility with an aggregate aboveground maximum storage or handling capacity of [ ~~greater than~~ ] one million gallons [ or greater ] of oil the fee is \$3,353; or

d. For a pipeline, the [ ODCP application ] fee shall be based on the average daily throughput of oil. Once that volume is determined, the [ ODCP ] application fee will be calculated per subdivisions a, b and c of this subdivision.

2. The fee for approval of a contingency plan encompassing more than one facility as described in 9 VAC 25-91-170 D shall be based on the aggregate aboveground storage capacity of the facilities.

3. Fees shall only be paid upon initial submittal of an oil discharge contingency plan by an operator. Renewals, additions, deletions or changes to the plan are not subject to the administrative fee.

4. Application fees are refundable upon receipt of a written request [ to withdraw the ODCP application provided the request is received ] no later than 30 days

after submittal and prior to [approval the department's review] of the contingency plan.

5. Overpayments of application fees are refundable upon written request. [Overpayments not refunded will be credited for the applicant's future use under this section.]

**9 VAC 25-91-70. Notices to the Department of Environmental Quality (DEQ) [~~Waste Division~~].**

All written [communications correspondence] to the Department of Environmental Quality related to the requirements of this chapter, with the [exception exceptions] of [fees (i) the correspondence which contains fees and therefore must be] paid directly to the Treasurer of [the Commonwealth per Virginia as specified in] 9 VAC 25-91-60 A [ , and (ii) variance petitions as specified in 9 VAC 25-91-160] shall be addressed [as follows to the cognizant DEQ regional office. A list of regional offices and their addresses are available from the central office at the following address] :

Mailing Address:

Department of Environmental Quality [~~Waste Division~~]  
Office of Spill Response and Remediation  
P.O. Box 10009  
Richmond, VA 23240-0009

Street Address:

Department of Environmental Quality [~~Waste Division~~]  
Office of Spill Response and Remediation  
629 E. Main Street  
Richmond, VA 23219

**9 VAC 25-91-80. Delegation of authority.**

The executive director, or his designee, may perform any act of the board under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

**9 VAC 25-91-90. Evaluation of regulation.**

A. Within three years after the effective date of this chapter, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.

B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendments, (ii) repeal this chapter or (iii) amend this

chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

PART II.  
REGISTRATION, NOTIFICATION AND CLOSURE REQUIREMENTS.

**9 VAC 25-91-100. Registration requirements.**

A. Section 62.1-44.34:19.1 of the Code of Virginia requires an operator of a facility located within the Commonwealth with an aggregate aboveground storage capacity of more than 1,320 gallons of oil or an operator of an individual AST located within the Commonwealth with a storage capacity of more than 660 gallons of oil to register such facility or AST with the board and with the local director or coordinator of emergency services unless otherwise specified within this regulation.

B. [Although the term "operator" includes a variety of persons who may share joint responsibility for compliance with this regulation,] in fixing responsibility for compliance with the registration requirements, DEQ shall look first to the owner or a duly authorized representative of the facility or AST.

C. A duly authorized representative may submit the registration on the owner's behalf.

1. A person is a duly authorized representative only if:

a. The authorization is made in writing by the owner and indicates that the representative has signatory authority for the registration;

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

c. The written authorization is submitted to the department [along] with the registration form.

2. Changes to authorization. If an authorization [previously submitted] is no longer accurate because a different individual or position has [assumed] responsibility for the overall operation of the facility [or for environmental matters], a new authorization satisfying the requirements shall be submitted to the department prior to or together with any reports or information [to be] signed by [a that] duly authorized representative.

3. Certification. Any person signing a registration document shall make the following certification:

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"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 ensure that qualified personnel properly gathered and evaluated 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 fines and imprisonment for knowing violations."

D. The owner or a duly authorized representative of a new facility or AST, a converted facility or AST, or a facility or AST brought back into use after permanent closure shall register such facility or AST with the board and local director or coordinator of emergency services within 30 days after being brought into use.

E. Registration shall include the following information and other information that may be required if approved by the board:

1. Facility and AST owner and operator information (e.g., name, address, and phone numbers);
2. Facility information (e.g., name, type, address, contact person and phone numbers, and aggregate storage capacity);
3. Tank and piping information (e.g., storage capacity, [product stored,] type of design and construction standards);
4. ~~Notification of changes (e.g., upgrade, repair, replacement and closure)~~ Other information that may be reasonably requested by the board]; and
5. Owner certification of information.

F. The owner or a duly authorized representative of the facility or AST shall renew the registration required by this section every five years or whenever title to the facility or AST is transferred (change of ownership), whichever occurs first.

G. A facility or AST installed after the effective date of this regulation, including an AST or facility operated by the federal government, shall not be registered without either (i) ~~an inspection by the department or (ii)~~ a review by the department of the permits, inspections, and certification of use required in accordance with the provisions of the Uniform Statewide Building Code, the BOCA® National Building Code and NFPA Code and obtained by the owner or a duly authorized representative from the local code officials or their designee [ or (ii) an inspection by the department ]. In the case of a regulated AST operated by the Commonwealth, the Department of General Services shall function as the local code official in accordance with § 36-98.1 of the Code of Virginia.

## 9 VAC 25-91-110. [ ~~Notification~~ Notifications ] .

A. An owner or a duly authorized representative of the facility or AST shall notify the board within 30 days after any AST:

1. Upgrade;
2. Major repair; [ ~~or~~ ]
3. Replacement (i.e., relocating or repositioning of an existing AST) [ ; or
4. Change in service (i.e., change in operation, conditions of the stored product, specific gravity, corrosivity, temperature or pressure that has occurred from the original that may affect the tank's suitability for service) ] .

B. Notifications do not require a fee.

## 9 VAC 25-91-120. Aboveground storage tank closure.

A. After the effective date of this regulation, a facility or AST, including a facility or AST operated by the federal government, shall not be permanently closed without being registered and the fee paid and either (i) ~~being inspected by the department or (ii)~~ having a review performed by the department of the permits and inspections required in accordance with the provisions of the Uniform Statewide Building Code, the BOCA® National Building Code, and NFPA Code obtained by the owner or a duly authorized representative from the local code official or his designee [ or (ii) being inspected by the department ] .

1. For inspections by the department (e.g., where a permit is not issued by the local code official or his designee), at least 14 days notice to the department is required prior to the commencement of closure operations. Notice shall be made by the owner or a duly authorized representative [ ~~submitting the Intent to Permanently Close an AST form~~ ] .

2. In the case of a regulated AST operated by the Commonwealth, the Department of General Services shall function as the local code official in accordance with § 36-98.1 of the Code of Virginia.

3. If the closure is in response to containment and cleanup actions that necessitate AST removal, the owner or a duly authorized representative of the facility or AST shall immediately notify the local code official and the department.

B. Closure operations shall be reported to the department by the owner or a duly authorized representative within 30 days after the permanent closure operation is completed [ ~~using the AST Permanent Closure form~~ ] .

C. Closure operations shall include the following:

1. Removal of all liquids, sludges, and vapors from the AST and associated piping. All wastes removed shall be disposed of in accordance with all applicable state and federal requirements.

2. For tanks being closed in place, the tank [shall be] rendered vapor free. Provisions must be made for [~~natural breathing~~ adequate ventilation] to ensure that the tank remains vapor free. Vent lines shall remain open and maintained in accordance with the applicable codes. All access openings shall be secured (normally with spacers to assist ventilation). The AST shall be secured against tampering and flooding. The name of the product last stored, the date of permanent closure and PERMANENTLY CLOSED shall be stenciled in a readily visible location on the AST. Piping shall be disconnected. All pipes being closed in place shall be vapor free and capped or blind flanged.

3. An assessment of the AST site conducted prior to completion of permanent closure operations.

a. In conducting the assessment, the owner or a duly authorized representative shall sample and test for the presence of petroleum hydrocarbons at the AST site in any area where contamination is likely to have occurred. [~~Soil samples shall be tested~~ These locations shall be subject to the review of the board. Sampling and testing shall be conducted] in accordance with established EPA-approved analytical methods or other methods approved by the board.

(1) The owner or a duly authorized representative shall submit copies of the laboratory results, a description of the area sampled, a photograph of the site indicating sampled areas, and a site map indicating the location of the closed AST and associated piping as attachments to the closure form.

(2) If contaminated soils, contaminated [~~ground water or~~ groundwater,] free product as a liquid or vapor[, or other evidence of a release] is discovered, the owner or a duly authorized representative shall immediately notify the board and conduct the cleanup in accordance with department requirements.

b. The department may consider an alternative to the soil sampling requirements of this subsection if the owner or a duly authorized representative of the AST demonstrates to the board's satisfaction that:

(1) There is no evidence of present or past contamination by providing records of monthly leak detection monitoring for the previous 12 months; and

(2) The facility or AST has operated an approved leak detection system.

4. A closure inspection conducted by either the department or the local building official, as discussed in subsection A of this section.

D. When deemed necessary by the board, the owner or a duly authorized representative of a facility or an AST that was permanently closed prior to the effective date of this

regulation shall assess the site and close the AST in accordance with the requirements of this section.

E. The owner or a duly authorized representative shall maintain all records relating to compliance with this [~~regulation~~ section] for a period of not less than five years from the date the board receives notice of the completed closure. These records shall be made available to the board upon request.

## PART III.

### POLLUTION PREVENTION REQUIREMENTS.

**9 VAC 25-91-130. Pollution prevention standards and procedures.**

A. Section 62.1-44.34:15.1 of the Code of Virginia provides the following requirements for existing aboveground storage tanks at a facility with an aggregate aboveground storage capacity of one million gallons of oil or greater or for an existing individual aboveground storage tank with a storage capacity of one million gallons [~~of oil~~] or greater [of oil], unless otherwise exempted.

1. Inventory control and testing for significant variations.

a. The following aboveground storage tanks shall not be subject to inventory control and testing for significant variations:

(1) Aboveground storage tanks totally off ground with all associated piping off ground;

(2) Aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil; and

(3) Aboveground storage tanks containing No. 5 or No. 6 oil for consumption on the premises where stored.

b. Each operator shall institute inventory control procedures capable of detecting a significant variation of inventory. A significant variation shall be considered a variation in excess of 1.0% of the storage capacity of each individual AST. For a refinery, a significant variation of inventory shall be considered a loss in excess of 1.0% by weight of the difference between the refinery's input and output. Reconciliations of inventory measurements shall be conducted monthly. If the significant variation persists for two consecutive reconciliation periods, the operator shall conduct an investigation to determine the cause of the variation. This investigation shall be completed within five working days of the end of the second reconciliation period. If this investigation does not reveal the cause of the inventory variation, the operator shall notify the board and the local director or coordinator of emergency services and shall conduct additional testing to determine the cause of the inventory variation. The testing method, schedule,

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and results of this additional testing shall be submitted to the board for review.

c. Inventory records shall be kept of incoming and outgoing volumes of oil from each tank. All tanks shall be gauged no less frequently than once every 14 days and on each day of normal operation. Physical measurements shall be reconciled to 60°F at 14.7 pounds per square inch absolute.

## 2. Formal inspections.

a. Each AST shall undergo formal external and internal tank inspections. The initial formal internal and external inspections for an existing AST shall be completed on or before June 30, 1998, unless otherwise specified within this [ ~~regulation~~ chapter ].

(1) All newly installed ASTs shall have initial formal inspections within five years after the date of installation.

(2) Operators of facilities exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall complete the initial formal inspections within five years of the effective date of this regulation.

(3) An AST with a storage capacity of less than 12,000 gallons shall not be subject to the formal internal inspection unless the integrity of the AST is in question and an inspection is deemed necessary by the board.

b. Inspections shall be conducted in accordance with the provisions of API Standard 653 or procedure approved by the board. If construction practices allow external access to the tank bottom, a formal external inspection utilizing accepted methods of nondestructive testing or procedure approved by the board may be allowed in lieu of the internal inspection. An AST with a release prevention barrier or liner installed shall be internally inspected in accordance with the applicable provisions of API Standard 653 or API Recommended Practice 652 or procedure accepted by the board.

c. An API Standard 653 inspection conducted between January 1, 1991, and the effective date of this regulation may be accepted by the board if the operator provides supporting documentation to the board for review and approval.

## 3. Formal reinspections.

a. Each AST shall undergo an external reinspection every five years in accordance with the provisions of API Standard 653 after the initial formal external inspection has been conducted.

b. Each AST with a storage capacity of 12,000 gallons of oil or greater shall undergo an internal reinspection in accordance with the provisions of API Standard 653

every 10 years after the initial formal internal inspection has been conducted.

(1) The board may require the internal reinspection sooner than 10 years if there is an indication that the corrosion rate established by the initial internal inspection or a subsequent reinspection has increased.

(2) The internal reinspection period may be extended beyond 10 years if the operator can demonstrate to the board that an extension of the reinspection period is warranted. The operator shall provide supporting documentation to the board for review and approval at least six months prior to the date the reinspection is due.

c. An AST with a storage capacity of less than 12,000 gallons shall not be subject to the formal internal reinspection unless the integrity of the AST is in question and an inspection is deemed necessary by the board.

## 4. Secondary containment.

a. Each secondary containment dike or berm shall be maintained and evaluated or certified with respect to its compliance with the applicable requirements of 40 CFR Part 112, NFPA 30, and 29 CFR 1910.106. The operator shall have this evaluation or certification performed by a professional engineer or person approved by the board on or before June 30, 1998, and every 10 years thereafter, unless otherwise exempted.

(1) Operators of facilities exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have this evaluation completed within five years after the effective date of this regulation and every 10 years thereafter.

(2) Operators of a newly installed AST shall have this evaluation completed [ ~~within five years after the date of installation~~ prior to being placed into service ] and every 10 years thereafter.

## 5. Safe fill and shutdown procedures.

a. Each operator shall [ ~~provide~~ institute ] safe fill [ ~~and~~ ] shutdown [ ~~and transfer~~ ] procedures [ ~~including an audible staged alarm with immediate and controlled shutdown procedures~~ ], or equivalent measures established by the board, that will ensure [ ~~overflowing of ASTs does~~ that spills resulting from tank overfills or other product transfer operations do ] not occur.

(1) All receipts of oil shall be authorized by the operator or facility personnel trained by the operator who shall ensure the volume available in the tank is greater than the volume of oil to be transferred to the tank before the transfer operation commences. The operator shall ensure the transfer operation is

monitored continually, either by manual or automatic means, until complete. The operator shall ensure that all tank fill valves not in use are secured and that only the tank designated is receiving oil.

(2) ~~[All ASTs~~ If unattended during transfer operations, the AST ] shall be equipped with a high level alarm or other appropriate mechanism approved by the board that will immediately alert the operator to prevent an overflow event. Activation of the high level alarm or other appropriate mechanism shall initiate an immediate and controlled emergency shutdown of the transfer, either by manual or automatic means. Each operator shall include this emergency shutdown procedure in the facility records and shall ensure that all facility personnel involved in the transfer operation are trained in this procedure. The alarm shall consist of a visual and audible device capable of alerting the operator, both by sight and hearing, to prevent an overflow situation. If the operator is in a control station, this alarm shall cause a warning light and audible signal in that station to activate. In addition, this system shall alarm on failure, malfunction or power loss. This high level alarm shall be tested prior to each receipt of oil. Records of testing shall be maintained at the facility.

b. All oil transfer areas where filling connections are made with vehicles shall be equipped with a spill containment system capable of containing and collecting those spills and overfills ~~[ of a size typically encountered in transfer operations ]~~ . [ The containment system shall be designed to hold at least the capacity as required by 40 CFR Part 112 (1997) (e.g., the capacity of any single compartment of a vehicle loaded or unloaded in the transfer area) ] .

c. If installed, an automatic shutdown system utilized during transfer of oil shall include the capability to direct the flow of oil to another tank capable of receiving the transferred oil or the capability to shut down the pumping or transfer system. This automatic shutdown system shall be tested prior to each receipt of oil and records of testing shall be maintained at the facility.

d. All ASTs shall be equipped with a gauge that is readily visible and indicates the level of oil or quantity of oil in the tank. In addition, the storage capacity [ , product stored ] and tank identification number shall be clearly marked on the tank at the location of the gauge. These gauges shall be calibrated annually.

## 6. Cathodic protection of piping and pressure testing of piping.

a. The requirement for cathodic protection of piping shall apply to buried piping only. Cathodic protection shall be installed and maintained in accordance with the following applicable publications: API 1632, NFPA 30, NACE 0169, or NACE 0285. All piping above

ground shall be protected from corrosion using methods and procedures referenced in NFPA 30, Chapter 2, Section 2-4.3 or a procedure approved by the board. Piping that passes through the wall of the containment berm or dike or under road crossings shall be protected from corrosion and damage using practices recommended in the publications listed in this subdivision.

~~[ b. All buried piping shall be hydrostatically tested every five years unless otherwise exempted. The use of oil as a test medium is acceptable if the flash point is greater than 120°F at 14.7 pounds per square inch absolute. All piping above ground shall be hydrostatically tested or inspected. The board will consider alternatives to the hydrostatic test requirement based on site specific conditions by an inspection method approved by the board. The operator shall submit any proposal regarding alternative methods to the board six months prior to its application. The operator shall conduct the initial hydrostatic test on or before June 30, 1998, unless otherwise exempted.~~

~~(1) Operators of a newly installed AST shall have this hydrostatic test completed within five years after the date of installation and every five years thereafter.~~

~~(2) Operators of facilities exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have this hydrostatic test completed within five years after the effective date of this regulation and every five years thereafter.~~

b. All piping shall be pressure tested as specified in this subsection or using an equivalent method or measure approved by the board at intervals not to exceed five years. The operator of an existing facility or AST shall complete the initial test on or before June 30, 1998, except operators of existing facilities or ASTs for which compliance was exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil). These excepted operators shall complete the initial test within five years after the effective date of this chapter. All newly installed or repaired piping shall be tested before being placed into service.

(1) A pressure test may be a hydrostatic test at 150% maximum allowable working pressure (MAWP) or an inert gas test at 110% MAWP.

(2) A test conducted and certified by an API authorized piping inspector to be in conformity with the API 570 Piping Inspection Code is deemed an equivalent method of testing approved by the board.

(3) The board may consider on a case-by-case basis requests for approval of other equivalent methods or measures which conform to industry

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recommended practices, standards and codes. The operator shall submit a request for approval of a proposed equivalent method or measure to the board as specified in 9 VAC 25-91-160. ]

## 7. Visual daily inspection and weekly inspections.

a. The operator or a duly authorized representative shall conduct a daily visual inspection for each day of normal operation in the areas of the facility where this regulation applies. The facility person conducting the inspection shall document completion of this inspection by making and signing an appropriate notation in the facility records. This visual inspection shall include the following:

- (1) A complete walk-through of the facility property in the areas where this chapter applies to ensure that no hazardous conditions exist;
- (2) An inspection of ground surface for signs of leakage, spillage, or stained or discolored soils;
- (3) A check of the berm or dike area for excessive accumulation of water and to ensure the dike or berm manual drain valves are secured;
- (4) A visual inspection of the exterior tank shell to look for signs of leakage or damage; and
- (5) An evaluation of the condition of the aboveground storage tank and appurtenances.

b. The operator or a duly authorized representative shall conduct a weekly inspection of the facility in the areas where this regulation applies, using a checklist that contains at least the items found in the weekly inspection checklist subdivision of this section. The checklist is not inclusive of all safety or maintenance procedures but is intended to provide guidance to the requirements within this regulation. The weekly checklist shall be maintained at the facility and provided to the board upon request. This checklist shall be signed and dated by the facility person or persons conducting the inspection and shall become part of the facility record.

- (1) The operator of a new AST/facility shall develop the checklist within 90 days after the date of installation.
- (2) The operator of each facility exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall develop the checklist within 90 days after the effective date of this chapter.
- (3) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have developed a checklist within 90 days after June 30, 1993, shall be deemed to be in compliance with this checklist requirement as of the effective date of this chapter.

c. Sample - weekly inspection checklist for aboveground storage tank systems:

- \_\_\_\_ (1) Containment dike or berm in satisfactory condition.
- \_\_\_\_ (2) Containment area free of excess standing water or oil.
- \_\_\_\_ (3) Gate valves used for emptying containment areas secured.
- \_\_\_\_ (4) Containment area/base of tank free of high grass, weeds, and debris.
- \_\_\_\_ (5) Tank shell surface, including any peeling areas, welds, rivets/bolts, seams, and foundation, visually inspected for areas of rust and other deterioration.
- \_\_\_\_ (6) Ground surface around tanks and containment structures and transfer areas checked for signs of leakage.
- \_\_\_\_ (7) Leak detection equipment in satisfactory condition.
- \_\_\_\_ (8) Separator or drainage tank in satisfactory condition.
- \_\_\_\_ (9) Tank water bottom drawoffs not in use are secured.
- \_\_\_\_ (10) Tank fill valves not in use are secured.
- \_\_\_\_ (11) Valves inspected for signs of leakage or deterioration.
- \_\_\_\_ (12) Inlet and outlet piping and flanges inspected for leakage.
- [ \_\_\_\_ (13) All tank gauges have been inspected and are operational.

\_\_\_\_\_  
Signature of Inspector                      Date                      Time ]

## 8. Training of individuals.

a. To ensure proper training of individuals conducting inspections required by subdivision 7 of this subsection, the operator of a facility shall train personnel based on the following requirements:

- (1) Each facility operator shall establish a training program for those facility personnel conducting the daily visual and weekly inspections of the facility [ ~~and shall document completion of this training in the.~~ ] Facility records [ shall contain the basic information and procedures required by 9 VAC 25-91-130 A 8 a (3) ]. The required training may be conducted by the operator or by a third party. The training program established shall [ be maintained to ] reflect current conditions of the facility.

(a) The operator of a new facility shall establish the training program within six months after being brought into use.

(b) The operator of each facility exempted under § 62.1-44.34:17 D [ of the Code of Virginia ] (i.e., exempted facilities not engaged in the resale of oil) [ of the Code of Virginia ] shall establish the training program within six months after the effective date of this chapter.

(c) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have developed a training program within six months after June 30, 1993, shall be deemed to be in compliance with this training program requirement as of the effective date of this chapter [ , so long as that program reflects current conditions of the facility ] .

(2) The required training shall be conducted for facility personnel [ as applicable ] . Personnel not receiving this initial training and who will be conducting these inspections shall receive the training prior to conducting any inspection.

(a) The operator of a new facility shall conduct the personnel training within 12 months after being brought into use and prior to personnel conducting any inspection.

(b) The operator of each facility exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall conduct the personnel training within 12 months after the effective date of this chapter.

(c) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have conducted the personnel training within 12 months after June 30, 1993, shall be deemed to be in compliance with this personnel training requirement as of the effective date of this chapter [ , so long as the training provided reflects current conditions of the facility and all inspections are current in their training ] .

(3) [ Initial ] training [ for personnel performing daily and weekly inspections ] shall address at a minimum:

(a) Basic information regarding occupational safety, hazard recognition, personnel protection, and facility operations;

(b) The procedures to be followed in conducting the daily visual and weekly facility inspections;

(c) The procedures to be followed upon recognition of a hazard or the potential for a hazard; and

(d) The procedure for evaluating the condition of the aboveground storage tank and appurtenances.

(4) The operator of a facility shall train facility personnel upon any changes to the contents of the initial training program or every three years and shall [ make this retraining action part of document this training in ] the facility records.

(5) All formal inspections and testing required by subdivision 2 of this subsection shall be conducted by a person certified to conduct the inspection or test. This certification shall be accomplished in accordance with the provisions of API Standard 650 and API Standard 653 or a procedure approved by the board. Proof of this certification shall be maintained in the facility records. The results of all tests and inspections required by subdivision 2 of this subsection shall be maintained at the facility or at a location approved by the board for the life of the tank, but for no less than five years.

9. Leak detection. The operator shall operate, maintain, monitor and keep records of the system established for early detection of a discharge to groundwater [ (i.e., a method of leak detection) ] as required by 9 VAC 25-91-170 A 18 and contained in the facility's approved ODCP. These activities shall be inspected and approved by the department.

B. Section 62.1-44.34:15.1 of the Code of Virginia provides the following requirements for existing aboveground storage tanks at facilities with an aggregate aboveground storage capacity of less than one million gallons but equal to or more than 25,000 gallons of oil or for an existing individual aboveground storage tank with a storage capacity of less than one million but equal to or more than 25,000 gallons of oil, unless otherwise exempted.

1. Inventory control and testing for variations.

a. The following aboveground storage tanks shall not be subject to inventory control and testing for significant variations:

(1) Aboveground storage tanks totally off ground with all associated piping off ground;

(2) Aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil; and

(3) Aboveground storage tanks containing No. 5 or No. 6 oil for consumption on the premises where stored.

b. Each operator shall institute inventory control procedures capable of detecting a significant variation of inventory. A significant variation shall be considered a variation in excess of 1.0% of the storage capacity of each individual AST. For a



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refinery, a significant variation of inventory shall be considered a loss in excess of 1.0% by weight of the difference between the refinery's input and output. Reconciliations of inventory measurements shall be conducted monthly. If the significant variation persists for two consecutive reconciliation periods, the operator shall conduct an investigation to determine the cause of the variation. This investigation shall be completed within five working days of the end of the second reconciliation period. If this investigation does not reveal the cause of the inventory variation, the operator shall notify the board and the local director or coordinator of emergency services and shall conduct additional testing to determine the cause for the inventory variation. The testing method, schedule, and results of this additional testing shall be submitted to the board for review.

c. Inventory records shall be kept of incoming and outgoing volumes of oil from each tank. All tanks shall be gauged no less frequently than once every 14 days and on each day of normal operation. Physical measurements shall be reconciled to 60°F at 14.7 pounds per square inch absolute.

## 2. Secondary containment.

a. Each secondary containment dike or berm shall be maintained and evaluated or certified to be in compliance with the applicable requirements of 40 CFR Part 112 [ (1997) ], NFPA 30, and 29 CFR Part 1910.106. The operator shall have this evaluation or certification performed by a professional engineer or person approved by the board on or before June 30, 1998, and every 10 years thereafter, unless otherwise exempted.

(1) Operators of facilities exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have this evaluation completed within five years after the effective date of this chapter and every 10 years thereafter.

(2) Operators of a newly installed AST shall have this evaluation completed [ within five years after the date of installation prior to being placed into service ] and every 10 years thereafter.

## 3. Safe fill and shutdown procedures.

a. Each operator shall [ provide institute ] safe fill [ and ] shutdown [ , and transfer ] procedures [ , or equivalent measures established by the board, ] that will ensure [ overfilling of ASTs does that spills resulting from tank overfills or other product transfer operations do ] not occur. All receipts of oil shall be authorized by the operator or facility personnel trained by the operator who shall ensure the volume available in the tank is greater than the volume of oil to be transferred to the AST before the transfer operation commences. The operator shall ensure the transfer

operation is monitored continually, either by manual or automatic means, until complete. The operator shall ensure that all tank fill valves not in use are secured and that only the tank designated is receiving oil.

b. All oil transfer areas where filling connections are made with vehicles shall be equipped with a spill containment system capable of containing and collecting those spills and overfills [ of a size typically encountered in transfer operations ] . [ The containment system shall be designed to hold at least the capacity as required by 40 CFR Part 112 (e.g., the maximum capacity of any single compartment of a vehicle loaded or unloaded in the transfer area) ] .

c. If installed, an automatic shutdown system utilized during transfer of oil shall include the capability to direct the flow of oil to another tank capable of receiving the transferred oil or the capability to shut down the pumping or transfer system. This automatic shutdown system shall be tested prior to each receipt of oil and records of testing shall be maintained at the facility.

d. All AST's shall be equipped with a gauge that is readily visible and indicates the level of oil or quantity of oil in the tank. In addition, the storage capacity and tank identification number shall be clearly marked on the tank at the location of the gauge. These gauges shall be calibrated annually.

## 4. Pressure testing of piping.

[ a. All piping above ground shall be protected from corrosion using methods and procedures referenced in NFPA 30, Chapter 2, Section 2.4.3 or a procedure approved by the board. Piping that passes through the wall of the containment berm or dike or under road crossings shall be protected from corrosion and damage using practices recommended in the above publications.

b. All buried piping shall be hydrostatically tested every five years, unless otherwise exempted. The use of oil as a test medium is acceptable if the flash point is greater than 120°F at 14.7 pounds per square inch absolute. All piping above ground shall be hydrostatically tested or inspected. The board will consider alternatives to the hydrostatic test requirement based on site specific conditions by an inspection method approved by the board. The operator shall submit any proposal regarding alternative methods to the board six months prior to its application. The operator shall conduct the initial hydrostatic test on or before June 30, 1998, unless otherwise exempted.

(1) Operators of a newly installed AST shall have this hydrostatic test completed within five years after the date of installation and every five years thereafter.

~~(2) Operators of facilities exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have this hydrostatic test completed within five years after the effective date of this regulation and every five years thereafter.~~

a. All piping shall be pressure tested using an equivalent method or measure approved by the board at intervals not to exceed five years. The operator of an existing facility or AST shall complete the initial test on or before June 30, 1998, except operators of existing facilities or ASTs for which compliance was exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil). These excepted operators shall complete the initial test within five years after the effective date of this chapter. All newly installed or repaired piping shall be tested before being placed into service.

(1) A pressure test may be a hydrostatic test at 150% maximum allowable working pressure (MAWP) or an inert gas test at 110% MAWP.

(2) A test conducted and certified by an API authorized piping inspector to be in conformity with the API 570 Piping Inspection Code is deemed an equivalent method of testing approved by the board.

(3) The board may consider on a case-by-case basis requests for approval of other equivalent methods or measures which conform to industry recommended practices, standards and codes. The operator shall submit a request for approval of a proposed equivalent method or measure to the board as specified in 9 VAC 25-91-160. ]

## 5. Visual daily inspection and weekly inspections.

a. The operator or [ ~~the operator's~~ a duly ] authorized representative shall conduct a daily visual inspection for each day of normal operation in the areas of the facility where this regulation applies. The facility person conducting the inspection shall document completion of this inspection by making and signing an appropriate notation in the facility records. This visual inspection shall include the following:

(1) A complete walk-through of the facility property in the areas where this regulation applies to ensure that no hazardous conditions exist;

(2) An inspection of the ground surface for signs of leakage, spillage, or stained or discolored soils;

(3) A check of the berm or dike area for excessive accumulation of water and to ensure the dike or berm manual drain valves are secured;

(4) A visual inspection of the exterior tank shell to look for signs of leakage or damage; and

(5) An evaluation of the condition of the aboveground storage tank and appurtenances.

b. The operator or a duly authorized representative shall conduct a weekly inspection of the facility in the areas where this regulation applies, using a checklist which contains at least the items found in the weekly inspection checklist subdivision of this section. The checklist is not inclusive of all safety or maintenance procedures but is intended to provide guidance to the requirements within this regulation. The weekly checklist shall be maintained at the facility and provided to the board upon request. This checklist shall be signed and dated by the facility person or persons conducting the inspection and shall become part of the facility record.

(1) The operator of a new AST/facility shall develop the checklist within 90 days after the date of installation.

(2) The operator of each facility exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall develop the checklist within 90 days after the effective date of this chapter.

(3) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have developed a checklist within 90 days after June 30, 1993, shall be deemed to be in compliance with this checklist requirement as of the effective date of this chapter.

c. Sample - weekly inspection checklist for aboveground storage tank systems:

\_\_\_ (1) Containment dike or berm in satisfactory condition.

\_\_\_ (2) Containment area free of excess standing water or oil.

\_\_\_ (3) Gate valves used for emptying containment areas secured.

\_\_\_ (4) Containment area/base of tank free of high grass, weeds, and debris.

\_\_\_ (5) Tank shell surface, including any peeling areas, welds, rivets/bolts, seams, and foundation, visually inspected for areas of rust and other deterioration.

\_\_\_ (6) Ground surface around tanks and containment structures and transfer areas checked for signs of leakage.

\_\_\_ (7) Leak detection equipment in satisfactory condition.

\_\_\_ (8) Separator or drainage tank in satisfactory condition.

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\_\_\_\_ (9) Tank water bottom drawoffs not in use are secured.

\_\_\_\_ (10) Tank fill valves not in use are secured.

\_\_\_\_ (11) Valves inspected for signs of leakage or deterioration.

\_\_\_\_ (12) Inlet and outlet piping and flanges inspected for leakage.

[ \_\_\_\_ (13) All tank gauges have been inspected and are operational.

\_\_\_\_\_  
Signature of Inspector      Date      Time ]

## 6. Training of individuals.

a. To ensure proper training of individuals conducting inspections required by subdivision 5 of this subsection, the operator of a facility shall train personnel based on the following requirements:

(1) Each facility operator shall establish a training program for those facility personnel conducting the daily visual and weekly inspections of the facility [ ~~and shall document completion of this training in the.~~ ] Facility records [ shall contain the basic information and procedures required by subdivision 6 a (3) of this subsection ]. The required training may be conducted by the operator or by a third party. The training program established shall [ be maintained to ] reflect current conditions of the facility.

(a) The operator of a new facility shall establish the training program within six months after being brought into use.

(b) The operator of each facility exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall establish the training program within six months after the effective date of this chapter.

(c) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have developed a training program within six months after June 30, 1993, shall be deemed to be in compliance with this training program requirement as of the effective date of this chapter [ , so long as that program reflects current conditions of the facility ] .

(2) The required training shall be conducted for facility personnel. Personnel not receiving this initial training and who will be conducting these inspections shall receive the training prior to conducting any inspection.

(a) The operator of a new facility shall conduct the personnel training within 12 months after being

brought into use and prior to personnel conducting any inspection.

(b) The operator of each facility exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall conduct the personnel training within 12 months after the effective date of this chapter.

(c) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have conducted the personnel training within 12 months after June 30, 1993, shall be deemed to be in compliance with this personnel training requirement as of the effective date of this chapter [ , so long as the training provided reflects current conditions of the facility and all inspections are current in their training ] .

(3) Training [ for personnel performing daily and weekly inspections ] shall address at a minimum:

(a) Basic information regarding occupational safety, hazard recognition, personnel protection, and facility operations;

(b) The procedures to be followed in conducting the daily visual and weekly facility inspections;

(c) The procedures to be followed upon recognition of a hazard or the potential for a hazard; and

(d) The procedure for evaluating the condition of the aboveground storage tanks and appurtenances.

(4) The operator of a facility shall retrain facility personnel upon any changes to the contents of the initial training program or every three years and shall [ ~~make this retraining action part of~~ document this training in ] the facility records.

7. Leak detection. The operation, maintenance, monitoring and recordkeeping of the system established for early detection of a discharge to groundwater as required by 9 VAC 25-91-170 A 18 and contained in the facility's approved ODCP shall be inspected and approved by the department.

**9 VAC 25-91-140. Performance standards for aboveground storage tanks [ newly ] installed, retrofitted, or brought into use.**

A. All ASTs shall be built in accordance with the applicable design standards adopted by Underwriters Laboratories, the American Petroleum Institute, the Steel Tank Institute or other standard approved by the board.

B. All ASTs shall be strength tested before being placed in use in accordance with the applicable code or standard under which they were built.

C. ASTs that have the tank bottom in direct contact with the soil shall have a determination made by a corrosion professional as to the type and degree of corrosion protection needed to ensure the integrity of the tank system during the use of the tank. If a survey indicates the need for corrosion protection for the new installation, corrosion protection shall be provided.

D. ASTs installed after the effective date of this chapter shall have a release prevention barrier (RPB) installed either under or in the bottom of the tank. The RPB shall be capable of: (i) preventing the release of the oil and (ii) containing or channeling the oil for leak detection.

E. Existing ASTs that are retrofitted (reconstruction or bottom replacement) or brought back into use shall be brought into compliance with subsections A, B, C, and D of this section. The operator shall submit a schedule to the board of the work to be performed in order to bring the existing AST into compliance with new-built construction standards. This compliance schedule shall be submitted to the board no less than six months prior to the anticipated completion date.

F. Operators of ASTs installed, retrofitted (reconstruction or bottom replacement) or brought back into use shall also comply with 9 VAC 25-91-130 A or 9 VAC 25-91-130 B, whichever is applicable.

G. All newly installed ASTs shall be constructed and installed in a manner consistent with the applicable standards and requirements found in NFPA 30 and the BOCA® National Building Code or other standards approved by the board. Approval and any applicable permits shall be obtained from the local building official before construction starts.

H. Compliance dates for subsections A through G of this section.

1. Operators of a newly installed, retrofitted or brought-back-into-use facility or AST shall comply with the requirements of this section within 30 days [ ~~of~~ prior to ] being placed into service.
2. Operators of facilities exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall comply with these requirements within 120 days of the effective date of this chapter.
3. Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have met these requirements on or before June 30, 1993, shall be deemed to be in compliance with these requirements as of the effective date of this chapter.

#### 9 VAC 25-91-150. Recordkeeping and access to facilities.

A. Each operator of a facility subject to this chapter shall maintain the following records:

1. All records relating to all required measurements and inventory of oil at the facility;
2. All records relating to required tank/pipe testing;
3. All records relating to spill events and other discharges of oil from the facility;
4. All supporting documentation for developed contingency plans;
5. All records for implementation and monitoring of leak detection and applicable provisions of 9 VAC 25-91-170 A 18 of Part IV, Oil discharge contingency plan (ODCP) requirements, of this chapter; [ ~~and~~ ]
6. [ All records relating to training of individuals; and
7. ] Any records required to be kept by statute or regulation of the board.

B. These records shall be kept by the operator of a facility at the facility or at an alternate location approved by the board for a period of no less than five years unless otherwise indicated.

C. Upon request, each operator shall make these records available to the board and to the director or coordinator of emergency services for the locality in which the facility is located or to any political subdivision within one mile of the facility.

D. Operators shall maintain all records relating to compliance with this regulation for a period of no less than five years from the date the board receives notice of the closure unless otherwise indicated. These records shall be made available to the board at any time upon request.

#### 9 VAC 25-91-160. Variances to the requirements of Part III (9 VAC 25-91-130 et seq.) of this chapter.

A. General criteria for granting a variance on a case-by-case basis.

1. The board is required by § 62.1-44.34:15.1 of the Code of Virginia to establish the criteria to grant variances of the AST pollution prevention requirements on a case-by-case basis and by regulation for categories of ASTs. Any person affected by these regulations may petition the board to grant a variance of any requirement of Part III (9 VAC 25-91-130 et seq.) of this chapter.
2. The board will not grant any petition for a variance related to:
  - a. Definitions;
  - b. Registration;
  - c. Classification of aboveground storage tanks; [ or ]
  - d. Oil discharge contingency plans [ ~~et seq.~~ ]

[ ~~e. Any requirement for which the petitioner is currently under enforcement action by the board. ]~~
3. The board may grant a variance if:

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a. The applicant demonstrates to the satisfaction of the board that the alternate design or operation will result in a facility that is equally capable of preventing pollution of state water, land, and storm drains from the discharge of oil from new and existing ASTs. If the variance would extend a [ ~~statutory~~ ] deadline, the petitioner shall demonstrate that a good faith effort to comply with the [ ~~statutory~~ ] deadline was made[ -; ]

b. Granting the variance will not result in an unreasonable risk to human health or the environment; and

c. Granting the variance will not result in a conflict with applicable local codes or ordinances.

4. In rendering a decision, the board may:

a. Deny the petition;

b. Grant the variance as requested;

c. Grant a modified variance which:

(1) Specifies additional or modified requirements;

(2) Includes a schedule for:

(a) Periodic review of the modified requirements;

(b) Implementation by the facility of such control measures as the board finds necessary in order that the variance may be granted; or

(c) Compliance, including increments of progress, by the facility with each requirement of the variance; or

(3) Specifies the termination date of the variance.

d. Grant a partial variance that:

(1) Specifies a particular part of the requirement;

(2) Specifies a particular part of the request;

(3) Includes a schedule for:

(a) Periodic review of the partial requirements;

(b) Implementation by the facility of such control measures as the board finds necessary in order that the variance may be granted; or

(4) Specifies the termination date of the variance.

[ 5. An operator must comply with the requirements of this regulation even when a variance request is under consideration by the board. A variance request submitted but disapproved, or submitted but not yet decided, shall not constitute a defense or delay to any enforcement action undertaken by the department. ]

B. Administrative procedures.

1. General requirements for the submission of a petition by the owner or a duly authorized representative.

a. All petitions submitted to the board shall include:

(1) The owner's or duly authorized representative's name and address;

(2) A citation of the regulatory requirement [ ~~from~~ to ] which a variance is requested;

(3) An explanation of the need or desire for the proposed action, including the reason the existing requirement is not achievable or is impractical [ compared to the alternative being proposed ] ;

(4) An explanation of the impact to applicable local codes and ordinances;

(5) A description of the proposed action;

(6) The duration of the variance, if applicable;

(7) The potential impact of the variance on human health or the environment and a justification of the proposed action's ability to provide equivalent protection of human health and the environment as would compliance with the regulatory requirements;

(8) [ Enforcement action against or pending against the petitioner;

(9) ] Other information believed by the applicant to be pertinent; and

[ ~~(9)~~ (10) ] The following statements signed by the owner or a duly authorized representative:

"I certify that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. The petition, if granted, will not be in violation of any local codes or ordinances or pose an unreasonable risk to human health or the environment. [ ~~I certify that I know of no enforcement action against or pending (the petitioner) for compliance with this regulation.~~ ] I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

2. In addition to the general information required of all petitioners under subdivision B 1 of this section, the petitioner shall submit other information as may be required by the board.

[ 3. All variance petitions and correspondence shall be submitted to the following address:

Mailing Address:

Department of Environmental Quality  
Office of Spill Response and Remediation  
P.O. Box 10009  
Richmond, VA 23240-0009

Street Address:

Department of Environmental Quality  
Office of Spill Response and Remediation  
629 E. Main Street  
Richmond, VA 23219 ]

C. Petition processing.

1. After receiving a petition that includes the information required in subdivision B 1 of this section, the board will determine whether the information received is sufficient to render the decision. If the information is deemed to be insufficient, the board will specify additional information needed and request that it be furnished.

2. The petitioner may submit the additional information requested, may attempt to show that no reasonable basis exists for the request for additional information, or may withdraw the petition. If the board agrees that no reasonable basis exists for the request for additional information, the board will act in accordance with subdivision C 3 b of this section. If the board continues to believe that a reasonable basis exists to require the submission of such information, the board will deny the petition.

3. After the petition is deemed complete:

a. The board will review the petition;

b. After evaluating the petition, the board will notify the applicant of the following final decision:

(1) Petition is denied;

(2) Requested variance is granted; or

(3) Modified or partial variance is granted;

c. The board shall send written notification of the variance to the chief administrative officer of the locality in which the facility is located;

d. If the board grants a variance request, the notice to the petitioner shall provide that the variance may be terminated upon a finding by the board that the petitioner has failed to comply with any variance requirements.

D. Variance by regulation for categories of ASTs.

1. ASTs totally off ground with all associated piping off ground shall not be subject to inventory control or testing for significant variation.

2. ASTs with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil shall not be subject to inventory control or testing for significant variation.

3. ASTs containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control or testing for significant variation.

4. ASTs with Release Prevention Barriers (RPBs) with all associated piping off ground, with an established corrosion rate and cathodic protection that protects the entire area of the tank bottom shall not be subject to inventory control or testing for significant variation.

5. ASTs with Release Prevention Barriers (RPBs) with all associated piping off ground and with secondary containment that is 72 hours impermeable shall not be subject to inventory control or testing for significant variation.

6. ASTs that meet the construction and installation standards of STI - F911-93, F921-93, or F941-94 or equivalent standards approved by the board shall not be subject to inventory control or testing for significant variation.

7. For refineries with a continuous leak detection monitoring system and cathodic protection of the AST and piping, a significant variation of inventory shall be considered a loss in excess of 3.0% by weight of the difference between the refinery's input and output,

8. Vaulted tanks meeting UL 2245 or an equivalent standard approved by the board shall not be subject to inventory control or testing for significant variation.

9. An AST used in the production/manufacturing process with full containment that is 72 hours impervious shall not be subject to inventory control or testing for significant variation.

10. An AST of 12,000 gallons or less with full containment that is 72 hours impervious, inside a building and used for the storage of heating oil consumed on the premises shall not be subject to inventory control or testing for significant variation.

## PART IV.

### OIL DISCHARGE CONTINGENCY PLAN (ODCP) REQUIREMENTS.

#### 9 VAC 25-91-170. Contingency plan requirements and approval.

A. Section 62.1-44.34:15 of the Code of Virginia requires that all facility oil discharge contingency plans shall provide for the use of the best available technology (economically feasible, proven effective and reliable and compatible with the safe operation of the facility) at the time the plan is submitted for approval and, in order to be approvable, shall contain, at a minimum, the following requirements:

1. The name of the facility, geographic location and access routes from land and water if applicable;

2. The names of the operators of the facility including address and phone number;

3. A physical description of the facility consisting of a plan of the facility which identifies the applicable oil storage areas, transfer locations, control stations, above and below ground oil transfer piping within the facility

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boundary (and including adjacent easements and leased property), monitoring systems, leak detection systems and location of any safety protection devices;

4. A copy of the material safety data sheet (MSDS) or its equivalent for each oil or groups of oil with similar characteristics stored, transferred or handled at the facility. To be equivalent, the submission shall contain the following:

- a. Generic or chemical name of the oil;
- b. Hazards involved in handling the oil; and
- c. A list of fire-fighting procedures and extinguishing agents effective with fires involving each oil or groups of oil demonstrating similar hazardous properties which require the same fire-fighting procedures;

5. The maximum storage or handling capacity of the facility and the individual tank capacities or, in the case of a pipeline, the average daily throughput of oil;

6. A complete listing, including 24-hour phone numbers, of all federal, state and local agencies required to be notified in the event of a discharge;

7. The position title of the individuals responsible for making the required notifications and a copy of the notification check-off list;

8. The position title, address and phone number of the individuals authorized to act on behalf of the operator to implement containment and cleanup actions. This individual shall be available on a 24-hour basis to ensure the appropriate containment and cleanup actions are initiated;

9. The position title of the individuals designated by the operator to ensure compliance during containment and cleanup of a discharge with applicable federal, state and local requirements for disposal of both solid and liquid wastes;

10. Identification and ensurance by contract or other means acceptable to the board of the availability of private personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge. This contract or agreement shall ensure a certain response within the shortest feasible time. The board will accept a letter of understanding between the operator and the response contractors which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the equipment and specification of the other information required by subdivision A 12 of this section, shall be included unless these capabilities are already on file with the board;

11. Assessment of the worst case discharge, including measures to limit the outflow of oil, response strategy

and operational plan. For the purpose of this regulation, the worst case discharge is the instantaneous release of the volume of the largest tank on the facility (125% of the volume of the largest tank for facilities with multiple tanks within a single containment dike) during adverse weather conditions. Facilities shall take into consideration that due to hydraulic pressure of the release, the secondary containment will not contain this volume in its entirety. The worst case discharge for a pipeline shall be based upon the volume of a discharge calculated using the maximum pressure, velocity, and elevation, and the largest pipe size and pipeline location. If facility design and operation indicates that this worst case discharge scenario does not meet the intent of this chapter, the board may require submission of other worst case scenarios on a facility-specific basis;

12. Inventory of facility containment equipment, including specification of quantity, type, location, time limits for gaining access to the equipment, and identification of facility personnel trained in its use;

13. Identification and location of natural resources at risk (including, but not limited to, surface waters as indicated on the applicable USGS quadrangle maps, groundwater, public water supplies, public and private water wells and springs, state or federal wildlife management areas, wildlife refuges, management areas, sanctuaries, property listed on the National Register of Historic Places and property listed on the National Register of Natural Landmarks), priorities for protection and means of protecting these resources;

a. In addition to the requirements set forth in this subdivision, the operator of a facility with an aggregate aboveground storage or handling capacity [~~greater than~~ of] one million gallons [or greater] of oil shall conduct a groundwater characterization study (GCS) within the geographic boundaries of the facility to be submitted as part of the contingency plan. The operator of such a facility shall utilize upgradient and downgradient [GCS] monitoring wells to satisfy this requirement. At the time of a discharge, the operator of such a facility shall conduct further characterization of the groundwater as required by the board;

b. For purposes of satisfying the requirement to identify and locate natural resources at risk, the operator of a pipeline shall identify surface waters as indicated on the applicable USGS quadrangle maps, public water supplies, state or federal wildlife management areas, wildlife refuges, management areas, sanctuaries, property listed on the National Register of Historic Places and property listed on the National Register of Natural Landmarks which could reasonably be expected to be impacted by the discharge. At the time of a discharge, the operator of a pipeline shall conduct a complete groundwater characterization study as required by the board and identify other natural resources at risk including public

and private wells or springs which could reasonably be expected to be impacted by the discharge;

14. Identification and location of any municipal or other services (including, but not limited to, storm drains, storm water collection systems and sanitary sewer systems) at risk, notification procedures applicable and means of protection of these services. The identification and location of all municipal services shall include those services for which official records are available. The operator of a pipeline shall determine which sections of the system are located in areas that would require an immediate response by the operator to prevent hazards to the public if a discharge occurred;

15. If applicable, the facility's responsibility for responding to a discharge from a vessel moored at the facility and the identity of the sizes, types, and number of vessels that the facility can transfer oil to or from simultaneously;

16. A description of training, equipment testing, and periodic unannounced oil discharge drills conducted by the operator to mitigate or prevent the discharge or the substantial threat of a discharge;

17. The facility's oil inventory control procedures. Facilities shall ensure that this control procedure is capable of providing for the detection of a discharge of oil within the shortest feasible time in accordance with recognized engineering practices and industry measurement standards;

18. A detailed description of a system for early detection of a discharge to groundwater, utilizing up-gradient and down-gradient [ leak detection ] monitoring wells or other groundwater protection measures acceptable to the board [ (i.e., visual, interstitial, vapor and leak detection groundwater monitoring wells) ]. The system will be operated, maintained and monitored [ by the operator ] in [ a the ] manner approved and [ inspected be subject to inspection ] by the department under the pollution prevention requirements of Part III (9 VAC 25-91-130 et seq.) of this chapter. Operators subject to subdivision A 13 a of this section may utilize such [ GCS ] wells to meet this requirement [ when approved by the board ];

19. The procedures to be followed, upon detection of a discharge of oil, for testing and inspection of all tanks, piping and all oil transfer associated equipment that could reasonably be expected to be a point source for the discharge. These procedures shall be conducted within the shortest feasible time, include a progression of written procedures from visual inspection to formal testing and be conducted in accordance with recognized engineering practices;

20. The facility's preventive maintenance procedures applicable to the critical equipment of an oil storage and transfer system as well as the maximum pressure for each oil transfer system. The term "critical equipment"

shall mean equipment that affects the safe operation of an oil storage and handling system;

21. A description of the security procedures used by facility personnel to avoid intentional or unintentional damage to the facility; and

22. A post-discharge review procedure to assess the discharge response in its entirety.

B. All nonexempt facility operators shall file with the board the application form for approval of the contingency plan. This form shall be submitted with the required contingency plan and shall be completed insofar as it pertains to the facility. The operator shall sign and date the certification statement on the application form. If the operator is a corporation, the form shall be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the form shall be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the form shall be signed by a general partner or the sole proprietor. All forms shall be acknowledged before a Notary Public.

C. Contingency plans shall be filed with and approved by the board. The plan shall be submitted to the board at the address specified in 9 VAC 25-91-60 A. A copy of the original with the facility-specific information and the approval letter shall be retained at the facility and shall be readily available for inspection.

D. An operator of multiple facilities may submit a single contingency plan encompassing more than one facility if the facilities are located within the defined boundaries of the same city or county or if the facilities are similar in design and operation. The plan shall contain site specific information as required by subsection A of this section for each facility. The site-specific information shall be placed in appendices to the plan.

Upon renewal of an approved contingency plan submitted under this subsection, the board shall consider the individual facilities subject to all provisions of subsections E through J of this section.

E. Oil discharge contingency plans shall be reviewed, updated if necessary and resubmitted to the board for approval every 60 months from the date of approval unless significant changes occur sooner. Operators shall notify the board of significant changes and make appropriate amendments to the contingency plan within 30 days of the occurrence. For the purpose of this chapter, a significant change includes the following:

1. A change of operator of the facility;
2. An increase in the maximum storage or handling capacity of the facility that would change the measures to limit the outflow of oil, response strategy or operational plan in the event of the worst case discharge;
3. A decrease in the availability of private personnel or equipment necessary to remove to the maximum extent



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practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge;

4. A change in the type of product dealt in, stored or handled by any facility covered by the plan for which a MSDS or its equivalent has not been submitted as part of the plan; or

5. A change in the method or operation utilized for the early detection of a discharge to groundwater [ i.e., change in a method of leak detection ].

F. Updated plans or certification for renewal of an existing plan shall be submitted to the board for review and approval not less than 90 days prior to expiration of approval of the current plan. Submittal of the certification for renewal of an existing plan shall be made in accordance with the provisions of subsection B of this section. All notifications of changes, renewals, submissions and updates of plans required by this chapter shall be directed to the respective regional office.

G. An oil discharge exercise may be required by the board to demonstrate the facility's ability to implement the contingency plan. The board will consult with the operator of the facility prior to initiating an exercise. Where appropriate, the board will ensure coordination with federal agencies prior to initiation of an exercise.

H. The board may, after notice and opportunity for a conference pursuant to § 9-6.14:11 of the Code of Virginia, deny or modify its approval of an oil discharge contingency plan if it determines that:

1. The plan as submitted fails to provide sufficient information for the board to process, review and evaluate the plan or fails to ensure the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of a discharge, and to contain and clean up an oil discharge within the shortest feasible time;

2. A significant change has occurred in the operation of the facility covered by the plan;

3. The facility's discharge experience or its inability to implement its plan in an oil spill discharge exercise demonstrates a necessity for modification; or

4. There has been a significant change in the best available technology since the plan was approved.

I. The board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;

2. The plan cannot be implemented as approved;

3. A term or condition of approval of this chapter has been violated; or

4. The facility is no longer in operation.

J. A Facility Response Plan (FRP) developed pursuant to § 4202 of the federal Oil Pollution Act of 1990, Pub. L. No.

101-380, 33 USCA § 2716 (1996), may be accepted as meeting the requirements of subdivisions A 1 through A 22 of this section. The operator shall submit a copy of the FRP and a copy of the currently valid FRP approval letter for the facility for review and approval by the board. The FRP shall contain a cross reference in order to index pages for the specific requirements of the ODCP. The FRP shall also contain the satisfaction of the requirements of subdivisions A 13 a and A 18 of this section. This information shall be resubmitted in accordance with the renewal period established by federal statute or regulation but in no instance shall the renewal period exceed five years. The board shall be notified of any plan amendments.

## PART V. GROUNDWATER CHARACTERIZATION STUDY [ (GCS) ] AND [ GCS WELL ] MONITORING REQUIREMENTS.

**9 VAC 25-91-180. Groundwater characterization study (GCS).**

A. Section 62.1-44.34:15 of the Code of Virginia requires ~~[ that ]~~ the operator ~~[ conduct a Groundwater Characterization Study (GCS) within the geographic boundaries~~ to apply to the board for approval of an ODCP. The ODCP shall be accompanied by other relevant information required by the board (e.g., Groundwater Characterization Study) of each facility with an aggregate aboveground storage capacity of one million gallons or greater of oil [ ). The purpose of this GCS is to determine baseline conditions and flow of groundwater within the geographic boundaries of the facility. The operator's results of the GCS shall be subject to the review and approval of the department and shall be submitted to the department as part of the Oil Discharge Contingency Plan referenced in Part IV (9 VAC 25-91-170, Oil Discharge Contingency Plan (ODCP) requirements). The GCS wells are required by 9 VAC 25-91-170 A 13 a in the ODCP requirements ] .

B. ~~[ The Groundwater Characterization Study and Groundwater Monitoring Guidelines developed by the board shall be used for this procedure~~ Section 62.1-44.34:15.1 of the Code of Virginia requires that the operator of a facility with an aggregate capacity of one million gallons or greater of oil conduct monthly gauging and inspection, monitoring of well head space, and quarterly sampling and laboratory analysis of all groundwater monitoring wells located at the facility to determine the presence of petroleum or petroleum by-product contamination. The monitoring requirements of these GCS wells are in 9 VAC 25-91-190, GCS well monitoring ] .

C. ~~[ The GCS shall be submitted as part of the Oil Discharge Contingency Plan. (See Part IV, Oil discharge contingency plan (ODCP), 9 VAC 25-91-170 of this chapter.)~~ Although GCS monitoring wells may be approved for use as part of a leak detection system, the GCS well monitoring requirement should not be confused with any requirement for leak detection monitoring wells required by 9 VAC 25-91-170 A 18. ]

## 9 VAC 25-91-190. GCS well monitoring.

~~[ The Groundwater Characterization Study and Groundwater Monitoring Guidelines developed by the board shall be used for this procedure.~~

~~1. All GCS wells required by 9 VAC 25-91-170 A 13 a in the ODCP requirements shall be:~~

- ~~a. Gauged monthly for depth to water measurements;~~
- ~~b. Sampled quarterly at the wellhead space of each well for the presence of petroleum vapors; and~~
- ~~c. Sampled annually for laboratory analysis to determine the presence of petroleum or petroleum by-product contamination.~~

~~2. This gauging and sampling should not be confused with the monitoring of leak detection wells.~~

A. All GCS wells required by 9 VAC 25-91-170 A 13 a in the ODCP requirements shall be monitored as follows:

1. Monthly gauging of GCS groundwater monitoring wells.
  - a. Measure and record static water levels monthly.
  - b. Reference all water-level measurements, including total well-depth measurements, from an established and documented point on the top of the well casing.
  - c. Measurements shall be correlated with mean sea level datum and measured to the nearest 0.01 foot.
2. Quarterly groundwater and vapor monitoring.
  - a. Quarterly vapor monitoring of all GCS wells identified in the ODCP-GCS shall be conducted prior to collecting quarterly groundwater samples.
  - b. Quarterly vapor monitoring consists of collecting one monitoring well headspace measurement.
  - c. Quarterly groundwater sampling (visual inspection) of all wells identified in the ODCP-GCS shall be conducted.
    - (1) Measure for free product on top of the groundwater.
    - (2) Collect groundwater samples for visual inspection.
  - d. Tabulate vapor measurements and quarterly visual groundwater monitoring results for each well sampled.
3. Annual groundwater monitoring for laboratory analysis.
  - a. Annual groundwater sampling of all wells identified in the ODCP groundwater characterization study (GCS) shall be conducted.
  - b. Annual groundwater monitoring consists of collecting groundwater samples for laboratory analysis.

c. Groundwater samples shall be collected and analyzed for BTEX and TPH for each well.

B. The GCS groundwater well monitoring should not be confused with the monitoring of groundwater wells utilized to satisfy 9 VAC 25-91-170 A 18 (i.e., leak detection wells). ]

## 9 VAC 25-91-200. Reporting [ ; GCS well monitoring report.

~~All observations and data gathered as a result of requirements in 9 VAC 25-91-190 shall be maintained at the facility, compiled, and submitted to the board annually.~~

~~1. The Groundwater Characterization Study and Groundwater Monitoring Guidelines developed by the board shall be used as guidance for this submittal.~~

~~2. Observation data submitted to the board shall include:~~

- ~~a. Depth to water measurements;~~
- ~~b. Headspace readings;~~
- ~~c. Groundwater analytical results;~~
- ~~d. Field and trip blank results; and~~
- ~~e. Analytical methods used and laboratory data including chain-of-custody forms.~~

A. All observations and data gathered as a result of the requirements in 9 VAC 25-91-190 and any other data obtained from those same wells shall be maintained at the facility, compiled, and submitted to the board annually in the following format:

- I. Monthly gauging of GCS groundwater monitoring wells.
  - 1.0 Summary of measurement procedures.
  - 2.0 Table of static water levels recorded from monitoring wells.
- II. Quarterly GCS groundwater vapor monitoring.
  - 1.0 Summary of groundwater and vapor collection procedures.
  - 2.0 Table of vapor measurements from monitoring well headspace.
  - 3.0 Table of groundwater monitoring well visual inspection results.
- III. Annual GCS groundwater quality evaluation.
  - 1.0 Summary of groundwater collection methods.
  - 2.0 Summary of groundwater analytical results and interpretation.
  - 3.0 Table of analytical methods used.
  - 4.0 Table of analytical results.
  - 5.0 Table of field and trip blank results.

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6.0 Groundwater laboratory data including chain-of-custody forms.

7.0 Laboratory quality assurance review.

B. The annual GCS monitoring report shall include the facility name and address, operator, and consultant, if any, who prepared the report, contact person and the date the report was submitted. ]

## 9 VAC 25-91-210. Response.

Should any observations or data indicate the presence of petroleum hydrocarbons in groundwater, the results shall be immediately reported to the board and to the local director or coordinator of emergency services appointed pursuant to § 44-146.19 of the Code of Virginia.

### PART VI.

[ REFERENCED ] PUBLICATIONS [ INCORPORATED BY REFERENCE ] .

## 9 VAC 25-91-220. Referenced publications.

A. The following documents or portions thereof are [ ~~incorporated by reference for~~ ] referenced in [ ~~regulation chapter~~ ] :

1. Underwriters Laboratories Standards: Specification 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids," Seventh Edition;

2. American Petroleum Institute (API) Standards:

a. API 12B: Specification 12B and Supplement 2, October 1, 1990, "Specification for Bolted Tanks for Storage of Production Liquids," Thirteenth Edition;

b. API 12D: Specification 12D and Supplement 2, 1982 as supplemented 1985, "Specification for Field Welded or Storage of Production Liquids," Ninth Edition;

c. API 12F: Specification 12F, and Supplement 1, 1982 as supplemented 1988, "Specification for Shop Welded Tanks for Storage of Production Liquids," Tenth Edition;

[ d. API 570: Piping Inspection Code, Inspection, Repair, Alteration, and Rerating of In-Service Piping Systems, First Edition, June 1993. ]

[ ~~d. e.~~ ] API 620: Standard 620, 1990, "Design and Construction of Large, Welded, Low-Pressure Storage Tanks," Eighth Edition;

[ ~~e. f.~~ ] API 650: Standard 650, 1988, "Welded Steel Tanks for Oil Storage," Eighth Edition;

[ ~~f. g.~~ ] API 652: Recommended Practice 652, April 1991, "Lining of Aboveground Petroleum Storage Tank Bottoms," First Edition;

[ ~~h.~~ ] API 653: API Standard 653, January 1991, "Tank Inspection, Repair, Alteration, and Reconstruction," First Edition, incorporates supplement 1, January 1992;

[ ~~g. i.~~ ] API 2350: Recommended Practice 2350, March 1987, "Overfill Protection for Petroleum Storage Tanks";

3. National Fire Protection Association (NFPA Standards):

a. NFPA 30, "Flammable and Combustible Liquids Code," [ ~~1993~~ 1996 ] edition;

b. NFPA 30A, "Automotive and Marine Service Station Code," 1990 edition;

4. National Association of Corrosion Engineers Standards (NACE): Recommended Practice 0285-1995 (1995), "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems";

5. 40 CFR Part 112 [ (1997) ], "Oil Pollution Prevention" [ ~~1990~~ edition ] ;

6. 29 CFR Part 1910.106 [ (1997) ], "Flammable and Combustible Liquids" [ ~~1985~~ edition ] ;

7. Uniform Statewide Building Code (USBC), [ ~~1993~~ 1996 ] edition;

8. Virginia Statewide Fire Prevention Code (SWFPC), [ ~~1993~~ 1996 ] edition;

9. Building Officials & Code Administrators International, Inc. (BOCA):

a. BOCA - National Building Code, [ ~~1993~~ 1996 ] edition;

(1) Chapter 32 - Flammable and Combustible Liquids;

(2) Chapter 23 - Hazardous Materials;

10. Steel Tank Institute (STI), Standards and Recommended Practices; and

a. STI Standard for Diked Aboveground Storage Tanks F911-93;

b. STI Standard for Aboveground Tanks with Integral Secondary Containment F921-93;

c. STI Fireguard™ Thermally Insulated Aboveground Storage Tank Standard F941-94.

B. The issue of the industry specification, standard, or code, including addenda or changes, described in this chapter as referenced publications, shall be used unless circumstances warrant the use of an earlier date and are specifically authorized by the board.

### FORMS

Registration for Aboveground Storage Tank(s), DEQ Form 7540-AST (6/98).

Application for Approval of a Facility Contingency Plan, Form A (6/98).

DEQ Form 7540-AST: REGISTRATION FOR ABOVEGROUND STORAGE TANK(S)



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II. OPERATOR OF TANK(S):

Operator Name (First,Middle,Last), Street Address, City, Country, ZIP Code (+ 4), State, Phone Number (include area code)

III. CONTACT PERSON IN CHARGE OF TANK(S):

Contact Name (First,Middle,Last), Street Address, City, Country, ZIP Code (+ 4), State, Phone Number (include area code)

IV. LOCATION OF TANK(S):

Facility Name or company site identifier, Street Address, City, Country, Latitude (Example: 0423612N), Longitude (Example: 0852417W), ZIP Code (+ 4), State, Phone Number (include area code)

DEQ Form 7540-AST: REGISTRATION FOR ABOVEGROUND STORAGE TANK(S)



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DEQ Form 7540-AST: REGISTRATION FOR ABOVEGROUND STORAGE TANK(S)

STATE USE: Date Received, FAC-ID

GENERAL INFORMATION

INITIAL REGISTRATION: An owner of an aboveground storage tank (AST) facility or an owner of an individual AST shall register all AST located within the Commonwealth with the Department of Environmental Quality and the local director or coordinator of emergency services within 90 days of the effective date of this regulation... WHAT IS AN AST? Aboveground storage tanks or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil or petroleum products...

WHAT ARE EXEMPT FROM THE REGISTRATION REQUIREMENT?

- 1. an operator of a. an AST containing petroleum, including crude oil or any fraction thereof, that is subject to and specifically listed or designated as a hazardous substance under subchapter (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. § 2601; b. any wastewater treatment unit system that is part of a wastewater treatment facility regulated under § 402 or § 407(b) of the Clean Water Act; c. an AST regulated by the Department of Motor, Mileage, and Ferry under Chapter 53, U.S.C. 301, of the Code of Virginia; d. an AST used for the storage of crude oil or refined petroleum products; e. any AST that is not a double-walled AST and is not a floating-roof AST; f. an AST with a storage capacity of 660 gallons or less that is used for consumption on the premises where stored; g. an AST used to store propane gas; h. an AST of 660 gallons or less located at a farm or residence that is used for storing motor fuel for noncommercial purposes or for storing substances that are used to facilitate the production of crops, livestock, and livestock products on a farm; i. an AST that is a non-temperature/hydrocarbon based metal and vegetable oil storage tank (AST) that is not a double-walled AST; j. a storm-water or wastewater collection system; or, k. equipment or machinery that contains oil for operational purposes.

INSTRUCTIONS

Owners, please PRINT (BLACK INK) all items except signature in sections XIII and XIV. This form must be completed for each facility containing aboveground storage tanks. Photocopy pages 5 through 9 for each tank. Complete task information pages for each aboveground storage tank greater than or equal to 110 gallons (unless exempt) if located in a facility with an aggregate capacity greater than 1,320 gallons or if an individual aboveground storage tank is greater than 660 gallons.

I. OWNERSHIP OF TANK(S):

Owner Name (First,Middle,Last), Street Address, City, Country, ZIP Code (+ 4), State, Phone Number (include area code)



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DEQ Form 7540-AST: REGISTRATION FOR ABOVEGROUND STORAGE TANK(S)

Page: 3

V. REGISTRATION / NOTIFICATION TYPE: (Fill in all circles that apply)

- A.  Initial Registration (New or existing AST/facility)
- B.  Renewal Registration (Due to title transfer / 5 year reporting requirement)
- C.  Amended Notification (Converted, upgraded, repaired, or replaced AST)
- D.  Closure Notification (Temporary or permanent closure)
- E. Number of Aboveground Storage Tanks (ASTs at this facility): (example:0001)

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- F. Number of Tank Information Sheets attached (ASTs only): (example:0001)

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- G. Number of Underground Storage Tanks (USTs) at the facility: (example:0001)

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VI. OWNER TYPE: (Fill in one circle only)

- A.  Local Government
- B.  State Government
- C.  Federal Government
- D.  Commercial
- E.  Private

VII. INDIAN LANDS: (Fill in all circles that apply)

- A.  Tanks located on an Indian Reservation or on trust lands.
- B.  Tanks owned by Native American nation, tribe or individual.
- C. Specify Native American tribe or nation (specify on page 9).

VIII. FACILITY TYPE: (Fill in all circles that apply)

- A.  Gas Station/Convenience
- B.  Petroleum Distributor
- C.  Air Taxi (Airline)
- D.  Aircraft Owner
- E.  Auto Dealership
- F.  Local Government
- G.  State Government
- H.  Railroad
- I.  Federal: Non-Military
- J.  Federal: Military
- K.  Commercial
- L.  Industrial
- M.  Contractor
- N.  Trucking/Transport
- O.  Utilities
- P.  Residential
- Q.  Farm
- R.  Bulk Storage
- S.  Other (Specify on page 9)

IX. TOTAL STORAGE CAPACITY OF FACILITY: (Fill in all circles that apply)

- A.  Individual AST with capacity greater than 660 gallons.
- B.  Facility with total capacity greater than 1,320 gallons.
- C.  Facility with total capacity greater than 25,000 gallons.
- D.  Facility with total capacity greater than or equal to 1,000,000 gallons.

E. Total storage capacity of facility in gallons: (Example: 0123456789; no commas)

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F. If facility is 25,000 gallons or greater, include Oil Discharge Contingency Plan facility identification number:

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X. FACILITY SAFE FILL AND SHUTDOWN PROCEDURES: (Fill in all circles that apply)

- A. Method of monitoring transfer operations:
  - 1.  Manual
  - 2.  Automatic



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DEQ Form 7540-AST: REGISTRATION FOR ABOVEGROUND STORAGE TANK(S)

Page: 4

B. Type of spill containment system at oil transfer areas where vehicle filling connections are made:

- 1.  Curbing
- 2.  Drip Pans
- 3.  Sorbent Materials
- 4.  None
- 5.  Other

C. Automatic shutdown system located at the tank vehicle loading rack?

- 1.  Yes
- 2.  No

D. Collision barriers used to protect pipe where vehicles are loading?

- 1.  Yes
- 2.  No

XI. FINANCIAL RESPONSIBILITY (Fill in all circles that apply)

A. I have met the financial responsibility requirements in accordance with Sec. 62.1-44.34:16 of the Code of Virginia utilizing the following method(s): (NOTE: This section is not applicable until VR 680-14-14 becomes effective.)

- 1.  Self-Insurance
- 2.  Guarantee
- 3.  Trust Fund
- 4.  Commercial Insurance
- 5.  Surety Bond
- 6.  Letter of Credit
- 7.  Risk Retention Group (Group Self-Insurance Pool)
- 8.  Va. Petroleum Storage Tank Fund (VPSTF)
- 9.  Not Applicable

B. Amount of financial responsibility requirements: (example: 002000000; no commas)

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C. Applicable registration fees must be submitted with any registration. Fees are explained below.

\*NOTE: No fee is required for a "notification" for AST conversion, upgrade, repair, replacement, or closure.

- 1.  One facility with one AST = \$25
- 2.  One facility with two or more ASTs = \$50
- 3.  Two facilities with one AST each = \$50
- 4.  Two facilities with one AST at the first facility and two or more at the other = \$75
- 5.  Two or more facilities with two or more ASTs each = \$100
- 6.  Three facilities with one AST each = \$75
- 7.  Three facilities with two or more ASTs at the first facility and one AST at each other facility = \$100

D. Application fee for "registration" is attached?

- 1.  Yes
- 2.  No

Make check or money order payable to: Commonwealth of Virginia, Department of Environmental Quality.

(If registration fee not enclosed, explain on page 9.) Mailing Address: P.O. Box 11143, Richmond VA 23210-1143



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STATE USE ONLY

FAC.ID

Facility ID input field

DEQ Form 7540-AST: REGISTRATION FOR ABOVEGROUND STORAGE TANK(S)

Page: 5

TANK INFORMATION

(Complete all tank sheets for each tank at this location)

XII. DESCRIPTION OF ABOVEGROUND TANKS: (Fill in all that apply)

A. OWNER'S TANK IDENTIFICATION NUMBER:

Owner's tank ID number input field

B. TANK STATUS:

- 1. New Installation, 2. Currently in Use, 3. Upgrade, 4. Repaired, 5. Converted, 6. Replacement, 7. Change in Service, 8. Temporarily Out of Use, 9. Permanently Out of Use

C. INSTALLATION DATE (MMDDYY):

Installation date input field

D. TOTAL STORAGE CAPACITY OF TANK (in gallons)

Total storage capacity input field

E. TANK MATERIAL OF CONSTRUCTION:

- 1. Painted/Bare Single-walled Steel, 2. Cathodically Protected Steel, 3. Composite/Steel w/Fiberglass, 4. Fiberglass Reinforced Plastic, 5. Insulated/Tank Jacket, 6. Lined Interior, 7. Double-Walled, 8. Double Bottomed, 9. Concrete, 10. Excavation Liner, 11. Epoxy Coated Steel (Internal), 12. Epoxy Coated Steel (External), 13. Unknown, 14. Other (Specify on Page 9)

F. FOUNDATION CONSTRUCTION MATERIAL:

- 1. Earthen Material, 2. Concrete with Impermeable Material, 3. Steel, 4. Concrete without Impermeable Material, 5. Unknown, 6. Other

G. ROOF CONSTRUCTION TYPE:

- 1. Floating Roof, 2. Bolted Steel Cone Roof, 3. Breather Roof, 4. Double Deck Roof, 5. Pontoon Roof, 6. Balloon Roof, 7. Lifter Roof, 8. Pan Roof, 9. Other (Specify on Page 9)

H. PIPING TYPE:

- 1. Below Ground Pipes, 2. Above Ground Pipes, 3. Both

I. PIPING CONSTRUCTION MATERIAL:

- 1. Bare Steel, 2. Galvanized Steel, 3. Copper, 4. Fiberglass Reinforced Plastic, 5. Double-walled, 6. Secondary Containment, 7. Unknown, 8. Other (Specify on Page 9)

J. TANK CATHODIC PROTECTION:

- 1. None, 2. Sacrificial Anode(s), 3. Impressed Current



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DEQ Form 7540-AST: REGISTRATION FOR ABOVEGROUND STORAGE TANK(S)

Page: 6

TANK INFORMATION

(Complete all tank sheets for each tank at this location)

K. TANK CONTAINMENT AND/OR DIVERSIONARY STRUCTURES OR EQUIPMENT: (Fill in all circles that apply)

- 1. Curbing, 2. Weirs and/or Booms, 3. Sorbent Materials, 4. Culverts and/or Gutters, 5. Spill Diversion Pools, 6. Retention Ponds, 7. Dikes/Berms/Retaining Walls, 8. Unknown, 9. Other (Specify on Page 9)

L. RELEASE PREVENTION BARRIERS:

- 1. Double Bottom, 2. Double-walled, 3. Lined Interior, 4. Polyethylene Jacket, 5. Excavation Liner, 6. None, 7. Unknown, 8. Other (Specify on Page 9)

M. RELEASE DETECTION METHOD:

- 1. Groundwater Monitoring, 2. Visual Monitoring, 3. Vapor Monitoring, 4. Interstitial Monitoring, 5. None, 6. Other (Specify on Page 9)

N. TANK SAFE FILL AND SHUTDOWN PROCEDURES:

- 1. Does tank have a gauge measuring liquid level of tank? a. Yes, b. No

2. Date gauge was last calibrated: (MMDDYY)

Date gauge calibrated input field

3. High level alarmed installed?

- a. Yes, b. No

4. Type of high level alarm:

- a. Visual, b. Audible, c. Both

O. AST AND FACILITY INSPECTIONS:

(N/A = Not applicable; N/C = Not conducted; Unk = Unknown; Date = Date inspected)

Table with columns: Information Requested, N/A, N/C, Unk, Date (MMDDYY). Rows include cathodic protection evaluation, external tank inspections, and internal tank inspections.



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**TANK INFORMATION**

(Complete all tank sheets for each tank at this location)

|   | N/A                   | N/C                   | Unk                   | Date (MMDDYY)        |
|---|-----------------------|-----------------------|-----------------------|----------------------|
| 6. Last hydrostatic testing for piping.   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="text"/> |
| 7. Last corrosion protection for aboveground piping.  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="text"/> |
| 8. Last cathodic protection for underground piping.   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="text"/> |
| 9. Last berm or dike evaluation or certification by a professional engineer.  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="text"/> |
| 10. Has AST had any major repairs or alterations? If yes, specify on page 9.<br>a. <input type="radio"/> Yes                      b. <input type="radio"/> No |                       |                       |                       |                      |

**P. SUBSTANCE CURRENTLY OR LAST STORED IN TANK:**

- |                                      |  |   |
|--------------------------------------|--|---|
| 1. <input type="radio"/> Gasoline    | 5. <input type="radio"/> Fuel Oil        | 9. <input type="radio"/> Bunker "C"                 |
| 2. <input type="radio"/> Diesel Fuel | 6. <input type="radio"/> Kerosene        | 10. <input type="radio"/> Jet Fuel                  |
| 3. <input type="radio"/> Gasohol     | 7. <input type="radio"/> Used Oil        | 11. <input type="radio"/> Aviation Gasoline         |
| 4. <input type="radio"/> Heating Oil | 8. <input type="radio"/> Lubricating Oil | 12. <input type="radio"/> Other (Specify on Page 9) |

**Q. TEMPORARY OR PERMANENT TANK CLOSURES:**

1. Type:
  - a.  Temporary closure
  - b.  Permanent closure
2. Date tank was last used (MMDDYY)
  - a.  Unknown
  - b.
3. Date tank was last closed (MMDDYY)
  - a.  Unknown
  - b.
4. Has a site assessment been completed?
  - a.  Yes
  - b.  No
5. Has a permit and required inspection been obtained?
  - a.  Yes
  - b.  No
6. If temporary closure, has an extension of the 12 month temporary period been requested?
  - a.  Yes
  - b.  No
  - c.  N/A - Applicable



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**TANK INFORMATION**

(Complete all tank sheets for each tank at this location)

|  | Yes                       | No                        |
|--|---------------------------|---------------------------|
| 7. Was tank dismantled?  | <input type="radio"/> 7a  | <input type="radio"/> 7b  |
| 8. Was piping dismantled?                                      | <input type="radio"/> 8a  | <input type="radio"/> 8b  |
| 9. Was tank closed in place?                                   | <input type="radio"/> 9a  | <input type="radio"/> 9b  |
| 10. Was piping closed in place?                                | <input type="radio"/> 10a | <input type="radio"/> 10b |
| 11. Was closure approved by local building official inspector? | <input type="radio"/> 11a | <input type="radio"/> 11b |
| 12. Was evidence of leak detected?                             | <input type="radio"/> 12a | <input type="radio"/> 12b |
| 13. Was closure assessment completed?                          | <input type="radio"/> 13a | <input type="radio"/> 13b |

**Section "Q" is not complete without the following information attached:**

1.  Copies of laboratory results of sample(s) and test(s) for oil / petroleum hydrocarbons.
2.  Description of area sampled.
3.  Photographs indicating sampled area.
4.  Site map indicating location of closed AST and associated piping.
5.  Copy of local code permit.

**XIII. COMPLIANCE CERTIFICATION: (Complete for all new and upgraded tanks at this location)**

- A. OWNER'S TANK IDENTIFICATION NUMBER: (example: 000001; no commas)
- B. Installer certified by tank and piping manufacturers?
  1.  Yes
  2.  No
- C. Installation inspected by registered engineer?
  1.  Yes
  2.  No
- D. Installation completed to which standard?
  1.  API 650
  2.  UL 142
  3.  API 620
  4.  Other (Specify on Page 9)
- E. Manufacturer's installation checklist(s) have been completed?
  1.  Yes
  2.  No
- F. "Certificate of Use" issued by local permitting official?
  1.  Yes
  2.  No



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STATE USE ONLY FAC.ID  -

DEQ Form 7540-AST: REGISTRATION FOR ABOVEGROUND STORAGE TANK(S)

Page: 9

TANK INFORMATION

XIII. (continued)

(Complete all tank sheets for each tank at this location)

G. OATH: I certify the information concerning installation that is provided in section XIII is true to the best of my belief and knowledge.

Installer Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Installer Position: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

XIV. OWNER CERTIFICATION (Read and sign after completing all sections of this registration/notification.)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

(To be signed by either the owner or the owner's authorized representative).

Name and official title of owner: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name and official title of owner's authorized representative: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

USE THIS SPACE TO SPECIFY "OTHER" INFORMATION OF FORM: (Use additional sheets as needed)

- VII. C. \_\_\_\_\_
- VIII. S. \_\_\_\_\_
- X. B. \_\_\_\_\_
- XI. D. \_\_\_\_\_
- XII. E. \_\_\_\_\_
- XII. F. \_\_\_\_\_
- XII. G. \_\_\_\_\_
- XII. I. \_\_\_\_\_
- XII. K. \_\_\_\_\_
- XII. L. \_\_\_\_\_
- XII. M. \_\_\_\_\_
- XII. O. \_\_\_\_\_
- XII. P. \_\_\_\_\_
- XIII. D. \_\_\_\_\_

ADDITIONAL COMMENTS: \_\_\_\_\_

9 VAC 25-91-10 et seq. 6/98

APPENDIX I - Form A

APPLICATION FOR APPROVAL OF A FACILITY CONTINGENCY PLAN

Department of Environmental Quality  
Office of Spill Response and Remediation  
P.O. Box 10009  
Richmond, VA 23240-0009

State use only  
ID Number \_\_\_\_\_  
Date Received \_\_\_\_\_

Please type or print in ink all items except signature in certification section. This form must be completed for all aboveground oil storage facilities subject to the provisions of 9 VAC 25-91-20, B.

This facility has the maximum aboveground storage or handling capacity of \_\_\_\_\_ gallons.

This facility is located in \_\_\_\_\_ County (or) \_\_\_\_\_ City.

Name and mailing address of operator

Name and location address of facility

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone number of operator

Telephone number of facility

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Fax number of operator

Fax number of facility

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Certification

I certify that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals responsible for obtaining this information, I believe that the submitted information is true, accurate and complete. (To be signed by operator.)

Name of Operator

Signature

Date Signed

\_\_\_\_\_  
\_\_\_\_\_



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1. When the operator is an **individual** acting in his own right:

State of \_\_\_\_\_  
County/City of \_\_\_\_\_  
The foregoing document was signed and acknowledged before me on this day of \_\_\_\_\_, 199 , by \_\_\_\_\_  
(Name)

Notary Public  
My Commission Expires: \_\_\_\_\_

2. When the operator is an individual acting on behalf of a **corporation**:

State of \_\_\_\_\_  
County/City of \_\_\_\_\_  
The foregoing document was signed and acknowledged before me on this day of \_\_\_\_\_, 199 , by \_\_\_\_\_ who is  
(Name) (Title)  
of \_\_\_\_\_, a \_\_\_\_\_  
(Name of Corporation) (State of Incorporation)  
corporation, on behalf of the corporation.

Notary Public  
My Commission Expires: \_\_\_\_\_

3. When the operator is an individual acting on behalf of a **municipality, state, federal or other public agency**:

State of \_\_\_\_\_  
County/City of \_\_\_\_\_  
The foregoing document was signed and acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 199 , by \_\_\_\_\_, on  
behalf of said \_\_\_\_\_  
(Name and Title) (Municipality, State, Federal or other agency)

Notary Public  
My Commission Expires: \_\_\_\_\_

4. When the operator is an individual acting on behalf of a **partnership**:

State of \_\_\_\_\_  
County/City of \_\_\_\_\_  
The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 199 , by \_\_\_\_\_  
a general partner on behalf of \_\_\_\_\_  
(Name)  
\_\_\_\_\_, a partnership.  
(Name of Partnership)

Notary Public  
My Commission Expires: \_\_\_\_\_

\*\*\*\*\*

**Title of Regulation: 9 VAC 25-100-10 et seq. Tank Vessel Financial Responsibility Requirements and Administrative Fees for Approval (REPEALED).**

VA.R. Doc. No. R98-743; Filed May 4, 1998, 11:45 a.m.

**Title of Regulation: 9 VAC 25-101-10 et seq. Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Regulation.**

**Statutory Authority:** §§ 62.1-44.15, 62.1-44.34:16 and 62.1-44.34:21 of the Code of Virginia.

**Effective Date:** June 24, 1998.

**Summary:**

The final regulation, 9 VAC 25-101-10 et seq., consolidates existing requirements for tank vessel operators (Oil Discharge Contingency Plans and Administrative Fees for Approval, 9 VAC 25-90-10 et seq. (formerly VR 680-14-07) and Tank Vessel Financial Responsibility Requirements and Administrative Fees for Approval, 9 VAC 25-100-10 et seq. (formerly VR 680-14-08)), exempts application fees, and specifies provisions to accept federal approval of contingency plans and financial responsibility documentation as meeting state requirements. Concurrently with the adoption of the new regulation, the board has repealed the previously existing regulations.

The following are changes made to the final regulation from the published proposed regulation:

The proposed regulation required application forms submitted for tank vessel oil discharge contingency plan (ODCP) approval (9 VAC 25-90-50 C) and acceptance of evidence of tank vessel financial responsibility (TVFR) (9 VAC 25-100-50 H) be acknowledged before a Notary Public. The final regulation, because of public comment, deletes this requirement.

Under the proposed regulation, federal entities were exempt only from TVFR requirements but were subject to ODCP requirements. The final regulation, based on public comment, exempts public vessels (those owned by federal, state and local entities) from all provisions of the chapter. In the final regulation "public vessel" is defined in 9 VAC 25-101-10 and the definition of "tank vessel," also of 9 VAC 25-101-10, is amended to exclude public vessels from all provisions of the chapter.

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

**Agency Contact:** Copies of the regulation may be obtained from Janet C. Queisser, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4268.

## CHAPTER 101.

### TANK VESSEL OIL DISCHARGE CONTINGENCY PLAN AND FINANCIAL RESPONSIBILITY REGULATION.

#### 9 VAC 25-101-10. Definitions.

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

"Board" means the State Water Control Board.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Department" means the Department of Environmental Quality.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Net worth" means the amount of all assets of a tank vessel operator located in the United States, less all liabilities.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. For the purpose of this chapter only, this definition does not include nonpetroleum hydrocarbon-based animal and vegetable oils or petroleum, including crude oil or any fraction thereof which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC § 9601) and which is subject to the provisions of that Act.

"Operator" means any person who owns, operates, charters by demise, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.

"Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

[ "Public vessel" means a vessel owned or bareboat-chartered and operated by the United States, by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce. ]

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

"Tank vessel" means any vessel used in the transportation of oil in bulk as cargo. For the purpose of this chapter, this definition includes tankers, tank ships, tank barges and combination carriers when carrying oil. It does not include

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vessels carrying oil in drums, barrels, portable tanks or other packages or vessels carrying oil as fuel or stores for that vessel. [ For the purpose of this chapter only, this definition does not include public vessels. ]

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

"Working capital" means the amount of current assets of a tank vessel operator located in the United States, less all current liabilities.

## **9 VAC 25-101-20. Applicability.**

This chapter applies to all tank vessels transporting or transferring oil upon state waters having a maximum storage, handling or transporting capacity of equal to or greater than 15,000 gallons of oil.

## **9 VAC 25-101-30. Purpose.**

The purpose of this chapter is to provide guidance for the development of tank vessel contingency plans and to establish requirements for financial responsibility on the part of operators of tank vessels transporting or transferring oil as cargo upon state waters. Contingency plans must address concerns for the effect of oil discharges on the environment as well as considerations of public health and safety. The oil discharge contingency plans will ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas; to respond to the threat of an oil discharge; and to contain, clean up and mitigate an oil discharge within the shortest feasible time. This chapter provides acceptable means of demonstrating the required level of financial responsibility therefore providing the Commonwealth with the necessary assurance that an operator of a tank vessel has the necessary financial stability to conduct a proper response to a discharge of oil.

## **9 VAC 25-101-40. Oil discharge contingency plan review and approval.**

A. Tank vessel oil discharge contingency plans shall provide for the use of the best available technology (economically feasible, proven effective and reliable and compatible with the safe operation of the vessel) at the time the plan is submitted for approval, be written in English, and, in order to be approvable, shall contain, at a minimum, the following requirements:

1. The vessel name, country of registry, identification number, date of build and certificated route of the vessel.
2. The names of the vessel operators including address and phone number.
3. If applicable, name of local agent, address and phone number.

4. A copy of the material safety data sheet (MSDS) or its equivalent for each oil, or groups of oil with similar characteristics, transported or transferred by the tank vessel. To be equivalent, the submission must contain the following:

- a. Generic or chemical name of the oil;
- b. Hazards involved in handling the oil; and
- c. A list of firefighting procedures and extinguishing agents effective with fires involving each oil or groups of oil demonstrating similar hazardous properties which require the same firefighting procedures.

5. A complete listing, including 24-hour phone numbers, of all federal, state and local agencies required to be notified in event of a discharge.

6. The position title of the individuals responsible for making the required notifications and a copy of the notification check-off list. This individual must be fluent in English.

7. The position title, address and phone number of the individuals authorized to act on behalf of the operator to implement containment and cleanup actions. This individual must be fluent in English and shall be available on a 24-hour basis to ensure the appropriate containment and cleanup actions are initiated.

8. The position title of the individuals designated by the operator to ensure compliance during containment and cleanup of a discharge, with applicable federal, state and local requirements for disposal of both solid and liquid wastes.

9. A copy of the valid evidence of financial responsibility approved by the board pursuant to 9 VAC 25-101-50.

10. A complete description of the vessel including vessel drawings providing a complete view of the location of all cargo tanks as well as the location of fuels and other oils carried in bulk by the vessel.

11. A complete description of each oil transfer system on the vessel, including:

- a. A line diagram of the vessel's oil transfer piping, including the location of each valve, pump, control device, vent, safety device and overflow;
- b. The location of the shutoff valve or other isolation device that separates any bilge or ballast system from the oil transfer system; and,
- c. The maximum pressure for each oil transfer system.

12. Identification and ensurance by contract, or other means acceptable to the board, of the availability of private personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge. This contract or agreement shall

ensure a certain response within the shortest feasible time. The department will accept a letter of understanding between the operator and response contractors which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the equipment and specification of the other information required by subdivision 14 of this subsection shall be included unless these capabilities are already on file with the department.

13. Assessment of the worst case discharge, including measures to limit the outflow of oil, response strategy and operational plan. For the purpose of this chapter, the worst case discharge for a tank vessel is a discharge in adverse weather conditions of its entire cargo.

14. Inventory of onboard containment equipment, including specification of quantity, type, location, time limits for gaining access to the equipment, and, if applicable, identification of tank vessel personnel trained in its use.

15. If applicable, a copy of the United States Coast Guard approved oil transfer procedures and International Oil Pollution Prevention Certificate (IOPP).

16. A description of training, equipment testing, and periodic unannounced oil discharge drills conducted by the operator to mitigate or prevent the discharge, or the substantial threat of a discharge.

17. The tank vessel's cargo inventory control procedures. Tank vessel operators shall ensure that this control procedure is capable of providing for the detection of a discharge of oil within the shortest feasible time in accordance with recognized engineering practices and industry measurement standards.

18. A post discharge review procedure to assess the discharge response in its entirety.

B. [ 1. ] All nonexempt tank vessel operators shall file with the department the [ ~~appropriate application~~ Application for Approval of a Tank Vessel Contingency Plan ] form available from the department for approval of the contingency plan. This form [ identifies the tank vessel operator by name and address and provides information on the tank vessel or vessels and ] shall be submitted with the required contingency plan and shall be completed as far as it pertains to the tank vessel. The operator must sign and date the certification statement on the application form [ which certifies to the board that the information is true and accurate ]. If the operator is a corporation, the [ application ] form must be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the [ application ] form must be signed by an authorized executive officer or ranking elected

official; if the operator is a partnership or sole proprietorship, the [ application ] form must be signed by a general partner or the sole proprietor. [~~All forms must be acknowledged before a Notary Public.~~ ]

[ 2. A tank vessel operator who seeks approval of the contingency plan in accordance with subsection J of this section must complete and sign the Application for Approval of a Tank Vessel Contingency Plan form available from the department upon the effective date of this chapter or upon expiration of any contingency plan approval previously issued by the department.

3. Tank vessel operators may delegate signatory authority to an agent for notification of significant changes to the contingency plan and any notifications in accordance with subsection J of this section by completing and signing the Tank Vessel Agent Designation form available from the department. This form identifies the tank vessel operator, the designated agent by name and address, and the respective tank vessel or vessels covered by this designation. ]

C. Contingency plans must be filed with and approved by the board. A signed original shall be submitted to the department at the address specified in subsection F of this section. A copy of the original with the tank vessel specific information and the approval letter shall be retained on the tank vessel and shall be readily available for inspection. An operator of a tank vessel whose normal operating route does not include entry into state waters shall certify to the board, within 24 hours of entering state waters, that the operator has ensured by contract or other means acceptable to the board, the availability of personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent the discharge or the substantial threat of a discharge. The operator shall submit a contingency plan to the board for approval in accordance with this chapter prior to the next entry of the tank vessel into state waters.

D. An operator of multiple tank vessels may submit a single fleet contingency plan. The plan shall contain vessel specific information required by this section for each vessel. The vessel specific information shall be included in appendices to the plan. This plan shall be separate from any required facility contingency plan.

E. Oil discharge contingency plans shall be reviewed, updated if necessary, and resubmitted to the board for approval every 60 months unless significant changes occur sooner. Operators must notify the department of significant changes and make appropriate amendments to the contingency plan within 30 days of the occurrence. For the purpose of this chapter, a significant change includes the following:

1. A change of operator of the tank vessel [ or individual authorized to act on behalf of the operator ];

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2. A substantial increase in the maximum storage or handling capacity of the tank vessel;

3. A [ material ] decrease in the availability of private personnel or equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge;

4. A change in the type of product transported or transferred in or by any tank vessel covered by the plan for which a MSDS or its equivalent has not been submitted; or

5. The addition of a tank vessel to a single fleet contingency plan provided this requirement can be met by submittal of a new or amended appendix to the plan.

F. Updated plans shall be submitted to the board for review and approval not less than 90 days prior to expiration of the current plan. All applications and written communications concerning changes, submissions and updates of plans required by this chapter [ including copies of any subsequently reissued or renewed Vessel Response Plan (VRP) approval letters submitted in accordance with subsection J of this section ], with the exception of [ applications and submissions accompanied by ] fees addressed in subsection K of this section, shall be addressed as follows:

**Mailing Address:**

Virginia Department of Environmental Quality  
Office of Spill Response and Remediation  
P.O. Box 10009  
Richmond, VA 23240

**Location Address:**

Virginia Department of Environmental Quality  
Office of Spill Response and Remediation  
629 East Main Street  
Richmond, VA 23219

[ All applications and submissions accompanied by fees as addressed in subsection K of this section shall be sent to the address listed in subdivision K 2. ]

G. An oil discharge exercise may be required by the board to demonstrate the tank vessel's ability to implement the contingency plan. The department will consult with the operator of the vessel prior to initiating an exercise. Where appropriate, the department will ensure coordination with federal agencies prior to initiation of an exercise.

H. The board may, after notice and opportunity for a conference pursuant to § 9-6.14:11 of the Code of Virginia, deny or modify its approval of an oil discharge contingency plan if it determines that:

1. The plan as submitted fails to provide sufficient information for the department to process, review and evaluate the plan or fails to ensure the applicant can take such steps as are necessary to protect

environmentally sensitive areas, to respond to the threat of a discharge, and to contain and cleanup an oil discharge within the shortest feasible time;

2. A significant change has occurred in the operation of the tank vessel covered by the plan;

3. The tank vessel's discharge experience or its inability to implement its plan in an oil spill discharge exercise demonstrates a necessity for modification; or

4. There has been a significant change in the best available technology since the plan was approved.

I. The board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;

2. The plan cannot be implemented as approved;

3. A term or condition of approval or of this chapter has been violated; or

4. The tank vessel is no longer in operation.

J. Where an operator of a tank vessel has applied for and received from the United States Coast Guard an approval of a Vessel Response Plan (VRP), pursuant to § 4202 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 33 USCS § 2716 (1996), and its implementing regulations found in 33 CFR Part 155, such VRP shall be sufficient to meet the requirements of § 62.1-44.34:15 of the Code of Virginia and this section while the VRP approval is valid. The operator shall submit to the department [ a letter an application ] listing the vessel or vessels for which the approval is sought and a copy of the currently valid VRP approval letter for each tank vessel. [ The tank vessel operator submitting the application for contingency plan approval in accordance with this subsection shall be the same entity which has applied for and received approval of the VRP from the United States Coast Guard. ] Each time VRP approval is renewed or reissued, for any reason, for a tank vessel subject to this chapter, the operator shall submit a copy of such renewed or reissued VRP approval letter to the department.

K. An application for approval of an oil discharge contingency plan will be accepted only when the fee established by this section has been paid.

1. Fees shall be paid by operators of tank vessels subject to this chapter upon initial submittal of an oil discharge contingency plan. Renewals, additions, deletions or changes to the plan are not subject to the administrative fee. Operators of tank vessels subject to this chapter but meeting the provisions of subsection J of this section shall not be subject to administrative fees for the approval of an oil discharge contingency plan.

2. Fees shall be paid in United States currency by check, draft or postal money order made payable to the Treasurer, Commonwealth of Virginia [ and . All

applications and submissions accompanying fees ] shall be sent to:

**Mailing Address:**

Virginia Department of Environmental Quality  
Office of Financial Management  
P.O. Box 10150  
Richmond, VA 23240

**Location Address:**

Virginia Department of Environmental Quality  
Office of Financial Management  
629 East Main Street  
Richmond, VA 23219

3. Application fees for approval of tank vessel contingency plans are as follows:

- a. For a tank vessel with a maximum storage, handling or transporting capacity of 15,000 gallons and up to and including 250,000 gallons of oil the fee is \$718;
- b. For a tank vessel with a maximum storage, handling or transporting capacity between 250,000 gallons and up to and including 1,000,000 gallons of oil the fee is \$2,155; and
- c. For a tank vessel with a maximum storage, handling or transporting capacity greater than one million gallons of oil the fee is \$3,353.

4. The fee for approval of contingency plans encompassing more than one tank vessel, as authorized by subsection E of this section, shall be based on the aggregate capacity of the tank vessels.

5. Application fees are refundable upon receipt of a written request no later than 30 days after submittal and prior to approval.

6. Overpayments of application fees are refundable upon written request. Overpayments not refunded will be credited for the applicant's future use under this section.

**9 VAC 25-101-50. Financial responsibility requirements.**

A. The operator of any tank vessel entering upon state waters shall deposit with the board cash or its equivalent in the amount of \$500 per gross ton of such vessel. If the operator owns or operates more than one tank vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the vessel having the greatest maximum liability.

1. All documents submitted shall be in English and all monetary terms shall be in United States currency.
2. A copy of the board's acceptance of the required evidence of financial responsibility shall be kept on the tank vessel and readily available for inspection.

B. If the board determines that oil has been discharged in violation of applicable state law or there is a substantial threat

of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under such law.

~~[ C. Federal government entities whose debts and liabilities are debts and liabilities of the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further demonstrate an ability to provide financial responsibility under this chapter. ]~~

[ D. C. ] Operators of tank vessels may obtain exemption from the cash deposit requirement if evidence of financial responsibility is provided in an amount equal to the cash deposit required for such tank vessel pursuant to § 62.1-44.34:16 of the Code of Virginia and subsection A of this section. The following means of providing such evidence, or any combination thereof, will be acceptable:

1. Self-insurance. Any operator demonstrating financial responsibility by self-insurance shall provide evidence of such self-insurance in a manner that is satisfactory to the board. An operator demonstrating self-insurance shall:

- a. Maintain, in the United States, working capital and net worth each in the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section.

(1) Maintenance of the required working capital and net worth shall be demonstrated by submitting with the application form an annual, current nonconsolidated balance sheet and an annual, current nonconsolidated statement of income and surplus certified by an independent certified public accountant. Those financial statements shall be for the operator's last fiscal year preceding the date of application and shall be accompanied by an additional statement from the operator's treasurer (or equivalent official) certifying to both the amount of current assets and the amount of total assets included in the accompanying balance sheet which are located in the United States and are acceptable for purposes of this chapter.

(2) If the balance sheet and statement of income and surplus cannot be submitted in nonconsolidated form, consolidated statements may be submitted if accompanied by an additional statement by the involved certified public accountant certifying to the amount by which the operator's assets, located in the United States and acceptable under this subsection [ D C ], exceed total liabilities and that current assets, located in the United States and acceptable under this subsection [ D C ], exceed its current liabilities.

(3) When the operator's demonstrated net worth is not at least 10 times the required amount, an affidavit shall be filed by the operator's treasurer (or equivalent official) covering the first six months of the operator's fiscal year. Such affidavits shall state

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# Final Regulations

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that neither the working capital nor the net worth have fallen below the required amounts during the first six months.

(4) Additional financial information shall be submitted upon request by the department; or

b. Provide evidence in the form of a marine insurance broker's certificate of insurance, certificate of entry, or other proof satisfactory to the board that the operator has obtained oil pollution liability coverage through an operator's membership in a Protection & Indemnity (P&I) Club that is a member of the international group of P&I clubs or through coverage provided by a pool of marine underwriters in an amount sufficient to meet the requirements of § 62.1-44.34:16 of the Code of Virginia and subsection A of this section.

2. Insurance. Any operator demonstrating evidence of financial responsibility by insurance shall provide evidence of insurance issued by an insurer licensed, approved, or otherwise authorized to do business in the Commonwealth of Virginia. The amount of insurance shall be sufficient to cover the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section. The operator shall provide evidence of such coverage in the form of a marine insurance broker's certificate of insurance or by utilizing a form worded identically to the Insurance Form [ Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil ] available from the department. The insurer must also comply with all requirements in the form available from the department.

3. Surety. Any operator demonstrating financial responsibility through a surety bond shall file a surety bond utilizing a form worded identically to the surety form available from the department. The surety company issuing the bond must be licensed to operate as a surety in the Commonwealth of Virginia and must possess an underwriting limitation at least equal to the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section. The surety must also comply with all requirements in [ ~~forms~~ the Surety Bond Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil ] available from the department.

4. Guaranty. An operator demonstrating financial responsibility through a guaranty shall submit the guaranty worded identically to the form available from the department. The guarantor shall comply with all provisions of subdivision [ D ] 1 of this [ ~~section~~ subsection ] for self-insurance and also comply with all requirements in the [ ~~surety document~~ Guaranty Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil ] available from the department.

[ ~~E~~-D. ] To obtain exemption from the cash deposit requirements:

1. The operator shall appoint an agent for service of process in the Commonwealth;

2. The insurer, guarantor, or surety shall appoint an agent for service of process in the Commonwealth;

3. Any insurer must be authorized by the Commonwealth of Virginia to engage in the insurance business; and

4. Any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation by the operator of Article 11 (§ 62.1-33.34:14 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia up to, but not exceeding, the amount insured, guaranteed or otherwise pledged.

5. All forms of evidence of financial responsibility shall be accompanied by an endorsement that certifies that the insurance policy, evidence of self-insurance, surety or guaranty provides liability coverage for the tank vessels in the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section.

6. Subdivisions [ ~~E-2, E-3~~ 2, 3 ] and [ ~~E~~ ] 4 of this [ ~~section~~ subsection ] do not apply to operators providing evidence of financial responsibility in accordance with subdivision [ ~~D-C~~ ] 1 of this section.

[ ~~F~~-E. ] Any operator whose financial responsibility is accepted under this chapter shall notify the board at least 30 days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety.

[ ~~G~~-F. ] Acceptance of evidence of financial responsibility shall expire:

1. One year from the date that the board exempts an operator from the cash deposit requirement based on acceptance of evidence of self-insurance;

2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or

3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

[ ~~H~~-G. 1. ] All nonexempt tank vessel operators shall file with the board the [ ~~application form available from the department~~ Application for Approval of Evidence of Tank Vessel Financial Responsibility which identifies the tank vessel operator and agent for service of process by name and address, provides identifying information on the tank vessel or vessels and certifies to the board that the information is true and accurate ] from the department for approval of the evidence of financial responsibility. [ This form is available from the department. ] This form shall be submitted with the required evidence of financial responsibility (cash deposit, proof of insurance, self-insurance, guaranty or surety) [ , except as permitted in subdivision 2 of this

subsection ] and shall be completed as far as it pertains to the tank vessel. The operator must sign and date the certification statement on the application form. ~~[ All forms must be acknowledged before a Notary Public. ]~~ If the operator is a corporation, the [ application ] form must be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the [ application ] form must be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the [ application ] form must be signed by a general partner or the sole proprietor.

[ 2. A tank vessel operator who seeks approval of the evidence of financial responsibility in accordance with subsection K of this section must complete and sign the application required in subdivision 1 of this subsection upon the effective date of this chapter or upon expiration of any tank vessel financial responsibility approval previously issued by the department.

3. A tank vessel operator who seeks renewal of the approval of the evidence of financial responsibility in accordance with subsection K of this section, upon expiration of the approval of the evidence of the financial responsibility issued by the department, must complete and sign the Annual Certification of Tank Vessel Financial Responsibility form available from the department to renew approval of the evidence of financial responsibility and to certify that there have been no significant changes to the previously submitted application form.

4. Tank vessel operators may delegate signatory authority to an agent for the annual certification form required in subdivision 3 of this subsection or submittal of any notifications in accordance with subsection K of this section by completing and signing the Tank Vessel Agent Designation form available from the department. This form identifies the tank vessel operator, the designated agent by name and address, and the respective tank vessel or vessels covered by this designation. ]

[  ~~H. ] Application for renewal of [  ~~acceptance of proof of approval of tank vessel ]~~ financial responsibility shall be filed with the board 30 days prior to the date of expiration.~~

[  ~~I. ] All applications and written communications concerning changes, submissions and updates required by this chapter, with the exception of [ applications and submissions accompanied by ] fees as addressed in subsection [  ~~M L. ] of this section, shall be addressed as follows:~~~~

Mailing Address:

Virginia Department of Environmental Quality  
Office of Spill Response and Remediation  
P.O. Box 10009  
Richmond, VA 23240

Location Address:

Virginia Department of Environmental Quality  
Office of Spill Response and Remediation  
629 East Main Street  
Richmond, VA 23219

[ All applications and submissions accompanied by fees as addressed in subsection L of this section shall be sent to the address listed in subdivision L 2. ]

[  ~~K. J. ] The board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:~~

1. Acceptance has been procured by fraud or misrepresentation; or
2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility.

[  ~~K. ] Where an operator of a tank vessel has applied for and received from the United States Coast Guard a Certificate of Financial Responsibility (COFR), pursuant to § 1016 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 33 USCS § 2716 (1996), and its implementing regulations found at 33 CFR Part 138, such COFR shall be sufficient to meet the requirements of § 62.1-44.34:16 of the Code of Virginia, and this section while such COFR is valid. The operator shall submit to the department [  ~~a letter an application ] listing the vessel or vessels for which the approval is sought and a copy of the currently valid COFR for each tank vessel. [ The tank vessel operator submitting the application for approval of the evidence of financial responsibility in accordance with this subsection shall be the same entity which has applied for and received the COFR from the United States Coast Guard. ] If an operator has received a Master COFR or a Fleet COFR from the United States Coast Guard, the operator shall submit a listing, including any changes to such listing, of the vessels to which the Master COFR or Fleet COFR applies which are subject to this chapter. Each time a COFR is renewed or reissued for any reason for a tank vessel subject to this chapter, the operator shall submit a copy of such renewed or reissued COFR to the department.~~~~

[  ~~M. L. ] An application for approval of the demonstration of financial responsibility will be accepted only when the fees established by this section have been paid.~~

1. Fees shall only be paid upon initial submittal of the demonstration of financial responsibility by an operator. Renewals or changes are not subject to the administrative fee. Operators of tank vessels subject to this chapter but meeting the provisions of subsection [  ~~L K ] of this section shall not be subject to administrative fees for the approval of the demonstration of financial responsibility.~~

2. Fees shall be paid in United States currency by check, draft or postal money order made payable to Treasurer, Commonwealth of Virginia [  ~~and . All fees~~



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and accompanying applications and submissions ] shall be sent to:

**Mailing Address:**

Virginia Department of Environmental Quality  
Office of Financial Management  
P.O. Box 10150  
Richmond, VA 23240

**Location Address:**

Virginia Department of Environmental Quality  
Office of Financial Management  
629 East Main Street  
Richmond, VA 23219

3. Application fees for approval of evidence of financial responsibility for tank vessels are as follows:

- a. Applicants shall pay an application fee of \$120.
- b. Applicants shall pay a fee of \$30 for each additional tank vessel requiring a copy of the accepted evidence of financial responsibility.

4. Application fees are refundable upon receipt of a written request received by the department no later than 30 days after submittal and prior to approval.

5. Overpayments of application fees are refundable upon written request. Overpayments not refunded will be credited for the applicant's future use under this section.

**9 VAC 25-101-60. Delegation of authority.**

The executive director, or his designee, may perform any act of the board under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

**9 VAC 25-101-70. Evaluation of the chapter.**

Within three years after the effective date of this chapter, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of the current state and federal statutory and regulatory requirements, including identification and justification of the requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understood by affected entities.

Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

## FORMS

Application for Approval of a Tank Vessel Oil Discharge Contingency Plan (ODCP), DEQ101-1 (4/98).

Agent Designation Form for Commonwealth of Virginia Tank Vessel Oil Discharge Contingency Plan (ODCP) and Financial Responsibility Requirements, DEQ101-2 (4/98).

Insurance Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil Under § 62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50 A, DEQ101-3 (3/98).

Surety Bond Form Furnished as Evidence of Financial Responsibility of Liability for Discharge of Oil Under § 62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50 A, DEQ101-4 (3/98).

Guaranty Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil Under § 62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50 A, DEQ101-5 (3/98).

Application for Approval of Evidence of Tank Vessel Financial Responsibility (TVFR), DEQ101-6 (4/98).

Annual Certification of Evidence of Tank Vessel Financial Responsibility, DEQ101-7 (4/98).



**INSURANCE FORM FURNISHED AS EVIDENCE OF  
FINANCIAL RESPONSIBILITY IN RESPECT OF LIABILITY FOR  
DISCHARGE OF OIL UNDER § 62.1-44.34:16 OF THE CODE OF VIRGINIA  
AND SUBSECTION 9 VAC 25-101-50 A**

(Name of Insurer)  
 (hereinafter "insurer") hereby certifies that it is authorized to engage in the insurance business by the Commonwealth of Virginia and that for purposes of complying with the provisions of § 62.1-44.34:16 of the Code of Virginia and subsection 9 VAC 25-101-50 A of the Department of Environmental Quality's Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Requirements, each of the tank vessel operators specified in the schedules below is insured by it, in respect to each of the tank vessels respectively specified therein, against liability to the Commonwealth of Virginia to which such tank vessel operators could be subjected under Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. The amount of liability insured herein is:

1. In the case of a tank vessel, \$500 per gross ton of such tank vessel.

The foregoing amount of insurance coverage provided by the insurer on behalf of the Commonwealth of Virginia in respect to any tank vessel specified herein is not conditioned or dependent in any way upon any agreement or understanding between an assured operator and the insurer that any such tank vessel will or will not carry oil, or will or will not operate in certain waters.

(Name of Agent)

with offices located at \_\_\_\_\_  
 is hereby designated as the insurer's agent in the Commonwealth of Virginia for service of process for the purposes of Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia and implementing rules in 9 VAC 25-101-10 et seq. If the designated agent cannot be served due to his death, disability, or unavailability, the Clerk of the State Corporation Commission becomes the agent for service of process.

The insurer consents to be sued directly in respect of any claim against any of the operators arising under Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia and implementing rules in 9 VAC 25-101-10 et seq.; provided, however, that in any such direct action its liability per tank vessel in any one incident shall not exceed \$500 per gross ton of such tank vessel. The insurer shall be entitled to invoke only the rights and defenses permitted by § 62.1-44.34:18 of the Code of Virginia to the tank vessel operator.

The insurance evidenced by this undertaking shall be applicable only in relation to incidents occurring on or after the effective date before the termination date of this undertaking, and shall be applicable only to incidents giving rise to claims under Article 11 of 62.1-44.34:14 et seq. of Chapter 3.1 of Title 62.1 of the Code of Virginia in respect to any of the herein listed tank vessels.

The effective date of this undertaking shall, for each tank vessel listed below, be the date the tank vessel is named in or added to the schedules below. For each tank vessel, the termination date of this undertaking shall be 30 days after the date of receipt of written notice by the insurer of the

March 1-93

Environmental Quality that the insurer has elected to terminate the insurance evidenced by this undertaking, and has so notified the operator.

However, for any tank vessel that is carrying oil in bulk as cargo that has been loaded before the scheduled date of termination, the termination shall not take effect (1) until completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the Department of Environmental Quality of written notice that the insurer has elected to terminate the insurance evidenced by this undertaking, whichever date is earlier.

Termination of this undertaking as to any tank vessel shall not affect the liability of the insurer in connection with an incident occurring prior to the date such termination becomes effective.

If during the currency of this undertaking a below-named operator requests that an additional tank vessel be made subject to this undertaking and if the insurer should accede to the request and should so notify the Department of Environmental Quality, then the tank vessel shall be included in the schedules below.

The definitions in section 9 VAC 25-101-10 shall apply to this undertaking.

I hereby certify that the wording of this instrument is identical to the wording in form number DEQ101-3.

Effective date of coverage for tank vessels named on this undertaking:

\_\_\_\_\_  
 day/month/year

\_\_\_\_\_  
 (Name of Insurer)

\_\_\_\_\_  
 (Mailing Address)

\_\_\_\_\_  
 (Signature of Official Signing on Behalf of Insurer)

\_\_\_\_\_  
 (Typed Name and Title of Signer)

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05-05

SCHEDULE OF TANK VESSELS AND ASSURED OPERATORS

| Tank Vessel | Gross Tons | Assured Operator |
|-------------|------------|------------------|
|-------------|------------|------------------|

**SURETY BOND FORM FURNISHED AS EVIDENCE OF  
FINANCIAL RESPONSIBILITY IN RESPECT OF LIABILITY FOR  
DISCHARGE OF OIL UNDER § 62.1-44.34:16 OF THE CODE OF VIRGINIA  
AND SUBSECTION 9 VAC 25-101-50 A**

KNOW ALL PERSONS BY THESE PRESENTS, that We

\_\_\_\_\_ (Name of tank vessel operator)  
of \_\_\_\_\_, as  
(City) (State and Country)  
Principal (hereinafter called Principal), and \_\_\_\_\_,  
(Name of Surety)  
a company created and existing under the laws of \_\_\_\_\_  
(State and Country)

and authorized to do business in the Commonwealth of Virginia, as surety (hereinafter called Surety) are held and firmly bound unto the Commonwealth of Virginia for liability under Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, in the penal sum of \$ \_\_\_\_\_

(\$500 per gross ton)

for which payment, well and truly to be made, we find ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. The foregoing penal sum is not conditioned or dependent in any way upon any agreement or understanding between the Principal and Surety that any tank vessel or vessels will or will not carry oil or will or will not operate in certain waters.

WHEREAS, the Principal intends to become or is a holder of an approval of evidence of financial responsibility under the provisions of § 62.1-44.34:16 of the Code of Virginia and subsection 9 VAC 25-101-50 A of the Department of Environmental Quality's Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Requirements, and has elected to file with the Department of Environmental Quality such a bond as will insure financial responsibility to meet any liability to which such tank vessel operator could be subjected under Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, and

WHEREAS, this bond is written to ensure compliance by the Principal with the requirements of said Article 11 and subsection 9 VAC 25-101-50 A and shall insure to the benefit of claimants under § 62.1-44.34:18 of the Code of Virginia:

NOW, THEREFORE, the condition of this obligation is that if the Principal shall pay or cause to be paid to claimants any sum or sums for which the Principal may be held legally liable under said Article 11, then this obligation, to the extent of such payment, shall be void, otherwise to remain in full force and effect.

The liability of the Surety shall not be discharged by any payment or succession of

# Final Regulations

payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond. In no event shall the Surety's obligation hereunder exceed the amount of the penalty, provided that the Surety furnishes written notice to the Department of Environmental Quality forthwith of all suits filed, judgments rendered, and payments made by the Surety under this bond.

Any claim for which the Principal may be liable under said Article 11 may be brought directly against the Surety, provided, however, that in the event of a direct claim the surety shall be entitled to invoke only the rights and defenses permitted by § 62.1-44, 64.18 of the Code of Virginia to the Principal (tank vessel operator).

This bond is effective the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, 1201 a.m. Standard time at the address of the Surety as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or Surety may at any time terminate this bond by written notice sent by certified mail to the other party with a copy (plainly indicating that the original was sent by certified mail) to Department of Environmental Quality, Office of Spill Response and Remediation, P. O. Box 106009, Richmond, Virginia 23240. The termination becomes effective 30 days after actual receipt by the Department of Environmental Quality of written notice; provided, however, that with respect to any of the Principal's tank vessels carrying oil in bulk as cargo that has been loaded before the time of termination would otherwise have become effective, the termination shall not take effect (1) until completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the Department of Environmental Quality of written notice of termination of the bond by the above named Principal or Surety under the conditions set forth above, whichever date is earlier. The Surety shall not be liable hereunder in connection with an incident occurring after the termination of this bond as herein provided, but termination shall not affect the liability of the Surety in connection with an incident occurring before the date the termination becomes effective.

The Surety hereby waives notification of amendments to applicable laws, statutes, rules and regulations and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The Surety designates \_\_\_\_\_  
(Name of Agent)

with offices at \_\_\_\_\_ as the Insurer's agent in the Commonwealth of Virginia for service of process for the purpose of Article 11 and 9 VAC 25-101-10 et seq. If the designated agent cannot be served due to his death, disability or unavailability, the Clerk of the State Corporation Commission becomes the agent for service of process.

If more than one surety company forms an execution of this bond, it shall be deemed to constitute joint and several liability on the part of the sureties.

The definitions in section 9 VAC 25-101-10 shall apply to this form.

March 1994

11-03-14

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that this bond meets the requirements of section 9 VAC 25-101-50 and that the wording of this surety bond is identical to the wording specified in form DEQ101-4.

In witness whereof, the above-named Principal and Surety have executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Please type name of signer under each signature. In the case of partnership, each partner must sign.)

## PRINCIPAL

Individual Principal or Partner \_\_\_\_\_ Business Address \_\_\_\_\_

Individual Principal or Partner \_\_\_\_\_ Business Address \_\_\_\_\_

Individual Principal or Partner \_\_\_\_\_ Business Address \_\_\_\_\_

Corporate Principal \_\_\_\_\_

Business Address \_\_\_\_\_

(Affix Corporate Seal)

By \_\_\_\_\_

Title \_\_\_\_\_

March 1994

11-03-14

SURETY

Corporate Surety \_\_\_\_\_

Business Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Affix Corporate Seal)

By \_\_\_\_\_

Title \_\_\_\_\_

Surety's Bond Number: \_\_\_\_\_

SCHEDULE OF TANK VESSELS AND ASSURED OPERATORS

| Tank Vessel | Gross Tons | Assured Operator | Date Added |
|-------------|------------|------------------|------------|
|             |            |                  |            |

March 1998

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March 1994

March 1993

5

March 1994

**GUARANTY FORM FURNISHED AS EVIDENCE OF  
FINANCIAL RESPONSIBILITY IN RESPECT OF LIABILITY FOR  
DISCHARGE OF OIL UNDER § 62.1-44.34:16 OF THE CODE OF VIRGINIA  
AND SUBSECTION 9 VAC 25-101-50 A**

1. WHEREAS \_\_\_\_\_

(Name of Tank Vessel Operator)

(hereinafter the "Operator") is the Operator of the tank vessel or vessels specified in the annexed schedules (hereinafter "Tank Vessels"), and whereas the Operator desires to establish its financial responsibility in accordance with § 62.1-44.34:16 of the Code of Virginia and subsection 9 VAC 25-101-50 A of the Department of Environmental Quality's Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Requirements, the undersigned Guarantor hereby guarantees, subject to the provisions of clause 3 hereof, to discharge the Operator's legal liability to the Commonwealth of Virginia in respect to a claim under Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. Upon payment of the agreed sum, the Operator is to be fully, irrevocably, and unconditionally discharged from all further liability to the claimant with respect to the claim. The Operator's legal liability under Article 11, which is covered by this Guaranty, is:

a. In the case of a Tank Vessel, \$500 per gross ton of such Tank Vessel. The foregoing amount of coverage provided by the Guarantor on behalf of the Commonwealth of Virginia in respect to any of the Tank Vessels is not conditioned or dependent in any way upon any agreement or understanding between the Operator and the Guarantor that any of the Tank Vessels will or will not carry oil, or will or will not operate in certain waters.

2. The Guarantor's liability under this Guaranty shall attach only in relation to incidents giving rise under Article 11 to causes of action against the Operator in respect of any of the Tank Vessels for discharge or threat of discharge of oil, occurring on or after the effective date of this Guaranty, which, as to each of the Tank Vessels, shall be the date the Tank Vessel is named in Schedule A or added to Schedule B below, and before the termination date of this Guaranty, which, as to each of the Tank Vessels, shall be the date 30 days after the date of receipt by the Department of Environmental Quality, Office of Spill Response and Remediation, P. O. Box 10009, Richmond, Virginia 23240, of written notice that the Guarantor has elected to terminate this Guaranty, with respect to any of the Tank Vessels, and has so notified the Operator; provided however, that with respect to any Tank Vessel carrying oil in bulk as cargo that has been loaded before the scheduled date of termination, the termination shall not become effective (1) until completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the Department of Environmental Quality of written notice of termination, whichever date is earlier. Termination of this Guaranty as to any of the Tank Vessels shall not affect the liability of the Guarantor in connection with an incident occurring before the date of termination becomes effective.

3. Any claim against the Operator arising under Article 11 may be brought directly against the Guarantor; provided, however, that in the event of a direct claim the Guarantor shall be entitled to invoke only the rights and defenses permitted by § 62.1-44.34:18 of the Code of Virginia to the Tank Vessel operator.

4. If, during the currency of this Guaranty, the Operator requests that a Tank Vessel be included in the Operator, and not specified in the annexed Schedules A and B, should become subject to this Guaranty, and if the Guarantor accedes to the request and so notifies the Department of Environmental Quality,

writing, then the tank vessel becomes one of the Tank Vessels included in Schedule B and subject to this Guaranty.

5. The Guarantor certifies that it meets or exceeds the financial test criteria for self insurance of subsection 9 VAC 25-101-50 C, and agrees to comply with all the requirements for Guarantors as specified in section 9 VAC 25-101-50. Guarantor agrees that if, at the end of any fiscal year before cancellation of this Guarantee, the Guarantor fails to meet the financial test criteria of subsection 9 VAC 25-101-50 C, Guarantor shall send within 30 days of such failure, by registered mail, notice to the operator. The Guarantee will terminate 30 days from the date of receipt of the notice by the operator, as evidence by the return receipt.

6. The Guarantor hereby designates \_\_\_\_\_

(Name of Agent)

with offices at \_\_\_\_\_

as the Guarantor's agent in the Commonwealth of Virginia for service of process for the purpose of Article 11 and implementing rules in 9 VAC 25-101-10 et seq. If the designated agent cannot be served due to his death, disability, or unavailability, the Clerk of the State Corporation Commission becomes the agent for service of process.

7. If more than one guarantor joins in executing this Guaranty, that action constitutes joint and several liability on the part of the Guarantors.

8. The definitions in section 9 VAC 25-101-10 shall apply to this Guaranty.

I hereby certify that the wording of this Guaranty is identical to the wording specified in form DEQ101-5.

EFFECTIVE DATE \_\_\_\_\_

(Month/Day/Year and Place of Execution)

\_\_\_\_\_  
(Type Name of Guarantor)

\_\_\_\_\_  
(Type Address of Guarantor)

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_  
(Type Name and Title of Person Signing)

SCHEDULE B  
TANK VESSELS ADDED IN ACCORDANCE WITH CLAUSE 4

| Tank Vessel | Gross Tons | Operator | Date Added |
|-------------|------------|----------|------------|
|-------------|------------|----------|------------|

(March 1998)

SCHEDULE A  
TANK VESSELS INITIALLY LISTED

| Tank Vessel | Gross Tons | Operator |
|-------------|------------|----------|
|-------------|------------|----------|

(March 1998)





VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

ANNUAL CERTIFICATION OF EVIDENCE OF  
TANK VESSEL FINANCIAL RESPONSIBILITY

Virginia Department of Environmental Quality  
Office of Spill Response and Remediation  
P. O. Box 10009  
Richmond, Virginia 23240 USA

Location address:  
629 East Main Street  
Richmond, Virginia 23219 USA

Please type or print all information except signature. This form must be completed by tank vessel operators or designated agents (see form DEQ101-2) seeking annual renewal of approval of evidence of tank vessel financial responsibility in accordance with 9 VAC 25-101-50 K (submission of U. S. Coast Guard Certificate of Financial Responsibility (COFR) to meet Virginia requirements). This certification form serves as a renewal application and confirms that there have been no changes to the previously submitted Application for Approval of Evidence of Tank Vessel Financial Responsibility. Please refer to instruction sheet for information concerning application for the addition of vessels to this approval, deletion of vessels from this approval and other notifications.

Tank Vessel Operator Name: \_\_\_\_\_

Operator Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Certification

I certify that I have examined and am familiar with the information submitted in this document, and that I believe that the submitted information is true, accurate and complete and represents no change to the previously submitted Application for Approval of Evidence of Tank Vessel Financial Responsibility. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. (To be signed by the tank vessel operator or designated agent.)

Printed name of tank vessel operator  
or designated agent

Signature of authorized person

Date

(April 1998)

DEQ101-2

# Final Regulations

## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**REGISTRAR'S NOTICE:** The Department of Medical Assistance Services is claiming an exclusion 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 Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 12 VAC 30-50-10 et seq. **Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-160).**

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

**Effective Date:** July 1, 1998.

**Summary:**

*This regulatory change extends the deadline for durable medical equipment providers to obtain the signed Certificate of Medical Necessity from the prescribing physician in order to be reimbursed by Medicaid.*

**Agency Contact:** Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

#### 12 VAC 30-50-160. Home health services.

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a practitioner of the healing arts. Home health services shall be provided in accordance with guidelines found in the Virginia Medicaid Home Health Manual.

B. Nursing services provided by a home health agency.

1. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

2. Patients may receive up to 32 visits by a licensed nurse annually. Limits are per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services. Payment shall not be made for additional service unless authorized by DMAS.

C. Home health aide services provided by a home health agency.

1. Home health aides must function under the supervision of a registered nurse.

2. Home health aides must meet the certification requirements specified in 42 CFR 484.36.

3. For home health aide services, patients may receive up to 32 visits annually. Limits shall be per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

D. Durable medical equipment (DME) and supplies suitable for use in the home.

1. General requirements and conditions.

a. All medically necessary supplies and equipment shall be covered. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

b. DME providers shall adhere to all applicable DMAS policies, laws, and regulations for durable medical equipment and supplies. DME providers shall also comply with all other applicable Virginia laws and regulations requiring licensing, registration, or permitting. Failure to comply with such laws and regulations shall result in denial of coverage for durable medical equipment or supplies which are regulated by such licensing agency or agencies.

c. DME and supplies must be furnished pursuant to a Certificate of Medical Necessity (CMN) (DMAS-352).

d. A CMN shall contain a physician's diagnosis of a recipient's medical condition and an order for the durable medical equipment and supplies that are medically necessary to treat the diagnosed condition and the recipient's functional limitation. The order for DME or supplies must be justified in the written documentation either on the CMN or attached thereto. The CMN shall be valid for a maximum period of six months for Medicaid recipients 21 years of age and younger. The maximum valid time period for Medicaid recipients older than 21 years of age is 12 months. The validity of the CMN shall terminate when the recipient's medical need for the prescribed DME or supplies ends.

e. DME must be furnished exactly as ordered by the attending physician on the CMN. The CMN and any supporting verifiable documentation must be complete (signed and dated by the physician) and in the provider's possession within 30 60 days from the time the ordered DME and supplies are initially furnished by the DME provider. Each component of the DME must

be specifically ordered on the CMN by the physician. For example, the order must specify IV pole, pump, and tubing. A general order for IV supplies shall not be acceptable.

f. The CMN shall not be changed, altered, or amended after the attending physician has signed it. If changes are necessary, as indicated by the recipient's condition, in the ordered DME or supplies, the DME provider must obtain a new CMN. New CMNs must be signed and dated by the attending physician within 30 60 days from the time the ordered supplies are furnished by the DME provider.

g. DMAS shall have the authority to determine a different (from those specified above) length of time a CMN may be valid based on medical documentation submitted on the CMN. The CMN may be completed by the DME provider or other health care professionals, but it must be signed and dated by the attending physician. Supporting documentation may be attached to the CMN but the attending physician's entire order must be on the CMN.

h. The DME provider shall retain a copy of the CMN and all supporting verifiable documentation on file for DMAS' post payment audit review purposes. DME providers shall not create nor revise CMNs or supporting documentation for this service after the initiation of the post payment review audit process. Attending physicians shall not complete, nor sign and date, CMNs once the post payment audit review has begun.

2. Preauthorization is required for incontinence supplies provided in quantities greater than two cases per month.

3. Supplies, equipment, or appliances that are not covered include, but are not limited to, the following:

a. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners;

b. Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office;

c. Furniture or appliances not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales);

d. Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface); mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience (i.e., electric wheelchair plus a manual chair); cleansing wipes;

e. Prosthesis, except for artificial arms, legs, and their supportive devices which must be preauthorized by the DMAS central office (effective July 1, 1989);

f. Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; and support stockings);

g. Orthotics, including braces, splints, and supports;

h. Home or vehicle modifications;

i. Items not suitable for or not used primarily in the home setting (i.e., car seats, equipment to be used while at school, etc.); and

j. Equipment that the primary function is vocationally or educationally related (i.e., computers, environmental control devices, speech devices, etc.).

4. For coverage of blood glucose meters for pregnant women, refer to 12 VAC 30-50-500.

5. Reserved.

6. The medical equipment and supply vendor must provide the equipment and supplies as prescribed by the physician on the certificate of medical necessity. Orders shall not be changed unless the vendor obtains a new certificate of medical necessity prior to ordering or providing the equipment or supplies to the patient.

7. Medicaid shall not provide reimbursement to the medical equipment and supply vendor for services provided prior to the date prescribed by the physician or prior to the date of the delivery or when services are not provided in accordance with published policies and procedures. If reimbursement is denied for one of these reasons, the medical equipment and supply vendor may not bill the Medicaid recipient for the service that was provided.

8. The following criteria must be satisfied through the submission of adequate and verifiable documentation satisfactory to the department. Medically necessary DME and supplies shall be:

a. Ordered by the physician on the CMN;

b. A reasonable and necessary part of the recipient's treatment plan;

c. Consistent with the recipient's diagnosis and medical condition particularly the functional limitations and symptoms exhibited by the recipient;

d. Not furnished solely for the convenience, safety, or restraint of the recipient, the family, attending physician, or other practitioner or supplier;

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## Final Regulations

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e. Consistent with generally accepted professional medical standards (i.e., not experimental or investigational); and

f. Furnished at a safe, effective, and cost-effective level suitable for use in the recipient's home environment.

9. Coverage of enteral nutrition (EN) which does not include a legend drug shall be limited to when the nutritional supplement is the sole source form of nutrition, is administered orally or through a nasogastric or gastrostomy tube, and is necessary to treat a medical condition. Coverage of EN shall not include the provision of routine infant formulae. A nutritional assessment shall be required for all recipients receiving nutritional supplements.

E. Physical therapy, occupational therapy, or speech/language pathology services and audiology services provided by a home health agency or physical rehabilitation facility.

1. Service covered only as part of a physician's plan of care.

2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered annually without authorization. Limits shall apply per recipient regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

F. The following services are not covered under the home health services program:

1. Medical social services;

2. Services or items which would not be paid for if provided to an inpatient of a hospital, such as private-duty nursing services, or items of comfort which have no medical necessity, such as television;

3. Community food service delivery arrangements;

4. Domestic or housekeeping services which are unrelated to patient care and which materially increase the time spent on a visit;

5. Custodial care which is patient care that primarily requires protective services rather than definitive medical and skilled nursing care; and

6. Services related to cosmetic surgery.

RECIPIENT NAME \_\_\_\_\_ VMAP # \_\_\_\_\_  
 SERVICING PROVIDER NAME \_\_\_\_\_ PROVIDER ID# \_\_\_\_\_

SECTION II (continued)  
 DESCRIPTION/ADDITIONAL INFORMATION

| Begin Service Date | HCPCS Code | Item Ordered Description | Length of Time Needed | Quantity Ordered x1 Month | Quantity/Frequency of Use Justification/Comments |
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SECTION IV PHYSICIAN CERTIFICATION (MUST BE SIGNED AND DATED BY PHYSICIAN)  
 I CERTIFY THAT THE ORDERED DME AND SUPPLIES ARE PART OF MY TREATMENT PLAN AND, IN MY OPINION, ARE MEDICALLY NECESSARY.

ORDERING PHYSICIAN'S NAME (print) \_\_\_\_\_ PHYSICIAN'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_ LD.# \_\_\_\_\_ PHONE # \_\_\_\_\_

- Section I RECIPIENT DATA**
- Complete recipient full name (last name, first name)
  - Complete date of birth (month, day, year)
  - Telephone # (include area code)
- Section II SERVICING PROVIDER**
- Complete provider name
  - Complete contact identifying person to call if DVA's has questions
- Section III CMN STATUS**
- Check appropriate box
- Section IV RECIPIENT INFORMATION**
- Check ALL boxes that apply
  - Identify functional limitations related to recipient and need for DME service
  - Identify oxygen, the results of PO<sub>2</sub> saturation levels must be identified
  - Date last examined by physician
  - ICD9 Code (optional)
  - Clinical diagnoses - narrative must be identified. Diagnosis must be related to the item being requested
  - Check appropriate line for date of on-set

**Section I RECIPIENT DATA**

- Complete recipient full name (last name, first name)
- Complete date of birth (month, day, year)
- Telephone # (include area code)

**Section II SERVICING PROVIDER**

- Complete provider name
- Complete contact identifying person to call if DVA's has questions

**Section III CMN STATUS**

- Check appropriate box

**Section IV RECIPIENT INFORMATION**

- Check ALL boxes that apply
- Identify functional limitations related to recipient and need for DME service
- Identify oxygen, the results of PO<sub>2</sub> saturation levels must be identified
- Date last examined by physician
- ICD9 Code (optional)
- Clinical diagnoses - narrative must be identified. Diagnosis must be related to the item being requested
- Check appropriate line for date of on-set

DVA-5.501 Revised 8/91

VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES  
 CERTIFICATE OF MEDICAL NECESSITY  
 DURABLE MEDICAL EQUIPMENT AND SUPPLIES

SECTION I RECIPIENT DATA  
 LD.# \_\_\_\_\_ CMN STATUS  
 Name \_\_\_\_\_  INITIAL  
 Contact Person \_\_\_\_\_  REVISED  
 Phone # ( ) \_\_\_\_\_  RENEWED

SECTION II RECIPIENT INFORMATION  
 Answer all questions that are applicable to DME service being requested. If answered yes, you must describe/repeat additional information.  
 (Additional space on reverse)

| Does patient:  | YES                      | NO                       |
|--|--------------------------|--------------------------|
| 1. have impaired mobility?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. have impaired endurance?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. have restricted activity?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. have skin breakdown? (Describe site, size, depth and drainage)  | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. have impaired respiration? (Identify most recent PO <sub>2</sub> /saturation level for patient on oxygen) | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. require assistance with ADL's?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. have impaired speech?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. require nutritional supplements? (Identify complete diet order)   | <input type="checkbox"/> | <input type="checkbox"/> |

IS THE ITEM SUITABLE FOR USE IN HOME, AND DOES THE PATIENT/CAREGIVER DEMONSTRATE WILLINGNESS/ABILITY TO USE THE EQUIPMENT? YES \_\_\_ NO \_\_\_  
 DATE PATIENT LAST EXAMINED BY PHYSICIAN \_\_\_\_\_

ICD9 Code \_\_\_\_\_ Clinical Diagnosis \_\_\_\_\_

| Less than 6 months | Date of Onset | Greater than 6 months |
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SECTION III (ADDITIONAL SPACE ON REVERSE)

| Begin Service Date | HCPCS Code | Item Ordered Description | Length of Time Needed | Quantity Ordered x1 Month | Quantity/Frequency of Use Justification/Comments |
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SECTION IV PHYSICIAN CERTIFICATION (MUST BE SIGNED AND DATED BY PHYSICIAN)  
 I CERTIFY THAT THE ORDERED DME AND SUPPLIES ARE PART OF MY TREATMENT PLAN AND, IN MY OPINION, ARE MEDICALLY NECESSARY.

ORDERING PHYSICIAN'S NAME (print) \_\_\_\_\_ PHYSICIAN'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_ LD.# \_\_\_\_\_ PHONE # \_\_\_\_\_

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# Final Regulations

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**REGISTRAR'S NOTICE:** The Department of Medical Assistance Services is claiming an exclusion 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 Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 12 VAC 30-50-10 et seq. **Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-30, 12 VAC 30-50-70 and 12 VAC 30-50-220).**

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

**Effective Date:** July 1, 1998.

**Summary:**

*These amendments incorporate into the State Plan for Medical Assistance the coverage of Pap smears, prostate specific antigen, and digital rectal examination (PSA/DRE). Coverage of mammograms was already contained in the plan. Pap smears are already covered but were not listed in the plan. Only the coverage of the PSA/DRE, as a screening procedure, is a new service for Medicaid recipients.*

**Agency Contact:** Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

**12 VAC 30-50-30. Services not provided to the categorically needy.**

The following services and devices are not provided to the categorically needy:

1. Chiropractors' services.
2. Private duty nursing services.
3. Dentures.
4. Other diagnostic, ~~screening~~ and preventive services other than those provided elsewhere in this plan: diagnostic services (see 12 VAC 30-50-95 et seq.).
5. Inpatient psychiatric facility services for individuals under 22 years of age.
6. Special tuberculosis (TB) related services under § 1902(z)(2)(F) of the Act.
7. Respiratory care services (in accordance with § 1920(e)(9)(A) through (C) of the Act).

8. Ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider (in accordance with § 1920 of the Act).

9. Any other medical care and any type of remedial care recognized under state law specified by the Secretary: services of Christian Science Nurses; personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

**12 VAC 30-50-70. Services or devices not provided to the medically needy.**

1. Chiropractors' services.
2. Private duty nursing services.
3. Dentures.
4. Diagnostic, ~~screening~~, or preventive services other than those provided elsewhere in the State Plan.
5. Inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals age 65 or older in institutions for mental disease(s).
6. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined in accordance with § 1905(a)(4)(A) of the Act, to be in need of such care in a public institution, or a distinct part thereof, for the mentally retarded or persons with related conditions.
7. Inpatient psychiatric facility services for individuals under 22 years of age.
8. Special tuberculosis (TB) services under § 1902(z)(2)(F) of the Act.
9. Respiratory care services (in accordance with ~~Section~~ § 1920(e)(9)(A) through (C) of the Act).
10. Ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider (in accordance with ~~Section~~ § 1920 of the Act).
11. Services of Christian Science nurses.
12. Personal care services in a recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.
13. Home and community care for functionally disabled elderly individuals, as defined, described and limited in 12 VAC 30-50-410 through 12 VAC 30-50-470.
14. Personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are ~~(A)~~ (i) authorized for the individual by a physician in accordance with a plan of treatment, ~~(B)~~ (ii) provided by

an individual who is qualified to provide such services and who is not a member of the individual's family, and (G) (iii) furnished in a home.

**12 VAC 30-50-220. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.**

A. Diagnostic services are ~~not~~ provided *but only when necessary to confirm a diagnosis.*

B. Screening services.

1. Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

2. *Screening PSA (prostate specific antigen) and the related DRE (digital rectal examination) for males shall be covered, consistent with the guidelines published by the American Cancer Society.*

3. *Screening Pap smears shall be covered annually for females, consistent with the guidelines published by the American Cancer Society.*

C. Maternity length of stay and early discharge.

1. If the mother and newborn, or the newborn alone, are discharged earlier than 48 hours after the day of delivery, DMAS will cover one early discharge follow-up visit as recommended by the physicians in accordance with and as indicated by the "Guidelines for Perinatal Care" as developed by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists (1992). The mother and newborn, or the newborn alone if the mother has not been discharged, must meet the criteria for early discharge to be eligible for the early discharge follow-up visit. This early discharge follow-up visit does not affect or apply to any usual postpartum or well-baby care or any other covered care to which the mother or newborn is entitled; it is tied directly to an early discharge. The criteria for an early discharge are as follows:

a. Discharge criteria for early discharge of mother.

(1) Uncomplicated vaginal, full-term delivery following a normal antepartum course;

(2) Postpartum observation has sufficiently documented a stable course, including the following observations:

(a) Vital signs are stable;

(b) Uterine fundus is firm, bleeding (lochia) is controlled, of normal amount and color;

(c) Hemoglobin is greater than eight, hematocrit is greater than or equal to 24 and estimated blood loss is not greater than 500 cc or blood loss does not result in the patient being symptomatic for

anemia, i.e., lightheadedness, syncope, tachycardia, or shortness of breath;

(d) Episiotomy/repai red laceration is not inflamed and there is no evidence of infection or hematoma;

(e) Tolerating prescribed diet post delivery;

(f) Voiding without difficulty and passing flatus. Bowel sounds present; and

(g) If not previously obtained, ABO and Rh typing must be done and, if indicated, the appropriate amount of Rho(D) immunoglobulin must be administered.

b. Discharge criteria for early discharge of infant. The newborn must be deemed normal by physical examination and stable meeting the following criteria:

(1) Term delivery and weight is considered normal;

(2) Infant is able to maintain a stable body temperature under normal conditions;

(3) Infant is able to take and tolerate feedings by mouth and demonstrates normal sucking and swallowing reflexes;

(4) Laboratory data must be reviewed to include:

(a) Maternal testing for syphilis and hepatitis B surface antigen;

(b) Cord or infant blood type and direct Coombs test (if the mother is Rho(D) negative, or is type O, or if screening has not been performed for maternal antibodies);

(c) Hemoglobin or hematocrit and blood glucose determinations, as clinically indicated; and

(d) Any screening tests required by law.

(5) Initial hepatitis B vaccine must be administered in accordance with the time requirements in the current Recommended Childhood Immunization Schedule developed by the Advisory Committee on Immunization Practices under the requirements of § 1905(r)(1) of the Social Security Act (42 USC § 1396 d).

c. Discharge criteria for early discharge of mother and infant.

(1) Family members or other support persons must be available to the mother for the first few days following discharge;

(2) The mother or caretaker has demonstrated the ability to care for her infant, including feeding, bathing, cord care, diapering, body temperature assessment, and measurement with a thermometer;

(3) The mother or caretaker has been taught basic assessment skills, including neonatal well-being and



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recognition of illness. She verbalizes understanding of possible complications and has been instructed to notify the appropriate practitioner as necessary; and

(4) A physician-directed source of continuing medical care for both mother and baby must be identified and arrangements made for the baby to be examined within 48 hours of discharge.

2. The early discharge follow-up visit must be provided as directed by a physician. The physician may coordinate with the provider of his choice to provide the early discharge follow-up visit, within the following limitations. Qualified providers are those hospitals, physicians, nurse midwives, nurse practitioners, federally qualified health clinics, rural health clinics, and health departments clinics that are enrolled as Medicaid providers and are qualified by the appropriate state authority for delivery of the service. The staff providing the follow-up visit, at a minimum, must be a registered nurse having training and experience in maternal and child health. The visit must be provided within 48 hours of discharge.

3. The visit must include, at a minimum, the following:

a. Maternal assessment must include, but is not limited to:

- (1) Vital signs;
- (2) Assessment of lochia, height and firmness of the uterus;
- (3) Assessment of the episiotomy, if applicable;
- (4) Assessment for and of hemorrhoids;
- (5) Assessment of bowel and bladder function;
- (6) Assessment of the breasts, especially the nipples if the mother is breast feeding. Assessment of the mother's understanding of breast/nipple care and understanding of proper care;
- (7) Assessment of eating habits for nutritional balance, stressing good nutrition especially in the breast feeding mother;
- (8) Assessment for signs and symptoms of anemia and, if present, notification of the responsible physician for further instructions;
- (9) Confirmation that the mother has an appointment for a six-week postpartum check-up; and
- (10) Identification of the need for and make referrals to the appropriate resources for identified medical, social, and nutritional concerns and needs.

b. Newborn assessment must include, but is not limited to:

- (1) Vital signs;
- (2) Weight;

(3) Examination of the umbilical cord and circumcision, if applicable;

(4) Assessment of hydration status;

(5) Evaluation of acceptance and tolerance of feedings, including the frequency of feeds and the amount taken each feed. If possible, observation of the mother or caretaker feeding the infant for technique assessment;

(6) Assessment of bowel and bladder function;

(7) Assessment of skin coloration; if the infant demonstrates any degree of jaundice, notification of the physician for further instruction. If infant is pale, mottled, lethargic, or with poor muscle tone, immediate notification of the physician for further instruction;

(8) Assessment of infant behavior, sleep/wake patterns;

(9) Assessment of the quality of mother/infant interaction, bonding;

(10) Blood samples for lab work, or a urine sample as directed by state law, physician, or clinical judgment;

(11) Confirmation that the infant has an appointment for routine two-week check up;

(12) Discussion with the mother or caretaker planning for health maintenance, including preventive care, periodic evaluations, immunizations, signs and symptoms of physical change requiring immediate attention, and emergency services available; and

(13) Identification of the need for and make referrals to any other existing appropriate resources for identified medical, social and nutritional concerns and needs.

VA.R. Doc. No. R98-245; Filed May 4, 1998, 11:29 a.m.

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**Title of Regulation:** High Dose Chemotherapy and Bone Marrow Transplantation.  
**12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-100, [ 12 VAC 30-50-105, ] 12 VAC 30-50-140 and 12 VAC 30-50-540; adding 12 VAC 30-50-550, 12 VAC 30-50-560 and 12 VAC 30-50-570).**

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

**Effective Date:** July 1, 1998.

**Summary:**

*This regulation establishes the provider and recipient criteria for Medicaid coverage of high dose chemotherapy and bone marrow/stem cell transplants for*

*individuals over the age of 21 who have been diagnosed with lymphoma or breast cancer. Previously, these services were not covered for this age group.*

**Summary of Public Comments and Agency's Response:** No public comment was received by the promulgating agency.

**Agency Contact:** Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

**12 VAC 30-50-100. Inpatient hospital services provided at general acute care hospitals and freestanding psychiatric hospitals; enrolled providers.**

A. Preauthorization of all inpatient hospital services will be performed. This applies to both general acute care hospitals and freestanding psychiatric hospitals. Nonauthorized inpatient services will not be covered or reimbursed by the Department of Medical Assistance Services (DMAS). Preauthorization shall be based on criteria specified by DMAS. In conjunction with preauthorization, an appropriate length of stay will be assigned using the HCIA, Inc., Length of Stay by Diagnosis and Operation, Southern Region, 1996, as guidelines.

1. Admission review.

a. Planned/scheduled admissions. Review shall be done prior to admission to determine that inpatient hospitalization is medically justified. An initial length of stay shall be assigned at the time of this review. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

b. Unplanned/urgent admissions. Review shall be performed within one working day to determine that inpatient hospitalization is medically justified. An initial length of stay shall be assigned for those admissions which have been determined to be appropriate. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

2. Concurrent review shall end for nonpsychiatric claims with dates of admission and services on or after July 1, 1998, with the full implementation of the DRG reimbursement methodology. Concurrent review shall be done to determine that inpatient hospitalization continues to be medically necessary. Prior to the expiration of the previously assigned initial length of stay, the provider shall be responsible for obtaining authorization for continued inpatient hospitalization. If continued inpatient hospitalization is determined necessary, an additional length of stay shall be assigned. Concurrent review shall continue in the same manner until the discharge of the patient from acute inpatient hospital care. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

3. Retrospective review shall be performed when a provider is notified of a patient's retroactive eligibility for Medicaid coverage. It shall be the provider's responsibility to obtain authorization for covered days prior to billing DMAS for these services. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

4. Reconsideration process.

a. Providers requesting reconsideration must do so upon verbal notification of denial.

b. This process is available to providers when the nurse reviewers advise the providers by telephone that the medical information provided does not meet DMAS specified criteria. At this point, the provider must request by telephone a higher level of review if he disagrees with the nurse reviewer's findings. If higher level review is not requested, the case will be denied and a denial letter generated to both the provider and recipient identifying appeal rights.

c. If higher level review is requested, the authorization request will be held in suspense and referred to the Utilization Management Supervisor (UMS). The UMS shall have one working day to render a decision. If the UMS upholds the adverse decision, the provider may accept that decision and the case will be denied and a denial letter identifying appeal rights will be generated to both the provider and the recipient. If the provider continues to disagree with the UMS' adverse decision, he must request physician review by DMAS medical support. If higher level review is requested, the authorization request will be held in suspense and referred to DMAS medical support for the last step of reconsideration.

d. DMAS medical support will review all case specific medical information. Medical support shall have two working days to render a decision. If medical support upholds the adverse decision, the request for authorization will then be denied and a letter identifying appeal rights will be generated to both the provider and the recipient. The entire reconsideration process must be completed within three working days.

5. Appeals process.

a. Recipient appeals. Upon receipt of a denial letter, the recipient shall have the right to appeal the adverse decision. Under the Client Appeals regulations, Part I (12 VAC 30-110-10 et seq.) of 12 VAC 30-110, the recipient shall have 30 days from the date of the denial letter to file an appeal.

b. Provider appeals. If the reconsideration steps are exhausted and the provider continues to disagree, upon receipt of the denial letter, the provider shall have 30 days from the date of the denial letter to file an appeal if the issue is whether DMAS will reimburse the provider for services already rendered. The

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appeal shall be held in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

B. Cosmetic surgical procedures shall not be covered unless performed for physiological reasons and require DMAS prior approval.

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. Coverage of inpatient hospitalization shall be limited to a total of 21 days per admission in a 60-day period for the same or similar diagnosis or treatment plan. The 60-day period would begin on the first hospitalization (if there are multiple admissions) admission date. There may be multiple admissions during this 60-day period. Claims which exceed 21 days per admission within 60 days for the same or similar diagnosis or treatment plan will not be authorized for payment. Claims which exceed 21 days per admission within 60 days with a different diagnosis or treatment plan will be considered for reimbursement if medically indicated. Except as previously noted, regardless of authorization for the hospitalization, the claims will be processed in accordance with the limit for 21 days in a 60-day period. Claims for stays exceeding 21 days in a 60-day period shall be suspended and processed manually by DMAS staff for appropriate reimbursement. The limit for coverage of 21 days for nonpsychiatric admissions shall cease with dates of service on or after July 1, 1998.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in general hospitals and freestanding psychiatric hospitals in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical or psychological, as appropriate, examination. The admission and length of stay must be medically justified and preauthorized via the admission and concurrent or retrospective review processes described in subsection A of this section. Medically unjustified days in such hospitalizations shall not be authorized for payment.

E. Coverage for a normal, uncomplicated vaginal delivery shall be limited to the day of delivery plus an additional two days unless additional days are medically justified. Coverage for cesarean births shall be limited to the day of delivery plus an additional four days unless additional days are medically justified.

F. Coverage in freestanding psychiatric hospitals shall not be available for individuals aged 21 through 64. Medically necessary inpatient psychiatric care rendered in a psychiatric unit of a general acute care hospital shall be covered for all Medicaid eligible individuals, regardless of age, within the

limits of coverage prescribed in this section and 12 VAC 30-50-105.

G. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. *High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma or breast cancer.* Transplant services for liver, heart, and ~~bone marrow transplantation~~ and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow/*stem cell* transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS medical support. Inpatient hospitalization related to kidney transplantation will require preauthorization at the time of admission and, concurrently, for length of stay. Cornea transplants do not require preauthorization of the procedure, but inpatient hospitalization related to such transplants will require preauthorization for admission and, concurrently, for length of stay. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow transplant/*stem cell* services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. *If the actual charges are lower than the fee, the agency shall reimburse actual charges.* Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-540 [ *through 12 VAC 30-50-570* ].

H. Coverage of observation beds. (Reserved.)

I. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed shall be subject to review. Hospitals must submit the required DMAS forms corresponding to the procedures. Regardless of authorization for the hospitalization during

which these procedures were performed, the claims shall suspend for manual review by DMAS. If the forms are not properly completed or not attached to the bill, the claim will be denied or reduced according to DMAS policy.

**[ 12 VAC 30-50-105. Inpatient hospital services provided at general acute care hospitals and freestanding psychiatric hospitals; nonenrolled providers (nonparticipating/out of state).**

A. The full DRG inpatient reimbursement methodology shall become effective July 1, 1998, for general acute care hospitals and freestanding psychiatric hospitals which are nonenrolled providers (nonparticipating/out of state) and the same reviews, criteria, and requirements shall apply as are applied to enrolled, in-state, participating hospitals in 12 VAC 30-50-100.

B. Inpatient hospital services rendered by nonenrolled providers shall not require preauthorization with the exception of transplants as described in subsection K of this section. However, these inpatient hospital services claims will be suspended from payment and manually reviewed for medical necessity as described in subsections C through K of this section using criteria specified by DMAS.

C. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under four days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed three days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection H of this section.)

D. Cosmetic surgical procedures shall not be covered unless performed for physiological reasons and require DMAS prior approval.

E. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus was carried to term.

F. Hospital claims with an admission date prior to the first surgical date, regardless of the number of days prior to surgery, must be medically justified. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for all pre-operative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

G. Reimbursement will not be provided for weekend (Saturday/Sunday) admissions, unless medically justified. Hospital claims with admission dates on Saturday or Sunday will be pending for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice

for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admission will be denied.

H. Coverage of inpatient hospitalization shall be limited to a total of 21 days per admission in a 60-day period for the same or similar diagnosis or treatment plan. The 60-day period would begin on the first hospitalization (if there are multiple admissions) admission date. There may be multiple admissions during this 60-day period. Claims which exceed 21 days per admission within 60 days for the same or similar diagnosis or treatment plan will not be reimbursed. Claims which exceed 21 days per admission within 60 days with a different diagnosis or treatment plan will be considered for reimbursement if medically justified. The admission and length of stay must be medically justified and preauthorized via the admission and concurrent review processes described in subsection A of 12 VAC 30-50-100. Claims for stays exceeding 21 days in a 60-day period shall be suspended and processed manually by DMAS staff for appropriate reimbursement. The limit for coverage of 21 days shall cease with dates of service on or after July 1, 1998. Medically unjustified days in such hospitalizations shall not be reimbursed by DMAS.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age who are Medicaid eligible for medically necessary stays in general hospitals and freestanding psychiatric facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical or psychological, as appropriate, examination.

I. Coverage for a normal, uncomplicated vaginal delivery shall be limited to the day of delivery plus an additional two days unless additional days are medically justified. Coverage for cesarean births shall be limited to the day of delivery plus an additional four days unless additional days are medically necessary.

J. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the DMAS outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions.

K. For purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. *High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma or breast cancer.* Transplant services for liver, heart, ~~and bone marrow transplantation~~ and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, ~~and bone marrow/stem cell~~ transplants and any

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other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow/*stem cell* transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover: procurement costs; all hospital costs from admission to discharge for the transplant procedure; total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. *If the actual charges are lower than the fee, the agency shall reimburse actual charges.* Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-540 through 12 VAC 30-50-570.

L. Coverage of observation beds. (Reserved.)

M. In compliance with 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed shall be subject to review of the required DMAS forms corresponding to the procedures. The claims shall suspend for manual review by DMAS. If the forms are not properly completed or not attached to the bill, the claim will be denied or reduced according to DMAS policy. ]

**12 VAC 30-50-140. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.**

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Outpatient psychiatric services.

1. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to DMAS' approval) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by DMAS. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. Consistent with § 6403 of the Omnibus Budget Reconciliation Act of 1989, medically necessary psychiatric services shall be covered when prior authorized by DMAS for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening.

2. Psychiatric services can be provided by psychiatrists or by a licensed clinical social worker or licensed professional counselor under the direct supervision of a psychiatrist.\*

3. Psychological and psychiatric services shall be medically prescribed treatment which is directly and specifically related to an active written plan designed and signature-dated by either a psychiatrist or by a licensed clinical social worker or licensed professional counselor under the direct supervision of a psychiatrist.\*

\* Licensed clinical social workers and licensed professional counselors may also directly enroll or be supervised by psychologists as provided for in 12 VAC 30-50-150.

4. Psychological or psychiatric services shall be considered appropriate when an individual meets the following criteria:

a. Requires treatment in order to sustain behavioral or emotional gains or to restore cognitive functional levels which have been impaired;

b. Exhibits deficits in peer relations, dealing with authority; is hyperactive; has poor impulse control; is clinically depressed or demonstrates other dysfunctional clinical symptoms having an adverse impact on attention and concentration, ability to learn, or ability to participate in employment, educational, or social activities;

c. Is at risk for developing or requires treatment for maladaptive coping strategies; and

d. Presents a reduction in individual adaptive and coping mechanisms or demonstrates extreme increase in personal distress.

5. Psychological or psychiatric services may be provided in an office or a mental health clinic.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial

endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients over the age of 21 are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses or treatment plan and is further restricted to medically necessary authorized (for enrolled providers)/approved (for nonenrolled providers) inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in general hospitals and freestanding psychiatric facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days shall be limited to medically necessary inpatient hospital days.

H. (Reserved).

I. Reimbursement shall not be provided for physician services provided to recipients in the inpatient setting whenever the facility is denied reimbursement.

J. (Reserved.)

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. *High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma or breast cancer.* Transplant services for liver, heart, and ~~bone marrow~~ and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow/*stem cell* transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow/*stem cell* transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons,

etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. *If the actual charges are lower than the fee, the agency shall reimburse actual charges.* Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-540 [ *through 12 VAC 30-50-570* ].

**12 VAC 30-50-540. Standards for the coverage of organ transplant services. The following criteria will be used to evaluate specific organ transplant requests. 1.1. Patient selection criteria for provision of Kidney transplantation (KT).**

A. *Patient selection criteria for provision of kidney transplantation.* Transplantation of the kidney is a surgical treatment whereby a diseased kidney is replaced by a healthy organ. Pre-authorization is required. The following patient selection criteria shall apply for the consideration of all approvals for coverage and reimbursement for kidney transplantation.

1. Current medical therapy has failed and patient has failed to respond to appropriate conservative management;
2. The patient does not have other systemic disease including but not limited to the following:
  - a. Reversible renal conditions;
  - b. Major extra-renal complications (malignancy, systemic disease, cerebral cardio-arterial disease);
  - c. Active infection;
  - d. Severe malnutrition; or
  - e. Pancytopenia.
3. The patient is not in both an irreversible terminal state and on a life support system;
4. Adequate supervision will be provided to assure there will be strict adherence to the medical regimen which is required;
5. The KT is likely to prolong life and restore a range of physical and social function suited to activities of daily living;
6. A facility with appropriate expertise has evaluated the patient, and has indicated willingness to undertake the procedure;
7. The patient does not have multiple uncorrectable severe major system congenital anomalies;
8. Failure to meet (1) through (7) above shall result in denial of pre-authorization and coverage for the requested kidney transplant procedures.

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~~4-2~~ B. Facility selection criteria for kidney transplantation (KT). A- For medical facility to qualify as an approved Virginia Medicaid provider for performing kidney transplants, the following conditions must be met:

1. The facility has available expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;
2. The KT program staff has extensive experience and expertise in the medical and surgical treatment of renal disease;
3. Transplant surgeons on the staff have been trained in the KT technique at an institution with a well established KT program;
4. The transplantation program has adequate services to provide specialized psychosocial and social support for patients and families;
5. Adequate blood bank support services are present and available;
6. Satisfactory arrangements exist for donor procurement services;
7. The institution is committed to a program of at least 25 KTs a year;
8. The center has a consistent, equitable, and practical protocol for selection of patients (at a minimum, the DMAS Patient Selection Criteria must be met and adhered to);
9. The center has the capacity and commitment to conduct a systematic evaluation of outcome and cost;
10. In addition to hospital administration and medical staff endorsement, hospital staff support also exists for such a program;
11. The hospital has an active, ongoing renal dialysis service;
12. The hospital has access to staff with extensive skills in tissue typing, immunological and immunosuppressive techniques;
13. Initial approval as KT center requires performance of 25 KTs within the most recent 12 months, with a one year survival rate of at least 90%. Centers that fail to meet this requirement during the first year will be given a one-year conditional approval. Failure to meet the volume requirement following the conditional approval will result in loss of approval.

## 12 VAC 30-50-550. Corneal transplantation.

A. Patient selection criteria for provision of corneal transplantation (CT). A- Transplantation of the cornea is a surgical treatment whereby a diseased cornea is replaced by a healthy organ. While pre-authorization is not required, the following patient selection criteria shall apply for the consideration of all approvals for reimbursement for cornea transplantation.

1. Current medical therapy has failed and will not prevent progressive disability;
2. The patient is suffering from one of the following conditions:
  - a. Post-cataract surgical decompensation,
  - b. Corneal dystrophy,
  - c. Post-traumatic scarring,
  - d. Keratoconus, or
  - e. Aphakia Bullous Keratopathy;
3. Adequate supervision will be provided to assure there will be strict adherence by the patient to the long term medical regimen which is required;
4. The CT is likely to restore a range of physical and social function suited to activities of daily living;
5. The patient is not in both an irreversible terminal state and on a life support system;
6. The patient does not have untreatable cancer, bacterial, fungal, or viral infection;
7. The patient does not have the following eye conditions:
  - a. Trichiasis,
  - b. Abnormal lid brush and/or function,
  - c. Tear film deficiency,
  - d. Raised transocular pressure,
  - e. Intensive inflammation, and
  - f. Extensive neo-vascularization.

~~2-2~~ B. Facility selection criteria for cornea transplantation (CT). A- For medical facility to qualify as an approved Medicaid provider for performing cornea transplants, the following conditions must be met:

1. The facility has available expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;
2. The CT program staff has extensive experience and expertise in the medical and surgical treatment of eye disease;
3. Transplant surgeons on the staff have been trained in the CT technique at an institution with a well established CT program;
4. The transplantation program has adequate services to provide social support for patients and families;
5. Satisfactory arrangements exist for donor procurement services;
6. The institution is committed to a program of eye surgery;

7. The center has a consistent, equitable, and practical protocol for selection of patients (at a minimum, the DMAS Patient Selection Criteria must be met and adhered to);

8. The center has the capacity and commitment to conduct a systematic evaluation of outcome and cost;

9. In addition to hospital administration and medical staff endorsement, hospital staff support also exists for such a program;

10. Initial approval as CT center requires performance of corneal transplant surgery, with a one year graft survival rate of at least 75%. Centers that fail to meet this requirement during the first year will be given a one-year conditional approval. Failure to meet this requirement following the conditional approval will result in loss of approval.

**12 VAC 30-50-560. Liver, heart, allogeneic and autologous bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational (coverage for persons younger than 21 years).**

~~3-4.~~ A. Patient selection criteria for provision of liver, heart, allogeneic and autologous bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational.

~~A. General.~~ 1. The following general conditions shall apply to these services:

~~1- a.~~ Coverage shall not be provided for procedures that are provided on an investigational or experimental basis.

~~2- b.~~ There must be no effective alternative medical or surgical therapies available with outcomes that are at least comparable.

~~3- c.~~ The transplant procedure and application of the procedure in treatment of the specific condition for which it is proposed have been clearly demonstrated to be medically effective and not experimental or investigational.

~~4- d.~~ Prior authorization by the Department of Medical Assistance Services (DMAS) is required. The prior authorization request must contain the information and documentation as required by DMAS.

~~B- 2.~~ The following patient selection criteria shall apply for the consideration of authorization and coverage and reimbursement:

~~1- a.~~ The patient must be under 21 years of age at time of surgery.

~~2- b.~~ The patient selection criteria of the transplant center where the surgery is to be performed shall be used in determining whether the patient is appropriate for selection for the procedure. Transplant procedures will be pre-authorized only if the selection of the

patient adheres to the transplant center's patient selection criteria, based upon review by DMAS of information submitted by the transplant team or center.

~~a-~~ The recipient's medical condition shall be reviewed by the transplant team or program according to the transplant facility's patient selection criteria for that procedure and the recipient shall be determined by the team to be an appropriate transplant candidate. Patient selection criteria used by the transplant center shall include, but not necessarily be limited to, the following:

~~1-~~ (1) Current medical therapy has failed and the patient has failed to respond to appropriate therapeutic management;

~~2-~~ (2) The patient is not in an irreversible terminal state, and

~~3-~~ (3) The transplant is likely to prolong life and restore a range of physical and social function suited to activities of daily living.

~~3-2.~~ B. Facility selection criteria for liver, heart, allogeneic and autologous bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational (coverage for persons younger than 21 years).

~~A. General.~~ 1. The following general conditions shall apply:

~~1- a.~~ Procedures may be performed out of state only when the authorized transplant cannot be performed in the Commonwealth because the service is not available or, due to capacity limitations, the transplant can not be performed in the necessary time period.

~~2- b.~~ Criteria applicable to transplantation services and centers in the Commonwealth also apply to out-of-state transplant services and facilities.

~~B- 2.~~ To qualify for coverage, the facility must meet, but not necessarily be limited to, the following criteria:

~~1- a.~~ The transplant program staff has demonstrated expertise and experience in the medical and surgical treatment of the specific transplant procedure;

~~2- b.~~ The transplant surgeons have been trained in the specific transplant technique at an institution with a well established transplant program for the specific procedure;

~~3- c.~~ The facility has expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;

~~4- d.~~ The facility has staff or access to staff with expertise in tissue typing, immunological and immunosuppressive techniques;

~~5- e.~~ Adequate blood bank support services are available;



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6. *f.* Adequate arrangements exist for donor procurement services;

7. *g.* Current full membership in the United Network for Organ Sharing, for the facilities where solid organ transplants are performed;

8. *h.* Membership in a recognized bone marrow accrediting or registry program for bone marrow transplantation programs;

9. *i.* The transplant facility or center can demonstrate satisfactory transplantation outcomes for the procedure being considered;

10. *j.* Transplant volume at the facility is consistent with maintaining quality services;

11. *k.* The transplant center will provide adequate psychosocial and social support services for the transplant recipient and family;

**12 VAC 30-50-570. High dose chemotherapy and bone marrow/stem cell transplantation (coverage for persons over 21 years of age).**

*A. Patient selection criteria for high dose chemotherapy and bone marrow/stem cell transplantation (coverage for persons over 21 years of age).*

1. *The following general conditions shall apply to these services:*

*a. This must be the most effective medical therapy available yielding outcomes that are at least comparable to other therapies.*

*b. The transplant procedure and application of the procedure in treatment of the specific condition for which it is proposed have been clearly demonstrated to be medically effective.*

*c. Prior authorization by the Department of Medical Assistance Services (DMAS) is required. The prior authorization request must contain the information and documentation as required by DMAS. The nearest approved and appropriate facility will be considered.*

2. *The following patient selection criteria shall apply for the consideration of authorization and coverage and reimbursement for individuals who have been diagnosed with lymphoma or breast cancer and have been determined by the treating health care provider to have a performance status sufficient to proceed with such high dose chemotherapy and bone marrow/stem cell transplant:*

*a. The patient selection criteria of the transplant center where the treatment is to be performed shall be used in determining whether the patient is appropriate for selection for the procedure. Transplant procedures will be preauthorized only if the selection of the patient adheres to the transplant center's patient selection criteria based upon review by DMAS of information submitted by the transplant team or center.*

*b. The recipient's medical condition shall be reviewed by the transplant team or program according to the transplant facility's patient selection criteria for that procedure and the recipient shall be determined by the team to be an appropriate transplant candidate. Patient selection criteria used by the transplant center shall include, but not necessarily be limited to, the following:*

*(1) The patient is not in an irreversible terminal state (as demonstrated in the facility's patient selection criteria), and*

*(2) The transplant is likely to prolong life and restore a range of physical and social functions suited to activities of daily living.*

*B. Facility selection criteria for high dose chemotherapy and bone marrow/stem cell transplantation for individuals diagnosed with lymphoma or breast cancer.*

1. *The following general conditions shall apply:*

*a. Unless it is cost effective and medically appropriate, procedures may be performed out of state only when the authorized transplant cannot be performed in the Commonwealth because the service is not available or, due to capacity limitations, the transplant cannot be performed in the necessary time period.*

*b. Criteria applicable to transplantation services and centers in the Commonwealth also apply to out-of-state transplant services and facilities.*

2. *To qualify for coverage, the facility must meet, but not necessarily be limited to, the following criteria:*

*a. The transplant program staff has demonstrated expertise and experience in the medical treatment of the specific transplant procedure;*

*b. The transplant physicians have been trained in the specific transplant technique at an institution with a well established transplant program for the specific procedure;*

*c. The facility has expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;*

*d. The facility has staff or access to staff with expertise in tissue typing, immunological and immunosuppressive techniques;*

*e. Adequate blood bank support services are available;*

*f. Adequate arrangements exist for donor procurement services;*

*g. Membership in a recognized bone marrow accrediting or registry program for bone marrow transplantation programs;*

h. The transplant facility or center can demonstrate satisfactory transplantation outcomes for the procedure being considered;

i. Transplant volume at the facility is consistent with maintaining quality services; and

j. The transplant center will provide adequate psychosocial and social support services for the transplant recipient and family.

VA.R. Doc. No. R97-721; Filed May 6, 1998, 11:38 a.m.

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**Title of Regulation:** Expansion of Coverage of School-Based Health Services.

**12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-200; adding 12 VAC 30-50-229.1).**

**12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-30).**

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

**Effective Date:** July 1, 1998.

**Summary:**

*These amendments expand the services Medicaid covers in enrolled school districts, beyond the basic therapy services, to include skilled nursing services for children in special education who require such services. Medicaid provides only the federal matching dollars for these services for the school districts local and state funds.*

**Summary of Public Comments and Agency's Response:** A summary of comments received by the public 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 Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

**12 VAC 30-50-200. Physical therapy and related services.**

A. Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services. These services shall be prescribed by a physician and be part of a written physician's order/plan of care. Any one of these services may be offered as the sole service and shall not be contingent upon the provision of another service. All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements. Services shall be provided according to guidelines found in the Virginia Medicaid Rehabilitation Manual.

**B. Physical therapy.**

1. Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, ~~services provided by a local school division employing qualified therapists,~~ or when otherwise included as an authorized service by a cost provider who provides rehabilitation services. ~~A local school division may only provide these services to children entitled to services under Public Law 94 142.~~

2. Effective with dates of service on and after October 24, 1995, DMAS will provide for the direct reimbursement to enrolled rehabilitation providers for physical therapy services when such services are rendered to patients residing in nursing facilities (NFs). Such reimbursement shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the ~~NF nursing facility~~ or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the ~~NF nursing facility~~ to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

**C. Occupational therapy.**

1. Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, ~~services provided by a local school division employing qualified therapists,~~ or when otherwise included as an authorized service by a cost provider who provides rehabilitation services. ~~A local school division may only provide these services to children entitled to services under Public Law 94 142.~~

2. Effective with dates of service on and after October 24, 1995, DMAS will provide for the direct reimbursement to enrolled rehabilitation providers for occupational therapy services when such services are rendered to patients residing in nursing facilities (NFs). Such reimbursement shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the ~~NF nursing facility~~ or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the ~~NF nursing facility~~ to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

**D. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist.)**

1. These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, ~~services provided by a local school division employing qualified therapists,~~ or when otherwise included as an authorized service by a cost provider who provides rehabilitation services. ~~A local school division may only~~

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~~provide these services to children entitled to services under Public Law 94-142.~~

2. Effective with dates of service on and after October 24, 1995, DMAS will provide for the direct reimbursement to enrolled rehabilitation providers for speech/language therapy services when such services are rendered to patients residing in nursing facilities (NFs). Such reimbursement shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the NF *nursing facility* or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the NF *nursing facility* to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

E. Authorization for outpatient rehabilitation services.

1. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, school divisions, or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service annually. The provider shall maintain documentation to justify the need for services.

2. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized. Documentation for medical justification must include physician orders/plans of care signed and dated by a physician. Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS.

3. Covered outpatient rehabilitative services for acute conditions shall include physical therapy, occupational therapy, and speech-language pathology services. "Acute conditions" shall be defined as conditions which are expected to be of brief duration (less than 12 months) and in which progress toward goals is likely to occur frequently.

4. Covered outpatient rehabilitation services for long-term, nonacute conditions shall include physical therapy, occupational therapy, and speech-language pathology services. "Nonacute conditions" shall be defined as those conditions which are of long duration (greater than 12 months) and in which progress toward established goals is likely to occur slowly.

5. Payment shall not be made for reimbursement requests submitted more than 12 months after the termination of services.

F. Service limitations. The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology:

1. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

2. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the physician's order/plan of care, and indicate the frequency and duration for services. Physician orders/plans of care must be personally signed and dated prior to the initiation of rehabilitative services. The certifying physician may use a signature stamp, in lieu of writing his full name, but the stamp must, at minimum, be initialed and dated at the time of the initialing (within 21 days of the order).

3. Services shall be furnished under a written plan of treatment and must be established, signed and dated (as specified in this section) and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

4. A physician recertification shall be required periodically and must be signed and dated (as specified in this section) by the physician who reviews the plan of treatment. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed. Certification and recertification must be signed and dated (as specified in this section) prior to the beginning of rehabilitation services.

5. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

6. Physical therapy, occupational therapy and speech-language services are to be considered for termination regardless of the preauthorized visits or services when any of the following conditions are met:

a. No further potential for improvement is demonstrated. (The patient has reached his maximum progress and a safe and effective maintenance program has been developed.)

b. There is limited motivation of the part of the individual or caregiver.

c. The individual has an unstable condition that affects his or her ability to participate in a rehabilitative plan.

d. Progress toward an established goal or goals cannot be achieved within a reasonable period of time.

e. The established goal serves no purpose to increase meaningful functional or cognitive capabilities.

f. The service can be provided by someone other than a skilled rehabilitation professional.

**12 VAC 30-50-229. (Reserved.)**

**12 VAC 30-50-229.1. School health services.**

A. School health services shall be defined as those therapy and nursing services rendered by school divisions which are enrolled with DMAS to serve children who qualify to receive special education services as described under Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.).

B. Physical therapy and related services.

1. The services covered under this subsection shall include physical therapy, occupational therapy, and speech/language pathology services. All of the requirements of 12 VAC 30-50-200 applicable to these services shall continue to apply with regard to, but not necessarily limited to, necessary authorizations, documentation requirements, provider qualifications, and service limitations.

2. Consultation by physical therapy, occupational therapy, or speech pathology providers in meetings for the development, evaluation, or reevaluation of the Individualized Education Program (IEP) for specific children shall be covered when the IEP with the physical therapy, occupational therapy, or speech pathology services is implemented within one year following the IEP meeting consultation. This consultation is to be billed to DMAS [ ~~along with documentation to show that the services have been implemented~~ ] no earlier than the date such services are implemented. No more than two consultations may be billed for each child annually. This annual limitation includes consultations billed to DMAS attended by either registered nurses or licensed practical nurses.

C. Skilled nursing services.

1. These must be medically necessary nursing services which are required by a child in order to benefit from an educational program, as described under Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.). These services shall be limited to a maximum of six units a day of medically necessary services. Services not deemed to be medically necessary, upon utilization review, shall not be covered. A unit, for the purposes of this school-based health service, shall be defined as 15 minutes of medical care.

2. These services must be performed by a Virginia-licensed registered nurse (RN), or licensed practical nurse (LPN) under the supervision of a licensed RN. The service provider shall be either employed by the

school division or under contract to the school division. The skilled nursing services shall be rendered in accordance with the licensing standards and criteria of the Virginia Board of Nursing. Supervision of LPNs shall be provided consistent with the regulatory standards of the Board of Nursing at 18 VAC 90-20-270.

3. Consultation by skilled nursing providers in meetings for the development, evaluation, or reevaluation of the IEP for specific children shall be covered when the IEP with the skilled nursing services are implemented within one year following the IEP meeting consultation. This consultation is to be billed to DMAS [ ~~along with documentation to show that the services have been implemented~~ ] no earlier than the date such services are implemented. No more than two consultations may be billed for each child annually. This annual limitation includes consultations billed to DMAS attended by physical therapists, occupational therapists, and speech therapists. [ If an IEP eligibility meeting is billed to DMAS, then the subsequent IEP plan meeting must also be billed for any DMAS reimbursement to occur. ]

4. The services shall be of a level of complexity and sophistication which are consistent with skilled nursing services. These skilled nursing services shall include, but not necessarily be limited to, dressing changes, maintaining patent airways, and urinary catheterizations.

5. Skilled nursing services shall be directly and specifically related to an active, written plan of care, which [ has been established, signed and dated, and periodically reviewed by a physician or nurse practitioner, after any needed consultation with skilled nursing staff is based on a physician's or nurse practitioner's written order for skilled nursing services. The registered nurse shall establish, sign, and date the plan of care. The plan of care shall be periodically reviewed by a physician or nurse practitioner after any needed consultation with skilled nursing staff ]. The services shall be specific and provide effective treatment for the child's condition in accordance with accepted standards of [ medical skilled nursing ] practice. [ The plan of care is further described in subdivision 6 of this subsection. Skilled nursing services rendered which exceed the physician's or nurse practitioner's written order for skilled nursing services shall not be reimbursed by DMAS. A copy of the plan of care shall be given to the child's Medicaid primary care provider. ]

6. Documentation of services shall include a written plan of care which identifies the medical condition or conditions to be addressed by skilled nursing services, goals for skilled nursing services, time tables for accomplishing such stated goals, actual skilled nursing services to be delivered and whether the services will be delivered by an RN or LPN. Services which have been delivered and for which reimbursement from Medicaid is to be claimed must be supported with like documentation.

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7. *Service limitations. The following general conditions shall apply to reimbursable skilled nursing services in school divisions:*

a. *Patient must be under the care of a physician or nurse practitioner who is legally authorized to practice and who is acting within the scope of his license.*

b. *A recertification by a physician or nurse practitioner [ of the skilled nursing services ] shall be conducted at least once each school year. The recertification statement must be signed and dated by the physician or nurse practitioner who reviews the plan of care, and may be obtained when the plan of care is reviewed. The physician or nurse practitioner recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.*

c. *Physician or nurse practitioner orders for nursing services shall be required [ ~~and shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services~~ ].*

d. *Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided.*

e. *Skilled nursing services are to be terminated when further progress toward the treatment goals are unlikely or when they are not benefiting the child or when the services can be provided by someone other than the skilled nursing professional.*

### [ 12 VAC 30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12 VAC 30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services (12 VAC 30-80-160 has obstetric/pediatric fees). Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public), except that reimbursement rates for designated physician services when performed in hospital outpatient settings shall be 50% of the reimbursement rate established for those services when performed in a physician's office. The following limitations shall apply to emergency physician services.

a. *Definitions. The following words and terms, when used in this subdivision 1, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:*

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency department visit.

b. *Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.*

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12 VAC 30-80-160, rendered in emergency departments which DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the

transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers and licensed professional counselors shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment.

a. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.

b. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.

7. Local health services, including services paid to local school districts.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12 VAC 30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and adjusted to disregard offsets attributable to Medicare coinsurance amounts. ]

VA.R. Doc. No. R97-722; Filed April 27, 1998, 3:51 p.m.

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**REGISTRAR'S NOTICE:** The Department of Medical Assistance Services is claiming an exclusion 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 Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 12 VAC 30-100-10 et seq. Part II, State/Local Hospitalization Program (amending 12 VAC 30-100-120).

**Statutory Authority:** § 32.1-325 of the Code of Virginia and Item 338 C of Chapter 464 of the 1998 Acts of Assembly.

**Effective Date:** July 1, 1998.

**Summary:**

*This regulation delays the implementation of the Diagnosis Related Groups (DRG) reimbursement methodology for inpatient hospital services provided under the State/Local Hospitalization Program until July 1, 1999. Until that time, the reimbursement rate will be the per diem rate in effect on June 30, 1998.*

**Agency Contact:** Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

**12 VAC 30-100-120. Inpatient hospital reimbursement rate.**

The inpatient hospital reimbursement rate shall be consistent with the Medicaid inpatient rate methodology. However, no disproportionate share or medical education adjustment for SLH inpatient hospital reimbursement shall be provided. For the two-year DRG phase-in period beginning

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July 1, 1996, the daily inpatient hospital reimbursement rate shall be the same as that per diem rate established and in effect on July 1 of each year by DMAS for the specific hospital established by § 32.1-346 B 2 of the Code of Virginia. Inpatient hospital reimbursement rates for SLH services shall not be subject to readjustment through the year-end cost reporting process.

The department shall delay implementation of the Diagnosis Related Groups reimbursement methodology for inpatient hospital services provided under this program until July 1, 1999. Until that time, the daily inpatient hospital reimbursement rate shall be the same as the per diem rate established by the department and in effect on June 30, 1998.

VA.R. Doc. No. R98-243; Filed May 4, 1998, 11:27 a.m.

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**REGISTRAR'S NOTICE:** The amendments to the following regulation are exempt from the Administrative Process Act as follows:

1. VAC 30-120-385 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 or the appropriation act where no agency discretion is involved;
2. 12 VAC 30-120-360, 12 VAC 30-120-410 and 12 VAC 30-120-420 in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation; and
3. 12 VAC 30-120-370 in accordance with § 9-6.14:4.1 C 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors.

The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 12 VAC 30-120-10 et seq. **Waived Services (Part VI: Medallion II, amending 12 VAC 30-120-360, 12 VAC 30-120-370, 12 VAC 30-120-410, 12 VAC 30-120-420; adding 12 VAC 30-120-385).**

**Statutory Authority:** § 32.1-325 and Item 322 (p) of Chapter 464 of the 1998 Acts of Assembly of the Code of Virginia.

**Effective Date:** July 1, 1998.

**Summary:**

DMAS is conforming its definition of emergency services to the new definition established in federal language. This language is also consistent with the definition of emergency services set out by the Virginia Bureau of Insurance for all HMOs.

This regulatory action creates a new section that excludes from the HMO contract all inpatient and outpatient behavioral health services provided to recipients in the Northern Virginia region. Transportation and prescription drugs provided in association with such behavioral health services remain the responsibility of the HMOs.

Recent amendments to the Social Security Act establish requirements for states in imposing sanctions on managed care organizations that are under contract to provide Medicaid services. This action adds those provisions of the federal law that are mandatory, including requirements regarding termination of HMO contracts and intermediate sanctions such as imposing a temporary manager.

To comply with a new federal mandate, DMAS is amending its regulations to indicate that a provider may act on behalf of a recipient when filing a grievance with an HMO.

This action contains one technical amendment to clarify that individuals who meet one of the exclusion criteria are only excluded from Medallion II for as long as they continue to meet the criteria.

**Agency Contact:** Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

**12 VAC 30-120-360. Definitions.**

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

"Appeal" means any written communication from a client or his representative which clearly expresses that he wants to present his case to a reviewing authority.

"Area of residence" means the recipient's address in the Medicaid eligibility file.

"Capitation payment" means the payment issued to an HMO contractor by DMAS on behalf of a client, in return for which the HMO accepts responsibility for the services to be provided under a contract.

"Client," "clients," "recipient" or "enrollee" means an individual or individuals having current Medicaid eligibility who shall be authorized by DMAS to be a member or members of Medallion II.

"CMP" means a competitive medical plan with current Medicare contracts.

"Covered services" means Medicaid services as defined in the State Plan for Medical Assistance.

"Disenrollment" means a change in enrollment from one Medallion II HMO plan to another.

"DMAS" means the Department of Medical Assistance Services.

"Eligible person" means any person determined by DMAS as eligible to receive services and benefits under the State Plan for Medical Assistance.

"Emergency services" means services provided in a hospital, clinic, office, or other facility that is equipped to furnish the required care, after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention ~~could reasonably be expected~~ to result in:

1. Placing the client's health or, with respect to a pregnant woman, the health of the woman or her unborn child in serious jeopardy;
2. Serious impairment to bodily functions; or
3. Serious dysfunction of any bodily organ or part.

"Foster care" means a child who received either foster care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.

"Grievance" means any request by a client, or a provider on behalf of a client, to an HMO to resolve a dispute regarding coverage or payment for services under the Medallion II Program.

"Health care plan" means any arrangement in which any health maintenance organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

"HMO" means a health maintenance organization, as licensed by the State Corporation Commission's Bureau of Insurance, which undertakes to provide or arrange for one or more health care plans.

"Network" means doctors, hospitals or other health care providers who participate or contract with an HMO and as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services.

"Nonparticipating provider" means a facility not in the HMO's network or a provider not in the HMO's network practicing at a facility not in the HMO's network.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

"Subsidized adoption" means any child for whom an adoption assistance agreement is in effect.

## 12 VAC 30-120-370. Medallion II enrollees.

A. DMAS shall determine enrollment in Medallion II. Enrollment in Medallion II is not a guarantee of continuing eligibility for services and benefits under the Virginia Medical Assistance Program.

B. The following individuals shall be excluded from participating in Medallion II. Individuals not meeting the exclusion criteria must participate in the Medallion II program.

1. Individuals who are inpatients in state mental hospitals;
2. Individuals who are approved by DMAS as inpatients in long-stay hospitals, nursing facilities, or intermediate care facilities for the mentally retarded;
3. Individuals who are placed on spend-down;
4. Individuals who are participating in federal waiver programs for home-based and community-based Medicaid coverage;
5. Individuals who are participating in foster care or subsidized adoption programs;
6. Individuals who are in the third trimester of pregnancy upon initial assignment to Medallion II and who request exclusion. *Following the end of the pregnancy, these individuals shall be required to enroll to the extent they remain eligible for Medicaid;*
7. Individuals who are in their ninth month of pregnancy, when they are or will be automatically assigned or reassigned, and were not in the Medicaid HMO to which they were assigned or reassigned within the last seven months, if they are seeking care from a provider (physician or hospital or both) not affiliated with the HMO to which they were previously assigned. Exclusion requests may be made by the HMO, a provider, or the recipient. *Following the end of the pregnancy, these individuals shall be required to enroll to the extent they remain eligible for Medicaid and do not meet any other exclusion;*
8. Individuals who live outside their area of residence for greater than 60 days except those individuals placed there for medically necessary services funded by the HMO;
9. Individuals who enter into a Medicaid approved hospice program in accordance with DMAS criteria;
10. Individuals with any other comprehensive group or individual health insurance coverage;
11. Individuals who have been preassigned to an HMO but have not yet been enrolled, who are inpatients in hospitals other than those listed in subdivisions 1 and 2 of this subsection, until the first day of the month following discharge;
12. Individuals who have been preassigned to an HMO but have not yet been enrolled, who are scheduled for surgery which is scheduled to be within 30 days of initial enrollment into the HMO, which requires an inpatient hospital stay, until the first day of the month following discharge; and
13. Individuals who have been preassigned to an HMO but have not yet been enrolled, who have been



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diagnosed with a terminal condition and who have a life expectancy of six months or less, if they request exclusion. The client's physician must certify the life expectancy.

C. Medallion II managed care plans shall be marketed to recipients, and recipients shall be enrolled in those plans, exclusively through an independent marketing broker under contract to DMAS.

D. Clients shall be enrolled as follows:

1. All eligible persons, except those meeting one of the exclusions of subsection B of this section, shall be enrolled in Medallion II.

2. Clients shall receive a Medicaid card from DMAS during the interim period, and shall be provided authorized medical care in accordance with DMAS' procedures, after eligibility has been determined to exist.

3. Once individuals are enrolled in Medicaid, they will receive a letter indicating that they may select one of the contracted HMOs. These letters shall indicate a preassigned HMO, determined as provided in subsection E of this section, in which the client will be enrolled if he does not make a selection within a period specified by DMAS of not less than 45 days.

4. The effective date of coverage in the Medallion II program for newly eligible individuals under the Virginia Medical Assistance Program (except for those specified under subdivision 6 of this subsection) and individuals who move from the area of their Medallion II HMO shall be assigned to an HMO as described in subdivision 3 of this subsection.

5. A child born to a woman enrolled with an HMO will be enrolled with the HMO from birth until the last day of the third month including the month of birth, unless otherwise specified by the Medicaid Managed Care Health Benefits Manager. For instance, a child born during the month of February will be automatically enrolled until April 30. By the end of that third month, the child will be disenrolled unless the Medicaid Managed Care Health Benefits Manager specifies continued enrollment. If the child remains an inpatient in a hospital at the end of that third month, the child shall automatically remain enrolled until the last day of the month of discharge, unless this child's parent requests disenrollment.

6. Individuals who lose then regain eligibility for Medallion II within 60 days will be reenrolled into their previous HMO without going through preassignment and selection.

E. Clients who do not select an HMO as described in subdivision D 3 of this section shall be assigned to an HMO as follows:

1. MEDALLION primary care physicians will be asked to select the HMO in which their MEDALLION clients will be enrolled.

2. Clients currently enrolled in "Options" shall be assigned to the HMO in which they participated under "Options" if that HMO contracts with DMAS for Medallion II.

3. Clients not assigned pursuant to subdivision 1 or 2 of this subsection shall be assigned to the HMO of another family member, if applicable.

4. All other clients shall be assigned to an HMO on a basis of approximately equal number by HMO in each locality.

F. HMO enrolled recipients shall be permitted to change HMOs, upon request to the Medicaid Managed Care Health Benefits Manager. The disenrollment will be effective no later than the first day of the second month following the request.

Clients in State Plan defined HMOs which are also CMPs or are federally qualified HMOs will be permitted to change HMOs upon request to the Medicaid Managed Care Health Benefits Manager only:

1. During DMAS-specified open enrollment periods;

2. During the first month of the six-month enrollment period;

3. If a combination of complex medical factors of the client, in the sole discretion of DMAS, would be better served under another contracted HMO; or

4. Upon determination by DMAS that good cause exists as determined under subsection H of this section.

G. DMAS will inform those HMOs which are CMPs, or are federally qualified HMOs, of open enrollment periods. Open enrollment periods will occur at a minimum of twice per calendar year and will be held no more than six months apart. CMPs and federally qualified HMOs will notify their enrolled recipients of open enrollment periods no less than 30 days before the start of each new period of enrollment and at least twice each year.

H. Disenrollment for good cause may be requested at any time. The request must be made in writing. Good cause for disenrollment shall include the following:

1. A recipient's desire to seek services from a federally qualified health center which is not under contract with the current HMO but is under contract to another HMO available to the recipient; or

2. Performance or nonperformance of service to the recipient by an HMO or one or more of its providers which is deemed by the department's external quality review organizations to be below the generally accepted community practice of health care.

DMAS shall determine whether good cause exists for disenrollment.

Good cause for disenrollment shall be deemed to exist and the disenrollment shall be granted if DMAS fails to take final

action on a valid request prior to the first day of the second month after the request.

The DMAS determination concerning good cause for disenrollment may be appealed by the client in accordance with the department's client appeals process at 12 VAC 30-110-10 through 12 VAC 30-110-380.

The current HMO shall provide, within two working days of a request from DMAS, information necessary to determine good cause.

**12 VAC 30-120-385. Medallion II provider responsibilities in Northern Virginia.**

*In addition to the requirements in 12 VAC 30-120-380, HMOs providing services in the Northern Virginia region shall comply with the requirements of this section. Inpatient and outpatient mental health services provided by physicians, practitioners, and clinics shall be provided outside the HMO network and shall be reimbursed directly by DMAS.*

**12 VAC 30-120-410. Sanctions.**

A. If DMAS determines that an HMO is not in compliance with state or federal laws, regulations (including but not limited to the requirements of or pursuant to 12 VAC 30-120-380 F), or their Medallion II contract, DMAS may impose sanctions on the HMO. The sanctions may include but are not limited to:

1. Limiting enrollments in the HMO by freezing voluntary recipient enrollments,
2. Freezing DMAS assignment of recipients to the HMO,
3. Limiting HMO enrollment to specific areas,
4. Denying, withholding, or retracting payments to the HMO,
5. Terminating the HMO's Medallion II contract, and
6. Developing procedures with which the HMO must comply to eliminate specific sanctions.

B. *In the case of an HMO that has repeatedly failed to meet the requirements of §§ 1903(m) and 1932 of the Social Security Act, DMAS shall, regardless of what other sanctions are imposed, impose the following sanctions.*

1. *Appoint a temporary manager to:*
  - a. *Oversee the operation of the Medicaid managed care organization upon a finding by DMAS that there is continued egregious behavior by the organization or there is a substantial risk to the health of enrollees; or*
  - b. *Assure the health of the organization's enrollees if there is a need for temporary management while (i) there is an orderly termination or reorganization of the organizations or (ii) improvements are made to remedy the violations found under subsection A of this section. Temporary management under this subdivision may not be terminated until DMAS has determined that the*

*HMO has the capability to ensure that the violations shall not recur.*

2. *Permit individuals enrolled with the HMO to disenroll without cause. If this sanction is imposed, DMAS shall be responsible for notifying such individuals of the right to disenroll.*

C. *Prior to terminating a contract as permitted under subdivision A 5 of this section, DMAS shall provide the HMO with a hearing. DMAS may not provide an HMO with a pretermination hearing before the appointment of a temporary manager under subdivision B 1 of this section.*

D. *Prior to imposing any sanction other than termination of the HMO's contract, DMAS shall provide the HMO with notice and such other due process protections as the state may provide.*

~~B. In the event DMAS determines that the HMO poses a threat to the life or safety of a recipient, that HMO may be terminated from participation in the Virginia Medicaid program without prior notice.~~ E. *In accordance with the terms of the contract, HMOs shall have the right to appeal any adverse action taken by DMAS. For appeal procedures not addressed by the contract, the HMO shall proceed in accordance with the appeals provisions of the Virginia Public Procurement Act, (§ 11-35 et seq. of the Code of Virginia). Pursuant to §§ 11-70 and 11-71 of the Code of Virginia, DMAS establishes an administrative appeals procedure, which the HMO may elect to appeal decisions on disputes arising during the performance of its contract. Pursuant to § 11-71 of the Code of Virginia, such appeal shall be heard by a hearing officer; however, in no event shall the hearing officer be an employee of DMAS. In conducting the administrative appeal, the hearing officer shall follow the hearing procedure used in § 9-6.14:12 of the Code of Virginia.*

G. F. *When DMAS determines that an HMO committed one of the violations specified in 12 VAC 30-120-400 A, DMAS shall implement the provisions of 42 CFR 434.67.*

1. *Any sanction imposed pursuant to this subsection shall be binding upon the HMO.*

2. *The HMO shall have the appeals rights for any sanction imposed pursuant to this subsection as specified in 42 CFR 434.67.*

**12 VAC 30-120-420. Client grievances.**

A. *The HMOs shall, whenever a client's request for covered services is reduced, denied, or terminated, or payment for services is denied, provide a written notice in accordance with the notice provisions specified in 12 VAC 30-110-70 through 12 VAC 30-110-100, federal requirements at 42 CFR 431.211, 431.213 and 431.214, and any other statutory or regulatory requirements.*

B. *Disputes between the HMO and the client concerning any aspect of service delivery, including medical necessity and specialist referral, shall be resolved through a verbal*

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informal or written formal grievance process operated by the HMO or through the DMAS appeals process. *A provider may act on behalf of a client in the HMO's internal informal or formal grievance procedures.*

1. A written request for a grievance or appeal shall be filed within 30 days of the client's receipt of the notice of adverse action, in accordance with the time limit for requests for appeal specified in 12 VAC 30-110-160 and 12 VAC 30-110-170. Any written communication from a client or his representative (*including a provider acting on behalf of the client*) which clearly expresses that he wants to present his case to a reviewing authority shall constitute an appeal request.

2. In compliance with 14 VAC 5-210-70 H 4, pending resolution of a written grievance filed by a client or his representative (*including a provider acting on behalf of the client*), coverage shall not be terminated for the client for any reason which is the subject of the written complaint. In addition, the HMO shall not terminate or reduce services as specified in 12 VAC 30-110-100.

C. The HMO shall develop written materials describing the informal and formal grievance system and its procedures and operation.

D. The HMO shall designate a person or persons to be responsible for the receipt and timely processing of client grievances. The HMO must maintain a grievance log summarizing each grievance. The grievance log shall capture the dates of receipt and decision and the nature of the decision. The log shall distinguish between Medicaid clients and commercial clients unless the HMO maintains a separate system for Medicaid clients.

E. At the time of enrollment and at the time of any adverse actions, the HMO shall notify the client, in writing, that:

1. Medical necessity, specialist referral or other service delivery issues may be resolved through a system of informal and formal grievances, within the HMO or through the DMAS client appeals process.

2. Clients have the right to appeal directly to DMAS, and

3. The HMO shall promptly provide grievance forms and written procedures to clients who wish to register written grievances.

F. The HMO shall, within two days of receipt of any written request for a grievance, provide DMAS with a copy of the request.

G. The HMO shall issue informal grievance decisions within seven days from the date of initial receipt of the grievance. The informal decision is not required to be in writing.

H. The HMO shall issue formal grievance decisions within 14 days from the date of initial receipt of the formal grievance. The formal decision shall be required to be in writing and shall include but is not limited to:

1. The decision reached by the HMO,

2. The reasons for the decision,

3. The policies or procedures which provide the basis for the decision, and

4. A clear explanation of further appeal rights.

I. The HMO shall provide DMAS with a copy of its formal grievance decision concurrently with the provision of the decision to the client.

J. An expedited grievance decision shall be issued within 48 hours in case of medical emergencies, in which delay could result in death or serious injury to a client. Written confirmation of the decision shall promptly follow the verbal notice of the expedited decision.

K. Any grievance decision by the HMO may be appealed by the client to DMAS in accordance with the department's Client Appeals regulations at 12 VAC 30-110-10 through 12 VAC 30-110-380. DMAS shall conduct an evidentiary hearing in accordance with the Client Appeals regulations at 12 VAC 30-110-10 through 12 VAC 30-110-380 and shall not base any appealed decision on the record established by any grievance decision of the HMO. The HMO shall comply with the DMAS appeal decision. The DMAS decision in these matters shall be final and shall not be subject to appeal by the HMO.

L. A client may appeal directly to DMAS in accordance with the department's client appeal process. DMAS shall conduct an evidentiary hearing in accordance with the Client Appeals regulations at 12 VAC 30-110-10 through 12 VAC 30-110-380 and shall not base any appealed decision on the record established by any decision of the HMO. The HMO shall comply with the DMAS appeal decision. The DMAS decision in these matters shall be final and shall not be subject to appeal by the HMO.

M. The HMO shall provide information necessary for any DMAS appeal within timeframes established by DMAS.



COMMONWEALTH of VIRGINIA

VIRGINIA CODE COMMISSION  
General Assembly Building

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ACTING REGISTRAR OF REGULATIONS

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May 12, 1998

Mr. Joseph M. Teefey, Director  
Department of Medical Assistance Services  
600 East Broad Street, Suite 1300  
Richmond, Virginia 23219

Dear Mr. Teefey:

This letter acknowledges receipt of the amendments to 12 VAC 30-120-10 et seq., Waivered Services (Part VI: Medallion II), submitted by the Department of Medical Assistance Services.

As required by § 9-6.14:4.1 C 4(c) of the Code of Virginia, I have determined that the amendments to 12 VAC 30-120-360, 12 VAC 30-120-410, and 12 VAC 30-120-420 are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "E. M. Miller, Jr. /jc".

E. M. Miller, Jr.  
Acting Registrar of Regulations

VA.R. Doc. No. R98-246; Filed May 6, 1998, 11:38 a.m.

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**Title of Regulation:** Consumer-Directed Personal Attendant Services for Elderly and Disabled Individuals. 12 VAC 30-120-10 et seq. Waivered Services (adding Part VIII: 12 VAC 30-120-490 through 12 VAC 30-120-550).

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

**Effective Date:** July 1, 1998.

**Summary:**

The Consumer-Directed Personal Attendant Services (PAS) Program provides home and community-based care personal attendant services to consumers who meet Medicaid eligibility and financial requirements. The service allows qualifying consumers to remain in their homes, directing their own care, rather than receiving services under the home health agency model or being institutionalized. This regulation specifies the requirements and standards for the provision of consumer-directed PAS.

The Medicaid-funded Consumer-Directed PAS Program is currently being offered under a Social Security Act § 1915(c) home and community-based care waiver and Virginia emergency regulations, which must be a cost-effective alternative to institutionalization. Only persons eligible to receive services through the Department of Rehabilitative Services PAS program and who are determined to be at risk of nursing facility placement are eligible for services under the Medicaid-funded consumer-directed PAS waiver during the emergency regulation's effective period. Once these regulations become effective, all other potentially-eligible Virginians electing to do so will be able to select Medicaid-funded consumer-directed PAS.

Personal attendant services (PAS) are defined as long-term maintenance or support services necessary to enable an elderly or disabled individual to remain at or return to his home rather than a nursing facility. PAS assists elderly or disabled recipients with basic health-related services, such as activities of daily living (eating, bathing, grooming, dressing, ambulation, and toileting); assists with normally self-administered medications; and/or provides basic household maintenance services essential to health in the home. These services do not include the performance of skilled nursing services.

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

**Agency Contact:** Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

## PART VIII.

### CONSUMER-DIRECTED PERSONAL ATTENDANT SERVICES FOR ELDERLY AND DISABLED INDIVIDUALS.

#### 12 VAC 30-120-490. Definitions.

"Activities of daily living" or "ADL" means personal care tasks, i.e., bathing, dressing, toileting, transferring, and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Committee for recipient" means a person who has been legally invested with the authority, and charged with the duty of managing the estate or making decisions to promote the well-being of a person who has been determined by the circuit court to be totally incapable of taking care of his person or handling and managing his estate because of mental illness or mental retardation. A committee shall be appointed only if the court finds that the person's inability to care for himself or handle and manage his affairs is total.

"Current functional status" means the individual's degree of dependency in performing activities of daily living (ADL).

"DMAS" means the Department of Medical Assistance Services.

"DRS" means the Department of Rehabilitative Services. DRS currently operates the Personal Assistance Services Program, which is a state-funded program that provides a limited amount of personal care services to Virginians.

"DSS" means the Department of Social Services.

"Fiscal agent" means an agency or organization that may be contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of the recipient who is receiving consumer-directed personal attendant services (PAS).

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the recipient and managing his property and protecting the rights of the recipient 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 recipient in need of a guardian has been determined to be incapacitated.

"Home and community-based care" means a variety of in-home and community-based services reimbursed by DMAS (personal care, adult day health care, respite care, and assisted living,) authorized under a Social Security Act § 1915(c) waiver designed to offer individuals an alternative to institutionalization. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services in order to avoid nursing facility placement. The Nursing Home Preadmission Screening Team or DMAS shall give prior authorization for any Medicaid-funded home and community-based care.

"Instrumental activities of daily living" or "IADL" means social tasks, i.e., meal preparation, shopping, housekeeping, laundry, money management. A person's degree of independence in performing these activities is part of determining appropriate level of care and services. Meal preparation is planning, preparing, cooking and serving food. Shopping is getting to and from the store, obtaining/paying for groceries and carrying them home. Housekeeping is dusting, washing dishes, making beds, vacuuming, cleaning floors, and cleaning bathroom/kitchen. Laundry is washing/drying clothes. Money management is paying bills, writing checks, handling cash transactions, and making change.

"Nursing Home Preadmission Screening (NHPAS)" means the process to (i) evaluate the medical, nursing, and social needs of individuals referred for preadmission screening, (ii) analyze what specific services the individuals need, (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs, and (iv) authorize Medicaid funded nursing facility or community-based care for those individuals who meet nursing facility level of care and require that level of care.

"Nursing Home Preadmission Screening Team" means the entity contracted with DMAS which is responsible for performing nursing home preadmission screening. For individuals in the community, this entity is a committee comprised of staff from the local health department and local DSS. For individuals in an acute care facility who require screening, the entity is a team of nursing and social work staff. A physician shall be a member of both the local committee or acute care team.

"Participating provider" means an institution, facility, agency, partnership, corporation, or association that meets the standards and requirements set forth by DMAS, and has a current, signed contract with DMAS.

"Personal attendant" means, for purposes of this part and exemption from Worker's Compensation, a domestic servant. Consumers shall be restricted from employing more than two personal attendants simultaneously at any given time.

"Personal attendant services" or "PAS" means long-term maintenance or support services necessary to enable the mentally alert and competent individual to remain at or return home rather than enter a nursing care facility. Personal attendant services include hands-on care specific to the needs of a medically stable, physically disabled individual. Personal attendant services include assistance with ADLs, bowel/bladder programs, range of motion exercises, routine wound care which does not include sterile technique, and external catheter care as further defined in the Consumer-Directed PAS Manual. Supportive services are those which substitute for the absence, loss, diminution, or impairment of a physical function. When specified, supportive services may include assistance with IADLs which are incidental to the care furnished, or which are essential to the health and welfare of the recipient. Personal attendant services shall not include either practical or professional nursing services as

defined in Chapters 30 and 34 of Title 54.1 of the Code of Virginia, as appropriate.

"Plan of care" or "POC" means the written plan of services certified by the screening team physician and approved by DMAS as needed by the individual to ensure optimal health and safety for the delivery of home and community-based care.

"Providers" means those individuals, agencies or facilities registered, licensed, or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.

"Service [ ~~coordinator~~ coordination provider ]" means the [ ~~registered nurse, social worker, or case manager who~~ provider contracted by DMAS that ] is responsible for ensuring that the assessment, development and monitoring of the plan of care, management training, and review activities as required by DMAS are accomplished. [ ~~This individual is an employee of a~~ Individuals employed by the service coordination ] provider [ ~~that contracts with DMAS to provide consumer-directed PAS~~ shall meet the knowledge, skills, and abilities as further defined in this part ].

"State Plan for Medical Assistance" or "the Plan" means the document describing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire which assesses [ ~~a person's~~ an individual's ] social, physical health, mental health, and functional abilities. The UAI is used to gather information for the determination of [ ~~a person's~~ an individual's ] care needs and service eligibility, and for planning and monitoring [ ~~a customer's~~ an individual's ] care across various agencies for long-term care services.

## **12 VAC 30-120-500. General coverage and requirements for consumer-directed PAS as a home and community-based care waiver service.**

A. Coverage statement. Coverage of consumer-directed PAS shall be provided under the administration of the DMAS to disabled and elderly individuals who must be mentally alert and have no cognitive impairments who would otherwise require the level of care provided in a nursing facility. Individuals must be able to manage their own affairs without help from another individual and not have a guardian or committee. If disabled, individuals receiving services must be at least 18 years of age. Individuals eligible for consumer-directed PAS must have the capability to hire and train their own personal attendants and supervise the attendant's performance.

B. Individuals receiving services under this waiver must meet the following requirements:

1. Individuals receiving services under this waiver must be eligible under one of the following eligibility groups: aged, blind or disabled recipients eligible under 42 CFR

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435.121, and the special home and community-based waiver group at 42 CFR 435.217 which includes individuals who would be eligible under the State Plan if they were institutionalized.

2. Under this waived service, the coverage groups authorized under § 1902(a)(10)(C)(i)(III) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules.

3. Virginia shall reduce its payment for home and community-based [ care ] services provided for an individual by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made according to the guidelines in 42 CFR 435.735. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after deducting the amounts as specified in 42 CFR 435.726, listed below:

a. For individuals to whom § 1924(d) applies and for whom Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a non-institutionalized individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for individuals employed 20 hours or more, earned income shall be disregarded up to a maximum of 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours, earned income shall be disregarded up to a maximum of 200% of SSI. However, in no case, shall the total amount of income (both earned and unearned) disregarded for maintenance exceed 300% of SSI.

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the Plan.

b. For individuals to whom § 1924(d) does not apply, deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a non-institutionalized individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for individuals employed 20 hours or more, earned income shall be disregarded up to a maximum of 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours, earned income shall be disregarded up to a maximum of 200% of SSI. However, in no case, shall the total amount of income (both earned and unearned) disregarded for maintenance exceed 300% of SSI.

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.

C. Assessment and authorization of home and community-based care services.

1. To ensure that Virginia's home and community-based care waiver programs serve only individuals who would otherwise be placed in a nursing facility, home and community-based care services shall be considered only for individuals who are seeking nursing facility admission or for individuals who are at [ imminent ] risk of nursing facility admission in the near future. [ "~~Near future~~" "Imminent risk" ] is defined as within one month. Home and community-based care services shall be the critical service that enables the individual to remain at home rather than being placed in a nursing facility.

2. The individual's status as an individual in need of home and community-based care services shall be determined by the NHPAS Team after completion of a thorough assessment of the individual's needs and available support. Screening and preauthorization of home and community-based care services by the NHPAS Team or DMAS staff is mandatory before Medicaid will assume payment responsibility of home and community-based care services.

3. An essential part of the NHPAS Team's assessment process is determining the level of care required by applying existing criteria for nursing facility care

according to established nursing home preadmission screening processes.

4. The team shall explore alternative settings or services to provide the care needed by the individual. If nursing facility placement or a combination of other services are determined to be appropriate, the screening team shall initiate referrals for service. If Medicaid-funded home and community-based care services are determined to be the critical service to delay or avoid nursing facility placement, the screening team shall develop an appropriate plan of care and initiate referrals for service.

5. The annual cost of care for home and community-based care services for a recipient shall not exceed the average annual cost of nursing facility care. For purposes of this subdivision, the annual cost of care for home and community-based care services for a recipient shall include all costs of all Medicaid covered services which would actually be received by the recipient. The average annual cost of nursing facility care shall be determined by DMAS and shall be updated annually.

6. Home and community-based care services shall not be provided to any individual who resides in a board-and-care facility or adult care residences (ACRs) nor who is an inpatient in general acute care hospitals, skilled or intermediate nursing facilities, or intermediate care facilities for the mentally retarded. Additionally, home and community-based care services shall not be provided to any individual who resides outside of the physical boundaries of the Commonwealth, with the exception of brief periods of time as approved by DMAS. Brief periods of time may include, but are not necessarily restricted to, vacation or illness.

7. Medicaid will not pay for any home and community-based care services delivered prior to the authorization date approved by the NHPAS Team.

8. Any authorization and POC for home and community-based care services will be subject to the approval of DMAS prior to Medicaid reimbursement for waiver services.

## **12 VAC 30-120-510. General conditions and requirements for home and community-based care participating service coordination providers.**

A. Service coordination providers approved for participation shall, at a minimum, perform the following activities:

1. Accept referrals for services only when staff is available to initiate and perform such services on an ongoing basis.

2. Provide services and supplies to recipients in full compliance with [ (i) ] Title VI of the Civil Rights Act of 1964 (42 USC § 2000 et seq.) which prohibits discrimination on the grounds of race, color, religion, or national origin [ and of; (ii) ] § 504 of the Rehabilitation Act of 1973 (29 USC § 70 et seq.) which prohibits

discrimination on the basis of a disability [ and; (iii) Title II of the Americans with Disabilities Act of 1990 (42 USC § 126 et seq.) which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications ].

3. Assure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services were performed. Also assure the recipient's freedom to reject medical care and treatment.

4. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.

5. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope and details of the health care provided.

a. Such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of storage, location, and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

6. Submit charges to DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public. The provider will accept as payment in full the amount established by DMAS payment methodology from the first day of eligibility.

7. Immediately notify DMAS, in writing, of any change in the information which the provider previously submitted to DMAS. The provider will use program-designated billing forms for submission of charges.

8. Furnish to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit information on request and in the form requested. The Commonwealth's right of access to provider agencies and records shall survive any termination of this agreement.

9. Disclose all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or



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other legal entities providing any form of health care services to recipients of Medicaid.

10. Hold confidential and use for authorized DMAS purposes only all medical and identifying information regarding recipients served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data is necessary for the functioning of DMAS. DMAS shall not disclose medical information to the public.

11. When ownership of the provider agency changes, notify DMAS within 15 calendar days prior to the date of the change.

B. Requests for participation will be screened by DMAS to determine whether the provider applicant meets the basic requirements for participation.

C. For DMAS to approve contracts with home and community-based care providers the following provider participation standards shall be met:

1. Financial solvency.
2. Disclosure of ownership.
3. Staffing requirements.

D. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider contracts.

E. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and annually recertify each provider for contract renewal with DMAS to provide home and community-based services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's contract, may result in a written request from DMAS for a corrective action plan which details the steps the provider must take and the length of time permitted to achieve full compliance with the plan to correct the deficiencies which have been cited.

F. If there is more than one approved provider agency in the community, the individual will have the option of selecting the provider agency of his choice.

G. A participating service coordinator provider may voluntarily terminate his participation in Medicaid by providing 30 days written notification. DMAS shall be permitted to administratively terminate a service coordinator provider from participation upon 30 days written notification. DMAS may also cancel a contract immediately or may give notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Such action precludes further payment by DMAS for services provided to recipients subsequent to the date specified in the termination notice.

H. A provider shall have the right to appeal adverse action taken against it by DMAS. Adverse action includes, but shall not be limited to, termination of the provider agreement by DMAS, and retraction of payments from the provider by DMAS for noncompliance with applicable law, regulation, policy or procedure. All disputes regarding provider reimbursement or termination of the agreement by DMAS for any reason shall be resolved through administrative proceedings conducted at the office of DMAS in Richmond, Virginia. These administrative proceedings and judicial review of such administrative proceedings shall be conducted pursuant to the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia and duly promulgated regulations. Court review of final agency determinations concerning provider reimbursement shall be made in accordance with the Administrative Process Act.

I. Section 32.1-325 C of the Code of Virginia mandates that "Any such (Medicaid) agreement or contract shall terminate upon conviction of the provider of a felony." A provider convicted of a felony in Virginia or in any other of the 50 states must, within 30 days, notify the Medicaid Program of this conviction and relinquish its provider agreement. Reinstatement will be contingent upon provisions of state law. Additionally, termination of a provider contract will occur as may be required for federal financial participation.

J. It is the responsibility of the provider agency to notify DMAS and DSS, in writing on form DMAS-122, when any of the following circumstances occur:

1. Home and community-based care services are implemented.
2. A recipient dies.
3. A recipient is discharged or terminated from services.
4. Any other circumstances (including hospitalization) which cause home and community-based care services to cease or be interrupted for more than 30 days.

K. It shall be the responsibility of the provider agency to notify DMAS, in writing, within five days when any of the following changes in the authorized hours or termination of provider agency services occur:

1. Decreases in amount of authorized care by the provider.
  - a. The provider [ ~~agency~~ ] may decrease the amount of authorized care only if the recipient and the participating provider both agree that a decrease in care is needed and that the amount of care in the revised POC is appropriate.
  - b. The participating provider is responsible for devising the new POC and calculating the new hours of service delivery.
  - c. The individual responsible for supervising the recipient's care shall discuss the decrease in care with

the recipient, document the conversation in the recipient's record, and shall notify the recipient of the change by letter.

d. If the recipient disagrees with the decrease proposed, DMAS shall be notified to conduct a special review of the recipient's service needs.

2. *Increases in amount of authorized care.* If a change in the recipient's condition (physical, mental, or social) necessitates an increase in care, the participating provider shall assess the need for increase and, if appropriate, develop a plan of care with the recipient for services to meet the changed needs. The provider may implement the increase in hours without approval from DMAS as long as the amount of service does not exceed the amount established by DMAS as the maximum for the level of care designated for that recipient. Any increase to a recipient's plan of care which exceeds the number of hours allowed for that recipient's level of care or any change in the recipient's level of care must be pre-approved by DMAS. [ However, in no case shall the number of hours authorized exceed those established by the agency's individual cost effectiveness formula. ]

3. *Nonemergency termination of home and community-based care services by the participating provider.* The participating provider shall give the recipient 10 days written notification of the intent to terminate services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least 10 days from the date of the termination notification letter.

4. *Emergency termination of home and community-based care services by the participating provider.* In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered, DMAS must be notified prior to termination. The 10-day written notification period shall not be required. If appropriate, the local DSS Adult Protective Services supervisor must be notified immediately.

L. If a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately but no later than 48 hours from first knowledge to the local DSS adult protective services worker and to DMAS.

M. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and recertify each provider for contract renewal with DMAS to provide home and community-based services. A provider's noncompliance with DMAS regulations, policies and procedures may result in retraction of funds or termination of the provider agreement.

## 12 VAC 30-120-520. Personal attendant services (PAS).

A. Consumer-directed PAS may be offered to individuals in their homes as an alternative to more costly institutional nursing facility care. When the individual referred for consumer-directed PAS is already receiving another home and community-based care service, the DMAS utilization review staff shall assess the individual to determine the eligibility for consumer-directed PAS and authorize it if necessary to avoid more costly nursing facility care. In no event shall the services exceed cost effectiveness for this individual.

B. In addition to the general requirements above, to be enrolled as a Medicaid service coordination provider and maintain provider status, the following requirements shall be met:

1. The service coordination provider shall operate from a business office.

2. The service coordination provider must have sufficient qualified staff who will function as service coordinators to perform the needed POC development and monitoring, reassessments, service coordination, and support activities as required by the Consumer-Directed Personal Attendant Services Program.

3. It is preferred that the individual employed [ as by ] the service [ ~~coordinator~~ coordination provider ] possess a minimum of an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth of Virginia. In addition, it is preferable that the [ ~~service coordinator~~ individual ] have two years of satisfactory experience in the human services field working with persons with severe physical disabilities or the elderly. The [ ~~service coordinator~~ individual ] shall possess a combination of work experience and relevant education which indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities must be documented on the application form, found in supporting documentation, or observed during the interview. Observations during the interview must be documented. The knowledge, skills, and abilities shall include, but not necessarily be limited to:

a. Knowledge of:

(1) Types of functional limitations and health problems that are common to different disability types and the aging process, as well as strategies to reduce limitations and health problems;

(2) Physical assistance typically required by people with severe physical disabilities or elderly persons, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(3) Equipment and environmental modifications commonly used and required by people with physical disabilities or elderly persons which

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reduces the need for human help and improves safety;

(4) Various long-term care program requirements, including nursing home and adult care residence placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal assistance services;

(5) DMAS consumer directed personal attendant services program requirements, as well as the administrative duties for which the recipient will be responsible;

(6) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in care planning;

(7) Interviewing techniques;

(8) The recipient's right to make decisions about, direct the provisions of, and control his attendant care services, including hiring, training, managing, approving time sheets, and firing an attendant;

(9) The principles of human behavior and interpersonal relationships; and

(10) General principles of record documentation.

b. Skills in:

(1) Negotiating with recipients and service providers;

(2) Observing, recording, and reporting behaviors;

(3) Identifying, developing, or providing services to persons with severe disabilities or elderly persons; and

(4) Identifying services within the established services system to meet the recipient's needs;

c. Abilities to:

(1) Report findings of the assessment or onsite visit, either in writing or an alternative format for persons who have visual impairments;

(2) Demonstrate a positive regard for recipients and their families;

(3) Be persistent and remain objective;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, verbally and in writing; and

(6) Develop a rapport and communicate with different types of persons from diverse cultural backgrounds.

4. If the service coordinator [ staff ] employed by the service coordination provider is not a registered nurse, the service coordination provider must have registered nurse (RN) consulting services available, either by a

staffing arrangement or through a contracted consulting arrangement. The RN consultant is to be available as needed to consult with recipients/service [ ~~coordinators~~ coordination providers ] on issues related to the health needs of the recipient.

5. Service [ ~~coordinator~~ coordination provider ] duties.

a. The service [ ~~coordinator~~ coordination provider ] must make an initial, comprehensive home visit to develop the POC with the recipient and provide management training. Recipients who cannot receive management training at the time of the initial visit must receive management training within seven days of the initial visit. After the initial visit, two routine onsite visits must occur in the recipient's home within 60 days of the initiation of care or the initial visit to monitor the POC. The service [ ~~coordinator~~ coordination provider ] will continue to monitor the POC on an as needed basis, not to exceed a maximum of one routine onsite visit every 30 days [ ~~or~~ a but no less than the ] minimum of one routine onsite visit every 90 days per recipient. The initial comprehensive visit is done only once upon the recipient's entry into the program. If a waiver recipient changes service [ ~~coordinator~~ coordination provider ] agencies the new service [ ~~coordinator~~ coordination provider ] shall bill for a reassessment in lieu of a comprehensive visit.

b. A reevaluation of the recipient's level of care will occur six months after initial entry into the program, and subsequent reevaluations will occur at a minimum of every six months. During visits to the recipient's home, the service [ ~~coordinator~~ coordination provider ] shall observe, evaluate and document the adequacy and appropriateness of personal attendant services with regard to the recipient's current functioning and cognitive status, medical and social needs. The service [ ~~coordinator~~ coordination provider ] shall discuss the recipient's satisfaction with the type and amount of service. The service [ ~~coordinator's~~ coordination provider's ] summary shall include, but not necessarily be limited to:

(1) Whether personal attendant services continue to be appropriate and medically necessary to prevent institutionalization;

(2) Whether the POC is adequate to meet the needs of the recipient;

(3) Any special tasks performed by the attendant and the attendant's qualifications to perform these tasks;

(4) Recipient's satisfaction with the service;

(5) Hospitalization or change in medical condition, functioning or cognitive status;

(6) Other services received and their amount; and

(7) The presence or absence of the attendant in the home during the service coordinator's visit.

5. The service [ ~~coordinator~~ coordination provider ] shall be available to the recipient by telephone.

6. The service [ ~~coordinator~~ coordination provider ] will submit a criminal record check pertaining to the personal attendant on behalf of the recipient and report findings of the criminal record check to the recipient. Personal attendants will not be reimbursed for services provided to the recipient effective with the date the criminal record check confirms a personal attendant has been found to have been convicted of a crime as described in 12 VAC 30-90-180.

7. The service [ ~~coordinator~~ coordination provider ] shall verify biweekly timesheets signed by the recipient and the personal attendant to ensure the number of approved hours on the POC are not exceeded. If discrepancies are identified, the service [ ~~coordinator~~ coordination provider ] will contact the recipient to resolve discrepancies and will notify the fiscal agent. If a recipient is consistently being identified as having discrepancies in his timesheets, the service [ ~~coordinator~~ coordination provider ] will contact DMAS to resolve the situation. Service [ ~~coordinators~~ coordination providers ] shall not verify timesheets for personal attendants who have been convicted of crimes described in 12 VAC 30-90-180 and will notify the fiscal agent.

C. The service coordination provider shall maintain a personal attendant registry. The registry shall contain names of persons who have experience with providing personal attendant services or who are interested in providing personal attendant services. The registry shall be maintained as a supportive source for the recipient who may use the registry to obtain names of potential personal attendants.

D. The service coordination provider shall maintain all records of each consumer-directed PAS recipient. At a minimum these records shall contain:

1. All copies of the completed UAIs, the Long-Term Care Preadmission Screening Authorization (DMAS-96), all plans of care, and all DMAS-122's.
2. All DMAS utilization review forms.
3. Service [ ~~coordinator's~~ coordination provider's ] notes contemporaneously recorded and dated during any contacts with the recipient and during visits to the recipient's home.
4. All correspondence to the recipient and to DMAS.
5. Reassessments made during the provision of services.
6. Records of contacts made with family, physicians, DMAS, formal, informal service providers and all professionals concerning the recipient.

7. All training provided to the personal attendant or attendants on behalf of the recipient.

8. All recipient progress reports, as specified in subsection E of this section.

9. All management training provided to the recipients, including the recipient's responsibility for the accuracy of the timesheets.

E. The service coordination provider is required to submit to DMAS biannually, for every recipient, a recipient progress report, an updated UAI, and any monthly visit/progress reports. This information is used to assess the recipient's ongoing need for Medicaid-funded long-term care and appropriateness and adequacy of services rendered.

F. Recipients will hire their own personal attendants and manage and supervise the attendants' performance.

1. Attendant qualifications include, but shall not be necessarily limited to the following requirements. The attendant must:

- a. Be 18 years of age or older;
- b. Have the required skills to perform attendant care services as specified in the recipient's POC;
- c. Possess basic math, reading, and writing skills;
- d. Possess a valid social security number;
- e. Submit to a criminal records check. The personal attendant will not be compensated for services provided to the recipient if the records check verifies the personal attendant has been convicted of crimes described in 12 VAC 30-90-180;
- f. Be willing to attend training at the recipient's request;
- g. Understand and agree to comply with the DMAS Consumer-Directed PAS Program requirements; and
- h. Be willing to register in a personal attendant registry, which will be maintained by the provider agency chosen by the recipient.

2. Restrictions. Attendants shall not be members of the recipients' family. Family is defined as a parent or stepparent, spouse, children or stepchildren, siblings or stepsiblings, grandparents or stepgrandparents, grandchildren, or stepgrandchildren. In addition, anyone who has legal guardianship or is a committee for the recipient shall also be prohibited from being an attendant under this program.

G. The recipient's inability to obtain personal attendant services and substitution of attendants. The service coordination provider shall note on the Plan of Care what constitutes the recipient's backup plan in case the personal attendant does not report for work as expected or terminates employment without prior notice. Upon the recipient's request, the service coordination provider shall provide the recipient with a list of persons on the personal attendant

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registry who can provide temporary assistance until the attendant returns or the recipient is able to select and hire a new personal attendant. If a recipient is consistently unable to hire and retain the employment of an attendant to provide personal attendant services, the service coordination provider must:

1. Contact DMAS to transfer the recipient to a provider which provides Medicaid-funded agency-directed personal care services. The service coordination provider will make arrangements to have the recipient transferred, or
2. Contact the local health department and request a Nursing Home Preadmission Screening to determine if another long-term care option is appropriate.

### 12 VAC 30-120-530. Fiscal services.

A. DMAS shall be permitted to contract for the services of a fiscal agent. The fiscal agent will be reimbursed by the DMAS to perform certain tasks as an agent for the recipient/employer who is receiving consumer-directed PAS. The fiscal agent will handle responsibilities for the recipient for employment taxes. The fiscal agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all these duties.

B. A fiscal agent may be a state agency or other organization, and will sign a contract with the DMAS that clearly defines the roles and tasks expected of the fiscal agent and the DMAS and enroll as a provider of consumer-directed PAS. Roles and tasks which will be defined for the fiscal agent in the contract will consist of but not necessarily be limited to the following:

1. The fiscal agent will file for and obtain employer agent status with the federal and state tax authorities;
2. Once the recipient has been authorized to receive consumer-directed PAS, the fiscal agent will register the recipient as an employer, including providing assistance to the recipient in completing forms required to obtain employer identification numbers from federal agencies, state agencies, and unemployment insurance agencies;
3. The fiscal agent will prepare and maintain original and file copies of all forms needed to comply with federal, state, and local tax payment, payment of unemployment compensation insurance premiums, and all other reporting requirements of employers;
4. Upon receipt of the required completed forms from the recipient, the fiscal agent will remit the required forms to the appropriate agency and maintain copies of the forms in the recipient's file. The fiscal agent will return copies of all forms to the recipient for the recipient's permanent personnel records;
5. The fiscal agent will prepare all unemployment tax filings on behalf of the recipient as employer, and make all deposits of unemployment taxes withheld according to the appropriate schedule;

6. The fiscal agent will receive and verify the attendant biweekly timesheets do not exceed the maximum hours approved for the recipient and will process the timesheets.

7. The fiscal agent will prepare and process the payroll for the recipient's attendants, performing appropriate income tax, FICA and other withholdings according to federal and state regulations. Withholdings include, but are not limited to, all judgments, garnishments, tax levies or any related holds on the funds of the attendants as may be required by local, state, or federal law;

8. The fiscal agent will prepare payrolls for the recipient's personal attendant according to approved time sheets and after making appropriate deductions;

9. The fiscal agent will make payments on behalf of the recipient for [~~federal withholding~~] FICA (employer and employee shares), [~~state withholding~~] unemployment compensation taxes, and other payments required and as appropriate;

10. The fiscal agent will distribute biweekly payroll checks to the recipient's attendants on behalf of the recipient;

11. The fiscal agent will maintain accurate payroll records by preparing and submitting to DMAS, at the time the fiscal agent bills DMAS for personal attendant services, an accurate accounting of all payments on personal attendants to whom payments for services were made, including a report of FICA payments for each covered attendant;

12. The fiscal agent will maintain such other records and information as DMAS may require, in the form and manner prescribed by DMAS;

13. The fiscal agent will generate W-2 forms for all personal attendants who meet statutory threshold amounts during the tax year;

14. The fiscal agent will establish a customer service mechanism in order to respond to calls from recipients and personal attendants regarding lost or late checks, or other questions regarding payments that are not related to the authorization amounts generated from DMAS;

15. The fiscal agent will keep abreast of all applicable state and federal laws and regulations relevant to the responsibilities it has undertaken with regard to these filings;

16. The fiscal agent will use program-designated billing forms or electronic billing to bill DMAS; and

17. The fiscal agent will be capable of requesting electronic transfer of funds from DMAS.

C. The fiscal agent and all subcontracting bookkeeping firms, as appropriate, will maintain the confidentiality of Medicaid information in accordance with the following:

1. The fiscal agent agrees to ensure that access to Medicaid information will be limited to the fiscal agent. The fiscal agent shall take measures to prudently safeguard and protect unauthorized disclosure of the Medicaid information in its possession. The fiscal agent shall establish internal policies to ensure compliance with federal and state laws and regulations regarding confidentiality including, but not limited to, 42 CFR Part 431, Subpart F, and Chapter 26 (§ 2.1-377 et seq.) of Title 2.1 of the Code of Virginia. In no event shall the fiscal agent provide, grant, allow, or otherwise give, access to Medicaid information to anyone without the express written permission of the DMAS Director. The fiscal agent shall assume all liabilities under both state and federal law in the event that the information is disclosed in any manner.

2. Upon the fiscal agent receiving any requests for Medicaid information from any individual, entity, corporation, partnership or otherwise, the fiscal agent must notify DMAS of such requests within 24 hours. The fiscal agent shall ensure that there will be no disclosure of the data except through DMAS. DMAS will treat such requests in accordance with DMAS policies.

3. In cases where the information requested by outside sources can be released under the Freedom of Information Act (FOIA), as determined by DMAS, the fiscal agent shall provide support for copying and invoicing such documents.

D. A contract between the fiscal agent and the recipient will be used to clearly express those aspects of the employment relationship that are to be handled by the fiscal agent, and which are to be handled by the recipient. The contract will reflect that the fiscal agent is performing these tasks on behalf of the recipient who is the actual employer of the attendant. Before the recipient begins receiving services, the fiscal agent will send the contract to the recipient to review and sign. The fiscal agent must have a signed contract with the recipient prior to the reimbursement of personal attendant services.

#### **12 VAC 30-120-540. Recipient responsibilities.**

A. The recipient must be authorized for consumer-directed PAS and successfully complete management training performed by the service coordinator before the recipient can hire a personal attendant.

B. The recipient is the employer in this program and is responsible for hiring, training, supervising and firing personal attendants. Specific duties include checking references of personal attendants, determining that personal attendants meet basic qualifications, training personal attendants, supervising the personal attendants' performance, and submitting timesheets to the service coordinator and fiscal agent on a consistent and timely basis. The recipient must have an emergency back-up plan in case the personal attendant does not show up for work as expected or terminates employment without prior notice.

C. The recipient shall cooperate with the development of the plan of care with the service [ ~~eeordinator~~ coordination provider ], who monitors the plan of care and provides supportive services to the recipient. The recipient shall also cooperate with the fiscal agent, who handles fiscal responsibilities on behalf of the recipient. Recipients who do not cooperate with the service [ ~~eeordinator~~ coordination provider ] and fiscal agent will be disenrolled from consumer-directed PAS.

D. Recipients will acknowledge they will not knowingly continue to accept [ ~~receiving~~ ] consumer-directed personal attendant services when the services are no longer appropriate or necessary for their care needs and will inform the service coordination provider.

#### **12 VAC 30-120-550. DMAS termination of eligibility to receive home and community-based care services.**

A. DMAS shall have the ultimate responsibility for assuring appropriate placement of the recipient in home and community-based care services and the authority to terminate such services to the recipient for any of these reasons, but not necessarily limited to the provisions of this section.

B. Reasons eligibility for consumer-directed PAS may be terminated:

1. The home and community-based care service is not the critical alternative to prevent or delay institutional (nursing facility) placement.

2. The recipient no longer meets the nursing or pre-nursing facility level of care or cognitive criteria for consumer-directed PAS. [ ~~Cognitive criteria includes not having a cognitive impairment while having the ability to independently manage a personal attendant. An individual who meets this requirement does not have a cognitive impairment while having the ability to independently manage a personal attendant.~~ ]

3. The recipient's environment does not provide for his health, safety, and welfare.

4. An appropriate and cost-effective POC cannot be developed.

C. DMAS shall notify the recipient by letter. The effective date of termination shall be at least 10 days from the date of the termination notification letter. At the same time, DMAS will also advise the recipient in writing of his right to appeal the decision.

**NOTICE:** The forms used in administering Part VIII of this chapter (12 VAC 30-120-10 et seq.), Waivered Services, are not being published due to their length; however, the name of each form is listed below. The forms are available for public inspection at the Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

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Virginia Uniform Assessment Instrument (UAI), 1994.

Medicaid Funded Long-Term Care ~~Preadmission Screening~~  
*Service Authorization Form*, DMAS-96, revised 8/97.

*Service Coordinator Plan of Care*, DMAS-97B, revised 6/97.

*Patient Information*, DMAS-122, revised 11/84.

*Questionnaire: Assessing a Recipient's Ability to Independently Manage Personal Attendant Services*, [ ~~3/97~~  
2/98 ].

VA.R. Doc. No. R97-724; Filed April 28, 1998, 11:37 a.m.

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## TITLE 13. HOUSING

### BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: 13 VAC 5-61-10 et seq. Virginia  
Uniform Statewide Building Code (amending 13 VAC 5-  
61-440).

Statutory Authority: §§ 36-98 and 36-99.3 of the Code of  
Virginia.

Effective Date: July 1, 1998.

Summary:

*This regulatory amendment to the Uniform Statewide Building Code replaces the emergency regulation currently in effect. These regulations establish standards for automatic sprinkler systems throughout all public or private college or university buildings in Virginia which are (i) more than 75 feet or more than 6 stories high and (ii) used, in whole or in part, as dormitories to house students.*

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

Agency Contact: Copies of the regulation may be obtained from the Training and Certification Office, Department of Housing and Community Development, 501 North 2nd Street, Richmond, VA 23219, telephone (804) 371-7180.

**13 VAC 5-61-440. BNBC Section 3402.0 General requirements.**

A. Change subsection 3402.2 to read:

3402.2. Replacement glass: Any replacement glass installed in buildings constructed prior to the initial effective date of this code shall meet the quality and installation standards for glass installed in new buildings as are in effect at the time of installation.

B. Change subsection 3402.3 to read:

3402.3. Smoke detectors in colleges and universities: College and university buildings containing dormitories for sleeping purposes shall be provided with battery-powered or AC-powered smoke detector devices installed therein in accordance with this code in effect on July 1, 1982. All public and private college and university dormitories shall have installed and use due diligence in maintaining in good working order such detectors regardless of when the building was constructed.

The chief administrative ~~officer~~ *office* of the college or university shall obtain a certificate of compliance with the provisions of this subsection from the building official of the locality in which the college or university is located or in the case of state-owned buildings, from the Director of the Virginia Department of General Services.

The provisions of this section shall not apply to any dormitory at a state-supported military college or university which is patrolled 24 hours a day by military guards.

C. Change subsection 3402.4 to read:

3402.4. Smoke detectors in certain juvenile care facilities: Battery-powered or AC-powered smoke detectors shall be installed and maintained in all local and regional detention homes, group homes, and other residential care facilities for children and juveniles which are operated by or under the auspices of the Virginia Department of Juvenile Justice, regardless of when the building was constructed, by July 1, 1986, in accordance with the provisions of this code that were in effect on July 1, 1984. Administrators of such homes and facilities shall be responsible for the installation and maintenance of the smoke detector devices.

D. Change subsection 3402.5 to read:

3402.5. Smoke detectors for the deaf and hearing impaired: Smoke detectors providing an effective intensity of not less than 100 candela to warn a deaf or hearing-impaired individual shall be provided, upon request by the occupant to the landlord or proprietor, to any deaf or hearing-impaired occupant of any of the following occupancies, regardless of when constructed:

1. All dormitory buildings arranged for the shelter and sleeping accommodations of more than 20 individuals;
2. All multiple-family dwellings having more than two dwelling units, including all dormitories, boarding and lodging houses arranged for shelter and sleeping accommodations of more than five individuals; or
3. All buildings arranged for use of one-family or two-family dwelling units.

A tenant shall be responsible for the maintenance and operation of the smoke detector in the tenant's unit.

A hotel or motel shall have available no fewer than one such smoke detector for each 70 units or portion thereof, except that this requirement shall not apply to any hotel or

motel with fewer than 35 units. The proprietor of the hotel or motel shall post in a conspicuous place at the registration desk or counter a permanent sign stating the availability of smoke detectors for the hearing impaired. Visual detectors shall be provided for all meeting rooms for which an advance request has been made.

E. Change subsection 3402.6 to read:

3402.6. Smoke detectors in adult care residences, adult day care centers and nursing homes and facilities: Battery-powered or AC-powered smoke detector devices shall be installed in all adult care residences and adult day care centers licensed by the Virginia Department of Social Services, regardless of when the building was constructed. The location and installation of the smoke detectors shall be determined by the provisions of this code in effect on October 1, 1990.

The licensee shall obtain a certificate of compliance from the building official of the locality in which the residence or center is located, or in the case of state-owned buildings, from the Director of the Virginia Department of General Services.

The licensee shall maintain the smoke detector devices in good working order.

Fire alarm or fire detector systems, or both, as required by the edition of this code in effect on October 1, 1990, shall be installed in all nursing homes and nursing facilities licensed by the Virginia Department of Health by August 1, 1994, and shall be maintained in good working order.

F. Change subsection 3402.7 to read:

3402.7. Fire suppression systems in nursing homes and facilities: Fire suppression systems as required by the edition of this code in effect on October 1, 1990, shall be installed in all nursing facilities licensed by the Virginia Department of Health by January 1, 1993, regardless of when such facilities or institutions were constructed, and shall be maintained in good working order. Units consisting of certified long-term care beds located on the ground floor of general hospitals shall be exempt from the requirements of this section.

G. Delete subsection 3402.9.

H. Add subsection 3402.10 to read:

3402.10. Fire suppression systems in hospitals: Fire suppression systems shall be installed in all hospitals licensed by the Virginia Department of Health as required by the edition of this code in effect on October 1, 1995, regardless of when such facilities were constructed, and shall be maintained in good working order.

I. Add subsection 3402.11 to read:

3402.11. Identification of handicapped parking spaces by above grade signs: All parking spaces reserved for the use of handicapped persons shall be identified by above grade signs, regardless of whether identification of such spaces by above grade signs was required when any particular space

was reserved for the use of handicapped persons. A sign or symbol painted or otherwise displayed on the pavement of a parking space shall not constitute an above grade sign. Any parking space not identified by an above grade sign shall not be a parking space reserved for the handicapped within the meaning of this section.

All above grade handicapped parking space signs shall have the bottom edge of the sign no lower than four feet (1219 mm) nor higher than seven feet (2133 mm) above the parking surface. Such signs shall be designed and constructed in accordance with the provisions of Chapter 11 of this code.

J. Add subsection 3402.12 to read:

3402.12. Smoke detectors in hotels and motels: Smoke detectors shall be installed in hotels and motels as required by the edition of VR 394-01-22, USBC, Volume II, in effect on March 1, 1990, by the dates indicated, regardless of when constructed, and shall be maintained in good working order.

K. Add subsection 3402.13 to read:

3402.13. Sprinkler systems in hotels and motels: By September 1, 1997, an automatic sprinkler system shall be installed in hotels and motels as required by the edition of VR 394-01-22, USBC, Volume II, in effect on March 1, 1990, regardless of when constructed, and shall be maintained in good working order.

L. Add subsection 3402.14 to read:

3402.14. Fire suppression systems in dormitories: An automatic fire suppression system shall be provided throughout all buildings having a Use Group R-2 fire area which are more than 75 feet (22,860 mm) or six stories above the lowest level of exit discharge and which are used, in whole or in part, as a dormitory to house students by any public or private institution of higher education, regardless of when such buildings were constructed, in accordance with the requirements of this code and Section 906.2.1. The automatic fire suppression system shall be installed by September 1, 1999. The chief administrative office of the college or university shall obtain a certificate of compliance from the code official of the locality in which the college or university is located or in the case of state-owned buildings, from the Director of the Virginia Department of General Services.

Exceptions:

1. Buildings equipped with an automatic fire suppression system in accordance with Section 906.2.1 or the 1983 or later editions of NFPA 13.
2. Where the requirements of this section are modified by Section 3402.14.1.
3. Any dormitory at a state-supported military college or university which is patrolled 24 hours a day by military guards.



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3402.14.1. Modifications to requirements of Section 3402.14: The application of the requirements of Section 3402.14 shall be modified in accordance with this section.

1. Building systems, equipment or components other than the fire suppression system shall not be required to be added or upgraded except as necessary for the installation of the fire suppression system and shall only be required to be added or upgraded where the installation of the fire suppression system creates an unsafe condition.

2. Residential sprinklers shall be used in all sleeping rooms. Other sprinklers shall be quick response or residential unless deemed unsuitable for a space. Standard response sprinklers shall be used in elevator hoist ways and machine rooms.

3. Sprinklers shall not be required in wardrobes in sleeping rooms which are considered part of the building construction or in closets in sleeping rooms, when such wardrobes or closets (i) do not exceed 24 square feet (2.23 m<sup>2</sup>) in area, (ii) have the smallest dimension less than 36 inches (914 mm), and (iii) comply with the following:

a. A single station smoke detector monitored by the building fire alarm system is installed in the room containing the wardrobe or closet which will activate the general alarm for the building if the single station smoke detector is not cleared within five minutes after activation;

b. The minimum number of sprinklers required for calculating the hydraulic demand of the system for the room shall be increased by two and the two additional sprinklers shall be corridor sprinklers where the wardrobe or closet is used to divide the room. Rooms divided by a wardrobe or closet shall be considered one room for the purpose of this requirement; and

c. The ceiling of the wardrobe, closet or room shall have a fire resistance rating of not less than ½ hour.

4. Not more than one sprinkler shall be required in bathrooms within sleeping rooms or suites having a floor area between 55 square feet (5.12 m<sup>2</sup>) and 120 square feet (11.16 m<sup>2</sup>) provided the sprinkler is located to protect the lavatory area and the plumbing fixtures are of a noncombustible material.

5. Existing standpipe residual pressure shall be permitted to be reduced when the standpipe serves as the water supply for the fire suppression system provided the water supply requirements of NFPA 13 listed in Chapter 35 are met.

6. Limited service controllers shall be permitted for fire pumps when used in accordance with their listing.

7. Where a standby power system is required, a source of power in accordance with Section 701-11 (d) or

701-11 (e) of NFPA 70 listed in Chapter 35 shall be permitted.

VA.R. Doc. No. R98-64; Filed April 28, 1998, 1:41 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF DENTISTRY

Title of Regulation: 18 VAC 60-20-10 et seq. Virginia Board of Dentistry Regulations (adding 18 VAC 60-20-105).

Statutory Authority: §§ 54.1-2400 and 54.1-2709 of the Code of Virginia.

Effective Date: June 24, 1998.

Summary:

This regulation replaces emergency regulations 18 VAC 60-20-105 which became effective July 16, 1997, and which established an inactive license for dentists and dental hygienists who no longer actively practice in Virginia and do not want to meet the continuing education requirements for active licensure. The regulations also establish requirements for the minimal number of continuing education hours necessary to reactivate the license. An amendment to the proposed regulations clarifies that the continuing education hours required to activate the license must be obtained within the time period immediately preceding an application for activation.

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

Agency Contact: Copies of the regulation may be obtained from Marcia J. Miller, Executive Director, Board of Dentistry, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

#### 18 VAC 60-20-105. Inactive license.

A. Any dentist or dental hygienist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be entitled to perform any act requiring a license to practice dentistry or dental hygiene in Virginia.

B. An inactive license may be reactivated upon submission of the required application, payment of the current renewal fee, and documentation of having completed continuing education hours equal to the requirement for the [ ~~number of years, not to exceed three years, in which the license has been inactive~~ period of time immediately preceding the application for activation. In no event shall more than three years of continuing education be required ].

*The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2706 of the Code of Virginia.*

## FORMS

**NOTICE:** The forms used in administering 18 VAC 60-20-10 et seq., Virginia Board of Dentistry Regulations, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

Training Guidelines: Part I, Topical Anesthetics *Anesthetics*.

Training Guidelines: Part II, Professionally Applied Topical Fluorides.

Training Guidelines: Part III, Application of Desensitizing Agents.

Application for Certification to Administer Schedule VI Topical Medicinal Agents for Dental Assistants.

Training Form for Administration of Schedule VI Topical Medicinal Agents as Permitted Under Regulations 5.4.A.1.

Application for Licensure for Dentists, Dental Hygiene by Examination, Dental Hygiene by Endorsement, Full-Time Faculty, Temporary Permit, and Teacher's License.

Reinstatement Application for Dental/Dental Hygiene Licensure.

Application for Radiology Exam for Dental Assistants.

Certification of Dental/Dental Hygiene School.

Certification for Licensure in Another Jurisdiction.

Certification of Dental/Dental Hygiene Boards.

Renewal Notice and Application (Rev. 5/98).

# Final Regulations

Department of Health Professions  
COMMONWEALTH OF VIRGINIA

## RENEWAL NOTICE AND APPLICATION



Telephone:  
License, certificate or registration number:

|                 |                         |                   |                        |    |                                    |
|-----------------|-------------------------|-------------------|------------------------|----|------------------------------------|
| TYPE OF RENEWAL | CURRENT EXPIRATION DATE | LICENSE FEE<br>\$ | RENEWAL PERIOD<br>FROM | TO | AMOUNT DUE IF RECEIVED AFTER<br>\$ |
|-----------------|-------------------------|-------------------|------------------------|----|------------------------------------|

C-48214

MAKE CHECKS PAYABLE TO THE "TREASURER OF VIRGINIA"  
RETURN PAYMENT AND THE COMPLETED BOTTOM PORTION ONLY IN THE ENCLOSED ENVELOPE  
KEEP TOP PORTION FOR YOUR RECORDS

|   |   |
|---|---|
| <p><b>DISCLOSURE OF SOCIAL SECURITY OR VIRGINIA DMV CONTROL NUMBER</b><br/>In accordance with § 54.1-116 of the Code of Virginia, you are required to submit your Social Security Number or your control number issued by the Virginia Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will not be refunded.<br/>This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as provided for by law. Federal and state law requires that this number be shared with other agencies for child support enforcement activities.<br/>If the boxes below are empty, write in your Social Security or Virginia DMV Control Number. If the boxes do contain numbers, please verify that they are correct and make any necessary changes.</p> <p style="border: 1px solid black; padding: 2px;">NO LICENSE, CERTIFICATION OR REGISTRATION WILL BE ISSUED TO ANY INDIVIDUAL WHO HAS FAILED TO DISCLOSE ONE OF THESE NUMBERS.</p> <p style="font-size: small;">*In order to obtain a Virginia driver's license control number, it is necessary to appear in person at an office of the Department of Motor Vehicles in Virginia. A fee and disclosure of your Social Security Number will be required.</p> <p style="text-align: center;"><b>THIS BOTTOM PORTION MUST BE RETURNED IN ORDER TO RENEW</b></p> <p>Department of Health Professions<br/>Type of renewal:<br/>License, certificate or registration number:</p> | <p style="text-align: center;"><b>INSTRUCTIONS</b></p> <ol style="list-style-type: none"> <li>Verify Social Security or Virginia DMV Control Number at left.</li> <li>Complete statements "A" and "B" below, if renewing.</li> <li>Complete statement "C" if you desire inactive status or do not wish to renew.</li> <li>Make any address changes on this application.</li> <li>Make any name change on this application and enclose a copy of your marriage license or court order.</li> <li>Note name and certificate number on all enclosures.</li> <li>Return the bottom portion of this application in the enclosed envelope.</li> </ol> <p style="text-align: center;"><b>STATEMENTS</b></p> <p>A. I certify that I have met all continuing education requirements to renew this license, <input type="checkbox"/> Yes <input type="checkbox"/> No certificate or registration.</p> <p>B. I swear that I have not made any misrepresentation on this renewal application and understand that furnishing false information constitutes cause for loss of license to practice.</p> <p style="text-align: right;">_____<br/>Signature</p> <p>C. Check the appropriate box and sign below.<br/><input type="checkbox"/> I wish to take inactive status and enclose the inactive fee of:</p> <p style="text-align: center;">\$ <span style="border: 1px solid black; display: inline-block; width: 50px; height: 15px; vertical-align: middle;"></span></p> <p><input type="checkbox"/> I do not wish to renew.</p> <p style="text-align: right;">_____<br/>Signature</p> |
|---|---|

5/98

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# EMERGENCY REGULATIONS

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## TITLE 13. HOUSING

### BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: 13 VAC 5-51-10 et seq. Virginia Statewide Fire Prevention Code (adding 13 VAC 5-51-135).

Statutory Authority: § 27-97 of the Code of Virginia.

Effective Dates: April 27, 1998, through April 26, 1999.

#### STATEMENT OF EMERGENCY

This emergency regulation is necessary because of a situation involving an imminent threat to public health and safety. The proposed change was adopted as a result of research by the State Fire Marshal's Office concerning failure of a certain model of sprinklers. The State Fire Marshal's Office research, along with that of four local governments, has found that the sprinklers have failed to operate at the required pressures in several cases. The manufacturer and the third party testing and labeling laboratory have also sent notices advising of the potential problems and indicate there have been failures. In addition, the Consumer Products Safety Commission (CPSC) has filed an administrative law complaint seeking a recall of the sprinklers. The CPSC alleges the sprinklers are defective and likely to fail.

Currently, before replacement can be required, sprinklers must fail to pass the tests required by the Statewide Fire Prevention Code (SFPC). The SFPC presently requires testing of representative samples of sprinklers at 20 years for some sprinklers and 50 years for others. Such sprinklers have been in service for less than 20 years and therefore have not been subjected to testing required by the SFPC.

There is no reliable data base available to determine when to take appropriate action to replace all sprinklers that potentially could fail. Information based on statistical probability indicates that when dealing with a voluminous situation, it has been determined that at least thirty (30) to fifty (50) observations be made to obtain reliable data that observed failures of such equipment are likely not due to chance.

Automatic sprinkler protection is provided to protect life and property. Failure of one sprinkler to operate properly could result in a failure of the system and may result in loss of life or injury or both and loss of property.

The Statewide Fire Prevention Code does not currently have provisions to deal with a widespread problem of this nature. Also, the exact cause of the failures has not been determined and, therefore, corrective measures to specific causes have not been isolated. Other documented failures of specific sprinklers, such as with these sprinklers, would also be subject to the same criteria.

**13 VAC 5-51-135. BNFFPC Section F-506.0 Water-based Fire Protection Systems.**

Add exception to subsection F-506.1 to read:

*Exception: When the code official determines through investigation or testing or reports by a nationally recognized testing agency that specific, required water sprinkler or water-spray extinguishing equipment has been identified as failing to perform or operate through not less than thirty (30) randomly selected sprinkler heads at four (4) or more building sites anywhere in the nation, the code official shall order all such equipment to be rendered safe.*

/s/ Warren C. Smith, Director  
Department of Housing and Community Development  
Date: March 24, 1998

/s/ Joshua N. Lief  
Deputy Secretary of Commerce and Trade  
Date: April 27, 1998

/s/ James S. Gilmore, III  
Governor  
Date: April 27, 1998

VA.R. Doc. No. R98-239; Filed April 27, 1998, 4:46 p.m.

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# GENERAL NOTICES/ERRATA

## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Proposed Amendments to the Agricultural Stewardship Act Guidelines

**Proposed Effective Date: ~~April 1, 1997~~ June 15, 1998**

The Commissioner of Agriculture and Consumer Services may alter the guidelines periodically after his proposed changes have been published in the Register of Regulations and a public comment period has been provided. Written and oral comments may be submitted to the following individual until 5 p.m., Friday, June 12, 1998:

Sara Pugh, Senior Policy Analyst  
Office of Policy, Planning, and Research  
Department of Agriculture and Consumer Services  
P.O. Box 1163  
Richmond, VA 23218  
Telephone (804) 786-3538.

#### Nature of These Guidelines

The Agricultural Stewardship Act<sup>1</sup> ("ASA" or "Act") requires that the Commissioner of Agriculture and Consumer Services ("Commissioner") develop guidelines to assist in the implementation of the ASA. These guidelines are not regulations, so no one is required to abide by them. In fact, there are no regulations ~~anywhere~~ concerning the ASA. The only document that anyone must abide by is the ASA itself.

These guidelines are simply advice on how to implement the ASA. The Commissioner expects that these guidelines will be reviewed periodically to determine whether changes are needed.

#### Who to Contact for Information

The Commissioner welcomes your questions and requests for information about the ASA. If you would like to send a letter, please send it to:

Commissioner of Agriculture and Consumer Services  
Agricultural Stewardship Program  
Virginia Department of Agriculture and Consumer Services  
P.O. Box 1163  
Richmond, Virginia 23218

If you prefer to talk with someone about the ASA program, please telephone (804) ~~786-3539~~ 786-3538.

#### Abbreviations and Definitions

Where personal pronouns are used, "he" and "she" are used interchangeably. The following terms and abbreviations, when used in these guidelines, shall have the following meanings:

|                       |   |
|-----------------------|---|
| Act or ASA            | Agricultural Stewardship Act  |
| BMP                   | Best management practice  |
| Board                 | <i>Virginia</i> Soil and Water Conservation Board   |
| Commissioner          | <i>Virginia</i> Commissioner of Agriculture and Consumer Services   |
| Complainant           | Person who submits complaint to Commissioner pursuant to ASA  |
| DCLS                  | Division of Consolidated Laboratory Services  |
| DCR                   | <i>Virginia</i> Department of Conservation and Recreation   |
| DEQ                   | <i>Virginia</i> Department of Environmental Quality   |
| District              | Soil and Water Conservation District  |
| Extension             | Virginia Cooperative Extension  |
| Farmer                | Agricultural producer, whether owner or operator of farming operation in question.  |
| FOTG                  | USDA, NRCS' Field Office Technical Guide  |
| FSA                   | USDA, Farm Service Agency   |
| Initial investigation | First investigation of a complaint to <i>gather information so that the Commissioner can</i> determine whether or not the agricultural activity in question is creating or will create pollution. |
| Jurisdiction          | Authority to do something under the ASA or other law  |
| NRCS                  | USDA, Natural <del>Resource</del> Resources Conservation Service  |
| SWCB                  | State Water Control Board (a.k.a. Virginia Water Control Board)   |
| USDA                  | United States Department of Agriculture   |
| VDACS                 | Virginia Department of Agriculture and Consumer Services  |
| VPA                   | Virginia Pollution Abatement permit from SWCB   |
| VPDES                 | Virginia Pollution Discharge Elimination System permit from SWCB  |
| VWCB                  | Virginia Water Control Board (a.k.a. State Water Control Board)   |

<sup>1</sup> Article 3.1 (§ 10.1-559.1 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

### Background on the ASA

Over the past seven to 10 years, a number of federal and state laws and regulations have been proposed that would have created strict rules to prevent pollution by governing the way we farm. Only a few of these proposed laws and regulations were adopted, but public opinion polls show that the public continues to value a clean environment. In the 1990 census, Virginia had for the first time more people living in urban and suburban areas than in rural areas. Of the nonpoint sources of pollution, due to the vast number of acres in agriculture, agriculture is a major contributor of nutrients and sediments to rivers, streams and lakes. Given the public's continued support for a clean environment, Virginia's increasing urbanization, and the recognition that most farmers are good stewards of the land, Virginia's agricultural leadership decided to take a proactive approach to water pollution coming from agricultural lands.

Virginia's agricultural leadership sought a way of dealing with agricultural water pollution that was different from the approaches used with other industries, such as manufacturers. Most manufacturing plants must obtain permits and follow strict rules of operation. The agricultural community wanted a different approach that did not rely on permits and strict operating rules, but took into account the wide variety of farming practices used in Virginia.

The ASA resulted from the joint work of representatives of Virginia's agricultural community, environmental community, Association of Soil and Water Conservation Districts, and state agencies. They sought to develop procedures by which individual agricultural producers can be alerted to areas of their operations that may be causing water pollution. Rather than developing regulations with strict rules governing every type of farming practice, the ASA looks at each farm individually.

### Brief Summary of Act

The procedures created by the ASA begin with a complaint made to the Commissioner. The Commissioner must accept complaints alleging that a specific agricultural activity is causing or will cause water pollution. Not all complaints must be investigated, however. After the Commissioner receives a complaint and the complaint is one that must be investigated, he will ask the local Soil and Water Conservation District ("District" or "local district") whether it wishes to investigate the complaint. If the District does not wish to investigate the complaint, the Commissioner will. (A copy of the ASA is in Appendix A.)

The purpose of the investigation is to determine whether the agricultural activity (that was the subject of the complaint) is causing or will cause water pollution. If not, the Commissioner will dismiss the complaint and inform the person who made the complaint ("complainant").

If the agricultural activity is causing or will cause water pollution, the ASA gives the farmer an opportunity to correct the problem. The farmer will be asked to develop a plan containing "stewardship measures" (often referred to as "best

management practices") to prevent the water pollution. The farmer then develops the plan, and once the plan is complete, the District reviews it and makes recommendations to the Commissioner. If the Commissioner approves the plan, he will then ask the farmer to implement the plan within specified periods of time.

~~If the farmer does not develop a plan, or if the farmer develops a plan, but fails to implement it, then (and only then) will an approved plan, enforcement action under the ASA will be taken against the farmer.~~

In some cases, the ASA investigation will not produce sufficient evidence to support the conclusion that the agricultural activity in question is causing or will cause pollution. In those cases, the investigator will see if the farmer is receptive to suggestions on how the farmer might improve his practices to prevent complaints in the future. This educational role of the investigator is just as important as anything else the investigator does pursuant to the ASA.

### SECTION A. What the Act Covers

#### 1. Activities Covered by the ASA

The ASA applies to agricultural activities that are causing or will cause water pollution by sedimentation, nutrients or toxins. The only exception is when the agricultural activity in question is already permitted by the State Water Control Board (through the Department of Environmental Quality). The permits are usually: a Virginia Pollution Abatement ("VPA") permit (general or individual) for the storage and land application of animal waste; a Virginia Pollution Discharge Elimination System ("VPDES") permit for certain aquaculture facilities or for mixed production and processing operations; or a VPA permit for the land application of sewage sludge.

#### ACT APPLIES TO WATER POLLUTION FROM AG ACTIVITIES

The ASA does not apply to forestry activities, nor does it apply to odor concerns. Nor does the ASA apply to landfills ~~or~~. ~~In terms of waste problems that do not involve~~, the ASA would only apply to farm dumps where agricultural products or animal carcasses are disposed of and that have ~~no~~ clear water quality impacts. Finally, the ASA does not apply to air pollution, nor does it apply to water pollution caused by non-agricultural activities.

#### ACT DOES NOT APPLY TO:

- \*PERMITTED ACTIVITIES
- \*FORESTRY
- \*ODORS /AIR POLLUTION
- \*LANDFILLS

If a complaint alleges that a farming operation is causing unpleasant odors, for example, neither the Commissioner nor the local District has the authority to investigate the complaint or to take any other action under the ASA. In that case, the Commissioner would inform the complainant that the ASA does not give authority to deal with anything other than water pollution.

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## General Notices/Errata

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The Commissioner's staff will use Form 1 to determine whether or not the complaint can be investigated under the ASA.

### 2. Definitions of Sedimentation, Nutrients and Toxins

Sedimentation is **soil** material, either mineral or organic matter, that has been transported from its original site by air, water, or ice through the force of gravity and has been deposited in another location. The primary focus under the ASA will be on **erosion** of soil and its deposition in adjacent surface water.

Nutrients are dry or liquid materials that provide elements, such as nitrogen, phosphorus, and potassium, that can nourish plants. **Commercial fertilizers and animal manures** are the two primary sources used to supply nutrients to plants in agricultural operations, and will be the focal point of the ASA.

For the purposes of these guidelines, a toxin is any substance or mixture of substances intended to be used to prevent, destroy, repel or mitigate agricultural pests, or to be used as a plant regulator, defoliant or desiccant, commonly called **pesticides**. In addition, **oil, gasoline, diesel fuel and other petroleum products** are potentially toxic materials that are usually employed in farming operations.

#### Major Pollutants Covered by the ASA:

- \*SEDIMENTS
- \*MANURE
- \*COMMERCIAL FERTILIZER
- \*PESTICIDES
- \*OIL, GASOLINE, DIESEL

#### THAT CAUSE WATER POLLUTION

Each of these potential pollutants -- soil, nutrients, pesticides, oil, gasoline and other petroleum products -- are good and useful things when they are kept in their proper places. It is only when any of these things reaches a stream, river, well, lake or other water body that they become a problem.

### 3. What the Act Means by "Pollution"

The ASA defines pollution as "any alteration of the physical, chemical or biological properties of any state waters resulting from sedimentation, nutrients, or toxins." (§ 10.1-559.1 of the ASA.) This means that when sediments, nutrients or toxins enter the water from an agricultural activity, they constitute pollution under the ASA.

However, even if pollution is occurring, the ASA gives the Commissioner the power to dismiss a case if the Commissioner determines that:

"... the pollution is the direct result of unusual weather events or other exceptional circumstances which could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or

recreational or other beneficial uses . . ." (From § 10.1-559.3 C of the ASA.)

#### COMMISSIONER MAY DECIDE NO PLAN NEEDED IF POLLUTION COMES FROM:

- \*HURRICANES
- \*DROUGHTS
- \*FLOODS

OR OTHER UNUSUAL WEATHER EVENTS OR CIRCUMSTANCES

#### COMMISSIONER MAY DECIDE NO PLAN NEEDED IF POLLUTION IS NOT A THREAT TO:

- \*HUMAN HEALTH
- \*ANIMAL HEALTH
- \*AQUATIC LIFE
- \*WATER QUALITY
- \*RECREATIONAL USES

As with all nonpoint source pollution, proof that a specific agricultural activity is causing or will cause pollution can be difficult, since nonpoint source pollution is, by definition, diffuse. In addition, two of the three categories of pollutants at issue here -- sediments and nutrients -- find their way into water naturally as well as from man's activities. Thus, for example, it can be difficult to prove that the nutrients came from a farming operation and not from natural or other sources.

#### LINKING SPECIFIC POLLUTION TO A SPECIFIC AG ACTIVITY CAN BE DIFFICULT

### 4. What the Investigation Has to Prove

The ASA requires that before a plan can be required, the agricultural activity must be one that "is creating or will create pollution." The following is the Commissioner's standard for determining whether the activity "is creating or will create pollution."

*To conclude that an agricultural activity is creating or will create pollution, there must be a reasonably certain link of cause and effect between the agricultural activity and the pollution that is being created or that will be created.*

(The term "is causing" will be used interchangeably with the term "is creating." Similarly, the term "will create" will be used interchangeably with "will cause.") The central question is *how certain* the investigator must be that the activity is causing or will cause pollution.

Examples:

**You Can See It** -- Suppose an investigator is visiting a farm during a rainstorm. A gully has eroded through the field, so the investigator can actually see the rain washing sediment into the stream. If an investigator can see pollution occurring, he can conclude that the agricultural activity *is causing* pollution.

Result:

A plan can be required for this field.

**You Would See It** -- If the same investigator were visiting the same farm on a dry day, he would not see the pollution actually occurring. But, given the law of gravity, he can be certain that sediment will be washed from the gully into the stream during future rainstorms. He can be certain that this *will cause* pollution.

Result:

A plan can be required for this field.

**Logic Tells You** -- Suppose a complaint alleges that fertilizer is washing from a field into the adjacent stream. The farmer uses fertilizer and does not follow a nutrient management plan. The farmer's fertilizer application rate exceeds the amount required by the crop. The field, which slopes slightly toward the stream, is plowed to within five feet of the stream's edge. Between the field's edge and the stream is a stream bank, which has only thin vegetation. Because of the amount of fertilizer applied, the slope of the field, the law of gravity, the thin vegetation on the bank, the investigator can be certain that fertilizer will wash from this field into the stream and thus *will cause* pollution.

Result:

A plan can be required for this field.

**You Can't Be Certain** -- Suppose that in relation to the same complaint, the farmer applies fertilizer, but he follows a nutrient management plan. The amount of fertilizer applied does not exceed the crop's needs and is applied when the crop will use it. In addition, the field is plowed to within 20 feet of the stream's edge, but the buffer and stream bank are thickly vegetated with grass. Because of the farmer's nutrient management practices, and the characteristics of the buffer and bank, the investigator cannot be sure that nutrients will wash from this field into the stream.

Result:

A plan cannot be required.

### Key Questions for Determining Whether Pollution is Occurring or Will Occur:

\*Is there any barrier to prevent the sediment, nutrients, or pesticides from reaching the water?

\*Is the farmer using any practices designed to prevent the pollutant from reaching the water?

If no plan can be required under the ASA, is this the end of the investigator's relationship with this farmer? Not necessarily. The investigator is free to see if the farmer is receptive to some suggestions on how the farmer might improve his practices to prevent complaints in the future. This educational role of the investigator will be just as important as anything else the investigator does pursuant to the ASA. As a result, water quality can still

be improved, and the farmer can enhance his protection against future complaints.

This underscores the importance of the investigator's maintaining a positive, non-judgmental attitude towards the farmer during the investigation. Even though the investigation may be somewhat upsetting for the farmer, it can be the beginning of a positive new relationship between the farmer and the District or VDACS.

## SECTION B. How Investigations are Conducted

### 1. Decision to Investigate

The ASA is "complaint-driven." There can be no investigation of any farm activity unless the Commissioner receives a complaint. If the person making the complaint gives his name, the ASA requires that the Commissioner or the local District determine the validity of the complaint. The ASA gives the Commissioner the choice of whether or not to investigate a complaint that was made anonymously.

#### No Complaint = no investigation

Non-anonymous complaints = must investigate

Anonymous complaints = may investigate

### 2. Priority of Complaints

The Commissioner will give top priority to complaints -- non-anonymous or anonymous -- that may prove to be serious and immediate threats to human health, animal health, aquatic life or water quality. The ASA requires that non-anonymous complaints be investigated, and they will receive second priority. Anonymous complaints will receive the lowest priority and may not be investigated at all.

#### Priority of Complaints:

1. Complaints (non-anonymous or anonymous) that may involve serious threats;
2. Non-anonymous complaints;
3. Anonymous complaints.

### 3. Who Investigates

The decision as to who performs the investigation of a complaint really lies with the local District. Upon receiving a complaint, the Commissioner must notify the local District and give the District the option to investigate the complaint. Form 2 shows the standard manner of notification to a District and requests their assistance.

The District then has **five days** to tell the Commissioner whether or not the District will investigate the complaint. The District may base this decision on anything the District chooses, and the District does not have to tell the Commissioner the reason for its decision. Form 3 is designed to provide the Districts with sample language that they may use in responding to the Commissioner's requests that they investigate.



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## General Notices/Errata

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### District chooses whether or not to investigate

Some Districts have chosen not to perform any investigations. Once a District has informed the Commissioner that it does not intend to perform investigations, the District does not have to respond to the Commissioner's notification that there is a complaint. As a courtesy, the Commissioner will always inform these Districts of complaints in their Districts so that these Districts will be aware of the situation.

*Some Districts have chosen to perform all of their investigations jointly with VDACS. This means that representatives of the District and VDACS ASA staff conduct the investigation together. This approach has worked well, and other Districts are welcome to try this approach.*

If a farmer has a preference as to who performs the investigation, the farmer should let the Commissioner know, and the Commissioner will try to accommodate his request.

### 4. Time Limitations on Investigations

After receiving the complaint, the Commissioner or the District has **21 days** to investigate. If the District conducts the investigation, the District then needs to send their findings to the Commissioner so that he can determine whether a plan is necessary. The Commissioner is responsible for reporting his decision to the farmer.

### 5. Notice to Farmer of Investigation

The farmer is entitled to notice that a complaint has been received regarding his operation that must be investigated. The notice may come from the Commissioner or from the District. In all cases in which the Commissioner will investigate, his staff in the Virginia Department of Agriculture and Consumer Services ("VDACS") will make the initial phone call to the farmer, following it with a written notice.

Some Districts may feel comfortable in performing investigations, but would prefer to have the initial notice of the investigation come from VDACS. VDACS will make the initial call to the farmer, *if* the District has adopted a written policy (e.g., a resolution or in meeting minutes) stating that the District wishes to have VDACS make the initial call. If a District has adopted such a policy, the District should send the Commissioner a copy of it. In the initial call, VDACS will explain that a complaint has been received, that an investigation is necessary, and that someone from the District will call to arrange a time to meet. After the District representative calls to arrange a time, the District should follow the phone call with a short letter or memorandum documenting the arrangements. (See Form 5.)

Some Districts may prefer to make all pre-investigation contacts with the farmer themselves. Unless VDACS receives a policy from a particular District to the contrary,

VDACS will assume that the District will make all of the pre-investigation contacts. The phone call should be documented and followed by a written notice. (See Forms 4 & 5.)

### Notice to Farmer of Investigation:

- \* Phone call
- \* Followed by letter or memo

Regardless of who makes the initial call, the person who sends the written notice of the investigation to the farmer should also send written information regarding the ASA. (VDACS ~~provides~~ *has provided* this information to the Districts.) This gives the farmer an opportunity to get a better understanding of the ASA, its procedures, and what the farmer can expect regarding resolution of the complaint.

### 6. Notice of Findings from Investigation

The Commissioner will notify the farmer of his decision as to whether a plan is necessary. When a District performs an investigation, they need to provide their findings to the Commissioner so that he can make this decision. *This includes all materials produced and collected during the investigation period.* (See Form 9.) The Commissioner's notice to the farmer will either dismiss the complaint or inform the farmer that he needs to submit a plan to the Commissioner describing what will be done to correct the pollution problem. This plan is due **60 days** after the farmer receives the written notice informing him that a plan is necessary. (See Form 6.) Information regarding planning and implementation will be sent with this notification to assist the farmer.

In addition, the farmer must begin implementing his plan within **six months** of receiving notice that a plan is necessary. Then, the farmer must complete implementation of his plan within **18 months** of receiving the notice. The farmer can receive an extension in some cases, as described in section 8 below.

### After Notice that a Plan is Necessary:

- \*Within 60 days, develop plan;
- \*Then have plan reviewed and approved;
- \*Within 6 months, begin implementing;
- \*Within 18 months, finish implementing.

Upon approving the farmer's plan, the Commissioner will inform the farmer, the District and the complainant. (See Forms 7 and 8.)

### 7. Extensions of Deadlines

Sometimes a farmer may need more time to complete implementation of his plan because of circumstances beyond his control. The ASA provides that the Commissioner may grant an extension of up to **six months** (180 days) if a hardship exists *and* if the farmer has made a request for an extension at least **60 days** prior to the date he was supposed to have completed implementing his plan. The Commissioner will determine

that a situation constitutes a hardship if it was caused by circumstances beyond the farmer's control, *and* if the farmer has been making a good faith effort to implement his plan. Hardship can include financial problems.

**Extensions:**

- \* Circumstances beyond farmer's control;
- \* Farmer has made good faith effort to implement plan;
- \* Request for extension made 60+ days before plan due to be completed.

8. Notification of Landowner, if Different from Operator

The Commissioner will determine on a case-by-case basis whether to notify the landowner when the complaint involves an agricultural activity on land that the farmer rents from someone else. If the investigation shows that no pollution problem exists, or if the problem is easily corrected by the operator's change in field management, the Commissioner may determine that notification of the landowner is unnecessary. If the problem involves an old feature (e.g., an old gully) that was created before the present operator began renting the land, or if correcting the problem requires construction, the Commissioner may determine that the landowner needs to be notified.

9. Right of Entry Explained

The ASA gives the Commissioner or the District the right to enter the farmer's *land* to determine whether or not the complaint is valid. This entry onto the farmer's private property must be handled in accordance with the farmer's rights. (See Section F for more information on the farmer's rights.)

a. Constitutional Right

The United States Constitution provides that the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches... shall not be violated..."

This is part of the Fourth Amendment (4th Amendment) to the U. S. Constitution, which protects the people against unreasonable searches of their property by the government. The investigation of the complaint is a "search" under the 4th Amendment. Therefore, the right of entry and investigation, like any other governmental entry and investigation, always remains subject to the 4th Amendment, as explained below.

b. Scope of the Right of Entry

The physical scope of the right of entry is determined by the scope of the complaint. If the complaint alleges water pollution created by erosion coming from a specific field on the farm, then the ASA investigator does not have the right to enter other fields. If the complaint is made more broadly to say that erosion is coming from the farm as a whole into X stream, then

the investigator's right of entry covers all of the farm that drains into X stream. If the complaint is made even more broadly to say that erosion is coming from the farm as a whole without naming the water body, then the investigator's right of entry covers the whole farm.

**The investigation is no broader than the complaint.**

Under the 4th Amendment, the ASA's right of entry is subject to further limitations. With the farmer's consent, however, the ASA investigator can enter, examine or do other things:

|  | Consent<br>Necessary?* |
|--|------------------------|
| Enter fields not covered by the complaint                    | Yes                    |
| Enter sheds, barns, houses, and other enclosed structures    | Yes                    |
| Open glove compartments, trunks, tanks, and other containers | Yes                    |
| Bring a non-District or non-VDACS person along               | Yes                    |
| View the farming operation from off-site                     | No                     |
| Enter streams adjacent to farm                               | No                     |

(\*To be valid, consent must be given voluntarily by someone who has the intelligence and ability to understand the situation and the possible consequences. For example, the consent of the farmer's five year old child probably wouldn't work because the child wouldn't understand the consequences.)

c. When Right of Entry Begins

Under the ASA, there is no right to enter a specific farm until the Commissioner has received a complaint regarding that particular farm and the farmer has been given notice of the intended entry. The ASA does not require that this notice be in writing, so a phone call or statement to the farmer is sufficient. To prevent misunderstandings, however, VDACS and District investigators should keep records of such phone calls, at a minimum, and follow with a written notice to the farmer to confirm the investigator's oral statements. (See Forms 4 & 5.)

d. Role of the Investigator

The ASA investigator is not a police officer, but a witness who has the right to enter land to conduct an investigation and collect information.

e. When Right of Entry is Denied

If the farmer denies the investigator entry onto the land or if the farmer later withdraws his consent regarding the investigator's entry, the investigator must leave the farmer's property immediately. The investigator should report this to the VDACS ASA staff as soon as possible. It may be possible for the Commissioner to

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obtain a court order allowing entry, and the farmer may be subject to a civil penalty under the ASA.

If a farmer threatens the investigator, then the investigator should leave immediately. The investigator should make no counter-threats nor do anything that could escalate the situation, but maintain a professional manner. The investigator should report the threat to the VDACS ASA staff immediately so that VDACS can take over the case.

### f. Unclear Situations

If a ~~District employee has a question~~ *questions arise* regarding an unclear ~~situation he may~~ *situations*, call the VDACS ASA staff at 804/~~786-3539~~, 786-3538 who will try to find the answer.

In the long run, understanding and respecting the farmer's rights is important because violation of Constitutional rights tends to give the government agency and program a bad reputation, eroding public support. In the short run, violation of a person's rights can jeopardize the case. Evidence obtained in violation of the 4th Amendment is likely to be inadmissible in court.

### 10. Purpose and Scope of Initial Investigation

The purpose of the initial investigation is to answer a single question: Is there substantial evidence that the agricultural activity in question is causing or will cause water pollution from sedimentation, nutrients or toxins, as alleged in the complaint? When performing an investigation, information to answer this question can be recorded on Form 9.

#### Answer the Question:

##### Yes or No

Is there substantial evidence that the agricultural activity is causing or will cause water pollution?

- Activities that are causing or will cause pollution that were *not* the subject of the complaint should be pointed out to the farmer as areas that the farmer needs to address, but with the understanding that these areas are not covered by the ASA complaint. The ASA's jurisdiction is "complaint-driven" and limited to the terms of the complaint. Thus, trying to enforce the ASA's requirements with respect to activities that were not mentioned in the complaint would be impossible.

#### Examples:

The complaint alleges that severe erosion in a farm field bordering a stream is causing pollution. The investigation confirms that this erosion is causing pollution of the stream through sedimentation. During the investigation, the investigator also notices that the farmer's manure-management practices in the nearby loafing lot are also causing pollution. The nutrients from the loafing lot are draining into the stream, but not through the eroded area that was the subject of the complaint.

#### Result:

The investigator should advise the farmer that the manure also appears to be causing pollution and that the farmer would be wise to correct the situation. An ASA plan can be required, however, only for the erosion problem specified in the complaint.

A similar complaint alleges that erosion in a field bordering a stream is causing pollution. The investigation confirms that this erosion is causing pollution of the stream through sedimentation. During the investigation, the investigator also notices that the farmer's manure-management practices in the nearby loafing lot are also causing pollution through nutrients. The nutrients are draining into the stream -- this time, through the eroded area that was the subject of the complaint.

#### Result:

An ASA plan that covers both the manure-management practices and the eroded area can be required, because the nutrients are being delivered to the stream through the eroded area, which was the subject of the complaint.

Sometimes, the question of whether or not a particular activity is covered by the complaint and, thus, should be included in the ASA plan will be difficult to answer. If a District employee or anyone else has a question regarding such a situation, he may call the VDACS ASA staff at 804/~~786-3539~~ 786-3538, who will assist in determining the answer.

### 11. Evidence

The ASA requires that there be "substantial evidence" that the agricultural activity is causing or will cause water pollution. This means that the evidence must be clear and must show cause and effect: that the agricultural activity caused or will cause pollution. In addition, there must be some evidence to support *each step* in the logical conclusion that activity X caused pollution Y.

#### a. "Real" Evidence

"Real" evidence is physical evidence (as opposed to testimony). Water samples, maps and photographs are examples of real evidence. Developing a standard procedure within the office as to the labeling and storage of physical evidence should be done. Keeping

physical evidence in locked closets or cabinets is necessary. This will assist VDACS if any enforcement action becomes necessary.

With maps, it will help to know who made the map (e.g., USGS or FSA), whether there have been any changes on the farm since the map was made, and if the map is labeled.

With all physical evidence, investigators need to maintain an unbroken chain of custody (possession). The purpose of the chain of custody is to be able to account for the whereabouts of the evidence at any time between the taking of the evidence and the evidence's arrival at VDACS in connection with an enforcement action. The investigator does not have to prove that no one ever tampered with the sample -- only that the handling of the sample adhered to a system of identification (e.g., labeling) and custody.

### b. Transporting Evidence

To maintain the chain of custody, evidence needs be transported by the investigator, by someone the investigator knows and trusts (and who would be willing to testify, if necessary), or by any standard means that will provide a receipt (e.g., registered mail, return receipt requested; a private courier service; or a private mail service). For samples to be tested, laboratories are generally aware of chain-of-custody questions and have procedures to prevent chain-of-custody problems. Thus, ASA investigators need to be concerned about custody issues only before the evidence reaches VDACS.

### c. Written Evidence

Official publications, such as the Field Office Technical Guide ("FOTG"), are often easily admitted into evidence in court. The rules regarding other types of writings (e.g., the plans) are too complex to go into detail, except to say that original documents are preferred over duplicates (e.g., photocopies). Duplicates are usually admissible, but only if they are exact copies of the original and if the original is unavailable.

### d. Oral Testimony

ASA investigators may have to appear as witnesses at hearings pursuant to the ASA. A witness' testimony is just as good evidence as any other kind. It will help the investigator if the investigator keeps notes regarding an investigation.

### e. Approved Laboratory

For scientific analysis of any water samples or other evidence, the investigator should send the sample or other evidence to the state's laboratory, the Division of Consolidated Laboratory Services ("DCLS"). ~~Private laboratories are available, but should not be used in the ASA program for cost reasons.~~ DCLS' services

are in great demand among state agencies, and DCLS will often be unable to meet the ASA deadlines (e.g., 21 days for investigation), unless they are notified that the sample is being used in connection with investigation of a pollution complaint. A form (Form 11) stating that the sample is for investigation of a pollution complaint must be attached to the sample when it arrives at DCLS. *Certified private laboratories are also acceptable.*

### 12. Sample Collection Techniques

To maintain uniformity in the state's system of collecting water samples, VDACS will use the procedures developed by the Virginia Water Control Board (VWCB), as set forth in the applicable sections of VWCB's "Water Quality Assessment Operating Procedures Manual." ~~VDACS will send a copies of this Manual to each of the Districts that performs investigations.~~

Due to the complexity and cost of water sampling and analysis, water samples should be taken only when they are absolutely necessary to prove a case. When an investigator can see that pollutants are entering or will enter the water body in question, he will not need to take samples because the case can be proven through photographs, maps, eye-witness testimony, and the law of gravity. The experience of other states that have programs similar to the ASA suggests that sampling is only necessary in a few cases. If sampling is necessary, VDACS' staff will be available to assist Districts until resources are available to supply sampling equipment and training to the Districts. VDACS will also pay for the sample and analysis, if the District notifies VDACS that a water sample may be needed and VDACS agrees.

### SECTION C. Confidentiality of Information

While an investigation is under way, disclosing information regarding the investigation can, in many cases, compromise or ruin any enforcement actions that may need to be taken later. The farmer may be understandably anxious to review whatever notes and records the investigator has made before the investigation is concluded, but the farmer should not be allowed to do so until the investigation is concluded. If at the conclusion of the investigation the farmer wants to know whether or not he will need to develop a plan, the investigator may give the farmer his opinion, but should also tell the farmer that this is subject to the Commissioner's ultimate decision. At the conclusion of the investigation, the farmer also has the right to review the investigator's materials.

~~Neither is it appropriate~~ *It is inappropriate (perhaps illegal)* to disclose information about an on-going investigation to anyone who does not work for the District or VDACS. The farmer's interest in keeping matters regarding an investigation of his practices confidential should be respected. In addition, allowing outside parties (e.g., the press) to, in effect, participate in the investigation by disclosing information about it is likely to compromise the case, in one way or another. Thus, it is essential that all information regarding on-going investigations be kept

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confidential until the Commissioner has decided whether the farmer needs to develop an ASA plan and, if so, until he has approved the plan.

This confidentiality extends to all aspects of the case, including disclosure of the name of the farmer or the name or location of the farm. For example, if someone (other than the complainant) asks whether Mr. Jones' farming operation is being investigated, the investigator (or anyone else from the District, whether employee or director) should simply respond that the District is unable to say either "yes" or "no" because the District has a strict policy that prohibits discussion of anything related to such matters.

### **Only the farmer has the right to receive information from the District regarding his case.**

The same principles apply to disclosing information regarding the complainant. Until the investigation is over, neither VDACS nor the District should disclose any information to anyone other than the farmer regarding the complaint. An investigation is over when the Commissioner makes his decision as to whether or not the farmer must develop an ASA plan and, if so, has approved the plan.

### **Information regarding the complainant is confidential, too.**

The District board of directors should go into executive session to discuss any on-going investigations and, if any have been filed, appeals or other litigated matters. In addition, the board's minutes that will be made available to the public should not disclose information regarding on-going investigations, appeals or other litigated matters. (The Department of Conservation and Recreation has supplied Districts with information on how to go into and out of executive session and related matters.)

A District may receive a request under the Virginia Freedom of Information Act [Chapter 21 (§ 2.1-340 *et seq.*) of Title 2.1 of the Code of Virginia] ("FOIA") to disclose records regarding an on-going investigation. Each request for records must be made in writing; if a District receives an oral request for records, the District must then advise the person making the request that the request must be made in writing. The District should not respond to any oral requests, only written requests. If the District does receive a written request for records, FOIA gives the District five work days to respond to the request. (This five-day deadline may be extended under limited circumstances.) If the District receives a written request for records regarding an on-going investigation, the District's response must:

- (i) deny disclosure of all records or portions of records that contain information regarding the on-going investigation; (ii) state that records related to on-going investigations are not subject to disclosure; and (iii) cite as authority for denying the records §§ 2.1-342 A and 10.1-559.9 of the Code of Virginia.

Once an investigation has been concluded, the records regarding it may legally be disclosed, in many instances. To minimize the possibility of FOIA requests made to Districts,

the Districts should turn over all of their written material (including notes) and evidence to VDACS. Failure to abide by the requirements of FOIA can subject a District director or employee to personal liability. To minimize their exposure to liability, Districts should not keep copies of matters related to the investigation. VDACS will supply copies to the District later if the District wants them.

### **To minimize potential FOIA problems, Districts should send all records and evidence related to an investigation to VDACS.**

The District may decide that it is better policy not to disclose the names of farmers involved in ASA matters or locational information regarding their farms, even after the investigations have been concluded. If a District has a question regarding its legal obligations in connection with disclosure of records, the District should pose these to their lawyer or to the local Commonwealth's Attorney who represents the District.

While making records, investigators should remember that the records will be shared with the farmer, in many cases, and, occasionally, the public. These records may even be published in the newspaper or on radio or television. Thus, the investigator should record only *accurate, factual* information, such as what was seen and even what was said -- *never* the investigator's opinion of the farmer (or anyone else) as a person. Untrue statements or statements of opinion regarding a person's character, health or looks may constitute slander and, if published, libel.

### **SECTION D. Subsequent Investigations Visits to Farm to Check Implementation**

After the initial investigation has been completed, no further ~~investigation~~ *on-site reviews* are necessary if the Commissioner has determined that no plan is necessary. Subsequent ~~investigations~~ *on-site reviews* are necessary only when an ASA plan is required. The purpose of the subsequent ~~investigations~~ *on-site review* is to determine whether the farmer is implementing his ASA plan in accordance with his implementation schedule.

Subsequent ~~investigations~~ *on-site reviews* have enforcement implications, which are the Commissioner's responsibility; so, Districts should not undertake subsequent ~~investigations~~ *visits* without VDACS' express agreement. (This need for agreement from the Commissioner does not apply to a District's *best management practices* "spot-check" ~~investigation~~ to determine compliance with a *District* cost-share agreement, even for a practice installed to meet ASA requirements.) ~~Conversely, some Districts will not want to undertake any subsequent investigations, and that desire will be respected.~~

### **SECTION E: Appeals and Other Hearings**

The ASA gives "persons aggrieved" the right to appeal any decision of the Commissioner to the Virginia Soil and Water Conservation Board ("Board"). "Persons aggrieved" means the farmer and may also include anyone else who has a

"substantial, immediate pecuniary interest" (e.g., economic harm).

### Decisions of the Commissioner:

- \*The a complaint does or does not come under the ASA's jurisdiction;
- \*That an investigation of a complaint is or is not necessary;
- \*That a plan is or is not necessary;
- \*That the plan is or is not approved;
- \*That the farmer is or is not entitled to an extension;
- \*That the farmer is or is not implementing his plan according to schedule;
- \*That the farmer has or has not completed implementation according to schedule;
- \*That a civil penalty can be assessed;
- \*That a corrective order should or should not be issued;
- \*That an emergency situation exists requiring special action.

The farmer or other appellant also has the right to request a discussion with the Commissioner before he makes any of these decisions (except the decisions regarding jurisdiction and whether the complaint should be investigated, which will be made before the farmer is aware of the complaint).

If he or she is dissatisfied with the Board's decision in an appeal, a party to the proceeding may then appeal to circuit court. Appeals may be made, in some instances, from circuit court decisions to higher courts.

### Appeals:

- \*First, to the Soil and Water Conservation Board;
- \*Next, to circuit court;
- \*Then, to appellate court(s).

The ASA provides that the farmer or other appellant may have a "hearing" before the Commissioner in connection with the issuance of any order pursuant to the ASA. (See e.g., § 10.1-559.4 B of the ASA, which gives the farmer or other appellant the right to a hearing prior to the issuance of a corrective order.) During these hearings, the propriety of the issuance of the order will be determined. These hearings may be more formal than a simple discussion with the Commissioner, if the farmer desires a more formal proceeding.

During hearings and appeals, District investigators and VDACS staff may be called as witnesses. District investigators and VDACS staff have no obligation in these proceedings to make any determinations, but only to provide evidence. Staff from the Department of Conservation and Recreation ("DCR") provides staff services to the Board.

Appeals conducted by the Board under the ASA would be conducted in accordance with Article 3 of Virginia's

Administrative Process Act.<sup>2</sup> Appeals to circuit court and thereafter to appellate courts would follow the courts' own procedural rules.

### SECTION F: Farmer's Rights

The farmer always has all of the rights given to him by the U.S. and Virginia Constitutions, and the ASA cannot take those rights away. Of his Constitutional rights, the farmer's right to be protected from unreasonable searches and seizures and the farmer's right to due process would be the greatest concerns in relation to the ASA. The farmer also has the right to consult with his own attorney, if he wishes, in connection with any aspect of, or proceeding under the ASA.

#### Farmer's Rights:

- \*Constitutional rights, especially
  - Protection against unreasonable searches,
  - Due process,
- \*Notices of investigation, plan approval or disapproval and orders;
- \*Right to discussions with Commissioner before decisions;
- \*Right to hearings regarding orders;
- \*Right to appeal decisions of the Commissioner;
- \*Right to appeal decision of Soil and Water Conservation Board;
- \*Right to seek appeal of circuit court decision.

A list that shows the farmer's rights at each stage of the initial investigation is attached.

### SECTION G: Sources of Assistance for Farmers

There are several sources of assistance available to farmers to address pollution problems and to develop stewardship measures and plans. Areas of assistance and possible sources are listed below:

#### 1. Technical Assistance

Planning and, if necessary, engineering assistance is often available through:

- Local Soil and Water Conservation District
- Department of Conservation and Recreation
- Natural Resources Conservation Service
- Virginia Cooperative Extension
- Virginia Department of Agriculture and Consumer Services
- Private businesses
- Consultants
- Agribusiness organizations

#### 2. Cost-Sharing

Cost-Share assistance that may be available to implement plans is offered by:

- Local Soil and Water Conservation Districts

<sup>2</sup> See Article 3 (§ 9-6.14:11 et seq.) of Chapter 1.1.1 of Title 9 of the Code of Virginia.

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- U. S. Department of Agriculture, Farm Service Agency (USDA)
- U. S. Department of Agriculture, Natural Resources Conservation Service

### 3. Financial Planning

Financial planning is always a consideration when making decisions that affect a farming operation. There are several organizations that can be of assistance to the farmer in his financial planning:

- Virginia Cooperative Extension (e.g., Farm Management Agents)
- Private financial institutions (e.g., commercial banks, agricultural financing organizations)
- ~~- Small business development centers (statewide, state funded network of centers, usually at state colleges and universities)~~

### 4. Physical Planning for Compliance with ASA

The ASA requires that the plan be returned to the Commissioner's Office and the District within 60 days after receiving notice that a plan is necessary. The local District must then review the plan and if the plan meets requirements, then Commissioner must approve the plan within 30 days and send notice of approval to the farmer. The farmer must begin implementing the plan within six months and complete plan implementation within 18 months after the plan approval date.

#### A. Public Sources of assistance in planning

- Local Soil and Water Conservation District
- Department of Conservation and Recreation
- Natural Resource Conservation Service
- Virginia Cooperative Extension
- Virginia Department of Agriculture and Consumer Services

#### B. Private Sources

- Private businesses (e.g., engineering and consulting firms)
- Agribusiness organizations

#### C. Required Contents of Plans

The following are the minimum requirements of a plan under the ASA:

The plan must include:

- Stewardship measures needed to prevent the pollution, and
- Implementation schedule.

The plan should also include:

- Tract map,
- Affected water feature designated,
- Soils map,
- Statement of pollution problem, and
- Signature page for

- Farmer,
- Local District, and
- Commissioner.

These plans may be submitted in the simplest form (e.g., in handwriting with photocopies of maps). More sophisticated forms of plans, such as plans developed using the various conservation computer programs, are acceptable, too. Planners simply need to remember that the ASA sets a 60-day deadline for developing the plan, so planners may want to develop simple plans to prevent or eliminate the pollution to meet the 60-day deadline.

*The farmer will have received a letter from the Commissioner notifying the farmer of the results of the investigation. This letter specifies the components of the agricultural activity that are causing or will cause water pollution. All of these components must be addressed in the plan.*

If necessary, simple plans can be converted into more sophisticated formats later, after this deadline has been met. Planners should be also sensitive to the fact that the farmer then has a second deadline to meet: the farmer must begin implementing the plan within six months of receiving the official notice that the plan has been approved.

Amendments to existing conservation plans are acceptable, too, as long as the amendments prevent or eliminate the pollution.

Form 10 provides an example format of the "bare necessities" of an ASA plan.

To make the planning process most effective, farmers should be given options for solving their pollution problem whenever possible. In terms of appropriate options, the ASA defines stewardship measures as "the best available nonpoint source control methods, technologies, processes, siting criteria, operating methods or other alternatives." There are often a variety of best management practices that can be employed to solve a single pollution problem. Thus, the planner will often have a wide variety of types of options -- from structural practices to changing sites for an activity to changes in operating methods -- that can be offered to the farmer as solutions to the pollution problem. These options need not be the most expensive or employ the most sophisticated technology; they only need to prevent the pollution in question to be the "best".

### 5. Support & preventative measures -- Roles of agricultural and commodity organizations

The agricultural and commodity organizations can be leaders in supporting their producers and in educating them on Best Management Practices to avoid conflicts and potential pollution problems. As Virginia continues to urbanize, it will become more important for producers to become more aware of environmental concerns and address these issues before problems arise. Some

groups have already begun taking action on educating their producers, as described below:

- National Pork Producers Council and the Virginia Pork Industry Association - Environmental Assurance Program
- Virginia Poultry Federation - nutrient management planning commitment
- Virginia Farm Bureau Federation -- Natural and Environmental Resources Regional Workshops

In addition, Virginia Cooperative Extension has developed an on-farm self-assessment program that can help producers identify potential sources of water pollution. This program, ~~which will be available to farmers throughout the state during the coming year~~ is called:

- Farm\*A\*Syst

Local Extension agents can help farmers learn more about Farm\*A\*Syst. Using Farm\*A\*Syst can be an important step that farmers can take to prevent certain ground water pollution problems.

### SECTION H. Violations and Penalties

Under the ASA, no violation occurs until the Commissioner issues a corrective order and the farmer fails to comply with it or if the farmer denies an investigator the right of entry. The Commissioner *must* issue a corrective order if the farmer is found to need a plan and fails ~~to submit it or if the farmer fails~~ to implement his plan according to ~~his schedule~~ *the Act's standards*.

#### Violations:

- \*Farmer denies or revokes investigator's right of entry;
- \*Farmer fails to comply with a corrective order
  - To submit plan, or
  - To implement plan.

This means that if a farmer allows the investigator to enter the land and complete the investigation and then develops a plan and implements it according to schedule, the farmer is not in violation of the ASA -- despite the fact that the farmer's operation was causing or would have caused pollution. If the farmer complies with the process established by the ASA, he is a "good steward" despite the previous problems because he corrected them.

If a farmer fails to comply, he may be subject to civil penalties and orders issued by either the Commissioner or a court. The ASA does not create any crime -- only civil violations.

#### Penalties:

- \*Civil penalty of up to \$5,000 per violation, per day of violation;
- \*Orders from Commissioner or court.

ASA creates no crime.

### SECTION I. Intergovernmental Cooperation

The ASA requires that agricultural activities that are causing or will cause water pollution be corrected. It is very important that all agencies work together in a cooperative effort using a common-sense approach to assist farmers in effectively correcting these problems. Listed below are agencies and their roles in relation to the ASA.

1. The Department of Environmental Quality and the Virginia Water Control Board ("DEQ" and "VWCB")

Virginia's State Water Control Law gives the VWCB broad jurisdiction over almost all types of water pollution, whether point source or nonpoint source, whether agricultural or non-agricultural in origin, and involving any type of pollutant. (See Section 62.1-44.5 of the Code of Virginia.) The ASA gives the Commissioner jurisdiction over a smaller portion of this same area of concern: water pollution caused by three types of pollutants coming from agricultural activities not currently subject to a permit issued by VWCB through DEQ. The Commissioner's and the VWCB's jurisdiction overlap, but the Commissioner's jurisdiction is a subset of the VWCB's. (This concept is illustrated by the figure in Appendix C.)

#### DEQ and Commissioner share jurisdiction over agricultural nonpoint source pollution

The VWCB has asserted its jurisdiction over certain types of agricultural operations by requiring them to obtain permits. For those agricultural activities that are subject to a permit issued by the VWCB (through DEQ), the ASA is not applicable. The ASA expressly provides that those operations are exempt from the ASA. When a complaint arises regarding an operation that is subject to a VWCB permit (most often a VPA or VPDES permit), the complaint must be dismissed, and the farmer should be informed that he should check to make certain that the farmer is in compliance with his VWCB permit. The farmer should be given the address and phone number of his regional DEQ office so that DEQ can answer any questions that the farmer may have.

In addition to sharing joint jurisdiction over a set of water pollution concerns, DEQ participates in the ad hoc committee that is assisting the Commissioner in the development of these guidelines ("ad hoc committee"). DEQ is also providing VDACS staff with training in investigating, water sampling and collecting evidence. If any District officers or employees are interested in discussing investigation techniques with DEQ staff, District officers and employees may contact their regional DEQ office.

2. The Department of Conservation and Recreation ("DCR")

DCR is Virginia's primary natural resource conservation agency and provides farmers with technical assistance in



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developing nutrient management plans. In this program, DCR maintains a staff of specialists in field offices throughout the state to provide nutrient management planning (NMP) assistance. Closely connected with the NMP technical assistance program is DCR's certification program for nutrient management planners from both private and public organizations.

In addition to its programs related to NMP, DCR provides the Districts with coordination services at the state level. DCR is the major conduit of funds for Districts. An integral part of this program is the state cost-share program that DCR administers and the Districts implement.

DCR collects land-use and related data from across the state to identify small watersheds where the potential for nonpoint source pollution is high. DCR also provides various predictive modeling services that help estimate the progress made in reducing nonpoint source pollution.

Of particular interest to the ASA program is DCR's close relationship with the Virginia Soil and Water Conservation Board ("Board"). DCR provides the staff services to the Board that will help the Board meet its ASA obligations.

In relation to the ASA, DCR is likely to continue providing its NMP assistance to farmers with corresponding ASA planning needs, as well as cost-share assistance (when appropriate). Finally, DCR has participated in the creation of the ASA and in the ad hoc committee.

### 3. Natural Resources Conservation Service ("NRCS")

The United States Department of Agriculture, NRCS (formerly known as the Soil Conservation Service) was formed in response to the "Dust Bowl" that devastated agricultural production in the 1930s and contributed to the Depression. Over the years, the NRCS has developed numerous conservation techniques and practices to conserve, improve and sustain natural resources on private lands. The NRCS pioneered the planning approach to conservation management.

Today, in addition to setting the standards for a wide variety of conservation practices, the NRCS provides technical assistance to landowners and managers in many localities throughout the state. These technical assistants often work closely with the local Districts. The NRCS also assists other federal agencies in administering the federal cost-share program for agricultural conservation practices.

In relation to the ASA, the NRCS will continue to provide its technical and cost-share assistance (when and where appropriate) to farmers faced with ASA needs. Finally, NRCS participates in the ad hoc committee.

### 4. Virginia Cooperative Extension ("Extension")

Extension has played an important role over the years by providing landowners and managers with education

regarding a wide variety of concerns. These educational services range from production matters to farm financial planning to natural resource technical and planning assistance.

In relation to the ASA, Extension will continue to provide technical and planning assistance to farmers to prevent complaints under the ASA and to assist in the preparation of ASA plans, at least in those areas where Extension has resources to provide such assistance. Extension's Farm Management Agents, who provide financial planning assistance, may be called upon to provide financial planning assistance in relation to the development of an ASA plan. In response to farmers' questions, Extension is also likely to provide some education to farmers regarding the ASA itself. Extension has a representative on the ad hoc committee.

### 5. Soil and Water Conservation Districts ("Districts")

As described in other sections of these guidelines, the Districts may play a role in investigating complaints, if they choose to do so. The decision of whether or not to perform investigations lies with each District individually. Pursuant to the ASA, all Districts will play a role in the ASA by reviewing ASA plans ~~before they~~ *that are being* sent to the Commissioner.

As actual political subdivisions of the Commonwealth, the Districts are the local sources of technical and planning assistance for agricultural conservation practices, in many instances. Like the NRCS, the District system was developed in response to the Dust Bowl of the 1930s. Over the decades, the work of Districts, together with other conservation agencies, has helped produce an advanced agricultural system.

The Districts are the local administrators of the cost-share program. Beyond the investigative and review roles that the ASA speaks to directly, the Districts are likely to provide continued planning and technical assistance to farmers with ASA needs. Where and when appropriate, the Districts are likely to provide cost-share assistance, too. Finally, the Districts have played a vital role on the ad hoc committee.

### 6. Chesapeake Bay Local Assistance Department ("CBLAD")

The Chesapeake Bay Preservation Act ("Bay Act") was enacted in 1988, and CBLAD was established shortly thereafter to administer the Bay Act's programs.

Section 10.1-559.10 of the ASA makes it clear that any local government may adopt an ordinance establishing a process for filing complaints, investigating them, and creating agricultural stewardship plans where necessary to correct pollution problems, provided that such ordinances meet certain conditions set forth in this section. Subsection B also states that adoption of such ordinances shall not interfere, conflict with, supplant, or otherwise affect *any* other ordinance previously adopted (prior to July 1, 1996). This includes ordinances adopted

pursuant to the Bay Act. If any localities adopt ASA ordinances, these ASA ordinances are intended to supplement and work alongside those other ordinances.

Likewise, § 10.1-559.11 seeks to address potential conflicts with the Bay Act regulations. This section states that nothing in the ASA shall be interpreted to duplicate the agricultural requirements in the regulations adopted pursuant to the Bay Act. In fact, the ASA is intended to supplement and work alongside the Bay Act and its regulations. ASA investigators and planners should note that, while the ASA guidelines seek to provide consistent implementation process across local jurisdictional boundaries, local enforcement of violations of Bay Act ordinances may vary somewhat from one locality to another.

Under the Bay Act regulations and local Bay Act ordinances, agricultural landowners are required to (i) establish (where one does not exist) and maintain a 100-foot-wide vegetated buffer separating the land upon which agricultural activities are being conducted and adjacent environmentally sensitive features, and (ii) obtain a soil and water quality conservation plan (SWQCP) addressing erosion, nutrients and pesticides. This plan must be approved by the local District Board. A SWQCP, or parts thereof, is only required to be implemented if a reduction in the width of the 100-foot-buffer is sought.

If an ASA investigator is informed by the farmer that the farmer has a Bay Act SWQCP, the investigator should review the plan to see what best management practices (BMPs) have been recommended for water quality protection and what is actually being implemented by the farmer.

In some cases, the ASA investigator may find that the BMP recommended in the SWQCP already addresses the water quality problem complained of, but was not required to be implemented under the Bay Act. Rather than duplicating efforts, the ASA investigator may simply refer to the information in the SWQCP and recommend that the farmer implement any or all relevant parts of the plan that address the identified ASA water quality problem.

Local governments in Tidewater Virginia may consider the ASA as a way by which the ASA's enforcement mechanisms may be used to further the goals of the Bay Act.

If an ASA complaint involves a Bay Act vegetated buffer (e.g., a channel has formed in the field and continues through the buffer emptying directly into the stream), the stewardship measures included in the ASA plan must not conflict with either the allowable buffer reductions under the Bay Act regulations or with the buffer performance criteria established via the Bay Act. If the ASA investigator or planner has questions regarding the reduction rules or the performance criteria, the investigator or planner should contact the

local CBLAD-funded Agricultural Water Quality Specialist for assistance. The local District should be able to provide the name and telephone number of the Agricultural Water Quality Specialist.

### 7. Soil & Water Conservation Board ("Board")

As discussed in the previous section of these guidelines entitled "Appeals and Other Hearings," the Board provides the initial forum in which appeals from any of the Commissioner's decision may be heard. This serves to protect important Constitutional rights of farmers and others in obtaining due process. The ASA also empowers the Board to assess, after affording due process, civil penalties against any farmer who has not complied with an order issued pursuant to the ASA.

DCR provides staff services to the Board, and DCR staff has participated in the Ad Hoc committee. In addition, the Commissioner is a member of the Board and has participated in the ad hoc committee.

### 8. Virginia Department of Agriculture and Consumer Services ("VDACS")

VDACS provides staff assistance to the Commissioner, who is in a sense the "point person" for the ASA. Beyond providing assistance to the Commissioner in investigations and enforcement, VDACS' staff will assist in communicating the results of the investigations with complainants.

VDACS also serves as the primary coordinating agency for administering the ASA. In addition to helping draft these guidelines, VDACS runs the ad hoc committee meetings and will undertake reporting and assessment processes annually as the ASA is implemented. The purposes of the annual reporting and assessment process will be to identify trends and needs and to seek means of addressing any problems that develop in the system of administering the ASA.

In some cases, VDACS may provide technical and planning assistance to farmers in the wake of a complaint. VDACS' other main role will be to coordinate the administration of the ASA with the Districts and other partners. VDACS' main goal in administering the ASA is to institute a "farmer-friendly" set of mechanisms by which farmers can address water pollution problems on a case-by-case basis, without the necessity of further overall regulation.

## GOVERNOR'S EMPLOYMENT AND TRAINING DEPARTMENT

### Job Training Partnership Act

The U. S. Department of Labor Appropriations Act for 1998 authorizes the Secretary of Labor to grant statutory and regulatory waivers of Job Training Partnership Act (JTPA) provisions for the year beginning July 1, 1998. The

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## General Notices/Errata

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Governor's Employment and Training Department (GETD) intends to submit a proposal in June 1998 to the U. S. Department of Labor seeking waivers of certain JTPA requirements. The waiver proposal will address U. S. Department of Labor principles for further reforms of the Job Training System and the GETD vision of economic security for Virginians through quality work force development.

A draft copy of the waiver proposal will be available for public review and comment from May 26, 1998, through June 2, 1998, at the GETD from 9 a.m. until 4 p.m. The GETD is located in the Theater Row Building at 730 East Broad Street, 9th Floor, Richmond, VA. Questions should be directed to Gail Robinson, Policy Analyst, telephone (804) 786-2511.

### DEPARTMENT OF HEALTH

#### State Medical Facilities Plan for General Surgical Services

##### Additional Comment Period

The State Board of Health published a Notice of Intended Regulatory Action in the April 18, 1994, issue of the Virginia Register (Volume 10, Issue 15, page 3853), announcing the board's intention to amend the State Medical Facilities Plan for General Surgical Services, 12 VAC 5-270-10 et seq., and thereby requested public comments in response to the board's intention. The 1994 notice stated the board's intention to amend the criteria and standards for approval of projects involving surgical services and facilities. This portion of the State Medical Facilities Plan provides the methodology for projecting the population need for operating rooms and criteria and standards for the approval of projects that involve the development or modification of surgical facilities subject to regulation under Virginia's certificate of public need program.

With this general notice, the board reminds the public that the board intends to amend this portion of the State Medical Facilities Plan and to consider such other potential amendments and issues relating to this portion of the plan that the public, regulants, and health planning community deem appropriate to raise. The board is soliciting, and will welcome until 5 p.m. on June 25, 1998, additional written comments on this intended action. Written comments should be addressed to Nancy R. Hofheimer, Director, Center for Quality Health Care Services and Consumer Protection, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230, FAX (804) 367-2149.

#### Rules and Regulations for the Licensure of Hospices

##### Additional Comment Period

The State Board of Health published a Notice of Intended Regulatory Action in the March 21, 1994, issue of the Virginia Register announcing the board's intention to amend the

Rules and Regulations for the Licensure of Hospices, 12 VAC 5-390-10 et seq., and thereby requested public comments in response to the board's intention. The 1994 notice stated the board's intention to amend the regulations to require hospices to develop and implement policies and procedures requiring criminal records checks for employees. These regulations govern a coordinated program of home and inpatient care providing palliative and supportive medical and other health-related services to terminally-ill patients and their families.

With this general notice, the board reminds the public that the board intends to amend these regulations and to consider such other potential amendments and issues relating to these regulations that the public, regulants, and health planning community deem appropriate to raise. The board is soliciting, and will welcome until 5 p.m. on June 25, 1998, additional public comments on this intended action. Comments should be addressed to Nancy R. Hofheimer, Director, Center for Quality Health Care Services and Consumer Protection, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230, telephone: (804) 367-2102, FAX (804) 367-2149.

#### Maternal and Child Health Block Grant Application Fiscal Year 1999

The Virginia Department of Health will transmit to the federal Secretary of Health and Human Services by July 15, 1998, the Maternal and Child Health Services Block Grant Application for the period October 1, 1998, through September 30, 1999, in order to be entitled to receive payments for the purpose of providing maternal and child health services on a statewide basis. These services include:

- Preventive and primary care services for pregnant women, mothers and infants up to age one
- Preventive and primary care services for children and adolescents
- Family-centered, community-based, coordinated care and the development of community-based systems of services for children with special health care needs

The Maternal and Child Health Services Block Grant Application makes assurance to the Secretary of Health and Human Services that the Virginia Department of Health will adhere to all the requirements of § 505, Title V-Maternal and Child Health Services Block Grant of the Social Security Act, as amended. To facilitate public comment, this notice is to announce a period from May 29 through June 28, 1998, for review and public comment on the block grant application. Copies of the document will be available as of June 1, 1998, in the office of the director of each county and city health department. Individual copies of the document may be obtained by contacting Janice M. Hicks, Ph.D., at the following address. Written comments must be received by June 30, 1998, and addressed to Dr. Janice Hicks, Virginia Department of Health, Office of Family Health Services, 1500

East Main Street, Suite 104, Richmond, VA 23219, telephone (804) 371-0478 or FAX (804) 692-0184.

/s/ David L. Norton, Director, Legislative and Regulatory Affairs

Date: December 23, 1997

VA.R. Doc. No. C98-891; Filed May 5, 1998, 12:20 p.m.

**STATE LOTTERY DEPARTMENT**

DIRECTOR'S ORDER NUMBER FIFTY-SIX (97)

VIRGINIA'S INSTANT GAME LOTTERY; "HEART OF GOLD," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's instant game lottery (422), "Heart of Gold." 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/ David L. Norton, Director, Legislative and Regulatory Affairs

Date: December 17, 1997

VA.R. Doc. No. C98-890; Filed May 5, 1998, 12:20 p.m.

DIRECTOR'S ORDER NUMBER FIFTY-SEVEN (97)

VIRGINIA'S NINETY-NINTH INSTANT GAME LOTTERY; "LUCKY LEPRECHAUN," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's ninety-ninth instant game lottery, "Lucky Leprechaun." 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.

DIRECTOR'S ORDER NUMBER FIFTY-EIGHT (97)

VIRGINIA'S INSTANT GAME LOTTERY; "JACKS OR BETTER," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's instant game lottery (423), "Jacks or Better." 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/ David L. Norton, Director, Legislative and Regulatory Affairs

Date: December 23, 1997

VA.R. Doc. No. C98-892; Filed May 5, 1998, 12:20 p.m.

DIRECTOR'S ORDER NUMBER ONE (98)

VIRGINIA'S INSTANT GAME LOTTERY 424; "WIN FOR LIFE," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's instant game lottery (424), "Win 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/ David L. Norton, Director, Legislative and Regulatory Affairs

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## General Notices/Errata

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Date: January 14, 1998

VA.R. Doc. No. C98-1056; Filed May 5, 1998, 12:20 p.m.

### DIRECTOR'S ORDER NUMBER TWO (98)

VIRGINIA'S INSTANT GAME LOTTERY 307; "WILD BINGO," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's instant game lottery (307), "Wild 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/ David L. Norton, Director, Legislative and Regulatory Affairs

Date: January 15, 1998

VA.R. Doc. No. C98-1062; Filed May 5, 1998, 12:20 p.m.

### DIRECTOR'S ORDER NUMBER THREE (98)

VIRGINIA'S EIGHTY-FIRST INSTANT GAME LOTTERY, "FAT CAT"; INSTANT GAME LOTTERY 306, "DOUBLE DOLLAR BINGO"; INSTANT GAME LOTTERY 408, "WEEKLY GRAND FOR LIFE"; AND INSTANT GAME LOTTERY 410, "CASINO NIGHT"; END OF GAME.

In accordance with the authority granted by Sections 58.1-4006 A and 9-6.14:4.1 B (15) of the Code of Virginia, I hereby give notice that Virginia's Eighty-First Instant Game Lottery, "Fat Cat"; Instant Game Lottery 306, "Double Dollar Bingo"; Instant Game Lottery 408, "Weekly Grand for Life"; and Instant Game 410, "Casino Nights" will officially end at midnight on Friday, February 13, 1998. The last day for lottery retailers to return for credit unsold tickets from any of these games will be Friday, March 27, 1998. The last day to redeem winning tickets for any of these games will be Wednesday, August 12, 1998, 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 August 12, 1998, 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 any State Lottery Department regional office. 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/ David L. Norton, Director, Legislative and Regulatory Affairs

Date: January 27, 1998

VA.R. Doc. No. C98-1111; Filed May 5, 1998, 12:21 p.m.

### DIRECTOR'S ORDER NUMBER FOUR (98)

VIRGINIA'S INSTANT GAME LOTTERY 120; "LET'S TALK MONEY," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery (120), "Let's Talk 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 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/ David L. Norton, Director, Legislative and Regulatory Affairs

Date: February 6, 1998

VA.R. Doc. No. C98-1358; Filed May 5, 1998, 12:21 p.m.

### DIRECTOR'S ORDER NUMBER FIVE (98)

VIRGINIA'S INSTANT GAME LOTTERY 121; "BASEBALL LEGENDS," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery (121), "Baseball Legends." 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/ David L. Norton, Director, Legislative and Regulatory Affairs

Date: March 16, 1998.

VA.R. Doc. No. C98-1359; Filed May 5, 1998, 12:21 p.m.

**DIRECTOR'S ORDER NUMBER SIX (98)**

**VIRGINIA'S SIXTH ON-LINE LOTTERY; "THE BIG GAME," FINAL RULES FOR GAME OPERATION; FIRST REVISION.**

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the first revision of the final rules for game operation in Virginia's sixth on-line game lottery, "The Big Game." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of on-line 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 supersedes Director's Order Number Twenty-Six (96), issued November 29, 1996. The 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/ David L. Norton, Director, Legislative and Regulatory Affairs

Date: March 16, 1998

VA.R. Doc. No. C98-1360; Filed May 5, 1998, 12:21 p.m.

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**Changes to Medicaid Income Eligibility Levels**

The Department of Medical Assistance Services hereby publishes notice of changes to the Virginia Medicaid Income Eligibility Levels as defined in Attachment 2.6 A Supplement 1 of the State Plan for Medical Assistance (12 VAC 30-40-220).

42 CFR 430.12 requires that state plans for medical assistance be kept up to date with federal requirements, such as the new Federal Poverty Income Guidelines. The Health Care Financing Administration (HCFA) published its 1998 Guidelines in the Federal Register (Volume 63, No. 36, page 9235) on February 24, 1998.

Sections 1902(l), 1902(l)(1)(D), 1902(m), and 1905(s) of the Social Security Act require states to base Medicaid eligibility on percentages of the Federal Poverty Income Guidelines for certain categories of eligible individuals. The Federal Register notice provided updated guidelines which are effective on the date of the Register publication.

This notice identifies those categories of eligible individuals whose eligibility must be based on a percentage of the Federal Poverty Income Guidelines, and the percentages required.

|                     |  |      |
|---------------------|--|------|
| 1902(a)(10)(E)(iii) | Special Low Income Medicare Beneficiaries  | 120% |
| 1902(a)(10)(E)(iv)  | Qualifying Individuals   | 135% |
| 1902(a)(10)(E)(iv)  | Qualifying Individuals 2   | 175% |
| 1902(l)             | Pregnant Women and Children Under Age 6  | 133% |
| 1902(l)(1)(D)       | Children born after 9/30/83 who have attained age 6 but have not attained age 19 | 100% |
| 1902(m)             | Qualified Medicare Beneficiaries   | 100% |
| 1905(s)             | Qualified Disabled and Working Individuals                                       | 200% |

Each year when the annual Federal Poverty Income Guidelines (FPIGs) are published, states must revise the financial eligibility income standards for the affected categories. The standards must be effective no later than April 1 each year.

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## General Notices/Errata

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| Family Size | Income Level           |                        |                        |                        |                        |                        |
|-------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|
|             | Based on 100% of FPIGs | Based on 120% of FPIGs | Based on 133% of FPIGs | Based on 135% of FPIGs | Based on 175% of FPIGs | Based on 200% of FPIGs |
| 1           | \$8,050                | \$9,660                | \$10,707               | \$10,868               | \$14,088               | \$16,100               |
| 2           | \$10,850               | \$13,020               | \$14,431               | \$14,648               | \$18,988               | \$21,700               |
| 3           | \$13,650               | \$16,380               | \$18,155               | \$18,428               | \$23,888               | \$27,300               |
| 4           | \$16,450               | \$19,740               | \$21,879               | \$22,208               | \$28,788               | \$32,900               |
| 5           | \$19,250               | \$23,100               | \$25,603               | \$25,988               | \$33,688               | \$38,500               |

### DEPARTMENT OF MINES, MINERALS AND ENERGY

#### Proposed Settlement Regarding Commonwealth of Virginia v. Cavalier Mining Corporation, et al.

The Department of Mines, Minerals and Energy announces its intent to recommend that the Attorney General of Virginia approve a proposed settlement in the case styled Commonwealth of Virginia v. Cavalier Mining Corporation, et al. This case was filed November 27, 1989, in the circuit court of Wise County, Virginia.

The details of the settlement that the Department of Mines, Minerals and Energy intends to recommend that the Attorney General approve are found in a draft settlement order that is available from Michael D. Abbott, Department of Mines, Minerals and Energy, U. S. Route 23 South, Big Stone Gap, Virginia 24219, telephone (540) 523-8100.

Written comments from the public will be accepted by Mr. Abbott through 5 p.m. on June 25, 1998. Any inquiries about this settlement should be directed to Mr. Abbott at the above address.

### VIRGINIA CODE COMMISSION

#### Notice to Subscribers

Beginning with Volume 14, Issue 1 of the Virginia Register (14:1 VA.R. September 29, 1997), the format of the Register changed slightly. Regulations and other information previously published in the State Corporation Commission, Marine Resources Commission, State Lottery Department, and Tax Bulletin sections have been merged into the Proposed Regulations, Final Regulations, Emergency Regulations, or General Notices sections as appropriate. In addition, regulations appear in order by Virginia Administrative Code (VAC) title order to correspond with the VAC.

#### 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 for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material for publication in *The Virginia Register of Regulations*. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

**Internet:** Forms and other *Virginia Register* resources may be printed or downloaded from the *Virginia Register* web page:  
<http://legis.state.va.us/codecomm/register/regindex.htm>

#### FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01  
NOTICE of COMMENT PERIOD - RR02  
PROPOSED (Transmittal Sheet) - RR03  
FINAL (Transmittal Sheet) - RR04  
EMERGENCY (Transmittal Sheet) - RR05  
NOTICE of MEETING - RR06  
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS - RR08

# CALENDAR OF EVENTS

## 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) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TDD ☎, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

## EXECUTIVE

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Virginia State Apple Board

† June 10, 1998 - 10 a.m. -- Open Meeting  
Department of Agriculture and Consumer Services,  
Washington Building, 1100 Bank Street, Second Floor Board  
Room, Richmond, Virginia. ♿

A meeting to review the year-end expenditures and revenues, 1998-99 budget, grant applications, and potential changes to the Code of Virginia. The board will entertain public comments at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Nancy L. Israel at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Nancy L. Israel, Program Director, Virginia State Apple Board, Washington Bldg., 1100 Bank St., Suite 1008, Richmond, VA 23219, telephone (804) 371-6104.

#### Virginia Horse Industry Board

† July 9, 1998 - 11 a.m. -- Open Meeting  
VPI & SU, Donaldson Brown Continuing Education Center  
and Alumni Hall, Conference Room C, Blacksburg, Virginia. ♿

A meeting to review reports on grants previously awarded and discuss updates on recent marketing projects. Budget items will also be reviewed as well as future marketing projects. The board will entertain public comments 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 Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Andrea S. Heid, Equine Marketing Specialist/Program Manager, Virginia Horse Industry Board, 1100 Bank St., Suite 1004, Richmond, VA 23219, telephone (804) 786-5842 or FAX (804) 371-7786.

#### Virginia Marine Products Board

June 17, 1998 - 6 p.m. -- Open Meeting  
The Backfin Restaurant, 213 Virginia Street, Urbanna,  
Virginia. ♿

A meeting to receive reports from the Executive Director of the Virginia Marine Products Board on finance, marketing, past and future program planning, publicity/public relations, and old/new business. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Shirley Estes at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Boulevard, Suite B, Newport News, VA 23608, telephone (757) 874-3474 or FAX (757) 886-0671.

#### Virginia Small Grains Board

† July 28, 1998 - 8 a.m. -- Open Meeting  
Richmond Airport Hilton, 5501 Eubank Road, Sandston,  
Virginia. ♿

A meeting to (i) hear FY 1997-98 project reports, (ii) receive FY 1998-99 project proposals, and (iii) allocate funding for FY 1998-99 projects. Additionally, action will be taken on any other new business that comes before the board. The board will entertain public comment at the



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## Calendar of Events

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conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact 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.

### STATE ADVISORY BOARD ON AIR POLLUTION

† June 10, 1998 - 9 a.m. -- Open Meeting  
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

A regular meeting to discuss issues related to the implementation of § 112r of the CAAA and a small business mentoring program.

**Contact:** Kathy Frahm, Senior Policy Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4376 or FAX (804) 698-4346.

### STATE AIR POLLUTION CONTROL BOARD

May 27, 1998 - 10 a.m. -- Open Meeting  
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

A quarterly meeting.

**Contact:** Cindy M. Berndt, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378.

### ALCOHOLIC BEVERAGE CONTROL BOARD

June 1, 1998 - 9:30 a.m. -- Open Meeting  
June 15, 1998 - 9:30 a.m. -- Open Meeting  
June 29, 1998 - 9:30 a.m. -- Open Meeting  
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☎

A meeting to receive reports from and discuss activities of staff members, and to discuss other matters not yet determined.

**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

† June 3, 1998 - 9 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

The Interior Design Section will meet 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 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

† June 4, 1998 - 9 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

The Landscape Architect Section will meet 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 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

† June 10, 1998 - 9 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A full board meeting to conduct 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 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

## COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND THEIR FAMILIES

### State Management Team

† June 4, 1998 - 10 a.m. -- Open Meeting  
St. Joseph's Villa, 8000 Brook Road, Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss recommendations for policies and procedures to the State Executive Council on the Comprehensive Services Act.

**Contact:** Elisabeth Hutton, Secretary, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 371-4099.

## BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

June 2, 1998 - 9 a.m. -- Open Meeting  
June 3, 1998 - 9 a.m. -- Open Meeting  
The Hotel Roanoke and Conference Center, 110 Shenandoah Avenue, Roanoke, Virginia. (Interpreter for the deaf provided upon request)

A retreat to develop a mission statement and work plan to guide the board in fulfilling that mission. No public comments will be heard.

**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) 662-9523 or (804) 662-7197/TDD

## BOARD FOR BARBERS

June 8, 1998 - 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 10 days 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) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD

## VIRGINIA STATE CHILD FATALITY REVIEW TEAM

May 27, 1998 - 10 a.m. -- Open Meeting  
Tyler Building, 1300 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss the status of ongoing studies and to 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) 786-1047, FAX (804) 371-8595, or toll-free 1-800-447-1706.

## COMPENSATION BOARD

May 28, 1998 - 11 a.m. -- Open Meeting  
Ninth Street Office Building, 202 North Ninth Street, 9th Floor, Room 913/913A, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A routine business meeting.

**Contact:** Bruce W. Haynes, Executive Secretary, P.O. Box 710, Richmond, VA 23218-0710, telephone (804) 786-0786, FAX (804) 371-0235, or (804) 786-0786/TDD

† June 25, 1998 - 11 a.m. -- Open Meeting  
Ninth Street Office Building, 202 North Ninth Street, 10th Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly board meeting.

**Contact:** Cindy Waddell, Administrative Assistant, Compensation Board, 202 N. 9th St., 10th Floor, Richmond, VA 23219, telephone (804) 786-0786 or FAX (804) 371-0235.

## DEPARTMENT OF CONSERVATION AND RECREATION

May 27, 1998 - 9:30 a.m. -- Open Meeting  
Chippokes Plantation State Park, Stewart Mansion House, 695 Chippokes Park Road, Surry, Virginia. (Interpreter for the deaf provided upon request)

A meeting to finalize goals and objectives and recommend developments and phasing programs to be included in the master plan.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899 or (804) 786-2121/TDD


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## Calendar of Events

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† June 9, 1998 - Noon -- Open Meeting

† July 7, 1998 - Noon -- Open Meeting


First Landing/Seashore State Park, Visitor's Center, 2500 Shore Drive, Virginia Beach, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the State Park Master Plan Team to revise the park master plan.

**Contact:** Derral Jones, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-9042 or FAX (804) 371-7899.

### Virginia Cave Board

May 30, 1998 - 1 p.m. -- Open Meeting


Department of Conservation and Recreation, Zinke Building, 203 Governor Street, Room 200, Richmond, Virginia. 

A regular meeting to discuss issues relating to cave and karst conservation. A public comment period has been set aside on the agenda.


**Contact:** Lawrence R. Smith, Natural Area Protection Manager, Department of Conservation and Recreation, Division of Natural Heritage, 1500 E. Main St., Suite 312, Richmond, VA 23219, telephone (804) 786-7951, FAX (804) 371-2674 or (804) 786-2121.

### Falls of the James Scenic River Advisory Board


June 4, 1998 - Noon -- Open Meeting

City Hall, 900 East Broad Street, 5th Floor, Planning Commission Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss river issues. Persons desiring interpreter services should contact the board at least one week prior to the meeting date.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Division of Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD 

† July 9, 1998 - Noon -- Open Meeting

City Hall, 900 East Broad Street, Planning Commission Conference Room, 5th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review river issues. A public comment period will follow the business meeting.

**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 or FAX (804) 371-7899.

### Virginia State Parks Foundation

† June 4, 1998 - 11 a.m. -- Open Meeting


Chippokes Plantation State Park, 695 Chippokes Park Road, Surry, Virginia.

A regular business meeting of the board of directors. There will be a public comment period following the business meeting.


**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.

### Rivanna Scenic River Advisory Board

May 28, 1998 - 3:30 p.m. -- Open Meeting


Albemarle County Office Building, 401 McIntire Road, Charlottesville, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss river issues. Public comments will be heard following regular business.


**Contact:** Richard G. Gibbons, Environmental Program Manager, Division of Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD 

### BOARD FOR CONTRACTORS


† June 2, 1998 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting of the Disciplinary Committee to receive board member reports and summaries from informal fact-finding conferences held pursuant to the Administrative Process Act and to review consent order offers in lieu of further disciplinary proceedings. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785 or (804) 367-9753/TDD 

† June 10, 1998 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting of the Recovery Fund Committee to consider claims filed under the Virginia Contractor Transaction Recovery Fund Act. This meeting will be open to the public; however, a portion of the board's business may be conducted in executive session. Persons desiring to

participate in the meeting and requiring special accommodations or interpreter services should contact Ms. Pratt Stelly so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Ms. Pratt P. Stelly, Assistant Director, Enforcement Division, Post-Adjudication, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2683 or (804) 367-9753/TDD ☎

## BOARD FOR COSMETOLOGY

**June 1, 1998 - 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 Karen W. O'Neal. Please notify the department of your request at least 10 days in advance. 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) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

## DISABILITY SERVICES COUNCIL

**July 29, 1998 - 11 a.m. -- Open Meeting**  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. (Interpreter for the deaf will be provided)

A meeting to review the FY 1999 Rehabilitative Services Incentive Fund (RSIF) Competitive Proposals for approval.

**Contact:** LaDonna Rogers, Administrative Staff Assistant, Disability Services Council, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-7154/Voice/TTY, toll-free 1-800-552-5019 or 1-800-464-9950/TDD ☎

## VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

**June 2, 1998 - 11 a.m. -- Open Meeting**  
Virginia Economic Development Partnership, 901 East Byrd Street, Riverfront Plaza, West Tower, 19th Floor, Board Room, Richmond, Virginia. ☎

A meeting of the Board of Directors to discuss matters related to the Virginia Economic Development Partnership.

**Contact:** Kim Ellett, Administrative Assistant, Virginia Economic Development Partnership, P.O. Box 798,

Richmond, VA 23218-0798, telephone (804) 371-8108 or FAX (804) 371-8112.

## Virginia Semiconductor Educational Endowment Board

**† June 2, 1998 - 9:30 a.m. -- Open Meeting**  
Virginia Economic Development Partnership, Riverfront Plaza, 901 East Byrd Street, West Tower, 19th Floor, Richmond, Virginia. ☎

A meeting of the board of directors to discuss matters related to the Virginia Semiconductor Educational Endowment.

**Contact:** Kimberly M. Ellett, Administrative Assistant, Virginia Economic Development Partnership, P.O. Box 798, Richmond, VA 23218-0798, telephone (804) 371-8108, FAX (804) 371-8112 or (804) 371-0327/TDD ☎

## LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF ALEXANDRIA

**† June 10, 1998 - 6 p.m. -- Open Meeting**  
Ogden Martin Systems, 5301 Eisenhower Avenue, Alexandria, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to conduct business in accordance with SARA Title III, Emergency Planning and Community Right-to-Know Act of 1986.

**Contact:** Charles W. McRorie, Emergency Preparedness Coordinator, 900 Second Street, Alexandria, VA 22314, telephone (703) 838-3825 or (703) 838-5056/TDD ☎

## LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

**June 4, 1998 - 5:30 p.m. -- Open Meeting**  
6610 Public Safety Way, Chesterfield, Virginia.

A regular meeting.

**Contact:** Lynda G. Furr, Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

## LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER

**May 27, 1998 - 6:30 p.m. -- Open Meeting**  
Courthouse Office Building, 6467 Main Street, Gloucester, Virginia. ☎ (Interpreter for the deaf provided upon request)

The biannual meeting of the committee to discuss a training exercise and a public information campaign for the current fiscal year.

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## Calendar of Events

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**Contact:** Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042 or (804) 693-1479.

### LOCAL EMERGENCY PLANNING COMMITTEE - MONTGOMERY COUNTY/TOWN OF BLACKSBURG

† **June 9, 1998 - 3 p.m.** -- Open Meeting  
American Red Cross, Training Annex, 16 East Main Street, Christiansburg, Virginia. ☎

A regular meeting to discuss an update of the hazardous materials emergency response plan.

**Contact:** Patrick Burton, Regional Planner, New River Planning District Commission, P.O. Box 3726, Radford, VA 24143, telephone (540) 639-9313.

### LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

† **June 3, 1998 - 3 p.m.** -- Open Meeting  
Shawnee Fire Company, 2333 Roosevelt Boulevard, Winchester, Virginia.

Selby Jacobs, coordinator of the Disaster Recovery Task Force, will give a presentation on the Disaster Recovery Task Force.

**Contact:** L. A. Miller, Fire and Rescue Chief, Winchester Fire and Rescue Dept., 126 N. Cameron St., Winchester, VA 22601, telephone (540) 662-2298 or (540) 665-5645 ☎

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

**May 27, 1998 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☎

A meeting of the Regulatory and Bylaws Committees to discuss regulations governing crematories.

**Contact:** Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9523.

**June 10, 1998 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☎

† **June 29, 1998 - 9 a.m.** -- Open Meeting  
The Hotel Roanoke and Conference Center, Roanoke, Virginia. ☎

A meeting to conduct a formal hearing. Public comments will not be received.

**Contact:** Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad

St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9523.

† **July 1, 1998 - 1 p.m.** -- Open Meeting  
The Hotel Roanoke and Conference Center, Roanoke, Virginia. ☎

A general board meeting. Public comments will be received for 15 minutes at the beginning of the meeting.

**Contact:** Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9523.

### BOARD OF GAME AND INLAND FISHERIES

**June 4, 1998 - 9 a.m.** -- Open Meeting  
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The Finance Committee will meet and review the status of the agency's fiscal year 1997-1998 budget and discuss the agency's planned budget for fiscal year 1998-1999. The committee may take any actions deemed appropriate. Other items, including general and administrative matters, may be discussed.

**Contact:** Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2311.

### DEPARTMENT OF GENERAL SERVICES

#### Design-Build/Construction Management Review Board

**June 15, 1998 - 11 a.m.** -- Open Meeting  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review requests submitted by localities for the use of the design-build or construction management type of contract. Public comments will be taken. The chairman may cancel the meeting if there is not business for the board's consideration. Please contact the Division of Engineering and Buildings to confirm meeting date and time.

**Contact:** Sandra H. Williams, Board Clerk, 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 ☎

## DEPARTMENT OF HEALTH

**June 3, 1998 - 10:15 a.m.** -- Open Meeting  
Department of Health, Main Street Station, 1500 East Main Street, Room 121, Richmond, Virginia. ☎

A quarterly meeting of the AIDS Drug Advisory Committee to discuss the state ADAP and the state medication formulary.

**Contact:** Ann Elam, Public Health Nurse Supervisor, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23219, telephone (804) 371-8294 or toll-free 1-800-533-4148.

## DEPARTMENT OF HEALTH PROFESSIONS

**† June 8, 1998 - 2 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

A workshop follow-up session to prioritize the long-term and short-term goals of the board.

**Contact:** Robert A. Nebiker, Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9919 or (804) 662-7197/TDD ☎

**† June 9, 1998 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

The board will receive committee reports from the Practitioner Self-Referral Committee and the Ad Hoc Telehealth Committee, petition for rulemaking dealing with dietitians. Brief public comment will be received at the beginning of 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 or (804) 662-7197/TDD ☎

**† June 9, 1998 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

A meeting of the Regulatory Research Committee to review the initial draft of the report for the evaluation of the need to regulate athletic trainers and receive the progress report on the sunrise study of clinical laboratory science professionals. Brief public comment will be received at the beginning of 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 or (804) 662-7197/TDD ☎

**† June 9, 1998 - 2 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

The Ad Hoc Telehealth Committee will meet to review public comments on the draft report and develop final recommendations for the study. Brief public comment will be received at the beginning of 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 or (804) 662-7197/TDD ☎

**† June 12, 1998 - 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)

The Intervention Program Committee will meet with its contractor and representatives to review reports, policies and procedures for the Health Practitioner's Intervention Program. The committee will meet in open session for general discussion of the program. The committee may meet in executive sessions for the purpose of consideration of specific requests from applicants or participants in the program.

**Contact:** John W. Hasty, Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9424, FAX (804) 662-9114 or (804) 662-7197/TDD ☎

## DEPARTMENT OF HISTORIC RESOURCES

### Board of Historic Resources and State Review Board

**† June 17, 1998 - 10 a.m.** -- Open Meeting  
Frederick County Municipal Building, 107 North Kent Street, Winchester, Virginia. ☎

A quarterly meeting to consider completed and proposed reports for the National Register of Historic Places and the Virginia Landmarks Register easements and highway markers.

**Contact:** June B. Ellis, National Register Assistant, Department of Historic Resources, 2801 Kensington Ave., Richmond, VA 23221, telephone (804) 367-2323, FAX (804) 367-2391 or (804) 367-2386/TDD ☎

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**June 2, 1998 - 9 a.m.** -- Open Meeting  
**July 7, 1998 - 9 a.m.** -- Open Meeting  
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☎ (Interpreter for the deaf provided upon request)

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## Calendar of Events

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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.

### VIRGINIA INFORMATION PROVIDERS NETWORK AUTHORITY

**May 28, 1998 - 1 p.m.** -- Open Meeting  
Council on Information Management, 1100 Bank Street, Suite 901, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular monthly meeting of the Board of Directors.

**Contact:** Linda Hening, Administrative Assistant, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or toll-free 1-800-828-1120/TDD ☎

### VIRGINIA INTERAGENCY COORDINATING COUNCIL

† **June 10, 1998 - 9:30 a.m.** -- Open Meeting  
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The council meets quarterly to advise and assist the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services as lead agency for Part H (of IDEA), early intervention for infants and toddlers with disabilities and their families. Discussion will focus on issues related to Virginia's implementation of the Part H program.

**Contact:** Nicole Corey, Part H Office Services Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, 10th Floor, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3710 or FAX (804) 371-7959.

### STATE BOARD OF JUVENILE JUSTICE

† **June 10, 1998 - 9 a.m.** -- Open Meeting  
700 Centre, 700 East Franklin Street, Richmond, Virginia. ☎

The Secure and Nonsecure Services Committees will meet at 9 a.m. The full board will meet at 10 a.m. to act on certification of programs, approve local VJCCCA Plans, and consider policy proposals regarding the Commonwealth's juvenile justice system.

**Contact:** Donald R. Carignan, Policy Analyst Senior, Department of Juvenile Justice, 700 E. Franklin St., 4th Floor, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

## DEPARTMENT OF LABOR AND INDUSTRY

### Migrant and Seasonal Farmworkers Board

† **June 17, 1998 - 10 a.m.** -- Open Meeting  
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular quarterly meeting.

**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) 786-8418 or (804) 786-2376.

### MARINE RESOURCES COMMISSION

**May 26, 1998 - 9 a.m.** -- Open Meeting  
**June 30, 1998 - 9 a.m.** -- Open Meeting  
Marine Resources Commission, 2600 Washington Avenue, Room 403, Newport News, Virginia. ☎ (Interpreter for the deaf provided upon request)

The commission will hear and decide the following marine environmental matters at 9 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 the following fishery management items at approximately noon: 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 ☎

### MATERNAL AND CHILD HEALTH COUNCIL

† **June 3, 1998 - 1 p.m.** -- Open Meeting  
General Assembly Building, Speaker's Conference Room, 6th Floor, 910 Capitol Square, 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, Ph.D., Policy Analyst, Department of Health, Office of Family Health Services, 1500 E. Main St., Room 104, Richmond, VA 23219; telephone (804) 371-0478 or FAX (804) 692-0184.

## BOARD OF MEDICAL ASSISTANCE SERVICES

† **June 9, 1998 - 10 a.m.** -- Open Meeting  
Department of Medical Assistance Services, Suite 1300, Board Room, 600 East Broad Street, Richmond, Virginia.

A meeting to discuss medical assistance services policy and to take action on issues pertinent to the board.

**Contact:** Cynthia K. Morton, 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.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**June 8, 1998 - 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 of the Pharmacy Liaison Committee.

**Contact:** Marianne Rollings, Pharmacist, Department of Medical Assistance Services, Program Operations, Pharmacy Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4268.

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**June 26, 1998 -** 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 adopt regulations entitled: **12 VAC 30-100-10 et seq. Health Insurance Program for Working Uninsured Individuals.** These regulations establish the Health Insurance Program for Working Uninsured Individuals. The regulations define, in a fair and equitable manner, who is eligible to receive premium subsidies, how beneficiaries will be enrolled and disenrolled, and what appeal rights they have. The regulations outline the rights and responsibilities of the providers and describe how the Department of Medical Assistance Services monitors the services provided by the managed care plans. The regulations also outline the administrative structure and reimbursement methodology and provide information on the benefit package or covered services.

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

Public comments may be submitted until June 26, 1998, to John Kenyon, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria Simmons or Roberta Jonas, 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.

## BOARD OF MEDICINE

**June 4, 1998 - 8 a.m.** -- Open Meeting  
**June 5, 1998 - 8 a.m.** -- Open Meeting  
**June 6, 1998 - 8 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 1, 2, 3, and 4, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

On June 4, a meeting to conduct general board business, receive committee and board reports and discuss any other items which may come before the board. On June 4, 5, and 6 the board will review reports, interview licensees/applicants, conduct administrative proceedings, and make decisions on disciplinary matters. The board will also review any regulations that may come before it. The board 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 ☎

## Informal Conference Committee

**June 24, 1998 - 9:30 a.m.** -- Open Meeting  
Sheraton Inn, 2801 Plank Road, Fredericksburg, Virginia.

**June 26, 1998 - 9:30 a.m.** -- Open Meeting  
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

† **August 6, 1998 - 10:30 a.m.** -- Open Meeting  
Patrick Henry Hotel, 617 South Jefferson Street, Roanoke, Virginia.

A meeting to 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) 662-7332, FAX (804) 662-9517 or (804) 662-7197/TDD ☎



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## Calendar of Events

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### DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

#### State Human Rights Committee

† **June 5, 1998 - 9 a.m.** -- Open Meeting  
New River Valley CSB, 700 University City Boulevard,  
Blacksburg, Virginia. (Interpreter for the deaf provided upon  
request)

A regular meeting of the committee to discuss business  
and conduct hearings relating to human rights issues.  
Agenda items are listed for the meeting.

**Contact:** Kli Kinzie, Executive Secretary, Department of  
Mental Health, Mental Retardation and Substance Abuse  
Services, P.O. Box 1797, Richmond, VA 23218-1797,  
telephone (804) 786-3988, FAX (804) 371-2308 or (804) 371-  
8977/TDD

#### MOTOR VEHICLE DEALER BOARD

† **June 8, 1998 - 3:30 p.m.** -- Public Hearing  
Tidewater Community College, 1428 Cedar Road, George B.  
Pass Building, Room 157, Chesapeake, Virginia.

**June 15, 1998 - 10 a.m.** -- Public Hearing  
Department of Motor Vehicles, 2300 West Broad Street,  
Williamsburg Room, Richmond, Virginia.

† **June 16, 1998 - 10:30 a.m.** -- Public Hearing  
Virginia Western Community College, 3095 Colonial Avenue,  
S.W., Duncan Hall, Room 209, Roanoke, Virginia.

† **June 23, 1998 - 10 a.m.** -- Public Hearing  
Northern Virginia Community College, Manassas Campus,  
6901 Sudley Road, Colgan Hall, Room MC226, Manassas,  
Virginia.

**June 27, 1998** - 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 Motor Vehicle Dealer Board  
intends to amend regulations entitled: **24 VAC 22-30-10  
et seq. Motor Vehicle Dealer Advertising Practices  
and Enforcement Regulations.** The purpose of the  
proposed amendments is to expand the definition of  
advertisement to include all types of media, including  
electronic media, and clarify the definition of the terms  
"free" and "dealer rebates" when used in advertisements.

Statutory Authority: §§ 46.2-1506 and 46.2-1582 of the Code  
of Virginia.

**Contact:** Bruce Gould, Executive Director, Motor Vehicle  
Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA  
23220, telephone (804) 367-1100, FAX (804) 367-1053 or  
toll-free 1-800-272-9268/TDD

### COMMONWEALTH NEUROTRAUMA INITIATIVE ADVISORY BOARD

**July 23, 1998 - 9:30 a.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms  
Drive, Richmond, Virginia. (Interpreter for the deaf provided  
upon request)

A quarterly board meeting.

**Contact:** Charlotte Neal, Board Administrator, Department of  
Rehabilitative Services, 8004 Franklin Farms Dr., Richmond,  
VA 23288-0300, telephone (804) 662-7082, toll-free 1-800-  
552-5019 or 1-800-464-9950/TDD

#### BOARD OF NURSING

**June 3, 1998 - 10 a.m.** -- Open Meeting  
Department of Social Services, Abingdon Regional Office,  
190 Patton Street, Abingdon, Virginia. (Interpreter for the  
deaf provided upon request)

A meeting to conduct informal conferences with certified  
nurse aides and nurses. Public comments 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

† **June 2, 1998 - 9 a.m.** -- Open Meeting

† **June 9, 1998 - 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, comprised of two or  
three members of the Board of Nursing, will conduct  
informal conferences 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

#### BOARD OF NURSING HOME ADMINISTRATORS

† **June 8, 1998 - 11 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Richmond, Virginia.

A meeting of the Task Force Committee to review the  
current administrator-in-training program and develop  
new criteria for that program. No public comments will  
be heard.

**Contact:** Senita Booker, Administrative Staff Assistant,  
Board of Nursing Home Administrators, 6606 W. Broad St.,  
4th Floor, Richmond, VA 23230-1717, telephone (804) 662-  
9111, FAX (804) 662-9523, or (804) 662-7197/TDD

† July 8, 1998 - 9:30 a.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Richmond, Virginia. ☎

A regular meeting. Public comments will be received for 15 minutes prior to the meeting. A formal hearing will be held following the meeting. No public comments will be heard at that time.

**Contact:** Senita Booker, Administrative Staff Assistant, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9523 or (804) 662-7197/TDD ☎

### VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

May 27, 1998 - 1 p.m. -- Open Meeting  
202 North Ninth Street, 9th Floor Conference Room,  
Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The Executive Committee will meet to discuss business and prepare for the May 28, 1998, board meeting.

**Contact:** Thomas Ariail, Business Manager, Virginia Board for People with Disabilities, 202 N. Ninth St., 9th Floor, Richmond, VA 23219, telephone (804) 786-0016/TDD ☎, FAX (804) 786-1118 or toll-free 1-800-846-4464.

May 28, 1998 - 9 a.m. -- Open Meeting  
202 North Ninth Street, 9th Floor, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

The Education, Community Living and Employment Committees will meet from 9 a.m. to noon to discuss business and prepare for the afternoon business meeting. The board business meeting will be held from 1 p.m. to 4:30 p.m. A public comment period will begin before the board business meeting. Consumers, family members, and service providers are encouraged to comment on the needs and issues facing people with disabilities in Virginia.

**Contact:** Thomas Ariail, Business Manager, Virginia Board for People with Disabilities, 202 N. Ninth St., 9th Floor, Richmond, VA 23219, telephone (804) 786-0016, FAX (804) 786-1118 or toll-free 1-800-846-4464.

### BOARD OF PHARMACY

May 28, 1998 - 10 a.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 on the issues addressed in SJR 61 of the 1998 Session of the General Assembly which requested the board to study the need for regulation of pharmacy technicians. The board seeks comment on the public perception of the identity, training, role and responsibilities of technicians in a pharmacy.

**Contact:** Elaine J. Yeatts, Senior Regulatory Analyst, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9918 or FAX (804) 662-9114.

† June 10, 1998 - 9 a.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 3, Richmond, Virginia. ☎

A working meeting of the Regulation Committee to (i) discuss emergency regulations regarding SB 560 and HB 1300 and (ii) discuss petition for rulemaking. This is a working meeting of the committee and public comments will not be received.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313 or (804) 662-7197/TDD ☎

† June 11, 1998 - 9 a.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 2, Richmond, Virginia. ☎

A general business meeting of the board. The board may consider disciplinary matters and conduct disciplinary proceedings and may act on any recommendations of the Regulation Committee for emergency regulations (HB 1300 and SB 560) if the final draft is available. Public comments will be received at the beginning of the meeting immediately following the approval of the agenda and the review and acceptance of the minutes.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313 or (804) 662-7197/TDD ☎

### POLYGRAPH EXAMINERS ADVISORY BOARD

† June 16, 1998 - 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, disciplinary cases, and other matters requiring board action. 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 accommodation. The department fully complies with the Americans with Disabilities Act. Contact the board for confirmation of meeting date and time.

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## Calendar of Events

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**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or (804) 367-9753/TDD ☎

### BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

**June 12, 1998** - 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 Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals intends to amend regulations entitled: **18 VAC 115-40-10 et seq. Regulations Governing the Certification of Rehabilitation Providers.** The proposed amendments will replace emergency regulations which have been in effect since October 1, 1997, and are intended to more clearly define the scope of practice and the mandate for certification to those who exercise professional judgment in the provision of rehabilitation services.

Statutory Authority: §§ 54.1-2400 and 54.1-3515 of the Code of Virginia.

**Contact:** Evelyn B. Brown, Executive Director, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912 or FAX (804) 662-9943.

### BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

**June 5, 1998 - 10 a.m.** -- Open Meeting  
Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Room B, Virginia Beach, Virginia. ☎

A general business 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:** Debra L. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519 or (804) 367-9753/TDD ☎

**June 5, 1998 - 1:30 p.m.** -- Public Hearing  
Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Room B, Virginia Beach, Virginia. ☎

A public hearing in connection with the board's study of the need to regulate electrologists. The study is a result of House Joint Resolution 204 and Senate Joint Resolution 128, which passed in the 1998 Session of the General Assembly. 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:** Debra L. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519 or (804) 367-9753/TDD ☎

### BOARD OF PSYCHOLOGY

**June 8, 1998 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ☎

A meeting of the Discipline Committee to conduct an informal hearing regarding allegations of practitioner misconduct. Public comments will not 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.

**June 9, 1998 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ☎

A regular meeting to discuss board business and receive committee reports. Public comments will be received at the beginning of the meeting.

**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.

### VIRGINIA PUBLIC SCHOOL AUTHORITY

**June 29, 1998 - 9:30 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, Virginia. ☎

A meeting to consider certain board administrative matters including election of officers, contract review, and other business as necessary.

**Contact:** Richard A. Davis, Debt Manager, Department of the Treasury, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-4928 or e-mail richard.davis@trs.state.va.us.

## VIRGINIA RACING COMMISSION

**May 30, 1998** - 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 Racing Commission intends to amend regulations entitled: **11 VAC 10-180-10 et seq. Medication**. The proposed regulations provided for the use of furosemide and adjunct therapies in racehorses on race day.

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

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

† **June 17, 1998 - 9:30 a.m.** -- Open Meeting  
Colonial Downs, Administrative Building, 12007 Courthouse Circle, New Kent, Virginia. ♿

A regular monthly meeting including a public participation segment. The commission will also hear a report from Colonial Downs.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

† **July 15, 1998 - 9:30 a.m.** -- Open Meeting  
Colonial Downs, Administrative Building, 12007 Courthouse Circle, New Kent, Virginia. ♿

A regular monthly meeting including a report from Colonial Downs regarding preparations for the full thoroughbred race meeting and a public participation segment.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

## VIRGINIA RECYCLING MARKETS DEVELOPMENT COUNCIL

† **June 9, 1998 - 10 a.m.** -- Open Meeting  
Central Virginia Waste Management Authority, 2104 West Laburnum Avenue, Board Room, Richmond, Virginia. ♿  
(Interpreter for the deaf provided upon request)

A quarterly meeting. The council was established by the General Assembly in 1993 to develop strategies to enhance the markets for recyclables. Meetings are dependent on a quorum of 10. Subcommittee meetings may be held prior to or after the general council meeting. Call Paddy Katzen for details or e-mail [pmkatzen@deq.state.va.us](mailto:pmkatzen@deq.state.va.us).

**Contact:** Paddy Katzen, Special Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488, e-mail [pmkatzen@deq.state.va.us](mailto:pmkatzen@deq.state.va.us).

## VIRGINIA RESOURCES AUTHORITY

**June 9, 1998 - 9:30 a.m.** -- Open Meeting  
Ramada Oceanfront Tower and Conference Center, 58th and Oceanfront, Virginia Beach, Virginia.

A meeting 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 the authority 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, Jr., 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 28, 1998 - 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 23218-0548, telephone (804) 782-1938.

## SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

† **June 10, 1998 - 10 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia.

A meeting to hear appeals of health department denials of septic tank permits.

**Contact:** Gary L. Hagy, Acting Secretary, Sewage Handling and Disposal Appeal Review Board, Department of Health, P.O. Box 2448, Room 115, Richmond, VA 23218, telephone (804) 225-4022 or FAX (804) 225-4003.

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# Calendar of Events

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## VIRGINIA SMALL BUSINESS FINANCING AUTHORITY


### Loan Committee

**May 26, 1998 - 10 a.m.** -- Open Meeting  
Department of Business Assistance, 707 East Main Street,  
3rd Floor, Main Board Room, Richmond, Virginia.


A meeting to review applications for loans submitted to  
the authority for approval. Meeting time is subject to  
change.

**Contact:** Cathleen M. Surface, Executive Director, Virginia  
Small Business Financing Authority, 707 E. Main St., 3rd  
Floor, Richmond, VA 23219, telephone (804) 371-8254 or  
FAX (804) 225-3384.


## STATE BOARD OF SOCIAL SERVICES

**† June 17, 1998 - 9 a.m.** -- Open Meeting  
**† June 18, 1998 - 9 a.m.** -- Open Meeting (if necessary)  
The Hotel Roanoke and Conference Center, 110  
Shenandoah Avenue, Roanoke, Virginia. 


A work session and business meeting.

**Contact:** Pat Rengnerth, Administrative Staff Specialist,  
Department of Social Services, 730 E. Broad St., Richmond,  
VA 23219, telephone (804) 692-1826, FAX (804) 692-0319,  
toll-free 1-800-552-3431, or toll-free 1-800-552-7096/TDD 


## BOARD FOR PROFESSIONAL SOIL SCIENTISTS

**† June 11, 1998 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. 

A regularly scheduled meeting of the board to address  
policy and procedural issues and other business matters  
which may require board action. The meeting is open to  
the public; however, a portion of the meeting may be  
discussed in executive session. Persons desiring to  
participate in the meeting and requiring special  
accommodations or interpreter services should contact  
the department in advance so that suitable arrangements  
can be made. The board fully complies with the  
Americans with Disabilities Act.

**Contact:** Geralde W. Morgan, Assistant Director,  
Department of Professional and Occupational Regulation,  
3600 W. Broad St., Richmond, VA 23230-4917, telephone  
(804) 367-2785 or (804) 367-9753/TDD 


## VIRGINIA TOURISM CORPORATION

**† June 3, 1998 - 4 p.m.** -- Open Meeting  
The Downtown Club, Riverfront Plaza, 901 East Byrd Street,  
Richmond, Virginia.  (Interpreter for the deaf provided upon  
request)

A meeting of the Motion Picture Development Committee  
to discuss strategic planning related to the Virginia Film  
Office. Public comment will be taken at the beginning of  
the meeting.


**Contact:** Judy Bulls, Assistant to the President and CEO,  
Virginia Tourism Corporation, Riverfront Plaza, 901 E. Byrd  
St., Richmond, VA 23219, telephone (804) 371-8174 or FAX  
(804) 786-1919.

## COMMONWEALTH TRANSPORTATION BOARD

**† June 17, 1998 - 2 p.m.** -- Open Meeting  
Department of Transportation, 1401 East Broad Street,  
Richmond, Virginia.  (Interpreter for the deaf provided upon  
request)

A work session of the board and the Department of  
Transportation staff.

**Contact:** Shirley J. Ybarra, Secretary of Transportation, 1401  
E. Broad St., Richmond, VA 23219, telephone (804) 786-  
6675.

**† June 18, 1998 - 10 a.m.** -- Open Meeting  
Department of Transportation, 1401 East Broad Street,  
Richmond, 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 comments will be  
received at the outset of the meeting on items on the  
meeting agenda for which the opportunity for public  
comments 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:** Shirley J. Ybarra, Secretary of Transportation, 1401  
E. Broad St., Richmond, VA 23219, telephone (804) 786-  
6675.

## DEPARTMENT OF TRANSPORTATION

† June 11, 1998 - 9 a.m. -- Public Hearing  
Salem Civic Center, 1001 Roanoke Boulevard, Salem,  
Virginia. (Interpreter for the deaf provided upon request)

The final hearing to receive comments on highway allocations for the upcoming year and on updating the six-year improvement program for the interstate, primary, and urban systems, and mass transit for the Bristol, Salem, Lynchburg and Staunton districts.

**Contact:** James W. Atwell, Assistant Commissioner - Finance, Virginia Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-5128, FAX (804) 371-8719 or toll-free 1-800-444-7832.

† June 11, 1998 - 2 a.m. -- Public Hearing  
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The final hearing to receive comments on highway allocations for the upcoming year and on updating the six-year improvement program for the interstate, primary, and urban systems, as well as mass transit for the Richmond, Fredericksburg, Suffolk, Culpeper, and Northern Virginia districts.

**Contact:** James W. Atwell, Assistant Commissioner - Finance, Virginia Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-5128, FAX (804) 371-8719 or toll-free 1-800-444-7832.

## TREASURY BOARD

† June 17, 1998 - 9 a.m. -- Open Meeting  
† July 15, 1998 - 9 a.m. -- Open Meeting  
† August 19, 1998 - 9 a.m. -- Open Meeting  
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

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.

## VIRGINIA BOARD ON VETERANS' AFFAIRS

† May 28, 1998 - 1 p.m. -- Open Meeting  
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The public is invited to speak on items of interest to the veteran community; however, presentations should be limited to 10 minutes. Speakers are requested to register with the aide present at the meeting and should leave a copy of their remarks for the record. Service organizations should designate one person to speak on behalf of the entire organization in order to allow ample time to accommodate all who may wish to speak.

**Contact:** Beth Tonn, Secretary to the Board, Virginia Board on Veterans' Affairs, 270 Franklin Rd., S.W., Room 503, Roanoke, VA 24011, telephone (540) 857-7104.

## VIRGINIA VETERANS CARE CENTER

† June 12, 1998 - 12:30 p.m. -- Open Meeting  
Ninth Street Office Building, 202 North 9th Street, Room 625, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The fourth quarterly meeting of the Board of Trustees to review operations of the Virginia Veterans Care Center.

**Contact:** Duane A. Kavka, Executive Director, Virginia Veterans Care Center, P.O. Box 6334, Roanoke, VA 24017-0334, telephone (540) 857-6974, FAX (540) 857-6954, toll-free 1-800-220-8387, or (540) 342-8810/TDD (Interpreter for the deaf provided upon request)

## BOARD FOR THE VISUALLY HANDICAPPED

July 21, 1998 - 1 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 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 (Interpreter for the deaf provided upon request)

## DEPARTMENT FOR THE VISUALLY HANDICAPPED

May 30, 1998 - 10 a.m.-- Open Meeting  
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Vocational Rehabilitation Council to advise the department 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 (Interpreter for the deaf provided upon request)

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## Calendar of Events

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### VIRGINIA VOLUNTARY FORMULARY BOARD

**May 29, 1998 - 10 a.m.** -- Public Hearing  
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add drugs and drug products to the formulary that became effective on January 15, 1996, and its most recent supplement. Copies of the proposed revisions to the formulary are available for inspection at the Department of Health, Bureau of Pharmacy Services, James Monroe Building, 101 North 14th Street, Room S-45, P.O. Box 2448, Richmond, VA 23218. Written comments sent to the above address and received prior to 5 p.m. on May 29, 1998, will be made part of the hearing record.

**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.

**June 18, 1998 - 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

NOTE: EXTENSION OF COMMENT PERIOD

**June 22, 1998** - 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 20-80-10 et seq. Solid Waste Management Regulations.** Proposed Amendment 2 consists of 513 changes developed as a result of the regulatory review process and in response to a petition for rulemaking. The major changes are proposed in the ground water monitoring program, permit-by-rule for captive industrial landfills, addition of presumptive remedies in corrective action and changes in analytical requirements for contaminated soils.

Statutory Authority: § 10.1-1402 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)

698-4266, toll-free 1-800-592-5482 or (804) 698-4021/TDD  
☎

### STATE WATER CONTROL BOARD

**May 28, 1998 - 1 p.m.** -- Public Hearing  
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Training Room, Glen Allen, Virginia. ☎

**June 26, 1998** - 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 amend regulations entitled: **9 VAC 25-590-10 et seq. Petroleum Underground Storage Tank Financial Responsibility Requirements.** The proposed amendments serve four purposes: (i) to make the regulation conform to amendments in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and to federal financial responsibility requirements; (ii) to permit local government underground storage tank owners to use additional financial responsibility demonstration mechanisms; (iii) to provide liability relief for lenders in accordance with federal and state law; and (iv) to correct typographical errors and omissions.

**Request for Comments:** The purpose of this notice is to provide the public with the opportunity to comment on the proposed amendments and the costs and benefits of the proposal.

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

**Location of Proposal:** The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed amendments, an explanation of need for the proposed amendments, an estimate of the impact of the proposed amendments upon small businesses, identification of and 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 Spill Response and Remediation, 629 East Main Street, 7th Floor, 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  
Phone: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
3019 Peters Creek Road  
Roanoke, Virginia  
Phone: (540) 562-6700

Lynchburg Satellite Office  
Department of Environmental Quality  
7705 Timberlake Road  
Lynchburg, Virginia  
Phone: (804) 582-5120

Valley Regional Office  
Department of Environmental Quality  
4411 Early Road  
Harrisonburg, Virginia  
Phone: (540) 574-7800

Fredericksburg Satellite Office  
Department of Environmental Quality  
300 Central Road, Suite B  
Fredericksburg, Virginia  
Phone: (540) 899-4600

Piedmont Regional Office  
Department of Environmental Quality  
4949-A Cox Road  
Glen Allen, Virginia  
Phone: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
5636 Southern Boulevard  
Virginia Beach, Virginia  
Phone: (757) 518-2000

Northern Regional Office  
Department of Environmental Quality  
13901 Crown Court  
Woodbridge, Virginia  
Phone: (703) 583-3800  
Statutory Authority: §§ 62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m. June 26, 1998.

**Contact:** Mary-Ellen Kendall, Financial Programs Manager, Office of Spill Response and Remediation, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4298, FAX (804) 698-4266, toll-free 1-800-592-5482 or (804) 698-4021/TDD ☎

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

**June 11, 1998 - 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 to discuss regulatory review and other matters requiring board action, including disciplinary cases. All meetings are subject to cancellation. Call the board office within 24 hours of the meeting to confirm meeting date and time. 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 department so that suitable arrangements can be made. The board 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 or (804) 367-9753/TDD ☎

## INDEPENDENT

### STATE LOTTERY BOARD

† **June 24, 1998 - 9:30 a.m. -- Open Meeting**  
State Lottery Department, 900 East Main Street, Richmond, Virginia ☎ (Interpreter for the deaf provided upon request)

A regular business meeting of the board. Public comment will be received at the beginning of the meeting.

**Contact:** David L. Norton, Esq., Director, Legislative and Regulatory Affairs, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7109 or FAX (804) 692-7775.

## LEGISLATIVE

### VIRGINIA CODE COMMISSION

† **June 10, 1998 - 10 a.m. -- Open Meeting**  
General Assembly Building, 910 Capitol Street, Speaker's Conference Room, 6th Floor, Richmond, Virginia ☎ (Interpreter for the deaf provided upon request)

A meeting to adopt the workplan for the recodification of Titles 2.1 and 9 of the Code of Virginia.

**Contact:** Jane Chaffin, Deputy Registrar, General Assembly Bldg., 910 Capitol Street, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625 or e-mail jchaffin@leg.state.va.us.

† **July 8, 1998 - 10 a.m. -- Open Meeting**  
General Assembly Building, 910 Capitol Street, Speaker's Conference Room, 6th Floor, Richmond, Virginia ☎ (Interpreter for the deaf provided upon request)

A meeting to continue with the recodification of Titles 2.1 and 9 of the Code of Virginia.



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# Calendar of Events

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**Contact:** Jane Chaffin, Deputy Registrar, General Assembly Bldg., 910 Capitol Street, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625 or e-mail jchaffin@leg.state.va.us.

## JOINT SUBCOMMITTEE STUDYING POTENTIAL CHANGES IN RESTRUCTURING THE ELECTRICAL UTILITIES INDUSTRY IN THE COMMONWEALTH (SJR 91, 1998)

† **June 3, 1998 - 10 a.m.** -- Open Meeting  
† **July 9, 1998 - 10 a.m.** -- Open Meeting  
† **August 18, 1998 - 10 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. Individuals requiring interpreter services or other accommodations should call or write Thomas C. Gilman seven working days before the meeting.

**Contact:** Thomas C. Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TDD

## JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† **June 8, 1998 - 9:30 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia.

A staff briefing on DMV Commercial Driver-Training Schools and update performance measures.

**Contact:** Philip A. Leone, Director, Joint Legislative Audit and Review Commission, General Assembly Bldg., 910 Capitol St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### May 26

Marine Resources Commission  
Small Business Financing Authority, Virginia  
- Loan Committee

#### May 27

Air Pollution Control Board, State  
Child Fatality Review Team, State  
Conservation and Recreation, Department of  
Emergency Planning Committee, Local - Gloucester  
Funeral Directors and Embalmers, Board of  
People with Disabilities, Virginia Board for

#### May 28

Compensation Board  
Conservation and Recreation, Department of  
- Rivanna Scenic River Advisory Board  
Information Providers Network Authority, Virginia  
People with Disabilities, Virginia Board for  
Richmond Hospital Authority  
- Board of Commissioners  
† Veterans' Affairs, Virginia Board on

#### May 30

Conservation and Recreation, Department of  
- Virginia Cave Board  
Visually Handicapped, Department for the

#### June 1

Alcoholic Beverage Control Board  
Cosmetology, Board for

#### June 2

Audiology and Speech-Language Pathology, Board of  
† Contractors, Board for  
- Disciplinary Board  
Economic Development Partnership, Virginia  
† Educational Endowment Board, Virginia  
Semiconductor  
Hopewell Industrial Safety Council  
† Nursing, Board of

#### June 3

† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for  
- Interior Design Section  
Audiology and Speech-Language Pathology, Board of  
† Electrical Utilities Industry in the Commonwealth, Joint Subcommittees Studying Potential Changes in Restructuring the  
† Emergency Planning Committee, Local - Winchester Health, Department of  
- AIDS Drug Advisory Committee  
† Maternal and Child Health Council  
Nursing, Board of  
† Tourism Corporation, Virginia  
- Motion Picture Development Committee

#### June 4

† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for  
- Landscape Architect Section  
† At-Risk Youth and Their Families, Comprehensive Services for  
- State Management Team  
Conservation and Recreation, Department of  
- Falls of the James Scenic River Advisory Board  
- Virginia State Parks Foundation  
Emergency Planning Committee, Local - Chesterfield County  
Game and Inland Fisheries, Board of  
Medicine, Board of

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## Calendar of Events

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### June 5

Medicine, Board of  
† Mental Health, Mental Retardation and Substance Abuse Services, Department of  
- State Human Rights Committee  
Professional and Occupational Regulation, Board for

### June 6

Medicine, Board of

### June 8

Barbers, Board for  
† Health Professions, Board of  
† Legislative Audit and Review Commission, Joint  
Medical Assistance Services, Department of  
† Nursing Home Administrators, Board of  
Psychology, Board of

### June 9

† Conservation and Recreation, Department of  
† Emergency Planning Committee, Local - Montgomery County/Town of Blacksburg  
† Health Professions, Board of  
- Regulatory Research Committee  
- Ad Hoc Telehealth Committee  
† Medical Assistance Services, Board of  
† Nursing, Board of  
Psychology, Board of  
† Recycling Markets Development Council, Virginia Resources Authority, Virginia

### June 10

† Agriculture and Consumer Services, Department of  
- Virginia State Apple Board  
† Air Pollution, State Advisory Board on  
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for  
† Code Commission, Virginia  
† Contractors, Board for  
- Recovery Fund Committee  
† Emergency Planning Committee, Local - City of Alexandria  
Funeral Directors and Embalmers, Board of  
† Interagency Coordinating Council, Virginia  
† Juvenile Justice, Board of  
† Pharmacy, Board of  
† Sewage Handling and Disposal Appeals Review Board

### June 11

† Pharmacy, Board of  
† Soil Scientists, Board for Professional  
† Transportation, Department of  
Waterworks and Wastewater Works Operators, Board for

### June 12

† Health Professions, Department of  
† Veterans Care Center, Virginia  
- Board of Trustees

### June 15

Alcoholic Beverage Control Board  
General Services, Department of

- Design-Build/Construction Management Review Board

### June 16

† Polygraph Examiners Advisory Board

### June 17

Agriculture and Consumer Services, Department of  
- Virginia Marine Products Board  
† Historic Resources, Department of  
- State Review Board/Historic Resources Board  
† Labor and Industry, Department of  
- Migrant and Seasonal Farmworkers Board  
† Racing Commission, Virginia  
† Social Services, State Board of  
† Transportation Board, Commonwealth  
† Treasury Board

### June 18

† Social Services, State Board of  
† Transportation Board, Commonwealth  
Voluntary Formulary Board, Virginia

### June 24

† Lottery Board, State  
Medicine, Board of

### June 25

† Compensation Board

### June 26

Medicine, Board of  
- Informal Conference Committee

### June 29

Alcoholic Beverage Control Board  
† Funeral Directors and Embalmers, Board of  
Public School Authority, Virginia

### June 30

Marine Resources Commission

### July 1

† Funeral Directors and Embalmers, Board of

### July 7

† Conservation and Recreation, Department of  
Hopewell Industrial Safety Council

### July 8

† Code Commission, Virginia  
† Nursing Home Administrators, Board of

### July 9

† Agriculture and Consumer Services, Department of  
- Virginia Horse Industry Board  
† Conservation and Recreation, Department of  
- Falls of the James Scenic River Advisory Board  
† Electrical Utilities Industry in the Commonwealth, Joint Subcommittees Studying Potential Changes in Restructuring the

### July 15

† Racing Commission, Virginia  
† Treasury Board

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## Calendar of Events

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**July 21**

Visually Handicapped, Board for the

**July 23**

Neurotrauma Initiative Advisory Board, Commonwealth

**July 28**

† Agriculture and Consumer Services, Department of  
- Virginia Small Grains Board

**July 29**

Disability Services Council

**August 6**

† Medicine, Board of

**August 18**

† Electrical Utilities Industry in the Commonwealth, Joint  
Subcommittees Studying Potential Changes in  
Restructuring the

**August 19**

† Treasury Board

### PUBLIC HEARINGS

**May 28**

Pharmacy, Board of  
Water Control Board, State

**May 29**

Voluntary Formulary Board, Virginia

**June 5**

Professional and Occupational Regulation, Board for

**June 8**

† Motor Vehicle Dealer Board

**June 15**

Motor Vehicle Dealer Board

**June 16**

† Motor Vehicle Dealer Board

**June 23**

† Motor Vehicle Dealer Board